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**Questionnaire: IMMORAL CONTRACTS IN EUROPE**

FINAL (3 October 2012)

**Case 1**

Prostitution contracts

Mr Bighead, a famous sportsman, agreed with Miss Butterfly, a known prostitute, that he would pay her EUR 10,000 for her services. After the contract was performed, Mr Bighead declared that he is not going to pay her anything. Can Miss Butterfly recover the amount promised to her?

**Case 2**

Contracts promoting prostitution

Mr Pioneer rented out his limousine to Miss Pearl, a known prostitute, on a month-to-month basis for EUR 2,000. After the first month, Mr Pioneer’s employees, who are responsible for the maintenance of the vehicle, informed him that they have come across evidence which suggests that the vehicle is being used for the purposes of Miss Pearl’s profession. Six months have since lapsed and Miss Pearl failed to pay last month’s rent for the use of the vehicle. Can Mr Pioneer recover the unpaid amount?

VARIATION: Would it make a difference if Mr Pioneer had raised the rent of the vehicle to EUR 3,000 per month after confirming that the vehicle was being used for Miss Pearl’s profession?

Case Reference: Pearce v Brooks [1866] Lr 1 Ex 213

**Case 3**

Contracts promoting telephone sex

WICKED Ltd, a telephone sex service provider, concluded a contract with FUN Ltd for the marketing of telephone cards. In connection with this marketing contract, the two companies concluded a loan contract by which WICKED Ltd borrowed EUR 50,000 from FUN Ltd. WICKED Ltd delivered to FUN Ltd telephone sex cards and other telephone sex related services for a value of EUR 80,000. Some months later, the business relationship between WICKED Ltd and FUN Ltd started deteriorating until it was eventually terminated. FUN Ltd has claimed from WICKED Ltd the repayment of the EUR 50,000 loan. Can WICKED Ltd set-off the claim and counterclaim EUR 30,000 from FUN Ltd as payment for the delivered services?

Case Reference: BGH, Urteil v. 9.6.1998 – XI ZR 192-97

**Case 4**

Contracts promoting ‘dwarf throwing’

Mr Courage, who suffers from dwarfism, concluded a contract with Smalltown’s local pub, the Mini Bar, to perform in circus-like events called ‘the flying dwarf’. During these events (commonly referred to as dwarf throwing), Mr Courage would wear protective clothing and be hurled across the pub onto an airbed by strong men who were competing to see who could throw him the furthest. After a disagreement with the Mini Bar’s owner, Mr Courage did not receive any payment for his performances in the dwarf throwing events of the last two months. Can Mr Courage recover the unpaid amount on the basis of his contract with Mini Bar?

VARIATION: In the scenario where Mini Bar’s owner has paid Mr Courage in advance, can the bar recover its money or require specific performance from Mr Courage if he says he does not wish to perform in these events anymore?

Case Reference: *Wackenheim v France*, Communication No 854/1999, U.N. Doc. CCPR/C/75/D/854/1999 (2002)

**Case 5**

Surrogate motherhood contracts

Mr and Mrs Duck concluded a contract with Miss Swan stipulating that she would carry and give birth to a child for them. The child was conceived by artificial insemination of Miss Swan’s egg with Mr Duck’s sperm. According to the agreement between the parties, Miss Swan was reimbursed for expenses related to the pregnancy and birth (including health care and clothing). After giving birth to a healthy baby boy, whom she named Donny, Miss Swan, however, realised she felt so much affection for the baby that she was unable to hand him over to Mr and Mrs Duck. Can the couple require Miss Swan to give Donny to them? If not, can they reclaim the amount of money they paid to Miss Swan?

VARIATION 1: Would it make a difference if Miss Swan had received a sum of EUR 25,000 for acting as a surrogate mother?

VARIATION 2: Would it make a difference if Donny had been conceived by using genetic material of both Mr and Mrs Duck and Miss Swan would only have carried and given birth to him?

Case References: Trib. Monza 27 October 1989, *Foro it.* 1990, I, 298; Trib. Roma 17 February 2000, *Foro it.* 2000, I, 972; OLG Hamm 2 December 1985, *NJW* 1986, 781; Cass. Ass. plén. 31 May 1991, D. 1991.417.

**Case 6**

Marriage brokerage contracts

Mr Lonely entered into a contract with Forever Happy Marriage Bureau whereby the agency promised to use its best efforts to find him a suitable wife. He paid an initial deposit of EUR 7,000 for this service, with the remaining amount of EUR 2,000 to be paid once he was married to someone introduced by the agency. After several unsuccessful introductions, he asked Forever Happy to return his deposit. According to the terms of the brokerage contract the deposit is non-refundable. Is this contract valid? Can Mr Lonely still recover his deposit?

VARIATION: Mr Settled entered into a contract with Forever Happy Marriage Bureau whereby the agency promised to use its best efforts to find him a suitable wife. He paid an initial deposit of EUR 2,000 for this service, with the remaining amount of EUR 7,000 to be paid once he was married to someone introduced by the agency. He met Miss Lonely through the service, who had concluded a similar contract with Forever Happy. The couple decided to get married and agreed that they will not inform the agency about this. Forever Happy is now suing for the remaining amount. Are the respective contracts of Mr and Mrs Settled with the agency valid? Can Mr and Mrs Settled challenge the claim brought forth by the agency?

