Index

acquisition financing 87, 146–51, 190
acquisition security rights 86, 124–5, 147–52
administration procedure 94, 96, 100–101, 161, 169, 171, 175
administrative law 44
adverse selection 55–6
Agnew v Commissioner of Inland Revenue 90
aircraft financing 58, 82, 103–4, 129
aircraft industry 58, 129
aircraft protocol see Cape Town Convention
Albert, Michel 75
all-assets security 12, 76, 87, 98, 126, 130–36
American Bar Association (ABA) 10, 116, 182
American Bar Foundation 10
American Uniform Commercial Code (Article 9) 79–101, 124, 150, 193
corporation with Legislative Guide 1, 28, 71, 76, 182
definition of security interests 41
Article 9 see American Uniform Commercial Code
corporate 176–9
cross-border transactions 18
debtors 12, 115, 124–5, 131–5, 147, 160, 165
financing statement 84
Islamic law 41
moveable 14, 184–7
right of sale 54
Atlantic Computers, case 161
avoidance 89, 135, 165–6
Baltic countries 62
bankruptcy
World Bank grading 99–100
Bankruptcy Abuse Prevention and Consumer Protection Act 2005 (BAPCPA) 114
Bankruptcy and Insolvency Act 126
Bankruptcy Code, US 1, 113–14, 126, 178, 181–6
Insolvency Legislative Guide 154–5, 160–66
security right 136
bankruptcy codes 67
bankruptcy laws 13, 118, 132
US 100–101
bankruptcy trustee 90, 97, 156, 168, 170–71
see also liquidator
Bazinas, Spiros 102
Berkowitz, Daniel 46, 50–51
Bermec case 160
Bills of Sale Acts 95
Block-Lieb, Susan 158
Braithwaite, John 20, 75
Canada 101, 126
Common Law 80, 90, 143–4
courts 90, 162–3
Personal Property Act 1, 80, 88, 99
Cape Town Convention on Aircraft Financing 103
Cape Town Convention on International Interests in Mobile Equipment 14, 18, 58, 103–4, 128
Cape Town Conventions see also Conventions
case law 41, 61, 92, 163, 193
Central America 78
see also Latin America
Central Europe see Eastern Europe
Central European and Eurasian Law Initiative (CEELI) 116–17
Centre for the Economic Analysis of Law (CEAL) 59
Chapter 11 process 155, 160–63, 171–7, 183, 186
filing 126
restructuring 113, 136
see also Bankruptcy Code, US
China 10, 64
Chrysler 177–8
civil law 4, 38–41, 44, 57, 61–3, 98, 101, 187, 193
EBRD Model Law 107, 111
OAS Model Law 121, 123
Secured Transactions Guide 141, 152
Civil Law Reform Commission 116
Collins, Hugh 31
Commercial Finance Association (CFA) 10, 182
Common Frame of Reference see Draft European Common Frame of Reference
civil law comparison 38–41, 44, 61–3
DCFR 187
EBRD Model Law 107–8
OAS Model Law 121
see also Canada, Common Law; English Law
communism 105, 111
Companies Act (2006) 94
Companies House 94
corporate charge registration 95
corporate voluntary agreement (CVA) 174
conditional sale 81, 109, 123
conflict 3, 15, 30
conflict-of-law rules 29, 104
consensus 5–7, 23, 103–4, 157–8, 180
contract 31, 98, 145, 167–8, 188–90, 193
enforcement 63
executory 164–5, 181
incomplete 55
law 93, 187
property rights 60
provision 2
receivables 139
registration 111
sale of goods 127
security interest 81, 84
see also Convention on Carriage of Goods by Sea; Vienna Convention on Contracts
control rights 55
Convention of Contracts for the International Sale of Goods 11, 20, 23–4, 32
Convention on Carriage of Goods by Sea 20, 23–4
convergence 15–16, 43, 47–8, 61, 74, 192–3
Core Principles for a Mortgage Law 119
