

KLUWER LAW INTERNATIONAL

CRIMINAL LAW IN SPAIN

LORENA BACHMAIER &
ANTONIO DEL MORAL GARCÍA



Wolters Kluwer
Law & Business

KLUWER LAW INTERNATIONAL

Criminal Law in Spain

Lorena Bachmaier and Antonio del Moral García

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Criminal Law.



Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-3295-6

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham and Eastbourne

Criminal Law in Spain

Table of Contents

| | |
|--|----|
| The Authors | 3 |
| List of Abbreviations | 17 |
| General Introduction | 19 |
| §1. THE GENERAL BACKGROUND OF SPAIN | 19 |
| I. Geography and Climate | 19 |
| II. Population | 20 |
| III. Economy | 20 |
| IV. Political and Administrative Structure | 21 |
| V. The Judicial System | 24 |
| §2. CRIMINAL LAW, CRIMINAL JUSTICE, AND CRIMINAL SCIENCE | 25 |
| I. Definitions of Criminal Law | 25 |
| A. Criminal Justice System | 25 |
| B. Criminal Law | 25 |
| C. Criminal Procedure | 25 |
| D. Criminal Offences | 26 |
| II. Characteristics of Criminal Law | 26 |
| III. Overview of the Criminal Justice System | 27 |
| A. The Police | 27 |
| B. The Prosecution Service | 30 |
| C. Investigating Judges | 31 |
| D. Trial Courts | 32 |
| E. Prison System and Probation Service | 32 |
| F. The Bar | 33 |
| G. Statistical Overview | 34 |
| §3. THE HISTORICAL BACKGROUND | 35 |
| I. Historical Criminal Law | 35 |
| II. The Historical Penal Codes | 36 |
| III. Criminal Law in the Constitutional Regime | 39 |
| IV. The Penal Code of 1995 | 41 |
| V. Subsequent Reforms | 41 |

Table of Contents

| | |
|---|----|
| §4. TRENDS IN CRIMINAL JUSTICE | 43 |
| I. The Debate on the Attribution of the Investigation Phase to the Public Prosecution Service | 43 |
| II. The Generalization of the ‘Double Instance’ | 45 |
| III. Principle of Opportunity and Mediation | 46 |
| IV. Substantive Criminal Law: The Harmonization Process in the EU | 47 |
| §5. SOURCES OF CRIMINAL LAW | 49 |
| I. International Sources | 49 |
| II. National Sources | 50 |
| A. The Constitution | 50 |
| B. Statutory Legislation | 50 |
| C. Statutory Delegated Legislation | 52 |
| D. Case Law | 52 |
| E. Public Prosecutor’s Office Guidelines | 53 |
| §6. CLASSIFICATIONS AND TECHNIQUES OF CRIMINAL LAW | 53 |
| Selected Bibliography | 57 |
| Part I. Substantive Criminal Law | 59 |
| Chapter 1. General Principles | 59 |
| §1. THE PRINCIPLE OF LEGALITY | 59 |
| I. Statement and Content | 59 |
| II. Legality and Interpretation | 63 |
| §2. THE PRINCIPLE OF INDIVIDUAL GUILT (MENS REA OR AUTONOMY) | 63 |
| §3. THE PRINCIPLE OF PROPORTIONALITY | 64 |
| Chapter 2. Scope of Application of Criminal Statutes | 65 |
| §1. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO TIME | 65 |
| I. Principle of Non-retroactivity | 65 |
| II. Retroactivity of the Milder Statute | 65 |
| §2. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO SPACE | 66 |
| I. The Territorial Principle | 66 |
| II. Extraterritorial Criminal Jurisdiction | 67 |
| §3. PRINCIPLES CONCERNING THE APPLICABILITY OF CRIMINAL STATUTES WITH RESPECT TO PERSONS | 67 |
| I. Inviolabilities Based on National Public Law | 68 |
| II. Immunities Based on National Public Law | 69 |

