

General Principles of Law

Secured Credit: under English and American Law

Camille Hylton-Stevenson on Corporate Law

Secured Credit Under English And American Law

Daniela Matri



Secured Credit Under English And American Law:

Secured Credit Under English and American Law Gerard McCormack, 2004-06-14 Secured Credit drives economic activity Under English Law it is possible to create security over almost any asset but the law is widely considered to be unsatisfactory for several reasons including a cumbersome registration system a preoccupation with formalistic distinctions and the lack of clear and rationally determined priority rules Gerard McCormack examines the current state of English law highlighting its weaknesses He uses Article 9 of the American Uniform Commercial Code as a reference point this Article has successfully serviced the world's largest economy for over 40 years and is increasingly used as the basis for legislation by Commonwealth jurisdictions including Canada and New Zealand The Law Commission has suggested the enactment of similar legislation in England In addition McCormack considers if there really is a case for the priority of secured credit as well as if there are other international models to draw upon Contains the text of Article 9 Secured Credit Under English and American Law, 2003 Under English Law it is possible to create security over almost any asset but the law is considered to be unsatisfactory McCormack examines the law in England highlighting its weaknesses He uses Article 9 of the American Uniform Commercial Code as a reference point Contains the text of Article 9 *International Secured Transactions Law* Orkun Akseli, 2011-03-17 This book focuses on international harmonisation and the law of secured transactions by distilling and analysing the unifying principles of various significant international conventions and instruments such as the UN Convention on the Assignment of Receivables the Unidroit Convention on International Factoring the EBRD Model Law on Secured Transactions the Unidroit Convention on the International Interests in Mobile Equipment and the UNCITRAL Legislative Guide on Secured Transactions International secured transactions conventions and instruments facilitate credit and promote economic activity through the creation of harmonised rules Therefore given the increasing globalisation of markets international reform efforts for the harmonised modernisation of secured transactions law have gained pace over recent years International Secured Transactions Law draws on experiences in both English and US laws in order to identify and illustrate the existing problems that need to be addressed as well as identify potential solutions International Secured Transactions Law will be of interest to scholars students interested in international commercial law corporate law or comparative secured transactions and practitioners involved in international commercial transactions International Insolvency Law Professor Paul Omar, 2013-02-28 International insolvency is a newly established branch of the study of insolvency that owes much to the phenomenon of cross border incorporations and conduct of business in more than one jurisdiction It is largely an offspring of globalization Paul Omar examines the development of domestic rules dealing with cross border instances and the many international projects in the field *Security and Credit in Roman Law* Hendrik L. E. Verhagen, 2022-09-05 There are no legal institutions other than pignus and hypotheca i.e. mortgage where the formative effect of legal practice can be so clearly observed Security and Credit in Roman Law outlines the legal history of these

institutions in terms of an iterative relationship between transactional lawyers drafting legal transactions and Roman jurisprudence deploying its analytical skills in order to accommodate new transactional practices into the Roman legal system. The evolution of the Roman law of real security well known through the legal sources Justinian's Digest and Code is reconstructed while matching it with actual banking practices in particular the secured lending transactions documented in the archive of the Sulpicii. In the late classical period the imperial chancery increasingly interfered with it in order to provide a considerable degree of protection to debtors. The largely but certainly not completely spontaneous evolution of Roman law produced a law of secured transactions which was highly sophisticated and versatile allowing non possessory security multiple charges pledges of receivables antichretic pledges and even floating charges over a dynamic fund of assets. Since legal systems often adapt in reaction to impulses from their economic environment the complexity of the Roman law of real security indicates that *pignus* and *hypotheca* did play a significant role in the Roman economy. It will be shown that this role was generally a positive one. Its main weaknesses were lack of publicity and the presence of fiscal charges even these weaknesses did not undermine the effectiveness of secured transactions.