Core Principles for an Insolvency Law Regime 186
Core Principles on Secured Transactions Law 152–3
cost of credit 13, 57, 60, 69, 128
Cotterell, Roger 38
cramdown 173–4, 181
credit bureaus 62–3
credit union 69
creditor rights 61–3
criminal law 44, 117
cross-border transactions 12–14, 16, 188
CVA see company voluntary agreement
Czech Republic 110
DCFR see Draft European Common Frame of Reference
De Soto, Hernando 50, 65–8
developer-in-possession 156, 168–71, 181
Department for International
Development (DfID) 66
developing countries 2–5, 16, 44–6, 65, 68, 76, 78, 128
Djankov, Simeon 192–3
Doing Business 13, 61–4, 99–100, 184–5
Draft European Common Frame of Reference (DCFR) 187–90, 191–2
Drahos, Peter 20, 75
Drobnig, Ulrich 11–12, 103, 140
e-commerce see electronic commerce
East Asia 59, 72
Easterbrook, Frank 35
Eastern Europe 46, 50, 58, 105, 107, 109, 112, 115–17
EBRD 13, 58, 133, 148–9, 185–6, 193
Model Law 101–30, 144, 148, 152, 193
economic growth 44, 56, 59–61, 72, 77, 105, 129
electronic commerce 11, 17–19, 22–3
employees 71, 87, 100, 148, 159, 179, 185–6
enforcement of contract see contract enforcement of security 1, 28, 54–60, 98–101, 111–19, 149–51, 182–3
(Chapter 11) 137
EBRD Model Law 108
OAS Model Law 125–8
out-of-court 12, 125–6
sovereignty 78
English language 10–11, 109
English law 41, 80–101, 110, 115, 123, 126, 136, 166
environmental protection 36
equity 17, 57, 112, 170
estoppel 190
EU 36–8, 62, 75, 133, 156, 167, 187–9
European Bank for Reconstruction and Development see EBRD
European Civil Code 187–8
European Union see EU
examinership procedure 169
executory contracts 164, 181
Export-Import Bank of the United States 58
Financial Collateral Directive 167
financial market regulation 36, 67, 184
financing statement 82–9, 97, 142
first-to-file 86, 89, 124, 146–7, 181
fixed charges 90, 92, 94, 97–8
Fleisig, Heywood 59
floating charges 90, 92, 94, 97
floating lien see lien, floating
floating security 12, 81, 133
see also all-assets security
France 6–10, 44, 62–4, 68, 135, 192–3
free market 58, 63, 119
General Motors 177–8
German Civil Code 37
Germany 40, 44, 139–40, 192–3
Global Business Regulation 20, 75
global convergence see convergence
globalisation 29–30, 76–9, 194
Goode, Roy 21, 104–5
gross domestic product (GDP) 57, 72
Gutteridge, Harold 3
Hague Conference on Private International Law 13, 132
Halliday, Terence 118, 158
Hansmann, Henry 48
Harris, Steven 137
Hart, Oliver 55
Haselmann, Rainer 69
hire-purchase 95, 147
Hobhouse, Lord 32, 34
Hoffmann, Lord 96
Hong Kong 95, 99
Hopt, Klaus 48
IMF see International Monetary Fund
Imperial Law 75–9
incomplete contracts 55
Independent Evaluation Group 64
India 10, 192–3
information-sharing 62–3
Insolvency Guide see Legislative Guide on Insolvency
Insolvency Legislative Guide see Legislative Guide on Insolvency
insolvency proceedings 151, 156, 159–62, 166–7, 170, 181–2
Institutional Reform and the Informal Sector (IRIS) 116–17
intangible property 59, 89, 127, 135
intellectual property 14, 82, 94, 104, 130
interest groups 7–10, 18, 31, 35, 82, 134–5, 170
interest payments 39
interest rate 55, 59–60, 69, 106, 147–8
international arbitration 11, 21–4
International Association of Insolvency Practitioners (INSOL) 182–3

