

## Contents

|   |                |
|---|----------------|
| <i>General editors' preface</i>   | <i>page xi</i> |
| <i>Preface</i>  | xiii           |
| <i>List of contributors</i>   | xv             |
| <i>Table of cases cited by name</i>   | xvii           |
| <i>Table of legislation</i>   | xxii           |
| <br>  |                |
| <b>Part I Introduction and context</b>  |                |
| <i>List of abbreviations</i>  | 3              |
| 1 Introduction: security rights in movable property within<br>the common market and the approach of the study   | 6              |
| EVA-MARIA KIENINGER   |                |
| 2 A labyrinth of creditors: a short introduction to the<br>history of security interests in goods   | 38             |
| WILLEM J. ZWALVE  |                |
| 3 Security in movables in the United States – Uniform<br>Commercial Code Article 9: a basis for comparison  | 54             |
| HARRY C. SIGMAN   |                |
| 4 The English law of security: creditor-friendly but<br>unreformed  | 81             |
| MICHAEL BRIDGE  |                |
| 5 The European Bank for Reconstruction and Development's<br>Secured Transactions Project: a model law and ten core<br>principles for a modern secured transactions law in<br>countries of Central and Eastern Europe (and elsewhere!) | 98             |
| FRÉDÉRIQUE DAHAN AND JOHN SIMPSON   |                |

**Part II The case studies**

|   |     |
|---|-----|
| <i>List of abbreviations</i>  | 117 |
| <i>Bibliographies</i>   | 128 |
| <i>Glossary</i>   | 150 |
| Case 1: Furniture for a new office  | 171 |
| <i>Transfer of ownership – general effects of insolvency on property – statutory rights of unpaid seller – resolutive clause – goods in transit</i> |     |
| Discussions   | 171 |
| Comparative observations  | 222 |
| Case 2: The deceived seller   | 230 |
| <i>Transfer of property – effect of fraud – effects of execution on property law questions</i>  |     |
| Discussions   | 230 |
| Comparative observations  | 243 |
| Case 3: Machinery supplied to be used by the buyer  | 246 |
| <i>Simple retention of title</i>  |     |
| Discussions   | 246 |
| Comparative observations  | 282 |
| Case 4: Jackets for resale  | 287 |
| <i>Simple retention of title – entitlement to resell</i>  |     |
| Discussions   | 287 |
| Comparative observations  | 298 |
| Case 5: Motor cars supplied and resold (I)  | 301 |
| <i>Protection of bona fide purchaser – retention of title and resale – consignment – special legislation</i>  |     |
| Discussions   | 302 |
| Comparative observations  | 343 |
| Case 6: Motor cars supplied and resold (II)   | 351 |
| <i>Retention of title and resale – claim arising out of sub-sale still existing</i>   |     |
| Discussions   | 351 |
| Comparative observations  | 362 |
| Case 7: Supply of material to manufacturer (I)  | 365 |
| <i>Retention of title and products clause – property effects of manufacturing</i>   |     |

|   | CONTENTS | ix  |
|---|----------|-----|
| Discussions   |          | 366 |
| Comparative observations  |          | 394 |
| Case 8: Supply of material to manufacturer (II)   |          | 398 |
| <i>Retention of title – sale of manufactured products –<br/>    combined products and proceeds clause</i>   |          |     |
| Discussions   |          | 398 |
| Comparative observations  |          | 414 |
| Case 9: Too many toasters   |          | 417 |
| <i>All-monies/sums clause – effects of commingling on<br/>    retention of title</i>  |          |     |
| Discussions   |          | 418 |
| Comparative observations  |          | 434 |
| Case 10: Bank loan on the basis of a car fleet  |          | 438 |
| <i>Security ownership – sale and lease-back – other<br/>    non-possessory security rights in individualised movables</i>   |          |     |
| Discussions   |          | 438 |
| Comparative observations  |          | 473 |
| Case 11: Bank loan for a wholesaler   |          | 480 |
| <i>Security right in revolving stock-in-trade – security<br/>    ownership – enterprise charge – actio Pauliana</i>   |          |     |
| Discussions   |          | 481 |
| Comparative observations  |          | 525 |
| Case 12: Bank loan on the basis of money claims (I)   |          | 531 |
| <i>Security assignment of claims in respect of an identified<br/>    debtor – distinction between present and future claims –<br/>    dependence of the secured creditor's rights on<br/>    communication of the security right to the debtor cessus</i> |          |     |
| Discussions   |          | 532 |
| Comparative observations  |          | 568 |
| Case 13: Bank loan on the basis of money claims (II)  |          | 573 |
| <i>Security right to a claim against a debtor whose identity<br/>    is unknown at the time the security right is created –<br/>    rights of the secured party in execution</i>  |          |     |
| Discussions   |          | 574 |
| Comparative observations  |          | 592 |

|   |   |     |
|---|---|-----|
| x | CONTENTS  |     |
|   | Case 14: Finance leasing of computers   | 595 |
|   | <i>Finance leasing – lessor’s and lessee’s rights in insolvency<br/>    of the other partner – effects of purchase option</i> |     |
|   | Discussions   | 595 |
|   | Comparative observations  | 619 |
|   | Case 15: Indebted businessman sells business to brother   | 623 |
|   | <i>Liability of purchaser of a business for pre-existing<br/>    debts – actio Pauliana</i>                                   |     |
|   | Discussions   | 623 |
|   | Comparative observations  | 644 |
|   | Evaluation: a common core? Convergences, subsisting<br>differences and possible ways for harmonisation                        | 647 |
|   | EVA-MARIA KIENINGER   |     |
|   | <i>Index by country</i>   | 674 |
|   | <i>Index by subject</i>   | 738 |