Covenants and Third-Party Creditors Daniela Matri, 2017-10-17. This book adds to the debate on the effects of covenants on third party creditors externalities which have recently become a focus of discussion in the contexts of bankruptcy law corporate law and corporate governance. The general thrust of the debate is that negative effects on third party creditors predominate because banks act in their own self interest. After systematising the debated potential positive and negative externalities of covenants the book empirically examines these externalities. It investigates the banks factual conduct and its effects on third party creditors in Germany and the US. The study's most significant outcome is that it disproves the assumption that banks disregard third party creditors interests. These findings are then interpreted with the tools of economic analysis particularly with the concept of common pool resources CPRs. Around the aggregated value of the debtor company's asset pool as CPR exists an n person prisoner's dilemma between banks and third party creditors. No creditor knows when and under what conditions the other creditor will appropriate funds from the debtor company's asset pool. This coordination problem is traditionally addressed by means of bankruptcy law and collaterals. However the incentive structure that surrounds the bilateral private governance system created by covenants and an event of default clause a CPR private governance system is found to also be capable of tackling this problem. Moreover the interaction between the different regulation spheres bankruptcy law collateral and the CPR private governance system has important implications for both the aforementioned discussions as well as the legal treatment of covenants and event of default clauses. Covenants alone cannot be seen as an alternative to institutional regulation the complete CPR private governance system and its interaction with institutional regulation must also be taken into consideration. In addition their function must first find more acceptance and respect in the legal treatment of covenants and event of default clauses. The CPR private governance system fills a gap in the regulation of the tragedy of the commons by

bankruptcy law and collateral This has particularly important implications for the German 138 BGB 826 BGB and ad hoc duties to disclose insider information

Financial Regulation in Crisis? Joanna Gray, Orkun Akseli, 2011 The depositor run on the Northern Rock bank in September 2007 which led to the bank's subsequent nationalization was the first run on a UK bank for nearly 150 years and was a seminal moment in the unfolding global financial crisis This book provides a detailed legal analysis of the role played by financial law and regulation during this event and the impact the episode made on the law The contributors to the book explore and elaborate upon the legal technique of securitization and how Northern Rock itself created and employed securitized financial assets There is also in depth discussion and analysis of the origin of the problems experienced in the wholesale interbank markets surrounding the Northern Rock crisis Chapters focus on risk based financial regulation depositor protection and bank rescue and resolution mechanisms in the UK before and after the Northern Rock crisis State aid implications of the nationalization of Northern Rock and the future of financial regulation are also considered This timely new book will appeal to academics postgraduate and undergraduate students in law and business schools as well as as practitioners regulators and lawmakers

New Financing for Distressed Businesses in the Context of Business Restructuring Law Sanford U. Mba, 2019-06-29 This book focuses on the restructuring of distressed businesses emphasizing the need for new financing during the restructuring process as well as during relaunch and examines the role of law in encouraging creditor confidence and incentivizing lending It describes two broad approaches to encouraging new finance during restructuring a prescriptive one that seeks to attract credit using expressly defined statutory incentives and a market based one that relies on the business judgment of lenders against the backdrop of transaction avoidance rules Securing new financing for a distressed business is a critical part of successful restructuring Without such financing the business may be unable to meet interim liquidity constraints or to implement its restructuring plans This book addresses related questions concerning the place of new financing as an essential component of restructuring In general terms the book explores how statutory interventions and the courts can provide support with contentious issues that arise from the provision of new financing whether through new financing agreements or through distressed debt investors who are increasingly gaining prominence as sources of new financing for distressed businesses It argues that courts play a key part in preventing or correcting the imbalances that can arise from the participation of distressed debt investors In this context it critically examines the distressed debt market in emerging markets like Nigeria and the opportunity presented by non performing loans arguing that the regulatory pattern of market entry may disincentivize distress debt investing in a market that is in dire need of financing The book offers a fresh and comparative perspective on restructuring new financing for distressed businesses by comparing various approaches primarily from the US UK and Germany and drawing lessons for frontier markets with particular reference to Nigeria It fills an important gap in international comparative scholarship and discusses a living problem with both empirical and policy aspects

