

Overview

<i>Preface</i>	VII
<i>Table of Contents</i>	XI
<i>Table of Abbreviations</i>	XXIX
 Introduction	 1
 Part I: The Analytical Framework of Bijuralism.....	 7
§ 1 <i>The History of Civil Law in Québec</i>	7
§ 2 <i>Bijuralism and Mixed Legal Systems</i>	29
§ 3 <i>Law and Economics</i>	40
 Part II: Property	 74
§ 4 <i>Property in Civil Law</i>	74
§ 5 <i>Property at Common Law</i>	113
§ 6 <i>Equitable Property Rights</i>	161
§ 7 <i>The Civil Law Trust</i>	183
§ 8 <i>Theory of Property Rights</i>	193
§ 9 <i>Property Unjustly Gained</i>	221
§ 10 <i>Proprietary Restitution</i>	250

Part III: Secured Transactions.....	308
§ 11 <i>The Law and Economics of Secured Transactions</i>	308
§ 12 <i>Security Interests in Common Law</i>	322
§ 13 <i>PPSA Security Interests and Property Law</i>	339
§ 14 <i>Security Interests in Civil Law</i>	353
Part IV: Vertical Co-ordination.....	386
§ 15 <i>Federal and Provincial Notions of Property and Security</i>	386
§ 16 <i>Property Rights in Insolvency</i>	405
Part V: Horizontal Co-ordination	446
§ 17 <i>International Property Law</i>	446
§ 18 <i>International Secured Transaction Law</i>	462
§ 19 <i>International Proprietary Restitution Law</i>	484
Conclusion.....	502
<i>Bibliography</i>	505
<i>Table of Cases</i>	539
<i>Index</i>	551

Table of Contents

<i>Preface</i>	VII
<i>Table of Abbreviations</i>	XXIX
 Introduction	1
A. The Problem	1
B. Outline	3
C. A Note on Terminology	5
 Part I: The Analytical Framework of Bijuralism	7
§ 1 <i>The History of Civil Law in Québec</i>	7
A. The Conquest of Québec	8
B. The Introduction of Equity in Québec	12
C. The <i>Quebec Act</i>	14
D. The Abolition of the Seigneurial System	15
E. Extent of the Seigneurial System and Feudalism	16
I. The <i>Seigneur</i>	17
II. The <i>Censitaires</i>	17
III. The Seigneurial System and the Civil Law on Immovables	18
IV. The Seigneurial System After the Conquest	18
V. Abolishment of the Seigneurial System	19
VI. Legacy of the Seigneurial System	21
F. United Canada, Codification, and Confederation	21
I. The Durham Report	21
II. The Codification of 1866	23
III. The <i>Code civil du Bas-Canada</i> as a Code	25
G. The <i>Code civil du Québec</i>	25
I. Institutional History	25
II. Scope of the Project	26
III. The <i>Code civil du Québec</i> as a Code	27
H. The Place of Civil Law in Québec	27

§ 2 <i>Bijuralism and Mixed Legal Systems</i>	29
A. Terminology	29
I. Bijuralism	29
II. Mixed Legal Systems	29
B. Bijuralism in Action	30
I. The First Vector of Interaction: Common Law and Civil Law	31
II. The Second Vector: Federal Law and Provincial Law	34
1. The Concept of a Federal Common Law	34
2. The Complimentary Relationship of Federal and Provincial Law ...	35
3. The <i>Interpretation Act</i>	36
a) Accepting Diversity	37
b) The Notion of Property in Federal Law	37
c) The Notion of Security Interest in Federal Law	37
d) Competing Property Rights in Federal Law	39
§ 3 <i>Law and Economics</i>	40
A. Law's Autonomy(?)	41
I. Formalism	42
II. Utilitarianism	45
III. Realism	45
1. Holmes	45
2. The Realist Challenge to Formalism	46
a) Law's Indeterminacy	46
b) The Incompleteness Theorem	47
3. Consequences of a Realist Approach	49
a) Taking Extrinsic Factors into Account	49
b) The Role of Law in Legal Realism	49
c) Adjudication is Law-Making	50
IV. Law and Economics	50
1. From Legal Realism to the Economic Analysis of Law	50
2. Coase's Contribution	50
B. Economic Analysis of Law	53
I. Positive and Normative Economic Analysis of Law	53
II. The Normative Analysis of the Law	53
1. Welfare and Efficiency	53
2. Measures of Efficiency	55
a) Pareto Efficiency	55
b) Kaldor-Hicks Efficiency	56
III. The Positive Analysis of the Law	56
1. The Two Steps of Positive Economic Analysis of Law	57
2. Turning Law Into Numbers	57
C. Law and Development	58
I. Law Matters	58

