

Comparative Perspectives on Secured Transactions: UCC Art 9, UNCITRAL Model Law and Reform Efforts

Thursday, 12 October 2023
UK: 12.00nn to 3.30pm (BST)
Europe: 1.00pm to 4.30pm (CEST)
Asia: 7.00pm to 10.30pm (SGT)
USA: 7.00am to 10.30am (EST)
via Zoom Webinar

ABOUT THE EVENT

Secured transactions law is at the crossroads of property, contracts, and insolvency laws. This creates a tension in its reform. The American law of secured transactions, primarily contained in Article 9 of the American Uniform Commercial Code, has long served as a model for secured transactions law as can be seen by the adoption of the core principles of the American law in the UNCITRAL Model Law of Secured Transactions, the Cape Town Convention, and the domestic laws of countries such as Canada, New Zealand, Australia and Brunei, where personal property security statutes have been enacted. Particularly, the UNCITRAL Model Law has been or is being enacted by a number of states, and has influenced a number of other uniform law texts. The Model Law is a comprehensive uniform law dealing with security interests in all types of movable property with limited exceptions. It implements the recommendations of the UNCITRAL Legislative Guide on Secured Transactions, including a supplement on security interests in intellectual property and a guide on registration.

The reform of secured transactions law in England has been debated since the 1970s. English secured transactions law is complex, prone to uncertainty in some areas and hard to access, particularly by those from different legal backgrounds. The same can be said of secured transactions law in countries such as Singapore and Hongkong, which is primarily based on English law for historical reasons. In England, possible reform has been the subject of a number of reports, including the 2005 report by the Law Commission. Since then, there has been some limited and targeted reform, but, unlike many other countries around the world, there has been no wholesale overhaul along principles which are increasingly becoming recognised as 'modern'. England faces three choices: doing nothing; introducing a personal property security statute; or drafting a secured transactions code by taking the basic principles of the current law, strip them of their unnecessary complications and write them down in a way that is appropriate to twenty first century transactions. In Singapore and Hongkong, however, much less attention has been paid to secured transactions law reform, although any developments in England are likely to be influential.

This symposium will discuss these comparative approaches to secured transactions law and important issues that affect financing transactions and law reform activities.

Speakers: Prof Henry Gabriel, Mr Spyridon V. Bazinas, Prof Louise Gullifer KC and Mr Richard Calnan

Commentator: Prof Orkun Akseli

Moderator: Prof Dora Neo

Convenors: Prof Dora Neo and Prof Orkun Akseli

REGISTRATION

There is no registration fee for this event, but registration is compulsory.

Register at: <https://tinyurl.com/CBFLMLSWS231012> or scan the QR code

Closing date: 10 October 2023

For enquiries, email cbfl@nus.edu.sg



ABOUT THE CENTRE FOR BANKING & FINANCE LAW

The Centre for Banking & Finance Law (CBFL) at the Faculty of Law, National University of Singapore, seeks to generate scholarship and promote thinking about the vibrancy, robustness and soundness of the banking sector, capital markets and other financial services. Through the research our scholars undertake and the events we organise, we seek to create and share knowledge, to engage stakeholders in an exchange of ideas, and to enhance the appreciation of legal and regulatory issues. We aim to bring greater theoretical and analytical clarity to these issues, to examine their policy impact, and to be a catalyst for ideas on how to improve banking and financial systems at the national, regional and global levels. Visit our website at <https://law.nus.edu.sg/cbfl/>.