The Future of European Property Law Sjef Erp

van, Arthur Salomons, Bram Akkermans, 2012-05-29 European integration has a growing impact on the property law systems of the EU Member States. The tensions which can be seen are considerably greater than in other areas of private law given the technically complex and mandatory nature of property law. In this book current developments in European property law particularly the Draft Common Frame of Reference are analysed and evaluated focussing on secured transactions and mortgage law. With contributions by academic and practicing lawyers containing Transfer of ownership and good faith acquisition the rules in the Member States and in Book VIII of the DCFR Secured transactions and the DCFR Registration of intellectual property rights. Trusts from a Common and a Civil lawyer's perspective. The border area between property law and contract law securities. Micro Business Entities and the Reform of Personal Property Security Law in Nigeria Gregory Esangbedo, 2023-10-27 This book examines an enactment that reforms Nigeria's personal property security law by adopting the unitary system of secured transactions in replacement of the common law system. With the unitary system widely acclaimed for enhancing access to credit for small business entities the book highlights the drawbacks of the enactment in the attainment of this objective. Being the foremost Nigerian book on the unitary system it is a significant text for all stakeholders in the credit system within and outside Nigeria including law academics practitioners students and financial regulators. It will interest those in countries that are intent on undergoing similar reform as it provides guidance on the unique features of the unitary system in contrast with those of the common law. In the spirit of reform the book compares the Nigerian enactment to other similar enactments to highlight potential lessons in areas in which the Nigerian enactment appears to have lost traction. This book examines an enactment that reforms Nigeria's personal property security law by adopting the unitary system of secured transactions in replacement of the common law system. With the unitary system widely acclaimed for enhancing access to credit for small business entities the book highlights the drawbacks of the enactment in the attainment of this objective. Being the foremost Nigerian book on the unitary system it is a significant text for all stakeholders in the credit system within and outside Nigeria including law academics practitioners students and financial regulators. It will interest those in countries that are intent on undergoing similar reform as it provides guidance on the unique features of the unitary system in contrast with those of the common law. In the spirit of reform the book compares the Nigerian enactment to other similar enactments to highlight potential lessons in areas in which the Nigerian enactment appears to have lost traction. The Impact of Legislation on Credit Risk—Comparative Evidence From the United States, the United Kingdom and Germany Philipp Schmieder, Mr. Christian Schmieder, 2011-03-01 This study investigates the link between bankruptcy and security legislation and potential credit losses faced by banks based on a cross country study for the United States US the United Kingdom UK and Germany. Focusing on corporate credit we find that legislation produces the highest credit risk in the US followed by Germany while UK law is found to be most favorable for banks. US banks gains from the higher number of informal restructurings without losses but lose from the low level of recovery in formal proceedings.

German banks demand more credit risk mitigants than UK and US banks do but still recover less than do UK banks To be at par with UK banks US banks would have to recover more than twice as much in formal proceedings while German proceedings would have to be shortened by about one half

Personal Property Security Law Reform in the UK ,
Edinburgh Student Law Review - Issue 3 Europeanisation , Law and Creditor Protection in Nigeria Onamson, Friday Okafor,2017-08-08 Examined here are the legal and practical reasons for the inefficiency of the legal framework of creditor protection in Nigeria This is amply justified considering the critical role of credit in the promotion of economic growth and development and also bearing in mind the near calamitous consequences the 2009 financial crisis unleashed not only among Nigerian banks and financial institutions and in the international financial system The latter nearly led to socioeconomic catastrophe in Nigeria as well as globally It is hoped that book is found useful by government policy makers academics corporate financial experts investment bankers and other stakeholders to initiate and implement efficient policy actions to protect creditors in order to sustain the flow of credit the engine of any economy *Explaining Financial Scandals* Vincenzo Bavoso,2014-07-24 The explosion of the global financial crisis in 2007 08 reignited the urgency to reflect on the origins and causes of financial collapses As the events in the above period triggered an economic meltdown that is still ongoing comparisons with the Great Crash of 1929 started to abound In particular the externalities that a broad spectrum of societal groups had to bear as a consequence of various banking failures highlighted the necessity of a more inclusive and balanced regulation of firms whose activities impact on a wide range of stakeholders The book is centred on the proposal of a paradigm the enlightened sovereign control that provides a theoretical institutional and substantive framework as a response to the legal issues analysed in the book These stem primarily from the analysis of two sequences of events the 2001 03 wave of accounting frauds and the 2007 08 global crisis which represent the background upon which modern financial scandals are explained This is done by highlighting a number of common denominators emerging from the case studies Enron and Parmalat Northern Rock and Lehman Brothers which all led to financial instability and scandals and illustrated the legal issues identified in the book The research is grounded on the initial recognition of theoretical themes in the field of corporate and financial law which eventually link with the more practical events examined Through this multifaceted approach the book contends that the occurrence of financial crises during the last decade is essentially rooted in two main problems a corporate governance one represented by the lack of effective control systems within large public firms and a corporate finance one identified with the excesses of financial innovation and related abuses of capital market finance Research conducted in this book ultimately seeks to contribute to current debates in the areas of corporate and financial law through the proposals of the enlightened sovereign control paradigm *International Arbitration and International Commercial Law* Eric E. Bergsten,2011-01-01 Over the last half century as UNCITRAL official professor arbitrator and father of the Willem C Vis Arbitration Moot Eric Bergsten has been at the forefront of progress in international commercial arbitration Now on the