Table of Contents

| | |
|--|-----------|
| III. Immunities Based on Supra-National Provisions | 70 |
| IV. Jurisdictional Exemptions or Immunities Based on International Public Law | 71 |
| Chapter 3. General Principles of Criminal Liability | 72 |
| §1. INTRODUCTION: THE BASIC ELEMENTS OF CRIMINAL OFFENCES | 72 |
| I. Methodological Systems | 72 |
| II. The Concept of the Offence in Spanish Criminal Law | 73 |
| §2. THE MATERIAL OR PHYSICAL ELEMENT (ACTUS REUS) | 73 |
| I. Description | 73 |
| II. Development | 73 |
| III. Acts, Omissions, and Causation | 74 |
| A. Offences of Action | 74 |
| B. Offences of Omission | 74 |
| C. Commission by Omission | 75 |
| D. Causation | 77 |
| IV. Classification of Offences from the Point of View of the Material Element | 78 |
| A. Momentary, Permanent, and Other Offence Types | 78 |
| B. Habitual Offences | 79 |
| §3. THE MORAL OR MENTAL ELEMENT (MENS REA) | 80 |
| I. Subjective Guilt or Culpability | 80 |
| II. Intent | 82 |
| A. Classes of Intent | 83 |
| B. Types of Intent with Reference to Their Consequences | 85 |
| 1. Direct Intent (<i>Dolus Directus</i>) | 85 |
| 2. Second-Degree Intent and Contingent Intent (<i>Dolus Eventualis</i>) | 85 |
| III. Negligence/Recklessness | 86 |
| A. Definition | 86 |
| B. The Criminalization of Negligence | 87 |
| C. Types of Negligence | 87 |
| IV. Exceeded Intent or Concurrence of Intent and Negligence | 89 |
| Chapter 4. Justification, Excuse, and Other Grounds of Impunity | 90 |
| §1. GENERAL PRINCIPLES | 90 |
| §2. GROUNDS OF JUSTIFICATION | 91 |
| I. Fulfilment of a Duty or Exercise of a Right | 92 |
| II. Self-Defence | 94 |
| A. General Characterization | 94 |
| B. Requirements | 94 |

Table of Contents

| | |
|---|-----|
| C. Putative (Self-) Defence and Other Problems in Relation to Error | 97 |
| III. Necessity | 98 |
| A. Necessity as a Justification | 98 |
| B. Conditions | 99 |
| C. Putative Necessity | 100 |
| IV. Consent of the Victim | 100 |
| §3. GROUNDS OF EXCUSE | 102 |
| I. Introduction | 102 |
| II. Minority | 102 |
| III. Mental Abnormalities or Disturbances and Temporary Mental Disorders | 103 |
| IV. Intoxication and Withdrawal Symptoms | 104 |
| A. Intoxication | 104 |
| B. Withdrawal Symptoms and the Regulation of Drug Addiction | 105 |
| C. Cases of <i>Actiones Liberae in Causa</i> | 106 |
| V. Grave Disturbance of the Perception of Reality | 106 |
| VI. Irresistible Force | 107 |
| VII. Insurmountable Fear | 107 |
| VIII. Ignorance or Mistake | 108 |
| A. Mistake of Offence Description | 110 |
| B. Mistake of Prohibition | 111 |
| C. Other Cases | 113 |
| §4. OTHER GROUNDS OF IMPUNITY | 113 |
| I. Grounds of Impunity Based on the Avoidance of the Consequences of the Offence | 114 |
| II. The Effect of Confession to the Authorities | 115 |
| III. Grounds of Impunity Based on Family Relationships | 115 |
| IV. Others | 117 |
| Chapter 5. Criminal Attempt and Parties to Criminal Offences | 118 |
| §1. CRIMINAL ATTEMPT | 118 |
| I. Overview | 118 |
| II. Punishable Manifest Resolutions | 118 |
| III. Attempt | 120 |
| IV. Attempting the Impossible | 121 |
| §2. PARTIES TO CRIMINAL OFFENCES | 122 |
| I. Regulations on Punishment of Participation | 122 |
| II. Principals and Assimilated Parties | 123 |
| III. Cooperators | 124 |
| IV. Special Rules for Perpetrators of Offences Committed through the Media | 125 |
| V. Acting on Behalf of Someone Else | 126 |