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PROGRAMME

Moderator

Professor Dora Neo, National University of Singapore

7.00pm - 7.05pm	Introduction
7.05pm - 7.35pm	Professor Henry Gabriel, Elon University <i>The Revision of American Secured Transactions Law to Accommodate Emerging Technologies</i>
7.35pm - 8.05pm	Mr Spyridon Bazinas, Consultant <i>The UNCITRAL Model Law on Secured Transactions: Preparation and Implementation</i>
8.05pm - 8.15pm	BREAK
8.15pm - 8.45pm	Professor Louise Gullifer, University of Cambridge <i>The Reform of English Secured Transactions Law</i>
8.45pm - 9.15pm	Mr Richard Calnan, Norton Rose <i>The Secured Transactions Code</i>
9.15pm - 9.25pm	BREAK
9.25pm - 9.45pm	Commentary Professor Orkun Akseli, University of Manchester
9.45pm - 10.30pm	Q&A and Discussion

**Timing is based on SGT*

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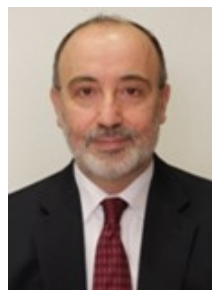
SPEAKERS & PRESENTATION SYNOPSES



Professor Henry Gabriel is a Professor of Law at Elon University. He is a member of the UNIDROIT Governing Council, and for the last twenty-five years has been a United States delegate to the United Nations Commission on International Trade Law Working Group on Electronic Commerce for the last twenty years. He is an Elected and Life Member of the American Law Institute, a Fellow of the European Law Institute, and a Commissioner and Life Member of the American Uniform Law Commission. He was the reporter for the revision of the Sales and Leases Articles of the American Uniform Commercial Code, the Chair of the Revisions of the Uniform Commercial Code Article on Documents of Title, and a member of the Uniform Law Commission drafting committee that drafted the Uniform Electronic Transactions Act and the recent revisions to the Uniform Commercial Code providing for emerging technologies. He is the author of twelve books and over 80 law review articles.

Title: The Revision of American Secured Transactions Law to Accommodate Emerging Technologies

The American law of secured transactions, primarily contained in Article 9 of the American Uniform Commercial Code, has long served as a model for secured transactions law as can be seen by the adoption of the core principles of the American law in the UNCITRAL Model Law of Secured Transactions, the Cape Town Convention, and the domestic laws of Canada, New Zealand and Australia. Article 9, drafted over 70 years ago, provides a comprehensive framework for security rights in those assets that were commonly used as collateral at the time it was originally drafted. The rise of new types of collateral, such as digital assets, as well as new modes of giving public notice of registered security rights suggested the need for revisions of the law to accommodate these technological changes. In this paper, I will explain the need for the revisions of the American law and how these needs are accommodated.



Mr Spyridon V. Bazinas is a Visiting Professor at the Law School of the University of Vienna, Austria, an author and an independent consultant advising States and national and international organizations on trade law reform matters. For a number of years, he was the Secretary of the UNCITRAL Working Group VI (Security Interests), which prepared a number of texts on secured finance, including the UNCITRAL Model Law on Secured Transactions (2016). He was also involved in the Commission's work on insolvency, bank guarantees, procurement and electronic commerce. He also provided technical assistance to States and lectured all over the world on a variety of international trade law topics. He co-authored more than ten books and published more than fifty articles on various topics, in particular, on secured finance and insolvency.

Title: The UNCITRAL Model Law on Secured Transactions: Preparation and Implementation

The Model Law is a comprehensive uniform law dealing with security interests in all types of movable property with limited exceptions. It implements the recommendations of the UNCITRAL Legislative Guide on Secured Transactions, including a supplement on security interests in intellectual property and a guide on registration. With respect to the treatment of security interests in the case of insolvency, the Model Law is complemented by the UNCITRAL Legislative Guide on Insolvency Law. The Model Law has been or is being enacted by a number of States, and has influenced a number of other uniform law texts.

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Professor Louise Gullifer KC (hon) FBA is Rouse Ball Professor of English Law at the University of Cambridge, and a fellow of Gonville and Caius College, Cambridge. She was formerly Professor of Commercial Law at the University of Oxford and a Fellow of Harris Manchester College. She is an associate member of 3VB, where she practiced for a number of years, and a Bencher of Gray's Inn. She teaches and writes extensively in all areas of commercial and financial law. She is the editor of Goode and Gullifer on Legal Problems of Credit and Security and has co-authored a number of books on commercial law and debt financing, including *The Law of Security and Title Financing* and has co-edited three books on secured transactions law and reform throughout the world, including books on Africa and Asia. She took over from Professor Sir Roy Goode as the director of the Secured Transactions Law Reform Project, and was the UK delegate to UNCITRAL working group VI during its work on secured transactions, and is a member of several UNIDROIT working groups, including that on a Model Law on Factoring.