II. Legal Origin	61
1. Common Law and Efficiency	61
2. The Legal Origin Theory	62
3. The Legal Origin Theory and Comparative Law Theory.....	63
a) Functionalism	63
aa) Functionalism as a Comparative Law Theory	63
bb) Functionalism and Legal Origin Theory	65
b) Legal Transplants	65
III. Legal Origin Appraised	66
1. Comparative Law Critique	66
2. The Colonial Approach.....	68
a) History and Institutions.....	68
b) The Impact of Institutions on Economic Development	69
3. Bijuralism and Mixed Legal Systems in the Law-and-Economics Analysis	71
D. Conclusion.....	73
 Part II: Property	 74
 § 4 Property in Civil Law	 74
A. Patrimony and Property	75
I. Patrimony	75
1. Patrimony in Roman Law	76
2. The Personal Theory of Patrimony	76
3. Patrimony by Appropriation	78
II. From Patrimonial Rights to Property	78
III. Types of Property	79
1. Corporeal and Incorporeal Property.....	79
2. Movable and Immovable Property.....	80
B. Property Rights as Real Rights.....	80
C. Ownership and Lesser Property Rights	82
I. Ownership	82
1. The Genesis of the Traditional Notion of Absolute Ownership	82
2. The Notion of Ownership as a Complete Right.....	84
II. Lesser Property Rights	84
1. Principal Property Rights	85
a) Usufruct, Use, and Servitude	85
b) Emphyteusis	86
2. Accessory Property Rights.....	86
III. Ownership as a Property Right.....	87
D. Right and Object of Right	87
I. Problem	87
1. The Classical Notion of Property in the <i>Code civil du Bas-Canada</i>	89

2. Property in the <i>Code civil du Québec</i>	90
II. Analysis.....	91
III. Conclusion	93
E. <i>Numerus Clausus</i> in Civil Law.....	93
I. Innominate Principal Property Rights	95
II. Restrictive Approach to Innominate Property Rights	96
III. The Addressee of the <i>Numerus Clausus</i> Principle	98
F. Acquisition of Ownership in Civil Law.....	99
I. <i>Inter Vivos</i> Transfer of Property in Roman Law	100
II. The Shift to Consensualism in French Law	102
III. Consensualism in Québec Law.....	103
G. Restrictions on Alienability	103
I. History.....	104
II. Purpose	105
III. Requirements	106
IV. Consequence	106
H. Vindication of Property Rights.....	106
I. Principle	106
II. Vindication of Incorporeal Property.....	107
III. Vindication of Property Held by Bankrupt Parties.....	108
IV. Assignability of the Right to Vindicate	108
I. Possession in Civil Law	109
I. The Notion of Possession.....	109
II. Acquisitive Prescription Through Possession	110
III. The Possessory Action	111
§ 5 <i>Property at Common Law</i>	113
A. Personal Property.....	113
I. Real and Personal Actions	114
II. Real and Personal Property.....	115
1. Property.....	115
2. Real Property or Personal Property.....	117
3. Choses in Action	117
B. Property Rights in Personal Property	117
I. Rights in Personal Property	117
II. Personal Rights and Property Rights	119
C. Title, Interest, and Ownership	120
I. Title, Interest, and Estate	121
1. Interest	121
2. Estate	121
3. Title.....	121
II. Ownership at Law	122
1. Ownership and Title	122
2. Ownership and Interest.....	123