Table of Contents

| | |
|--|------------|
| VI. Criminal Liability of Legal Persons | 127 |
| A. General Principle: Legal Persons Cannot Be Criminally Liable | 127 |
| B. Exceptions and Future Prospects | 129 |
| Chapter 6. Classification and Survey of Criminal Offences | 131 |
| §1. GENERAL CLASSIFICATION OF CRIMINAL OFFENCES | 131 |
| I. Statutory Trichotomy of Criminal Offences | 131 |
| II. Ordinary and Political Offences | 132 |
| III. Public, Semi-public, and Private Offences | 133 |
| §2. SURVEY OF CRIMINAL OFFENCES | 135 |
| I. Criminal Offences of the Penal Code | 136 |
| II. Criminal Offences in Special Criminal Laws | 150 |
| A. Military Offences | 150 |
| B. Aviation Offences | 151 |
| C. Smuggling Offences | 153 |
| D. Other Offences Regulated in Special Statutes | 153 |
| Chapter 7. The Sanctioning System | 155 |
| §1. GENERAL OVERVIEW | 155 |
| I. Definition of Sanctions | 155 |
| II. Administrative and Criminal Sanctions | 155 |
| §2. PUNISHMENT | 156 |
| I. Principles Guiding the System of Punishment | 156 |
| II. Classifications of Penalties | 157 |
| III. Principal Penalties | 158 |
| A. Liberty-Depriving Penalties | 158 |
| 1. Imprisonment | 158 |
| 2. The Punishment of Permanent Localization | 158 |
| 3. Personal Subsidiary Liability | 159 |
| B. Penalties Restricting Rights | 159 |
| 1. General Disqualification | 159 |
| 2. Specific Disqualifications | 159 |
| 3. Suspension from Public Employment or Position | 160 |
| 4. Disqualification from Driving | 160 |
| 5. Disqualification from Possessing and Carrying Arms | 160 |
| 6. Restrictions on the Rights to Reside in or Travel to Certain Places | 160 |
| 7. Prohibition on Approaching or Communicating with Certain Persons | 161 |
| 8. Work for the Benefit of the Community | 161 |
| C. Pecuniary Penalties | 163 |
| 1. Fines | 163 |
| 2. Non-payment of Fines: Subsidiary Personal Liability | 166 |

Table of Contents

| | |
|--|-----|
| IV. Accessorial Penalties | 166 |
| V. Penalties and Precautionary Measures | 168 |
| §3. MEASURES OF SECURITY AND REFORM | 168 |
| I. Security Measures in the Penal Code | 169 |
| A. Prerequisites for the Imposition of Security Measures | 169 |
| B. Classes of Measures | 170 |
| C. Execution of Measures | 172 |
| D. Concurrence of Penalty and Security Measure | 173 |
| II. Measures of Youth Criminal Legislation | 173 |
| §4. THE SO-CALLED ACCESSORIAL CONSEQUENCES | 175 |
| I. Confiscation | 175 |
| II. Other Accessorial Consequences | 176 |
| §5. SUBSTITUTE FORMS OF EXECUTION OF PRISON SENTENCES | 176 |
| I. Introduction | 176 |
| II. Suspension of the Execution of Liberty-Depriving Penalties | 177 |
| III. Substitution of Liberty-Depriving Penalties | 178 |
| §6. PRINCIPLES AND RULES CONCERNING SENTENCING | 180 |
| I. Introduction | 180 |
| II. Circumstances Modifying Criminal Responsibility | 181 |
| A. Mitigating Circumstances | 182 |
| B. Aggravating Circumstances | 183 |
| C. Family Relationship as Mixed Circumstance | 185 |
| III. Concurrence of Offences | 185 |
| A. Real Concurrence of Offences | 185 |
| B. Concurrence by One Act | 187 |
| C. Continued Offences | 188 |
| D. Apparent Concurrence of Criminal Provisions | 189 |
| IV. Combination of Sentencing Rules | 190 |
| Chapter 8. Other Consequences of Offences | 193 |
| §1. CIVIL LIABILITY | 193 |
| I. Content of Civil Liability | 193 |
| II. Civilly Liable Persons | 194 |
| §2. PROCEDURAL COSTS | 195 |
| Part II. Criminal Procedure | 197 |
| Chapter 1. Principles, Institutions, and Stages | 197 |
| §1. THE JUDICIAL ORGANIZATION | 197 |

