

points to some surveys of the development of procedure. It might be helpful to mention sources freely available online, including the original 1844 edition of May's *Treatise*, and his 1849 pamphlet of reform proposals discussed in detail in McKay's ch. 9. Some readers will think to search for "Commons Journals online", but if not will have to find their way to note 70 on p. 85 to be told where to find them.

The index is to be appreciated. There are signs of cut and paste: a number of chapter headings or subheadings appear as head-words for entries that more or less index the chapter, some of which then appear independently. But the result generally seems to be duplication rather than omission.

The book should be a pleasing addition to the series of Hart Studies in Constitutional Law. Seeing it in that context makes better sense of the choice of material. The 2013 volume, *Law in Politics, Politics in Law*, third in the series, edited by David Feldman, filled some of the ground between procedure and legislation. Readers should go there for a drafter's contribution, particularly Daniel Greenberg's ch. 11, with an account of the role of the clerks in the operation of the Parliament Act 1911. What he says on one point of interpretation could be applied more widely: "the lore of the Public Bill Office in the Commons, as well as traditionally within the Office of the Parliamentary Counsel, is replete with wisdom and examples." Rhodri Walters's ch. 13 gave a brief but desirable contribution from a Lords Clerk, not much in evidence in the book under review. Seen in this context, *Essays on the History of Parliamentary Procedure* whets the appetite for work on procedure and its implications with contributions from a wider field.

EDWARD STELL

Cross-Border Transfer and Collateralisation of Receivables: A Comparative Analysis of Multiple Legal Systems. By WOO-JUNG JON. [Oxford: Hart Publishing, 2018. 288 pp. Hardback £80. ISBN 978-15-09914-34-0.]

Secured Credit in Europe: From Conflicts to Compatibility. By TEEMU JUUTILAINEN. [Oxford: Hart Publishing, 2018. 334 pp. Hardback £85. ISBN 978-15-09910-06-9.]

The availability of credit and the consequent need to modernise collateral laws are important factors in improving access to finance. This is particularly important for micro- and small businesses' access to finance. The ability to give security influences both the cost of credit and the availability of credit. This consideration is equally applicable to both developed and developing economies. Since the 1990s many jurisdictions have embarked upon modernisation of secured transactions laws. Some of these modernisation activities have evolved from within domestic legal systems intended either to increase a country's credit rating, or to emulate the successful implementation of secured transactions reform by a neighbouring country. Some modernisation activities have instead been recommended by international financial institutions, as where a national government invites assistance to modernise its activities or a country goes through austerity measures to meet the conditions of finance offered by international financial institutions. The reason is that predictable laws on security rights are said to be critical in increasing investment and credit extension decisions; in particular, laws that permit non-possessory

security rights enable small and medium businesses to have access to credit with better terms including long term maturities and lower interest rates. Thus, modernisation activities have focused upon the main pillars of secured credit law regimes which enables the efficient taking of non-possessory security rights. Such security enables a debtor to keep possession of the collateral whilst making repayments to the creditor.

A secured credit regime of this kind requires a number of changes to traditional secured credit regimes, including the creation of security rights simply and cost effectively, achieving the effectiveness of security against third parties by registration or other efficient methods, predictable and simple rules to determine priority between security rights and efficient enforcement of security rights. Such reforms are best coordinated with insolvency law reforms ease access to credit for small businesses and entrepreneurialism. Numerous international instruments have been drafted to achieve effective secured credit regimes by internationally mandated standard setting organisations and international financial institutions. Some of these are the European Bank for Reconstruction and Development (EBRD) Model Law on Secured Transactions, Organisation of American States Inter-American Model Law on Secured Transactions, the World Bank/IFC Secured Transactions and Collateral Registries Toolkit, Unidroit International Factoring Convention and the various instruments of the UNCITRAL on secured transactions law. Since the mid-1990s the UNCITRAL has been leading the efforts on the creation of international instruments (conventions, legislative guides, model laws and practice guides) through work on influential instruments including the United Nations Convention on the Assignment of Receivables in International Trade, the UNCITRAL Legislative Guide on Secured Transactions, the UNCITRAL Model Law on Secured Transactions and the UNCITRAL draft Practice Guide on Secured Transactions.

Parallel to all this, literature on secured credit law has increased. The two books reviewed here are examples, each of a different scope.