3. Ownership as Used in Statutes.....	124
4. Honoré's Notion of Ownership.....	125
D. Possession and Property.....	125
I. Possession	126
II. Seisin	127
1. The Notion of Seisin.....	127
2. Seisin of Personal Property.....	127
3. Seisin and Property Right.....	128
4. Disseisin.....	128
III. Non-Possessory Property Interests as Choses in Action	129
E. Acquisition of Property in Common Law	130
I. <i>Inter Vivos</i> Transfer of Property in Common Law.....	130
1. From Delivery to Consensual Transfer	130
a) The Transfer of Property in Common Law	130
b) The <i>Sale of Goods Acts</i>	130
2. Transfer of Property and Relativity of Title	131
II. Assignment of Choses in Action	132
III. Adverse Possession	132
IV. Fruits, Accession	133
F. Wrongful Interference with Personal Property	133
I. Common Law Torts for Wrongful Interference	133
1. Larceny	134
2. Detinue.....	135
a) Requirements.....	135
b) Remedy	135
3. Conversion	136
a) Development of the Action for Trover or Conversion	136
b) Requirements.....	137
aa) Adverse Detention.....	137
bb) The Claimant's Interest	138
cc) Property Subject to Conversion	138
c) Remedy	139
4. Trespass.....	140
a) Requirements.....	140
b) Remedy	140
5. Replevin	140
a) Requirements.....	141
aa) The Claimant's Possession	141
bb) The Claimant's Title.....	142
cc) The Interference	142
dd) The Defendant's Title.....	143
b) Remedy	143
6. Summary of the Current State of the Law.....	144
II. The Case for Reform	145

G. Possessory or Proprietary Basis of Personal Property Law	146
I. The Case for a Property-Based Account of Personal Property	146
1. The Shortcomings of Possessory Protection	146
2. Extra-Judicial Rights Available to the Dispossessed Owner	149
3. Replevin	150
4. Third-Party Effects of Non-Possessory Personal Property Interests	150
II. The Case for a Possession-Based Account of Personal Property	150
1. Possession, Not Property as the Legal Event	150
2. Damages, Not Restitution as the Reply	151
3. Ownership, the Elusive Concept	151
H. <i>Numerus Clausus</i> in Common Law	152
I. <i>Numerus Clausus</i> Principle in 19 th Century Case Law	153
1. <i>Pro Numerus Clausus</i>	153
2. Less Restrictive Approach to New Property Rights	154
3. The Meaning of English Case Law	156
II. The <i>Numerus Clausus</i> Principle in Canadian Common Law	156
I. Comparing Common Law and Civil Law Property	158
I. Objects of Property	158
II. Absolute Right in Property	158
III. The Value of Possession and Vindication of Ownership	159
 § 6 <i>Equitable Property Rights</i>	161
A. Law and Equity	162
B. Development of the Conventional Trust	163
I. Introduction	163
II. Feudal Land Law and <i>Mortmain</i>	164
III. Circumvention of the Feudal Land Law	165
IV. The <i>Statute of Uses</i>	165
C. The Trust Beneficiary's Right	166
D. Constructive Trusts	168
I. Nature of the Constructive Trust	169
1. English Law	169
2. Canadian Law	170
3. American Law	171
II. Beginning of the Constructive Trust	173
1. Canadian Law	174
2. English Law	175
3. American Law	175
III. Vendor-Purchaser Constructive Trusts	176
E. Resulting Trusts	177
F. The Rule Against Perpetuities	179
G. Equitable Liens	180

§ 7 <i>The Civil Law Trust</i>	183
A. The Object of Comparison	183
B. The Trust in the <i>Code civil du Bas-Canada</i>	185
C. The Trust in the <i>Code civil du Québec</i>	187
I. Patrimony by Appropriation	187
II. Trustee, Beneficiary, and Trust Property	189
1. Management of the Trust by the Trustee	189
2. The Beneficiary's Right in Relation to the Trust	190
a) Rights of Enjoyment and in Regards to Management	191
b) Protection of the Trust Property	191
c) The Nature of the Trust Beneficiary's Right	192
§ 8 <i>Theory of Property Rights</i>	193
A. Theory of Property: Why Property?	193
I. The Natural Account of Property	193
1. Will Theory of Property	194
2. Locke's Notion of Property	195
3. The Natural Account of Property and Incorporeal Property	195
II. Utilitarian Account of Property	195
III. Realist Account of Property	196
B. Bundle of Rights or Institution: How Property?	196
I. The Bundle-of-Rights Picture	197
1. The Hohfeldian Concept of Property	197
a) The Hohfeldian Scheme	197
b) The Notion of Property Rights and Hohfeld	198
c) The Transfer of Property and Hohfeld	198
2. Honore's Bundle of Rights	199
a) Property Rights as Person-Thing Rights or Person-Person Rights	199
b) Necessary Incident of Ownership	200
c) Multititularity	200
d) The Incidents of Ownership	200
3. Discrete Property Rights in the Bundle-of-Rights Picture	201
II. Property Law as the Law of Things	202
C. The Economic Analysis of Property Law	203
I. Efficiency of Private Property Rights	204
II. Tragedy of the Commons	205
III. Tragedy of the Anti-Commons	206
D. Theory of <i>Numerus Clausus</i> : Which Property?	206
I. Formalist Account of the <i>Numerus Clausus</i>	207
1. Absence of Notice	207
2. Absence of Consent	208
3. Pyramiding	208