Gerard McCormack - 9780857933454
Downloaded from Elgar Online at 04/30/2019 08:54:44PM
via free access
Secured credit and the harmonisation of law

International Factoring Convention 14, 103
International Finance Corporation 13, 62
International Financial Leasing Convention 14, 103
International Institute for the Unification of Private Law (UNIDROIT) 14, 18, 103
International Monetary Fund (IMF) 45, 69, 78
intra-State transactions 30
inventory 13, 87–8, 125, 149–51, 184
Ireland 95, 169
IRIS see Institutional Reform and the Informal Sector (IRIS)
Islamic law 39, 41
Italy 44
jurisdictional competition 33–7, 47, 52–3
Kahn-Freund, Otto 46
Kanda, Hideki 149
Kennedy, David 45
Kozolchyk, Boris 120
Kraakman, Reiner 48
La Porta, Rafael 61, 184, 193
language 10, 40, 52, 110
see also English language
Latin America 44, 59, 67–8
Latvia 62
Law Commission 49
Leebron, David 15
legal culture 37–42, 45, 53, 63–4
legal dominance by US 28–9
legal origins 75, 192
legal origins literature 62
legal origins thesis 61–3, 184–5, 193
legal risk 30–32
legal transplantation 40–44, 46, 51–3, 72–4, 129, 194
Legislative Guide on Insolvency 1, 19, 24–7, 154–84
Legislative Guide on Secured Transactions 24–8, 33, 53, 101–2, 128, 130–53, 182
American Uniform Commercial Code 71–2, 76
background 1–2
CFA role 10
influence 186–94
purpose 19
legitimacy 4–9, 14, 44, 76
LeGrand, Pierre 39–43, 187
letters of credits 127
Levmore, Saul 149
liberal security regimes 54, 58, 60, 99, 101
lien 110, 113–14, 137
common 93
equitable 93
floating 90, 92, 109, 123
liquidation 57, 94, 96, 155–62, 184
(Chapter 11) 173–4
going-concern value 178
stay 100
unregistered securities 90
liquidator 90, 97, 156, 170
see also bankruptcy trustee
Lithuania 62
Lopez de Silanes, Florencio 61, 184
MacDonald, Roderick 145
macroeconomics 59–60
management displacement 168–9, 186
market integration 50
marketisation 70–71
Marvel Entertainment Group case 168
Mattei, Ugo 67
MC Bacon case 166
Mehren, AT von 43
micro businesses 67
Millett, Lord 90
Mistelis, Loukas 15, 102
mobile equipment see Cape Town Convention
Model Law 11–13, 16, 22–6, 101–30, 148
see also EBRD, Model Law; OAS, Model Law
Model Law on Electronic Commerce 17–19, 22
Model Law on International Commercial Arbitration 22–4
model statute see Model Law
Montesquieu 37, 46
Mooney, Charles 137
moral hazard 55–6
mortgage 81–2, 92–3, 95, 109–10, 123, 133

Nat-West Bank plc v Spectrum Plus Ltd 92
negotiable instruments 24, 89
netting 167
NGOs 5–9
non-adjusting creditors 71, 136
non-possessory security see security rights, non-possessory
North, Douglass 60
notice filing 76, 89, 153, 181
Article 9-style 83, 96–7
DCFR 190
Secured Transactions Guide 141–3

OAS
Model Law 102, 120–25, 128–9, 146
OHADA (Organization for Harmonization in Africa of Business Laws) 13
Organisation of American States (OAS) 13, 102, 120–29, 146
Örüçü, Esin 43
out-of-court enforcement see enforcement of security
path dependency 28, 47–53, 74, 159, 169, 192
perfect priority 86–7, 89
personal property security 81–6, 134–5, 139–40
see also Personal Property Security Act
Personal Property Security Act
Australia 80, 88, 99, 191
Canada 1, 80, 88, 99
New Zealand 1, 80, 88, 90, 99
Peru 50, 67–8
Pistor, Katarina 46–7, 50–51, 69
pledge 81–3, 92–3, 97, 108–11, 116–18, 123, 134
PMSI 86–9, 120, 125, 147, 149, 181
EBRD Model Law 113–14
OAS Model Law 124