occasion of his eightieth birthday the international arbitration and sales law community has gathered to honour him with this substantial collection of new essays on the many facets of the field to which he continues to bring his intellect integrity inquisitive nature eye for detail precision and commitment to public service Celebrating the long standing and sustained contribution Eric Bergsten has made in international commercial law international arbitration and legal education more than fifty colleagues among them quite a few of the best known arbitrators and arbitration academics in the world present 45 pieces that individually both engaging and incisive collectively present a thorough and far reaching account of the state of the field today with contributions covering international sales law commercial law commercial arbitration and investment arbitration In addition nine essays on issues in legal education mirror the great importance of the renowned Willem C Vis International Commercial Arbitration Moot Eric s Vienna project which has offered a life changing experience for so many young lawyers from all over the world

The Law of Security and Title-Based Financing Hugh Beale, Michael

Bridge, Louise Gullifer, Eva Lomnicka, 2012-03-22 Personal property security is an important subject in commercial practice as it is the key to much of the law of banking and sale This second edition has been fully updated and expanded to cover all important issues and changes within this highly complex area of law It explains traditional methods of securing debts such as mortgages charges and pledges on property other than land describing how these are created how they must be registered or otherwise perfected if they are to be valid the rights and duties of the parties and how the security is enforced if the debt is not paid The new edition includes an expanded section on priorities in which it explains how priority disputes between competing interests over the same property are resolved In addition the book covers the law governing other transactions that perform a similar economic function such as finance leases retention of title clauses and sales of a company s book debts These are not currently treated by the law as security and are therefore subject to different rules on perfection priority and enforcement There is much expansion of the discussion relating to enforcement including the issue of right of use following Lehman more analysis on administration and all forms of non possessory security and quasi security and a new chapter on enforcement of security addressing the right of appropriation under FC FCAR and the Cukurova case The conflict of laws section includes developments under the Rome I Regulation affecting assignment issues the UNIDROIT Convention 2009 in relation to tiered holdings and the Cape Town Convention s extensions made to coverage of asset backed security over equipment It also addresses the changes brought about by the abolition of Slavenburg registration This edition contains relevant points from the Banking Act 2009 concerning its impact on security such as the power to protect certain interests on a transfer of property and also considers amendments regarding liquidators expenses under the Insolvency Rules The authors additionally deal with the role of step in rights and why they are part of the statutory definition of project finance in the Enterprise Act Previously published as The Law of Personal Property Security this new edition brings together all of the law on this complex area providing guidance in the context of commercial practice especially with increased coverage of