4. Restraints Against Alienation	209
5. Conclusion	209
II. Philosophical Reasons for the <i>Numerus Clausus</i>	209
III. Realist Theory of the <i>Numerus Clausus</i>	210
IV. Economic Reason for the <i>Numerus Clausus</i>	211
1. Information Costs	211
2. Transaction Costs	212
3. Market	212
4. Fragmentation	212
5. Delimiting Use	213
V. Creating the List of Discrete Property Rights.....	213
E. Theory of Equitable Property Rights	214
I. The Contractarian View	215
II. The Personal / Property Dichotomy	215
III. Rights Against Rights.....	217
IV. Analysis.....	217
 § 9 Property Unjustly Gained	221
A. Unjustified Enrichment in Civil Law	223
I. Québec Law of Unjustified Enrichment.....	223
II. Scots Law of Unjustified Enrichment	224
1. The Conditiones.....	225
2. Unjustified Enrichment in the Map of Scots Law	225
a) Unjustified Enrichment and the Law of Obligations	225
b) Unjustified Enrichment and Property Law	226
B. Origins of Restitution.....	226
I. The Common Counts	226
II. <i>Moses v Macferlan</i>	227
III. Equitable <i>Restitution</i>	228
C. Development of the Unjust Enrichment Principle	229
I. Rejection of the Implied Contract Theory	229
1. England	229
2. Canada	231
II. Recognition of the Unjust Enrichment Principle.....	231
1. Canadian Law.....	231
a) <i>Murdoch</i>	232
b) <i>Rathwell</i>	232
c) <i>Pettkus v Becker</i>	233
2. English Law	234
III. Opposition to the Unjust Enrichment Principle	235
1. The Tail Wagging the Dog	236
2. Event and Response.....	236
a) Argument	236
b) Counter-Argument	237

IV. Requirements of the Action for Unjust Enrichment	239
D. No Basis or Unjust Factors	240
I. Unjust Factors	241
II. No-Basis Approach	241
1. The English Position: The Swap Cases and Their Aftermath	242
2. Canadian Position on the Unjust Question.....	243
III. The Relationship Between Unjust Factors and No-Basis Approach	246
E. Explaining Unjust Enrichment	247
I. Formalist Theory of Unjust Enrichment.....	247
II. Legal Realism and Unjust Enrichment.....	248
III. Conclusion	249
 § 10 Proprietary Restitution	 250
A. Proprietary Restitution.....	251
I. Canadian Law	251
1. Intimate Relationships	251
a) Principle	251
b) The Test for Proprietary Restitution	252
aa) Alternative Remedies.....	252
bb) The Link	253
2. Defective Transfers	253
3. Breach of Fiduciary Duties	255
a) <i>Lac Minerals</i>	255
b) <i>Soulos v Korkontzilas</i>	256
II. English Law	257
1. Defective Transfers	257
a) <i>Chase Manhattan</i>	257
b) <i>Macmillan</i>	258
c) <i>Westdeutsche Landesbank</i>	260
2. Wrongful Taking.....	263
a) <i>Lipkin v Gorman</i>	263
b) <i>Foskett v McKeown</i>	263
3. Breach of Fiduciary Duty	265
B. Explaining Proprietary Restitution	266
I. Preliminary Remarks	266
1. Equity's Preference for Personal Remedies	266
2. Requirements of a General Theory of Proprietary Restitution.....	266
II. The Unjust Enrichment Model.....	267
1. Event and Response.....	267
2. The Proprietary Restitution Test in the Unjust Enrichment Approach	 269
a) The Birksian Model	270
aa) Two Necessary Conditions	270
bb) The Temporal Element	270