Case Reference: Hermann v Charlesworth [1905] 2 KB 1 23

**Case 7**

Nuptial agreements

Miss Money, a successful business woman, realising the considerable difference in wealth between herself and her future husband Mr Doe, an electrician by trade, entered into a prenuptial contract which provided that neither party was to acquire any benefit from the property of the other during the marriage or on its termination. Six years and two children later the marriage broke down. Mr Doe has now applied for financial relief. Can Miss Money use the pre-nuptial contract to protect her assets?

VARIATION: Miss Cinderella, who was pregnant, wanted to marry the father of her unborn child. The father, Mr Money, agreed to do so only on the condition that the parties conclude a prenuptial agreement. This agreement provided that neither party was to acquire any benefit from the property of the other during the marriage or on its termination. Six years and two children later the marriage broke down. Miss Cinderella has now applied for financial relief. Can Mr Money use the pre-nuptial contract to protect his assets?

Case References: Radmacher (formerly Granatino) v Granatino [2010] UKSC 42; BVerfG, 1 BvR 1766/92 v. 29.3.2001, BVerfGE 103, 89, 101.

**Case 8**

Contracts restraining marriage

Mr Strict entered into a contract with his daughter, Clementine, to pay for her round-the-world trip in return for her promise to only marry a man belonging to Mr Strict’s faith. During the trip Clementine fell in love with Mr Dreamy, who belongs to a different faith from her father and married him. Mr Strict has now brought an action for breach of contract and is consequently demanding repayment of the amount he spent on Clementine’s trip. Is the contract between Mr Strict and his daughter valid? Can Clementine challenge the action brought forth by her father?

VARIATION: Would it make a difference if Clementine fell in love with Miss Dreamy, who belongs to the same faith as her father and entered into a civil partnership with her?

Case Reference: Lowe v Peers (1768) 4 Burr 2225

**Case 9**

Conditional contracts of succession

In 1930, the noble family Stern regulated the conditions for succession within the family through a succession contract. This contract states that the family property shall always pass to the eldest male successor who is not unequally married or born of an unequal marriage. According to the terms of the contract, a successor is unequally married if he is not married to a woman belonging to another noble family which follows the same religion as the heads of the Stern family. The last head of the family, Lord Stern, died in 2012 and is survived by his four sons. The eldest is in a civil partnership with a man. The second-born is married to a commoner who follows the same religion as the heads of the Stern family. The third-born is married to a woman belonging to a noble family which does not follow this religion. The youngest son is married to a woman belonging to a noble family which follows this religion. The estate executor has now transferred the property to the youngest son. Can the other brothers challenge their exclusion?

Case Reference: BVerfG, 1 BvR 2248/01 vom 22.3.2004; *Egerton v Brownlow* [1853] 4HLC 1

**http://www.bverfg.de/entscheidungen/rk20040322\_1bvr224801.html**

**Case 10**

Contracts restricting personal liberty

Mr Broke borrowed EUR 2,000 from Mr Coin and entered into a contract which stated that he would return the money with interest in a year’s time and till this time he would not without Mr Coin’s written consent leave or change his job, borrow money, dispose of his property or change his address. Six months later, due to more hardship Mr Broke also borrowed money from Mr Axle without obtaining Mr Coin’s written consent. Mr Coin has now brought an action for breach of contract and is claiming the principle amount plus the entire year’s interest as damages. Can Mr Broke challenge this?

Case Reference: Horwood v *Millar*’s Timber & Trading Co [1917] 1 KB 305

**Case 11**

Usurious contracts

Due to tight financial circumstances, Ms Moneypenny decided to conclude a credit agreement with Bond Bank for a sum of EUR 5,000. According to the terms of the contract, she would pay back this sum in 30 monthly rates of EUR 250. Moreover, the last rate would be equal to the loaned amount. This meant that in total Ms Moneypenny would have to pay a sum of about EUR 12,000 to the Bank. After paying 19 monthly rates, Ms Moneypenny found herself in such debts that she was no longer able to continue paying back the loan to the Bond Bank. The Bank is now suing for the remaining amount of the loan. Can Ms Moneypenny challenge this claim?

Case Reference: CJEU C-453/10 *Pereničová and Perenič*, 15 March 2012, nyr

**http://curia.europa.eu/juris/document/document.jsf?docid=121835&pageIndex=1&occ=first&part=1&text=&doclang=SK&mode=lst&dir=&cid=1135137**

**Case 12**

Immoral suretyships

Mr Hazard, a businessman, needed a loan of EUR 50,000. The Bossy Bank agreed to this on the condition that Mr Hazard’s daughter, Miss Penny, secured it for its full amount through a suretyship. The 19-year old Miss Penny owned no assets and had no experience in business. As a worker in a fish factory, she only earned 600 EUR/month (after tax). The suretyship contract was concluded when the Bossy Bank’s employee handed out a standard form contract to Miss Penny and said, without further explanation: “Could you please sign this, Miss? We need it for our files”. Four years and two millions EUR debts later, Mr Hazard has gone bankrupt. The Bossy Bank now claims the EUR 50,000 from Miss Penny. Can Miss Penny challenge this?

VARIATION: Would it make a difference if the suretyship was concluded by Mr Hazard’s wife, Ms. Hazard, who worked as a customer service employee in Mr Hazard’s business and earned 2000 EUR/month after tax?

Case Reference: BVerfG, 1BvR 567 u. 1044/89 v. 19.10.1993

http://lorenz.userweb.mwn.de/urteile/njw94\_36.htm