

# Table of Contents

Preface	V
List of Contributors	VII
Abbreviations	XIX
Introduction	
<i>Harry C. Sigman/Eva-Maria Kieninger</i>	
I. Basic structure and development	3
II. The Case Studies	
Case Study 1	11
Case Study 2	16
Case Study 3	17
Case Study 4	19
Case Study 5	24
Case Study 6	27
Case Study 7	28
Case Study 8	28
Case Study 9	28
Case Study 10	28
Case Study 11	30
Annex	32
III. Harmonisation	32
IV. Perfection and Priority under UCC Article 9 (with special focus on notice filing)	
1. Meaning of the term “perfection”	36
2. Meaning and importance of “priority”	38
3. How perfection is achieved	40
4. Filing/registration	42
5. Content of the filed financing statement	44
6. The UCC Article 9 priorities regime	49



V. Some Guiding Principles for Reform	54
VI. Conclusion	56

## The Case Studies

*Harry C. Sigman/Eva-Maria Kieninger*

A. General remarks	57
B. The Case studies	
1. Non-possessory security right in specific equipment	57
2. Non-possessory security right in present and future equipment (floating security right)	58
3. Non-possessory security right in present and future inventory (floating security right)	59
4. Purchase-money financing – alternative sources	59
5. Bona fide acquisition	59
6. Possessory pledge – constructive or fictive possession	60
7. Over-security	60
8. Legal (non-consensual) rights of unpaid seller	60
9. Special property registries	60
10. Non-possessory security rights in raw materials – effects of processing (commingling, attachment)	61
11. Cross-border issues	61

## Germany

*Julia Rakob*

I. Introduction	
1. General background; structure of national law re security over tangibles	63
2. Security devices denominated as such	68
3. Title-based security devices	68
4. Existing registries	69
5. Issues beyond the scope of this survey	69
II. Case studies	
General remarks on all case studies	70
1. Non-possessory security right in specific existing items of equipment	71
2. Non-possessory security right in present and after-acquired equipment (floating security right)	76



3. Non-possessory security right in present and after-acquired inventory (floating security right)	77
4. Purchase-money (asset-acquisition) financing – alternative sources	77
5. Bona fide acquisition	86
6. Possessory pledge – constructive or fictitious possession	87
7. Over-security	87
8. Legal (non-consensual) rights of unpaid seller	89
9. Special property registries	89
10. Non-possessory security rights in raw materials-effect of processing (commingling, attachment/accession)	90
11. Cross-border issues	92

## Annex –

## Limitations on granting and holding security under German law

1. Corporate Law Issues: upstream security and financial assistance	96
2. Holding accessory security for several lenders	98

## France

*James Leavy*

I. Introduction	101
II. Case studies	
Preliminary Remarks to the Case Studies	105
1. Non-possessory security right in specific existing items of equipment	105
2. Non-possessory security right in present and after-acquired equipment (floating security right)	110
3. Non-possessory security right in present and after-acquired inventory (floating security right)	110
4. Purchase-money (asset-acquisition) financing – comparison of financing provided by seller, financial lessor and third-party secured lender	112
5. Bona fide acquisition	115
6. Possessory pledge – constructive or fictive possession	117
7. Over-security	117
8. Legal (non-consensual) rights of unpaid seller	117
9. Special property registries	118
10. Non-possessory security rights in raw materials – effect of processing	119
11. Cross-border issues	120



## England and Wales

*Michael Bridge*

I. Introduction	
1. The statutory schemes	125
2. The general features of the law of security	126
II. Case Studies	
1. Non-possessory security right in specific equipment	133
2. Non-possessory security right in present and future equipment (floating security right)	142
3. Non-possessory security right in present and future inventory (floating security right)	144
4. Purchase-money financing – alternative sources	144
5. Bona fide acquisition	148
6. Possessory pledge – constructive or fictive possession	149
7. Over-security	150
8. Legal (non-consensual) rights of unpaid seller	151
9. Special property registers	152
10. Non-possessory security rights in raw materials – effects of processing (commingling, attachment)	153
11. Cross-border issues	155

## Italy

*Anna Veneziano*

I. Introduction	
1. General background; structure of national law re security over tangibles	159
2. Security devices denominated as such	162
3. Title-based security devices	166
4. Existing registries	168
II. Case studies	
1. Non-possessory security right in specific existing items of equipment	170
2. Non-possessory security right in present and after-acquired equipment (floating security right)	179
3. Non-possessory security right in present and future inventory (floating security right)	179
4. Purchase-money (asset-acquisition) financing – comparison of financing provided by seller, financial lessor and third party secured lender	181



5. Bona fide acquisition	187
6. Possessory pledge – constructive or fictive possession	187
7. Over-security	187
8. Legal (non-consensual) rights of unpaid seller	187
9. Special property registries	189
10. Non-possessory security rights in raw materials – effects of processing (commingling, attachment/accession)	190
11. Cross-border issues	191

## Netherlands

*Michael Veder*

I. Introduction	
1. General background; structure of national law re security over tangibles	193
2. Right of pledge in tangibles	194
3. Reservation of ownership (retention of title)	199
II. Case studies	
1. Non-possessory security right in specific equipment	201
2. Non-possessory security right in present and future equipment (floating security right)	207
3. Non-possessory security right in present and future inventory (floating security right)	207
4. Purchase-money financing – alternative sources	209
5. Bona fide acquisition	212
6. Possessory pledge – constructive or fictive possession	213
7. Over-security	213
8. Legal (non-consensual) rights of unpaid seller	213
9. Special property registries	215
10. Non-possessory security rights in raw materials – effects of processing (commingling, attachment)	215
11. Cross-border issues	217

## Belgium

*Eric Dirix*

I. Introduction	
1. General background; structure of national law re security over tangibles	221
2. Security devices denominated as such	224



3. Title-based security devices	228
4. Existing registries	228
II. Case studies	
1. Non-possessory security right in specific existing items of equipment	230
2. Non-possessory security right in present and after-acquired equipment (floating security right)	230
3. Non-possessory security right in present and future inventory (floating security right)	234
4. Purchase-money (asset-acquisition) financing – comparison of financing provided by seller, financial lessor and third-party secured lender	234
5. Bona fide acquisition	237
6. Possessory pledge – constructive or fictive possession	238
7. Over-security	238
8. Legal (non-consensual) rights of unpaid seller	239
9. Special property registries	239
10. Non-possessory security rights in raw materials – effects of processing (commingling, attachment/accession)	240
11. Cross-border issues	240

## Spain

*Angel Carrasco*

I. General background; structure of national law relating security over tangibles	
1. Assets which may be subject to security: general considerations	243
2. Assets which may be subject to security: specific security rights	244
3. Enterprises as chargeable assets	245
4. Parties	245
5. Priority Rules	246
II. Security devices denominated as such	
1. Possessory devices	247
2. Non-possessory devices	247
III. Title-based security devices	247
1. Reservation of title	247
2. Security ownership	248
3. Lease back	248
4. Trust	249



IV. Existing Registries	
1. Kinds of Registries for Tangible Movables	249
2. Depossession and Registration requirements	250
3. Characteristics of the Registries	255