FOREWORD

The Rt Hon Lord Hoffmann, PC

This book deals with a subject of enormous importance. The functioning of the wholesale financial markets is entirely dependent upon the existence of efficient means for providing financial collateral security. The management of risk would be impossible without it. It is therefore essential to have legal rules which make the grant of such security simple and its consequences predictable. This has been recognised for many years, not least in the United Kingdom, where the financial markets play so large a role in the national economy. But the global reach of wholesale financial dealings means that rules confined to this country would be inadequate. Hence the European Directive on Financial Collateral Arrangements, which creates a uniform system within the European Union, and the world-wide adoption of standard forms such as the ISDA Master Agreement and its related Credit Support Annexes for financial collateral.

Although the ISDA Master Agreement goes back to 1987 in its original form and 1992 in its most widely used form, its related Credit Support Annexes date from 1994–1995 and the Directive dates from 2002, this is the first book on English law which deals comprehensively with the whole subject of financial collateral security. There seems to be an inverse proportion between the importance of the subject and the extent of the literature which deals with it. If one thinks, for example, of the intellectual effort which has for more than a century been devoted to the rule in Rylands v Fletcher, a topic of no importance whatever, it is striking that so little attention has been paid to legal rules which are essential to the functioning of the City of London. It is not that the subject matter is too technical to deserve the notice of the academic lawyer. For example, the clash between, on the one hand, the need for certainty in sophisticated financial transactions for huge sums of money in an age of instant communication, and on the other hand, the medieval doctrine of relief against forfeiture, was the main issue in the Cukurova litigation, which is analysed in Chapter 12.

My own feeling on reading this book was that I wished it had existed when I became Chairman of the Financial Markets Law Committee. The clarity and comprehensiveness with which it is written would have saved me a good deal of effort in trying to understand an unfamiliar subject. I commend it to my more fortunate successors and all who are concerned with this vital branch of the law.

Lennie Hoffmann