Table of Contents

| | |
|---|-----|
| I. Trial Courts | 198 |
| II. Investigating Judges | 201 |
| III. Judicial Cooperation | 202 |
| §2. THE STAGES OF THE PENAL PROCESS | 203 |
| I. Some Basic Concepts | 203 |
| II. The Pre-trial Stage | 205 |
| A. The Judicial Inquiry | 205 |
| B. Main Features of the Judicial Inquiry | 208 |
| C. Aims and Content | 209 |
| D. Beginning of the Judicial Inquiry | 210 |
| E. Closing of the Judicial Inquiry and Intermediary Stage | 211 |
| III. The Prosecution | 213 |
| A. The Attribution of the Right to Prosecute | 213 |
| 1. The Public Prosecutor | 213 |
| 2. Other Accusing Parties | 216 |
| B. The Object of the Right to Prosecute | 217 |
| C. The Suspension of the Right to Prosecute | 218 |
| D. Lapse of the Right to Prosecute | 219 |
| 1. Death of the Defendant, Abolition of Penal Provision, and Grant of Amnesty | 219 |
| 2. The Pardon of the Offended: Withdrawal of the Complaint | 219 |
| 3. Statute of Limitations | 220 |
| 4. Double Jeopardy | 221 |
| IV. The Trial | 222 |
| A. General Characteristics | 222 |
| B. The Position of the Judge | 223 |
| C. The Beginning and Closing of the Inquiry | 224 |
| 1. The Indictment | 224 |
| 2. The Guilty Plea | 226 |
| 3. The Trial | 227 |
| 4. The Sentence | 227 |
| §3. THE LEGAL POSITION OF THE ACCUSED | 229 |
| §4. THE CIVIL PARTY | 232 |
| §5. THE RULES OF EVIDENCE | 234 |
| I. Principles of Evidence | 234 |
| A. Free Evaluation of Evidence, Burden of Proof, and Presumption of Innocence | 235 |
| B. The Evidentiary Value of the Pre-trial Acts and Respect of the Principle of Immediacy | 236 |
| II. Means of Proof | 237 |
| A. The Statement of the Accused | 237 |
| B. The Statement of the Witness | 238 |
| C. Expert Evidence | 240 |

Table of Contents

| | |
|---|-----|
| D. Documents | 240 |
| E. Inspection by the Judge | 241 |
| III. Illegally Obtained Evidence | 241 |
| Chapter 2. Powers, Rights, and Duties in the Pre-trial Proceedings | 244 |
| §1. THE POWERS AND DUTIES OF THE POLICE IN THE PRELIMINARY INQUIRY | 244 |
| I. Introductory Remarks | 244 |
| II. At the Crime Scene | 245 |
| III. Interview of Suspects and Witnesses | 245 |
| IV. Body Searches | 246 |
| A. Search of Clothing and Body | 246 |
| B. X-rays | 247 |
| V. The Powers of Entry and Search | 247 |
| VI. Alcohol- and Drug-Related Breath Tests | 248 |
| VII. Covert Police Methods | 249 |
| A. Controlled Delivery of Drugs and Other Objects | 249 |
| B. Visual and Video Surveillance | 250 |
| C. Informants | 250 |
| D. Buy-Bust Operations | 251 |
| VIII. Stop, Arrest, Detention | 252 |
| A. Stop for Breath Testing of Drivers | 252 |
| B. Stop for Identification | 252 |
| C. Arrest and Preventive Detention | 253 |
| IX. Miscellaneous | 255 |
| A. Identification Techniques | 255 |
| §2. THE POWERS AND DUTIES OF THE PUBLIC PROSECUTOR IN THE PRELIMINARY INQUIRY | 256 |
| I. The Position of the Public Prosecutor in the Pre-trial Investigation | 256 |
| II. The Powers and Duties of the Public Prosecutor in the Investigative Stage | 257 |
| §3. PRE-TRIAL DETENTION AND REMAND INTO CUSTODY BY THE INVESTIGATING JUDGE | 258 |
| I. Introductory Remarks | 258 |
| II. The Remand into Custody | 259 |
| A. Conditions for Remand | 259 |
| B. Time Limits of Remand | 260 |
| III. Procedure | 261 |
| IV. The Appeals | 261 |
| V. The Lifting of the Remand into Custody | 262 |
| VI. Right to Compensation for Damages in Case of Acquittal | 262 |
| VII. Alternatives to the Remand into Custody | 262 |