cc) Choosing the Appropriate Proprietary Response.....	271
b) Stevens' Model	271
c) <i>Moore v Sweet</i>	272
III. The Property Rights Model	274
IV. The Power Model	276
V. The Principled Approach	277
VI. The Specific Performance Approach	278
VII. Inability to Perform Personal Obligation	278
VIII. Summary.....	279
C. Persistence of Rights.....	279
I. Subrogation	280
II. Following	281
III. Tracing.....	283
1. The Basic Rules.....	283
2. Tracing Through Mixed Funds	283
3. The Multiplication of Property Rights	285
D. Explaining Tracing	285
I. Tracing in the Unjust Enrichment Model and Property Rights Model	285
1. The Argument Against Persistence	286
2. The Argument Against Property Including a Right to Proceeds	286
3. The Argument Against Tracing Being a Means of Enforcement....	287
II. Challenging <i>Foskett v McKeown</i>	287
III. Conclusion.....	288
E. The Problem of Title	288
I. Common Law Remedies for the Recovery of Personal Property	290
1. Conversion	290
2. Money Had and Received.....	291
II. Retention of Equitable Title.....	292
III. No Correspondence Between Enrichment and Deprivation	293
IV. Grantham and Rickett's Argument.....	295
V. Conclusion.....	295
F. Analysis of Proprietary Restitution	295
I. Formalist Accounts of Unjust Enrichment and Proprietary Restitution.....	296
II. Doctrinal Reasons for a Principled Approach	296
III. Shortcomings of the Unjust Enrichment Account	297
IV. Compatibility of Proprietary Restitution with Unjust Enrichment Law	297
1. Subsidiarity	297
2. Stevens' Unjust Enrichment Model	299
V. Explaining Proprietary Restitution Upon the Dissolution of Intimate Relationships.....	300
VI. Certainty and Discretion in the Law of Proprietary Restitution	301
VII. Conclusion	306

Part III: Secured Transactions.....	308
§ 11 <i>The Law and Economics of Secured Transactions</i>	308
A. Introduction	308
I. The Economic Nature of Secured Transactions.....	308
II. The Efficiency of Secured Transactions.....	310
B. The External Argument Against the Secured Creditor's Priority	312
C. The Traditional Case for Secured Transactions	314
D. Shortcomings of the Argument for Secured Transactions.....	314
I. The Modigliani-Miller Hypothesis.....	314
II. Kaldor-Hicks Efficiency	315
1. The Third-Party Creditor's Loss	315
2. Minimizing the Impact on Third-Party Creditors	316
III. Moral Hazard	316
E. Economic Arguments for the Efficiency of Secured Transactions.....	317
I. Signalling	317
II. The Unsecured Creditor's Benefit	317
III. Information and Control Rights.....	317
1. Information Asymmetry	318
a) Adverse Selection	318
b) Moral Hazard.....	318
c) Monitoring.....	319
d) Normative Results	319
2. Control Rights	320
IV. Purchase-Money Security Interests in Economic Theory.....	320
V. Priority Relationship.....	320
F. Conclusion.....	321
§ 12 <i>Security Interests in Common Law</i>	322
A. Common Law Security Interests	322
I. Overview of Common Law Security Devices	322
1. Pledge	323
2. Legal Lien	323
3. Chattel Mortgage.....	324
4. Equitable Charge	325
5. Floating Charge	326
II. Legal or Equitable Nature of Common Law Security Devices.....	326
III. Quasi-Security Devices in Common Law.....	327
IV. Personal Property Security Law Reform in England.....	328
B. The <i>PPSA</i> Approach to Security Interests in Personal Property.....	329
I. Enactment of <i>PPSAs</i>	329
II. The Functionalist Approach to Security Interests.....	330
1. Concept.....	330

2. Criticism	330
C. The <i>PPSA</i> Framework.....	331
I. Creation of the Security Interest: Attachment	332
1. Value	332
2. Rights in the Collateral.....	332
3. The Evidentiary Element	333
II. Perfection of the Security Interest	333
III. Creditor Rights Deriving from a Security Interest	334
IV. Priority	335
1. General Rule	335
2. Purchase-Money Security Interests in the <i>PPSA</i>	335
3. Securities.....	337
4. Electronic Chattel Paper	337
D. Conclusion.....	338
 § 13 <i>PPSA Security Interests and Property Law</i>	339
A. Nature of the <i>PPSA</i> Security Interest	339
B. The Debtor's Right in the Collateral and the Object of Attachment.....	340
C. <i>PPSA</i> and the Wrongful Interference with Personal Property	342
D. <i>PPSA</i> Security Interest and Equitable Property Rights	344
I. Common Law Priority Rules	344
1. Priority of Fixed Security Interests	344
a) Competing Legal and Equitable Interests.....	344
b) Competing Equities	345
2. Priority of Floating Charges	345
II. Priority in Relation to <i>PPSA</i> Security Interests	346
1. Priority of the Equitable Property Right	346
a) General Priority Rules	346
b) The Rule in <i>Barnes v Addy</i>	347
2. Priority of the <i>PPSA</i> Security Interest Over Equitable Property Rights	348
3. Avoiding the Equitable Interest.....	349
a) Canadian Law	349
b) Australian Law	350
c) Statement	350
4. Priority in the Event of Two <i>PPSA</i> Security Interests	350
E. <i>Bona Fide</i> Purchase of Negotiable Property	351
 § 14 <i>Security Interests in Civil Law</i>	353
A. Secured Transactions Law Framework in the <i>Code civil du Québec</i>	353
I. Classification of Credit Security	353
II. Common Pledge of Creditors	354
III. No Presumption of Hypothec	355

