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Transaction Avoidance in Insolvencies

Rebecca Parry, James Ayliffe QC and Sharif Shivji (3rd edition) (2018, OUP, Oxford), 720pp, £195, ISBN 978-0-19-879340-3

The book *Transaction Avoidance in Insolvencies* is now seeing the publication of its 3rd edition. The text consists of no less than 26 chapters and covers 639 substantive pages and over 100 devoted to the tables and index. The heart of the work is to be found in the four chapters on the key provisions of transaction avoidance. In addition to the two chapters covering sections 238 and 239 of the Insolvency Act 1986, there are the two chapters on Transaction Defrauding Creditors covered by section 423 and the Avoidance of Late Floating charges covered by section 245. Overall, the book provides much more than 'just' a very thorough analysis of the rules on transaction avoidance. Because of its scope and depth, it provides an integrated approach to transaction avoidance as part of the overall English legal system. Besides, the text does not omit a discussion of other grounds for seeking redress, such as the chapter on Office Holder Claims addressing claims based on misfeasance, fraudulent trading and wrongful trading.

The book is also relevant for practitioners because of the way the EIR works. Under Articles 7 and 16 of the European Insolvency Regulation, a court-appointed administrator not only has to be able to make it over the hurdle of the transaction avoidance of his or her own law, but, where the law applicable to the contract (*lex causae*) is different from the law of the opening Member State (*lex forum concursus*), the court-appointed administrator will also have to be able to make it across the hurdle of the *lex causae*. In practice, the second hurdle is often English law, very likely because of the very limited application of section 239 on preferences. Furthermore, for other reasons than the possible application of English law on transaction avoidance to certain transactions, the book provides great insights for practitioners, English and foreign alike. There is an entire part in the book with four chapters on practical issues such as evidence gathering and limitation periods.

Transaction Avoidance in Insolvencies also provides a wealth of information and inspiration for legislators and academics. In assessing the functioning of English law and to what extent it provides freedom to parties, one should not only look at section 239 and its very limited scope. English law has developed not only thoughts, but also working legal instruments addressing ways in which creditors may be prejudiced which have gone all too often unnoticed in other jurisdictions. Clear examples of these are the English rules on late floating charges, the anti-deprivation rules and rules on preferring insider guarantees. In summary, there is not a practitioner nor a scholar in Europe in the field of insolvency law who would not greatly benefit from reading the book.

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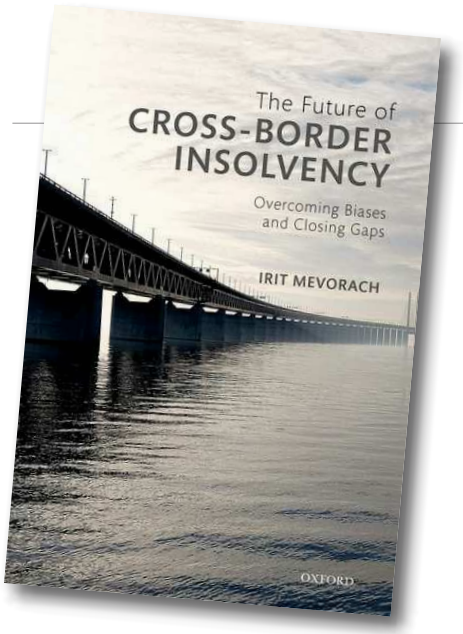

The Future of Cross Border Insolvency: Overcoming Biases and Closing Gaps

Irit Mevorach (2018, OUP, Oxford), xxiv and 290pp, £75, ISBN 978-0-19-878289-6

This is a text that analyses the phenomenon of cross-border insolvency from the standpoint of international law and behavioural and economic theory. Drawing on international texts, the jurisprudence, commentary and practice, this work seeks to understand the default to modified universalism as the benchmark for approaching transnational procedures and cooperation. Set against historical events, and particularly the Global Financial Crisis, the insolvencies of multinational institutions, particularly those of banks and other large players, have tested the limits of modified universalism as an effective tool for governing procedures with international features. This means that stakeholder choices, predicated on the bias towards modified universalism, have the potential to affect the location and conduct of insolvencies.

Addressing the nature of cross-border insolvency law and practice, the author makes the case for the treatment of modified universalism and other precepts derived from the law and practice of international insolvency as a form of customary international law, reducing, if not eliminating, the traditional divide between public and private international law. This, it is claimed, will assist in three things: the reconceptualisation of international insolvency as a source of substantive rules, rather than being seen solely as an adjunct to procedural law; the ability to shape the design and form of the instrument(s) by which cross-border insolvency is propagated; and, finally, the ability to understand how compliance with the new canons of international insolvency can be incentivised at domestic and international levels.

This is clearly a novel work that takes a fresh perspective of what transnational insolvency is as a system and set of rules. Adding to the evident depth of analysis, this text is well-written and the argument well-supported by an enviable range of resources drawn from a range of subjects and disciplines. It can be recommended to those seeking a fresh approach towards understanding this challenging area of law and practice.

Secured Credit in Europe: From Conflicts to Compatibility

Teemu Juutilainen (2018, Hart, Oxford), xxv and 334pp, £85, ISBN 978-1-5099-1006-9

The use of security in structuring the financing of enterprises is a given today, though the types of collateral given up as security may change from time to time. This work, based on a doctoral project at the University of Helsinki, focuses on security rights affecting tangible movables and receivables, currently very common forms of collateral. Security rights are, however, not without their problems, chiefly in whether they are valid and/or enforceable across borders. In the absence of a uniform approach towards security rights, saving some international conventions (e.g. Cape Town 2001) and suggested model laws on secured transactions, the issue devolves down mostly to the national level, at which there are profound differences in approaches to structuring property, asset-security and insolvency laws.

The project, on which this work is based, rests on solid doctrinal foundations and takes a comparative law approach, examining the laws of some ten different jurisdictions, mostly in Western Europe and the USA, as well as recent associated literature. The text distils this information and considers avenues for action at both domestic and international level, in the latter case focusing on the potential for action within the European Union derived from its recent work in the common civil law project. Analysing previous work in this area, including international initiatives and how asset-security rights have been reflected in, for example, cross-border insolvency texts, the author comes up with two potential approaches, one rooted in substantive harmonisation, the other in structuring conflict of laws.

Both approaches evidence difficulties and the author discloses, through the analysis across three major chapters, his preference for an order of treatment of the choices available, including the possibility of a European Security Right. While the text is very much reflective of the way a doctoral level project is conceived and executed, it manages to push to the fore the choices and difficulties facing law reform in this area. There is a plethora of resources used here and references to the sources that have informed this study. In summary, the text would be useful to policy-makers and those involved in the process of law reform from academic, judicial, practitioner or stakeholder backgrounds.

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