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978-0-521-83265-6 - Property in Securities: A Comparative Study

Eva Micheler

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Property in Securities

Eva Micheler analyses the English, German and Austrian law of securities, addressing the rules governing transfers of securities, including unauthorised transfers, equities arising out of defective issues and the holding of securities through intermediaries.

The book presents an account of the current English, German and Austrian legal regimes. It has been written with a view to explaining the German and Austrian regime to readers with a common law background and to explaining the English regime to readers with a civil law background.

The book also aims to determine whether globalisation will cause the two different approaches to converge. It concludes that the respective rules in all three jurisdictions have historically evolved consistently with incumbent legal doctrine. This pattern of change is likely to continue. Convergence will occur on a functional rather than on a doctrinal level. Moreover recent reform initiatives advanced by the UNIDROIT and the EU will lead to functional rather than doctrinal convergence.

DR EVA MICHELER is a Senior Lecturer at the London School of Economics and an ao Universitätsprofessor at the University of Economics in Vienna.

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For Aurelia, Paul and Theodore

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Preface

This book is the product of research carried out over the last nine years. I began researching property rights in securities in 1997 when I first arrived in England to study at the University of Oxford.

I have since then completed my Habilitation on this topic which was published in German in 2004. In that book, I advance a theory seeking to explain the proprietary dimensions of securities in German and Austrian law.

In this book, I approach the topic from a comparative perspective. The book has three aims. First, it aims to explain the relevant English law to readers with a civil law background, and the relevant German and Austrian law to readers with a common law background. Second, it aims to make a novel contribution to the debate as to whether legal systems are converging or developing in a path-dependent manner. Third, it expresses a view on how the law relating to property rights in securities can be harmonised across jurisdictions.

I am much indebted to my academic mentors, Paul L. Davies and Peter Doralt, without the support of whom this book and the earlier German volume would have never been written. I am also very grateful to Joanna Benjamin who knows more about the subject than I ever shall and who is an inspiring and very personable colleague at the London School of Economics.

I would also like to thank my other colleagues and those who are responsible for running the Law Department at the London School of Economics and the Institut für Bürgerliches Recht, Handels- und Wertpapierrecht at the Wirtschaftsuniversität Wien for providing me with environments that are so conducive to legal research.

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xii PREFACE

Last but not least I would like to thank my husband, Steven, for encouraging me to write this book, for being prepared to discuss the fine points of securities law over the last nine years and for being a wonderful companion through the highs and lows of my academic work.

London, 11 August 2006

EVA MICHELER

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