Title: The Reform of English Secured Transactions Law

English secured transactions law is complex, prone to uncertainty in some areas and hard to access, particularly by those from different legal backgrounds. Possible reform has been the subject of a number of reports, including the 2005 report by the Law Commission. Since then, there has been some limited and targeted reform, but, unlike many other countries around the world, there has been no wholesale overhaul along principles which are now recognised as 'modern'. In fact, much of English law is consistent with the modern principles, and reform along those lines, would not necessitate as much substantive change as is often thought, but would require some conceptual restatement and 'translation'. Irrespective of whether there is wholesale reform in the near future, reform of particular areas of English secured transactions law does merit close attention, the most notable example being the law relating to taking security over financial collateral.



Mr Richard Calnan is a partner in Norton Rose Fulbright LLP in London and a Visiting Professor at University College London. His practice has involved a broad range of corporate and financial transactions, restructurings and insolvencies. He has written a number of articles and chapters in books on commercial law. He is the author of *Taking Security* (LexisNexis, 4th ed 2018), *Proprietary Rights and Insolvency* (Oxford University Press, 2nd ed 2016), *Principles of Contractual Interpretation* (Oxford University Press, 2nd ed 2017) and *Principles of Statutory Interpretation* (Oxford University Press, 2023).

Title: The Secured Transactions Code

In recent years, there has been a stark choice open to those concerned with the reform of the law of secured transactions in England. We either introduce a PPSA or we do nothing. In his paper, Richard Calnan will argue that there is a third way. The current law works well but is encumbered with complications resulting from 400 years of development. Why not take the basic principles of the current law, strip them of their unnecessary complications and write them down in a way that is appropriate to twenty first century transactions? This paper explores how that can be done in practice.

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CONVENOR & COMMENTATOR



Professor Orkun Akseli is Professor of Commercial Law at the University of Manchester Law School and the Director of Manchester LawTech Initiative. He was a Fulbright Scholar at Elon University Law School, USA in 2022 where he taught secured transactions and international business transactions. He has published extensively on the modernisation and harmonisation of secured transactions law. His research has focused on the laws relating to secured credit, and the social and economic impact of these laws with reference to the financing of SMEs. His publications include *"Secured Transactions in Global Law-making" (under contract with Hart, co-authored with S.V. Bazinas)*; *"The Future of Commercial Law: Ways forward for Change and Reform" (Hart 2020, with J. Linarelli)*; *"International and Comparative Secured Transactions Law" (Hart 2017, with S.V. Bazinas)*; and *"Secured Transactions Law Reform: Principles, Policies and Practice" (Hart 2016, with L. Gullifer)*. He studied law in Turkey, USA and the UK. He is an Associate Member of the International Academy of Comparative Law and the past President of the International Academy of Commercial and Consumer Law. He is a member of Turkish Bar.

CONVENOR & MODERATOR



Professor Dora Neo is an Associate Professor and Director of the Centre for Banking & Finance Law at the Faculty of Law, National University of Singapore. Her publications include *Gullifer & Neo (eds) Secured Transactions Law in Asia: Principles, Perspectives and Reform (Hart, 2021)*. She is a member of the UNIDROIT Working Group on A Model Law on Warehouse Receipts and a UNIDROIT correspondent for Singapore. Her experience includes teaching at University of Aix Marseille III (France), Center for Transnational Legal Studies (London) and East China University of Political Science and Law (Shanghai, China). She graduated from Oxford University and Harvard Law School and is a non-practicing member of the Bar in England and Wales (Gray's Inn) and in Singapore.