



Title	Personal Property Secured Transactions Law in a Comparative Perspective
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Brief description	<p>It is frequently said that the flow of credit is the lifeblood of the economy. Typically, it is easier and cheaper for businesses as well as individuals to obtain credit if they provide security to the prospective creditor. Security may be personal (e.g. suretyship, demand guarantee) or proprietary. In the latter case, the creditor obtains a right of first recourse against certain assets or fund of assets of the debtor (or a third party).</p> <p>This course examines proprietary security: the various types of transactions whereby a borrower (debtor) can grant a lender (creditor) proprietary rights over personal (i.e. movable) property (i.e. property other than land), including tangibles as well as intangibles, to secure an obligation.</p> <p>Topics to be discussed include the creation, attachment and perfection of security rights in personal property, the priority among competing secured creditors as well as the rights and remedies of the parties upon default by the debtor (outside insolvency and in insolvency).</p> <p>The course will focus on the law of the two major English-speaking jurisdictions: England(&Wales) and the US. These two jurisdictions take markedly different approaches. English law in this field is the product of centuries-long evolution, it is still largely judge-made and follows a formal (or fragmented) approach: depending on the legal form chosen by the parties, different rules apply to transactions, even if they perform the same economic function, namely the provision of security. Security may be granted in the form of transfer of ownership by way of security (legal and equitable mortgages) or that of a limited proprietary right (fixed and floating charges), and the grant of security is sharply distinguished from the reservation of ownership by the creditor (under conditional sale, hire-purchase and leasing agreements).</p>

By contrast, the US law of secured transactions is the product of a comprehensive legislative reform, it is codified in Article 9 of the Uniform Commercial Code (UCC, the original version promulgated in 1951) and follows a functional (or unitary) approach: it subjects all secured transactions to the same set of rules, regardless of their legal form. For example, a transaction may be characterized by the parties as a sale or lease of goods, but if in economic reality a security interest (i.e. an interest in personal property which secures payment or performance of an obligation) is created, Article 9 will apply.

The first five classes of the course will deal with English law, the next four classes with US law. One class will deal with the proposals of the English Law Commission to reform English law along American lines. The last two classes will focus on European (EU) directives and regulations, i.e. European harmonization/unification in the field of secured transactions law.

Each class will require preparation beforehand. For each class, students will have to read excerpts from various types of texts (such as books, essays, court decisions, statutes, EU directives and regulations). Students will also be given for each class a set of questions (based on the reading material provided for the class) to work through. The set of questions will also be used as the basis of classroom discussion.

Upon completion of the course, students

- will be familiar with the structure, terminology and fundamental concepts of the English and US law of secured transactions
- will have an understanding of the different approaches of English and US law to security over personal property
- will be able to distinguish between the various types of secured transactions
- will have gained an experience in reading English and US cases and statutes
- will be able to analyze problems in terms of English as well as US law
- will be familiar with the EU instruments aimed at the harmonization/unification of secured transactions law

It is beneficial but not essential for students to have studied the law of proprietary security rights in their

	<p>own jurisdiction. Some familiarity with property law and contract law is useful. A good command of English, particularly fluency in reading, is required.</p>
Schedule	<p>1. Introduction.</p> <ul style="list-style-type: none"> - The nature and purposes of security <p>English secured transactions law I</p> <ul style="list-style-type: none"> - The classification of security rights (pledge, mortgage, charge, lien) - Legal and equitable security - Security granted by companies versus security granted by non-corporate debtors <p>2. English secured transactions law II</p> <ul style="list-style-type: none"> - Fixed and floating charges <p>3. English secured transactions law III</p> <ul style="list-style-type: none"> - Priority conflicts <p>4. English secured transactions law IV</p> <ul style="list-style-type: none"> - Title-Based Financing ('Quasi-security') <p>5. English secured transactions law V</p> <ul style="list-style-type: none"> - Enforcement of security - The treatment of secured creditors in insolvency (bankruptcy) <p>6. US secured transactions law I</p> <ul style="list-style-type: none"> - The pre-UCC law of secured transactions - The unitary concept of security interest - Purchase-money security interest (PMSI) - True lease vs leases intended as security <p>7. US secured transactions law II</p> <ul style="list-style-type: none"> - The notions of creation, attachment and perfection - Notice-filing <p>8. US secured transactions law III</p> <ul style="list-style-type: none"> - Priority conflicts <p>9. US secured transactions law IV</p> <ul style="list-style-type: none"> - Enforcement of security - The treatment of secured creditors in bankruptcy

	<p>10. The failed attempt to modernize English secured transactions law</p> <ul style="list-style-type: none"> - The Law Commission's proposals to reform company security interests (2002-2005) - The Law Commission's proposal to reform the law of bills of sale (From Bills of Sale to Goods Mortgages 2017) <p>11. European harmonization I</p> <ul style="list-style-type: none"> - The financial collateral directive <p>12. European harmonization II</p> <ul style="list-style-type: none"> - Security interests under the EU regulation on insolvency proceedings - Security interests under the EU restructuring directive
Materials/Recommended readings	<p>All required and recommended reading will be made available online, on the Canvas site of the course.</p> <p>The books to be used include: M Bridge, L Gullifer and E Lomnicka, <i>The Law of Security and Title-Based Financing</i>, 4th edition, OUP 2024 L Gullifer, <i>Goode and Gullifer on Legal Problems of Credit and Security</i>, 6th edition, Sweet & Maxwell 2017 JJ White, RS Summers, et al, <i>Principles of Secured Transactions</i>, 2nd edition, West Academic 2018 SD Walt and WD Warren, <i>Secured Transactions in Personal Property</i>, 10th edition, Foundation Press 2019</p>
Assessment/Exam	<p>The final grade is based on</p> <ul style="list-style-type: none"> - in-class participation [40%; including presence, oral assignments and active participation in discussions] and - a final, written exam [60%].