Dr. Teemu Juutilainen's monograph analyses the need for a unified or harmonised secured credit law within the Europe Union. The book is based on his PhD thesis written in the University of Helsinki's Faculty of Law, and "seeks the optimal way to promote compatibility between systems of proprietary security rights in Europe, focusing on security rights over tangible movables and receivables". With the idea of compatibility, the book advocates convergence and possible harmonisation of security rights in Europe. While the book does not compare jurisdictions systematically, it is built on various comparative studies and limited to the EU Member States.

The book is divided into three chapters in addition to an introduction and a conclusion. The introduction explains security rights as 'relational legal positions' (terminology used to denote that the security right is between the debtor and the secured creditor), the problem of incompatibility between national laws and the quest for compatibility. Chapter 1 (proper) is confined to the variety of means to promote compatibility. Dr. Juutilainen focuses on different approaches found in the European discourse on security rights in cross-border transactions: the centralised substantive approach, the centralised conflicts-approach, the local conflicts-approach and the local substantive approach. The chapter concludes with the suggestion that a combination of these approaches is indeed feasible.

Chapter 2 attempts to conceptualise three objectives that will assist the promotion of compatibility between systems of security rights in Europe. It argues that foreseeability, responsiveness and the division of unforeseeability costs are essential to a greater compatibility of national security rights systems. The argument in this

chapter is based on the economic functions of security interests, the conditions for legal evolution and a transnational conception of justice, and particularly focuses on their justifications. 'Foreseeability' is used to denote the universal economic functions of security rights. The debtor should be able to utilise the full economic value of his assets by providing them as collateral. The chapter suggests that credit markets need predictable rules. As part of this, the economic function of security rights needs to be increased by comprehensive harmonisation. What the author implicitly suggests with comprehensive harmonisation is that security rights should be modernised throughout Europe. Predictable norms created in the light of modern principles of secured transactions law should apply to security arrangements. Foreseeability is also a significant element in the priority of secured creditor over the unsecured creditor in insolvency. With "responsiveness" the author means that the law should respond to the changing legal and financial circumstances. The author takes Nonet and Selznick's seminal work as a starting point in evaluating the responsiveness of security rights. Responsiveness, in this context, emphasises the inevitability of controversial policy choices and the difficulty of choosing a single model of security rights system in an economic and social bloc. These two objectives have been regarded as indispensable elements of desirability of a compatible security rights system. Unforeseeability costs, on the other hand, denote the necessity to internalise (i.e. use the domestic law) in disputes but the costs involved should not be imposed entirely on external secured creditors. The author implicitly bases this objective on the risk of unenforceability (i.e. if the law is not harmonised or modern, but is incompatible with the legal and financial developments, there is a risk of unenforceability). Chapter 3 analyses the centralised substantive approach, the centralised conflicts-approach, the local conflicts-approach and the local substantive approach in the light of the objectives of foreseeability, responsiveness and the division of unforeseeability costs. The conclusions to this chapter suggest that comprehensive and substantive unification or harmonisation should not be imposed. Instead, unification and harmonisation should be pursued through recommendations and a model law. This result could also be achieved through enhanced cooperation among Member States. Security rights over tangibles should continue to be governed by the *lex rei sitae* rule. However, since this rule does not function uniformly, EU-wide legislation is needed. The author concludes that Finnish law falls foul of the local conflicts and the local substantive approaches, and that Finnish law needs reform.

The final conclusions to the book provide two lessons. First, the author reiterates that certainty and predictability via uniform or harmonised law should be "forcefully promoted but not at the expense of policy choices" of individual Member States. While certainty and predictability are two desirable outcomes of law reform, forceful or imposed reforms can never work. Second, even modest, partial or imperfect means of promoting compatibility should be welcome.

Much new terminology in the book (particularly in ch. 2) is used to conceptualise certain ideas, particularly as chapter subheadings such as "foreseeability", "relational legal positions" and "responsiveness". However, these are not expressly defined. The reader finds out indirectly what they mean. This is a pity, because this terminology does not create new concepts but presents the already known subjects under different banners. The use of unclear terms to denote well-known concepts causes unnecessary confusion to the reader.

Dr. Woo-jung Jon's monograph, which is based on his DPhil thesis written in the University of Oxford's Faculty of Law, comparatively analyses the transfer of receivables both outright and as security. It aims to assist international financiers and lawyers in relevant markets in their practice of international receivables financing.

Dr. Jon's methodology has significant originality. It compares a wide array of jurisdictions (15 jurisdictions comprised of Roman-Germanic, French-Napoleonic and Common law) in relation to their receivables financing laws and specifically their registration systems for movable assets and receivables in each jurisdiction. The monograph advocates an international registration system for transfers of and security rights in receivables. It proposes the creation of an International Receivables Registry following the example of the Cape Town Convention's international registration system.