Table of Contents

| | |
|---|---------|
| §4. THE POWERS AND DUTIES OF THE INVESTIGATING JUDGE AND THE RIGHTS OF THE ACCUSED IN THE JUDICIAL INQUIRY | 263 |
| I. Introductory Remarks | 263 |
| II. Wire-Tapping and Electronic Eavesdropping | 264 |
| A. Wire-Tapping | 264 |
| B. Eavesdropping | 266 |
| III. Entry, Search, and Seizure | 266 |
| A. Entry and Search | 266 |
| B. Subpoena to Produce Objects | 269 |
| C. Seizure | 269 |
| IV. Body Searches and DNA Tests | 271 |
| V. Interception of Other Types of Communication | 272 |
| A. Mail | 272 |
| B. Computers | 274 |
| VI. Interviewing the Accused | 274 |
| VII. Interviewing Witnesses | 275 |
| A. Procedure | 276 |
| B. Testimonial Privileges | 277 |
| C. Witnesses' Protection Measures | 279 |
| VIII. Confrontation | 280 |
| IX. The Power of Inquiry 'on the Spot' | 281 |
| X. The Power to Call in Experts | 281 |
| XI. Undercover Agent | 282 |
| Chapter 3. The Trial and the Legal Remedies | 284 |
| §1. PROCEEDINGS IN THE COURT OF FIRST INSTANCE | 284 |
| I. Introductory Remarks | 284 |
| II. Petty Offence Proceedings | 284 |
| A. Attendance of the Parties | 284 |
| B. Simplified Petty Offence Proceedings | 285 |
| C. Ordinary Petty Offence Proceedings | 286 |
| D. The Course of the Trial | 287 |
| III. Proceedings for Serious Offences | 287 |
| A. Preparatory Acts and Pre-trial Motions | 287 |
| B. Attendance of the Parties | 288 |
| C. Attendance of Witnesses and Experts | 289 |
| D. The Course of the Trial | 290 |
| E. The Judgment | 292 |
| IV. Proceedings for Less Serious Offences (<i>Proceso Abreviado</i>) | 293 |
| A. Preparatory Acts | 293 |
| B. Attendance of the Parties | 294 |
| C. The Course of the Trial | 295 |
| D. Judgment | 295 |
| E. Simplified Proceedings for Less Serious Offences | 295 |

Table of Contents

| | |
|--|-----|
| V. Jury Trial | 297 |
| A. Preparatory Acts | 298 |
| B. The Course of the Trial | 298 |
| C. Verdict and Sentence | 299 |
| §2. REMEDIES AND APPEALS | 300 |
| I. Introductory Remarks | 300 |
| II. The Ordinary Legal Remedies | 301 |
| A. Remedies against Interlocutory Decisions | 301 |
| B. Remedies against Judgments | 302 |
| 1. Appeal | 303 |
| 2. Cassation | 304 |
| III. Extraordinary Remedies | 306 |
| A. Opposition (<i>Recurso de Anulación</i>) | 306 |
| B. Appeal by Review | 306 |
| Part III. Execution and Extinction of Sanctions | 309 |
| Chapter 1. Sources of Penitentiary Law and the Nature of Regulations | 309 |
| Chapter 2. Fundamental Principles of the Prison System | 312 |
| Chapter 3. The Prison System | 313 |
| §1. ORGANIZATIONAL STRUCTURE | 313 |
| I. Prison Administration | 313 |
| II. Types and Organizational Regimes of Penitentiaries | 313 |
| §2. PENITENTIARY TREATMENT | 314 |
| I. Scientific Individualization System | 314 |
| II. Classification by Grades | 315 |
| §3. PENITENTIARY REGIME | 316 |
| I. Introduction | 316 |
| II. Aspects of Living Conditions | 316 |
| A. Health Care | 316 |
| B. Communications | 317 |
| C. Work | 317 |
| D. Security and Disciplinary Regime | 318 |
| E. Leave from Prison | 319 |
| F. Other | 319 |
| §4. JUDICIAL CONTROL: THE SUPERVISING PRISON JUDGE | 320 |

Table of Contents

| | |
|--|-----|
| §5. PRISON PRIVILEGES | 321 |
| I. Conditional Release | 321 |
| A. Ordinary Regime | 321 |
| B. Special Cases | 322 |
| 1. Early Conditional Release | 322 |
| 2. Prisoners of 70 or More Years or Who Are Seriously Ill | 322 |
| 3. Foreign Nationals | 323 |
| II. Individual Pardon | 323 |
| §6. OTHER ELEMENTS AFFECTING THE EXECUTION OF LIBERTY-DEPRIVING PENALTIES | 323 |
| I. Crediting of Time Served on Remand for Other Offences | 323 |
| II. Combination of Sentences | 324 |
| III. Suspension of the Sentence Due to Later Mental Disorder | 324 |
| IV. Transfer of Foreign Nationals for the Service of Prison Sentences | 324 |
| Chapter 4. Extinction of Criminal Liability | 326 |
| §1. PARDON | 326 |
| §2. PARDON BY THE VICTIM | 327 |
| §3. STATUTE OF LIMITATIONS | 328 |
| I. Limitation of the Offence | 328 |
| II. Limitation of Penalties | 329 |
| III. Limitation of Security Measures | 330 |
| §4. REHABILITATION | 330 |
| General Conclusion | 333 |
| Index | 335 |

KLUWER LAW INTERNATIONAL

Criminal Law in Spain

Lorena Bachmaier and Antonio del Moral García

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Criminal Law.



Wolters Kluwer
Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-3295-6

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham and Eastbourne