Foreword

Creditors with a security interest are typically super-priority creditors on the bankruptcy of the debtor, and indeed the whole purpose of a security interest is to confer this priority on bankruptcy. One of the most remarkable features of bankruptcy laws is that nowhere is there equality of distribution of the assets of the bankrupt. Rather, there is a lengthy and intricate ladder of priorities as creditors battle each other in climbing the rungs of this ladder, fighting to escape the rising swirls of debt, gasping for the bubble of oxygen at the top. To queue is human.

Security interests are one of the trio of these super-priority creditors, which are evident to a greater or lesser extent in the jurisdictions of the world. The identities of the three musketeers swaggering down the road showing off their superiority are: (1) secured creditors; (2) creditors entitled to bankruptcy set-off (and thereby able to get paid); and (3) claimants who are beneficiaries under a trust – who can get back their property held by the debtor in the debtor's own name, notwithstanding that the property appears to belong to the debtor. An example is custodianship.

The reception of each of these claimants is quite patchy around the world, but the fact that they do claim primacy, and often get it, means that their position sometimes raises eyebrows amongst those who are less favoured.

The law and practice relating to security interests is by far the most complex compared with the other members of the trio. There are various explanations for this, including (amongst others) the fact that there is a huge range of assets involved (some codes will accord special treatment to between 40 and 50 different categories of asset) and the fact that the number of legal issues is very large. For example, a question of priorities can lead to a discussion of at least a couple of dozen different priority contests. The arrival of this set of excellent essays edited by Frederique Dahan is therefore to be warmly welcomed.

There are a number of other reasons why this particular collection is of exceptional value.

Firstly, huge amounts are involved in security interests, which are often seen as unlocking capital for beneficial development.

Secondly, the essays cogently discuss the rationale for security interests and the extent to which they can be justified. So special attention is given to the policy. At the same time, the work focuses not just on the theoretical reasoning, but also on the practical application in relation to actual transactions, such as project finance, trade finance and the use of collateral in financial markets – an especially valuable combination of town and gown.

Thirdly, the work is truly international and comparative. It has detail on jurisdictions as varied as England and Mongolia, Russia and Morocco, as well as a piece on Shari'ah law in relation to security interests. Hence the overall result is a pooling of global intelligence.

Fourthly, the law of security interests is in many countries fossilised by ancient tradition and reveals dogmatic ideologies which are difficult to understand in relation to the modern financialised world. The essays illuminate many dark corners and shed needful light to show our way on this topic.

Finally, the essays are written by an exceptionally well-informed set of contributors who are at the centre of both policy and the application of the law in the real world, that is, what the law is for, law in actual flight.

This work pushes out the boundaries of the subject of security interests and deepens the perspective.

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