As argued two decades ago, raising finance through assignment of receivables "is simply bigger business than the financing of mobile goods": Cohen (1998) 33 *Tex. Int.L.J.* 173, at 185. Receivables financing has seen considerable growth as "receivables are self-liquidating and ... an excellent short-term source of cash": Schwarcz (1999) 20 *U.Pa.J.Int.Econ.L.* 455, at 456. Small businesses periodically use their receivables as collateral to finance their trading activities and to maintain their cash flow. The significant advantage of, for example, factoring is that receivables owed to the small business are assigned outright to the financier. The financier pays a discounted amount in return to the assignor, rather than collateralising these receivables. Collateralisation enables the financier to take the assets as security to satisfy the claims of creditors. If receivables are collateralised, the title on receivables stays with the assignor. In the case of bankruptcy, receivables will then become part of the bankrupt small business's estate. Thus, the credit risk stays with the small business. This is an important stage in the supply of credit by the factoring company which is based on the value of the small business's receivable rather than the creditworthiness of the small business. It is important to have a system that enables and encourages small businesses to utilise receivables financing more often as a method to raise finance and utilise their dead capital.

The book follows the idea of providing services on credit and the financing of receivables as a result of these services. It compares perfection (i.e. third-party effectiveness), priority and registration systems of multiple jurisdictions. The book is divided into seven chapters with an Appendix. The Appendix sets out a proposed Draft Convention on Priority of Transfers of, and Security Rights in, Receivables ("Draft International Receivables Registry Convention"). The introduction begins with the usual descriptions of receivables, transfers of receivables, security rights in receivables and security transfer of receivables. The chapter then looks at the difference between transfers and security rights which is followed by a proposal of an international receivables registry. Chapter 2 examines the function of publicity and the security rights registries under civil and common law jurisdictions as well as under international instruments. It analyses the advantages and disadvantages of a general security rights registry. Following this analysis, it compares the type of filing systems (document versus notice). Chapter 3 examines transfers of and security rights in receivables. The chapter focuses on priority and perfection of transfers of and security rights in receivables and private international law. It responds to priority and perfection problems as illustrated by a case study done comparatively. Chapter 4 examines one of the most contentious issues in cross-border secured transactions: the harmonisation of conflict of laws rules. This is particularly so in relation to the proprietary effects of transactions. The EU Commission's proposal for a new Regulation to the law applicable to the proprietary effects of transactions relating to receivables is still being debated. The author suggests a uniform substantive rule for priority with an international registration system for the transfer of and security rights in receivables and that the international receivables registry could bypass the notification requirement in certain jurisdictions. Chapter 5 attempts to draw the scope of the proposed international receivables registry and argues that

establishing a general security rights registry has impracticalities due to language and identification problems, and ch. 6 examines the perfection and priority in the international receivables registry. The author proposes that priority under the International Receivables Registry Convention be determined by the time of registration in the international receivables registry.

Whether or not drafting an International Receivables Registry Convention is on the agenda of any mandated international standard setting organisation, the proposal is ambitious. Conventions, as core examples of “hard” laws, are generally regarded as straightjacketing states to accept certain rules for which they have not taken part in the negotiation and drafting stages. Therefore, it is preferable to have “soft” law instruments such as a model law or a legislative guide to establish registry systems. Soft law instruments provide better flexibility to the legislators, as has been successfully achieved by the UNCITRAL Legislative Guide on Secured Transactions (Section IV recommendations 54–75), UNCITRAL Guide on the Implementation of a Security Rights Registry and the UNCITRAL Model Law on Secured Transactions (ch. IV). Furthermore, these instruments provide a much more comprehensive system of registration applicable to both tangible and intangible assets. While the UN Receivables Convention – which has not received the praise it deserves – provides an Optional Annex presenting priority rules based on registration (Optional Annex sections 1 and 2) for the ratifying states to choose, this system can only lay the foundations for a harmonised registration system applicable in the ratifying states. It is also important to remember that the Receivables Convention provides other options in the Annex, as well. Because a registry is only one available option, the proposal might not in practice be very like the Cape Town Convention: a registry is compulsory under that Convention, whereas states ratifying the proposed instrument in Dr. Jon’s book may prefer other options.