conflict of laws priority insolvency and enforcement

Comparative Perspectives on the Chinese Civil Code Meiling

Huang, Paul J. du Plessis, 2024-03-05 This book provides a comparative analysis of Chinese property law as depicted in the newly enacted Chinese Civil Code. The Chinese Civil Code, the first civil code in the history of the People's Republic of China, was enacted as law in May 2020. Reflecting the growing interest in this code and its provisions to scholars of codification and of comparative private law, it has already been translated into English, German, and Italian. Chinese property law has both local and global features, and this comparative study offers a channel through which to understand Chinese property law by highlighting both its similarities and differences from other property systems. Broadly speaking, the book brings together two approaches. The first comprises a comprehensive discussion of aspects of Chinese property law, such as ownership, property rights, and secured transactions. The second consists of perspectives from other jurisdictions and provides an assessment of Chinese property law based on other property systems. Containing contributions by both distinguished and young scholars who are experienced in comparative property law research, the book offers a unique insight into the Chinese Civil Code and through it how extra-civilian elements are embodied in a fundamentally civilian legal system. This book will appeal to scholars and students of property law, comparative law, and others with specific interests in law and politics in China.

Secured Credit in Europe Teemu Juutilainen, 2018-03-22 Winner of the 2016/2018 KG Idman Prize. This monograph seeks the optimal way to promote compatibility between systems of proprietary security rights in Europe, focusing on security rights over tangible movables and receivables. Based on comparative research, it proposes how best to tackle cross-border problems impeding trade and finance, notably uncertainty of enforceability and unexpected loss of security rights. It offers an extensive analysis of the academic literature of more recent years that has appeared in English, German, the Scandinavian languages, and Finnish. The author organises the concrete means of promoting compatibility into a centralised substantive approach, a centralised conflicts approach, a local conflicts approach, and a local substantive approach. The centralised approaches develop EU law, and the local approaches Member State laws. The substantive approaches unify or harmonise substantive law, while the conflicts approaches rely on private international law. The author proposes determining the optimal way to promote compatibility by objective-based division of labour between the four approaches. The objectives developed for that purpose are derived from the economic functions of security rights, the conditions for legal evolution, and a transnational conception of justice. This book is an important contribution to the future of secured transactions law in Europe and more widely. It will be of interest to academics, policymakers, and legal practitioners involved in this field.

The Law of Security and Title-Based Financing Michael Bridge, Louise Gullifer, Eva Lomnicka, 2024-10-23 Personal property security is an important subject in commercial practice, as it is the key to much of the law of banking and sale. This book examines traditional methods of securing debts, such as mortgages, charges, and pledges, as well as so-called quasi-security on property other than land, describing how these are created, how they must be registered or otherwise perfected if they are to be valid, the rights and

duties of the parties and how the security is enforced if the debt is not paid This fourth edition has been updated to incorporate recent political and legal developments including Brexit The Edinburgh Reforms which have followed the United Kingdom's exit from the European Union promise a thorough overhaul of the consumer credit regime The Retained EU Law Revocation and Reform Act 2023 potentially affects the interpretation of EU assimilated law including the Financial Collateral Arrangements No2 Regulations FCARs This edition further assesses the implications of the Business Contract Terms Assignment of Receivables Regulations 2018 taking pledges over electronic documents of title in the light of the Electronic Trade Documents Act 2023 the outlawing of ipso facto clauses by the Corporate Insolvency and Governance Act 2020 and the reduced scope of the EU Insolvency Regulation The treatment of insolvency matters within the framework of the Cape Town Convention is also considered as are recent cases on pledges of bills of lading when the carrier no longer has possession of the goods the distinction between fixed and floating charges equitable liens and the right of appropriation of financial collateral There is a full discussion of the taking of security over digital assets and the relevance of the FCARs The only full length treatment covering both traditional security over personal property and also devices that fulfil a similar economic function such as retention of title and sales of receivables The Law of Security and Title Based Financing is a frequently cited and indispensable reference work both for practitioners and academics

Unveiling the Magic of Words: A Overview of "**Secured Credit Under English And American Law**"

In some sort of defined by information and interconnectivity, the enchanting power of words has acquired unparalleled significance. Their power to kindle emotions, provoke contemplation, and ignite transformative change is truly awe-inspiring. Enter the realm of "**Secured Credit Under English And American Law**," a mesmerizing literary masterpiece penned by way of a distinguished author, guiding readers on a profound journey to unravel the secrets and potential hidden within every word. In this critique, we shall delve in to the book is central themes, examine its distinctive writing style, and assess its profound affect the souls of its readers.

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Secured Credit Under English And American Law Introduction

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