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Security Rights in Movable Property in European Private Law

For every transnational lawyer, it is vital to know the differences between national secured transactions laws. Since the applicable law is determined by the place where the collateral is situated, it may change when movables are brought from one state to another. Introductory essays from comparative lawyers set the scene. The book then presents a survey of the law relating to secured transactions in the member states of the European Union. Following the Common Core approach, the national reports are centred around fifteen hypothetical cases dealing with the most important issues of secured transactions law, such as the creation of security rights in different business situations, the relationship between debtor and secured creditor, the nature of the creditor's rights and their enforcement as against third parties. Each case is followed by a comparative summary. A general report evaluates the possibilities of European harmonisation in the field of secured transactions law.

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The Common Core of European Private Law

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 Science (UNESCO)

For the transnational lawyer the present European situation is equivalent to that of a traveller compelled to cross legal Europe using a number of different local maps. To assist lawyers in the journey beyond their own locality *The Common Core of European Private Law Project* was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger. This is its fourth completed book.

The aim of this collective scholarly enterprise is to unearth what is already common to the legal systems of European Union member states. Case studies widely circulated and discussed between lawyers of different traditions are employed to draw at least the main lines of a reliable map of the law of Europe.

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Eva-Maria Kieninger

With the assistance of
Michele Graziadei
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Frontmatter
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PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge, CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa
<http://www.cambridge.org>

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First published 2004

Printed in the United Kingdom at the University Press, Cambridge

Typeface Swift 10/13 pt. System L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

ISBN 0 521 83967 X hardback

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General editors' preface

This is the fourth book in the series *The Common Core of European Private Law*. The *Common Core of European Private Law* Project was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger. The methodology used in the Trento project is novel. By making use of case studies it goes beyond mere description to detailed inquiry into how most European Union legal systems resolve specific legal questions in practice, and to thorough comparison between those systems. It is our hope that these volumes will provide scholars with a valuable tool for research in comparative law and in their own national legal systems. The collection of materials that the Common Core Project is offering to the scholarly community is already quite extensive and will become even more so when more volumes are published. The availability of materials attempting a genuine analysis of how things are is, in our opinion, a prerequisite for an intelligent and critical discussion on how they should be. Perhaps in the future European private law will be authoritatively restated or even codified. The analytical work carried on today by the almost 200 scholars involved in the *Common Core Project* is a precious asset of knowledge and legitimization for any such normative enterprise.

We must thank the editors and contributors to these first published results. With a sense of deep gratitude we also wish to recall our late Honorary Editor, Professor Rudolf B. Schlesinger. We are sad that we have not been able to present him with the results of a project in which he believed so firmly. No scholarly project can survive without committed sponsors. The Dipartimento di Scienze Giuridiche of the University of Trento, its past and present directors and its excellent staff must be thanked. The European Commission has partially sponsored some of our past general meetings, having included them in their High

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xii GENERAL EDITORS' PREFACE

Level Conferences Program. The Italian Ministry of Scientific Research is now also funding the project, having recognized it as a 'research of national interest'. The Istituto Subalpino per l'Analisi e l'Insegnamento del Diritto delle Attività Transnazionali, the University of Torino, the University of Trieste, the Fromm Chair in International and Comparative Law at the University of California and the Hastings College of Law have all contributed to the funding of this project. Last but not least, we must thank all those involved in our ongoing Trento projects in contract law, property, tort and other areas whose results will be the subject of future published volumes. Our home page on the internet is at <http://www.jus.unitn.it/dsg/common-core>. There you can follow our progress in mapping the common core of European private law.

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Rodolfo Sacco, President of the International Association of Legal Science (UNESCO)

Preface

The law relating to security rights in movable property is one of the areas where the diversity of national laws is of special practical importance. As a consequence of the universally accepted rule of private international law, the *lex rei sitae*, two or more different laws have to be applied consecutively to a single transaction, if collateral is moved across borders. Because such movement is at the heart of the idea of a Common Market it comes as no surprise that the first project which emerged from the property law group of the Common Core was dedicated to security rights in movables.

Like all volumes in this series, this book is truly a collective scholarly enterprise. I am grateful to all contributors who prepared their reports and essays and discussed them at various annual meetings in Trento. Three of them, Michele Graziadei, George Gretton and Cornelius van der Merwe, were of special assistance in compiling the reports, drafting the comparative observations and finding a common terminology. Special thanks are due to Matthias Storme, who drafted the first version of the questionnaire and acted as editor in the beginning.

The editor and those contributors who are not native English speakers owe a great debt of gratitude to Alec Brown of the English Bar, who corrected the style of the texts. Without his dedication and diligence, the book might not have seen the light of day. All remaining errors are, however, the respective authors' responsibility. We are also especially grateful to Karin Linhart, Jenny Grimm and Olaf Beller, assistants at the University of Würzburg, who corrected the footnotes and compiled the bibliographies and lists of abbreviations.

Finally, I would like to thank the general editors of the series, Mauro Bussani and Ugo Mattei, for initiating the Common Core project and for providing excellent facilities and an amiable atmosphere at the

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general meetings in Trento. Thanks are also due to the research network 'Uniform Terminology for European Private Law' co-ordinated by Gianmaria Ajani at the University of Turin for financing part of the research work for this book.

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Würzburg, October 2003

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