Overall, both books in general are careful to expose the areas that need attention by legislators, policy-makers and academics. They demonstrate breadth and a depth of knowledge and understanding of both security interests and the need to reform the law in accordance with the modern principles of secured transactions law.

Regarding Dr. Juutilainen’s book, proposes promotion of compatibility between systems of security rights in EU and develops a theoretical foundation to supplement the European private law integration. The analysis of security rights and the need to modernise or harmonise them in an EU-wide framework has been presented in a somewhat longwinded fashion in undefined terminology. The comparative methodology of the book is appropriate for this type of analysis. His monograph concludes that certainty and predictability of security rights laws might achieve modernisation and harmonisation of secured credit laws in the EU. This can be achieved by respecting public policy choices of individual Member States and that even incremental reforms could be useful in achieving these goals. Indeed, incremental reforms are more useful in achieving the overall goal of modernising secured transactions laws than wholesale reforms. Modernisation efforts that specifically address certain problematic areas could eventually pave the way for an overall modernisation. From this perspective Dr. Juutilainen’s monograph provides a clear and useful theoretical analysis of the need for the modernisation of secured transactions laws in Europe.

Dr. Jon, by utilising a comparative methodology, emphasises the need for an international registration system for transfers of and security rights in receivables based on a proposed Convention. However, it is debatable whether his proposal for an international receivables registry is feasible or desirable as a separate system. His conclusions forward a number of powerful arguments for the desirability of this system, but a comprehensive registration system (a general security rights registry)

applicable to both tangible and intangible assets has already been drafted and recommended by UNCITRAL's soft law instruments. It is debatable whether there is a need to have a separate international registration system specifically for transfers of and security rights in receivables. Nevertheless, from this vantage point, the book is useful in providing a clear comparative analysis of different jurisdictions as to their treatment of transfers of and security rights in receivables.

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Class Actions in England and Wales. Edited by DAMIAN GRAVE, MAURA MCINTOSH and GREGG ROWAN. [London: Sweet & Maxwell, 2018. Hardback £199.99. ISBN 978-04-14057-30-2.]

Collective redress procedures are a necessary feature of any modern civil justice system. Such procedures facilitate access to justice for claimants whose individual losses are insufficient to make litigation practicable. "By combining into a group, a multitude of litigants may command sufficient resources to proceed, ... share the risks of litigation, obtain greater publicity and a manoeuvre into a better negotiating position": Zuckerman, *Civil Procedure*, 3rd edn (2003), [13.61].

The English courts have long recognised the necessary of developing some practicable class action procedures (see *Davies v Eli Lilly & Co.* [1987] 1 W.L.R. 1136, at 1139). In the decades prior to the introduction of the Civil Procedure Rules (CPR), the High Court exercised its powers to facilitate multi-party claims in a number of pharmaceutical cases. These gave rise to novel procedural tools: the use of test cases in the Primodos litigation in 1975 (*Hudd v Schering Chemicals Ltd.* [1980] E.C.C. 375); the establishment of a nominated procedural judge and a system of "master pleadings" in the Opren litigation of the 1980s (*Walker v Eli Lilly & Co.* [1986] E.C.C. 550); and a steering committee of law firms in the Benzodiazepine tranquiliser litigation in the early 1990s (*AB v John Wyeth & Brother Ltd.* (No. 4) (1994) 5 Med.L.R. 1). Welcome as these innovations were, they were no more than piecemeal solutions. In particular, the courts could not change the fundamental principle that members of the claimant group had actively to join – that is, "opt in" to – the litigation.

Class actions formed an important part of Lord Woolf's 1996 report, *Access to Justice*, which described its recommendations in this field as "managing the unmanageable". Ultimately, Lord Woolf recommended that the aims of access to justice, efficiency and fairness could best be achieved by allowing both opt-in and opt-out proceedings. Under the latter system, all persons falling within the class definition are automatically included in the class unless and until they actively opt out of the litigation. The potential advantages of an opt-out procedure for suitable claims are readily apparent. First, it eliminates procedural hurdles for group members, who will prima facie qualify for any relief even without having been parties to the claim. Secondly, it reduces the risk that a group member may fail to join proceedings in time (for example, because he or she did not hear about the litigation) and so lose out on the chance to participate. Thirdly, in cases where the defendant is in a position to identify and compensate all qualifying claimants (such as overcharging by a bank), an opt-out system in fact ensures that all claimants are properly compensated. Fourthly, it ensures that the claim is valued at the full amount of the loss allegedly caused, thereby giving the defendant greater certainty about the scope