priority rules 146–8
politics 48, 62
possessory security interest see security right, possessory
post-commencement security interest 162–3
preferred claims 179
prepacks 175–7
priority rules 12, 89, 104, 125, 131, 146–53
privatisation 46, 70–72, 78, 105–6
airlines 18
procedural fairness 4
property registration 62, 67–8
property rights 56, 60, 64–8, 101, 131, 160–61, 185
protection in value 156, 160–61
purchase money security interests see PMSI
purchase money super-priority 114, 148
quasi-security 98, 113–15, 123–4, 130, 143–8, 181
ratification of conventions 3, 20–21, 104, 128
receivables 81, 121, 127–8, 150–52
assignment 12, 124, 143–4
financing 128, 131, 135, 139
Receivables Convention see United Nations, Convention on Assignment of Receivables
registered charge 108–9, 134
Regulation on Insolvency Proceedings 156
regulatory competition 35–7, 74
reorganisation 99–100, 154–6, 160–62, 168–78, 183–4
repurchase agreements 115
retention of title see title-retention
Richard, Jean-Francois 46, 50–51
Roe, Mark 48
Said, Edward 76
Savigny–Thibault controversy 40
Schauer, Frederick 29–30, 194
Schmitthoff, Clive 3–4, 15
Scott, Lord 92
secured claims 56, 100, 113, 136, 158, 162, 179
secured credit and the harmonisation of law

secured lending 13, 67, 104, 163

Secured Transaction Systems and Collateral Registries 13

Secured Transactions Legislative Guide see Legislative Guide on Secured Transactions

security agreement 82–90, 95, 97, 110, 131, 138, 142

security interests 18, 41, 59, 104, 160, 163–4, 179–82, 186–91

(Article 9) 80–101

(Chapter 11) 155

conflicting 85

Drobnig report 11

EBRD Model Law 108–15

land 93

notice filing 76

OAS Model Law 120–28

Secured Transaction Working Group 25

Secured Transactions Guide 131–51

unification of law 12

see also purchase-money security interests (PMSIs)


enforcement see enforcement of security

non-possessor 12, 104, 120–22, 127, 131, 184

OAS Model Law 124

possessor 111, 121, 123

quasi-securities 98

registration 5, 14, 91, 131, 152

Secured Transactions Guide 130–42, 145, 147–53

set-off 167

Shleifer, Andrei 61, 184

Singapore 95, 99

Smith v Bridgend County Borough Council 96

social dumping 35–6, 74

South America 78

sovereignty 19, 29, 33–4, 78, 133

Soviet Union 45, 50, 105, 117

Spamann, Holger 51–2

Stephan, Paul 31

Stiglitz, Joseph 72

subordination agreements 125

super-priority 86, 114–15, 125, 130, 148–51, 162–3

see also PMSI; priority rules

Syria 62

Taiwan 62
tax 34, 36, 66, 100, 179, 185

technology 17, 50, 118

third party effectiveness 113–14, 130, 138–41, 144–52, 189–90

Third World 45

Tiebout, Charles 34
title retention 86–8, 98, 134, 180, 189–91

Article 9 inclusion 41, 81

OAS Model Law 123–4

Secured Transactions Guide 143–7, 151–2

trade credit 57, 71, 142

transaction costs 30–34, 52, 71

transplantability see legal transplants

Turkey 40–44, 78

UNCITRAL

establishment 2

membership 5

Secretariat 5–9, 19, 23–5, 128, 191

working methods 6–11

UNCITRAL Working Group see working group

UNIDROIT 14, 18, 103

unification 15–19, 26, 38, 103

security interests 12

trade law 2–4, 15

Uniform Acts 13

uninsurable risk 55–6

United Nations 17, 26

Convention on Assignment of Receivables in International Trade 12, 103–4, 139, 152

General Assembly 3–5, 16–17, 130

UNCITRAL establishment 2

International Trade Law Division 5

Office of Legal Affairs 5

Secretariat 5

unregistered securities 90–91

unsecured claims 113, 162, 179
Index

unsecured lending 56, 70
US Agency for International Development (USAID) 116
US Attorney General 138
US Bankruptcy Code see bankruptcy code, US
US Treasury 45

Vienna Convention on Contracts for the International Sales of Goods 11, 20, 23–4, 32
Vienna Sales Convention 32
Vishny, Robert 61, 184

Washington Consensus 45–6, 71–2
Watson, Alan 42–3, 72–3
Weatherill, Stephen 38
working group 5–13, 23–4
Insolvency 19, 24
Secured Transactions 24–5
World Bank 13, 45, 61–5, 69, 77–8, 99–100, 184, 192

Zartman v First National Bank of Waterloo 134
Ziegel, Jacob 15
Zimmerman, Reinhard 37