B. Hypothec	358
I. Roman Law Origins of the Hypothec in Movable Property	359
II. The Hypothec as a Property Right	359
1. Hypothec and Patrimony	359
2. Right to Follow	361
3. Real Subrogation	361
4. Accessory Nature of the Hypothec	362
III. Taxonomy of Hypothecs	362
IV. The Object of the Hypothec	362
1. Hypothecs in Corporeal Property	363
2. Hypothecs in Incorporeal Property	363
3. Floating Hypothec	364
4. Hypothecs in Securities	364
V. Creation of the Hypothec	364
1. General Rule	364
2. Delivery	366
a) Delivery to a Third Party	366
b) Delivery of an Obligation	366
aa) The <i>Val-Brillant</i> Decision	366
bb) Reactions to <i>Val-Brillant</i> in Doctrine	368
cc) Subsequent Amendments to the <i>Code civil</i>	368
VI. Opposability of the Hypothec	369
1. General Rule	369
2. Publication	369
VII. Hypothec in Securities	370
1. The Notion of Securities	370
2. Hypothecation of Securities	370
VIII. Rights Deriving From a Hypothec	371
1. Indivisibility of the Hypothec	371
2. Judicial Sale of Collateral	372
3. No Right of Foreclosure	372
4. Floating and Universal Hypothecs	372
C. Prior Claims	373
I. Nature of Prior Claims	373
II. Certain Particular Prior Claims	374
1. Prior Claim of a Supplier and the Right to Resolve the Contract ..	374
2. Right of Retention	374
3. Prior Claims for State Claims	375
4. Municipal Property Taxes	375
D. Quasi-Security Devices in Civil Law	376
E. Appraisal of Québec Secured Transactions Law Reform	377
I. Civilian Property Law and Secured Transactions in the <i>Code civil</i>	377
1. Title-Based Devices	377
2. Possession in Civil Law Secured Transaction Law	378

3. Securities Law and Civil Law Property	379
a) The Property Concept in the <i>Code civil</i> and in Securities Law ..	379
b) The Hypothecation of Securities in the <i>Code civil</i>	381
II. Efficiency of the <i>Code civil</i>	382
1. General Framework	382
2. Purchase Money Security Interests in the <i>Code civil</i>	384
3. Control Rights	385
 Part IV: Vertical Co-ordination	 386
 § 15 Federal and Provincial Notions of Property and Security	 386
A. Bank Act Security Interest	387
I. The Bank Act Framework	387
II. The Debtor's Original Interest	388
III. The Bank's Acquired Interest in the Property	389
IV. Bank Act Priority Rule	390
V. Priority under Provincial Property Law	391
1. Common Law: <i>Nemo Dat</i>	391
a) <i>Innovation Credit</i>	391
b) <i>Radius Credit</i>	395
2. Civil Law: Absoluteness of Property Rights	396
3. Amendment to the <i>Bank Act</i>	397
B. Crown Privileges	399
I. The <i>Drummond</i> Decision	399
II. Reaction to <i>Drummond</i>	403
 § 16 Property Rights in Insolvency	 405
A. Divestment of the Estate to the Trustee in Bankruptcy	405
I. Principle	405
II. Insolvency of a Trust	405
III. The Trustee's Title to the Property	406
IV. The Equity of Redemption	407
B. Security Interests in Bankruptcy	409
I. General Security Interests in Bankruptcy	409
II. Characterization of Prior Claims as a Credit Security	410
1. General	410
2. State Claims	411
3. Supplier Claims	411
4. Property Tax Claims	411
III. Title-Based Security Devices in Bankruptcy	412
1. Common Law Quasi-Security Devices and Deemed Security Interests in Bankruptcy	 412

a) Decision.....	412
b) Criticism.....	413
2. Civil Law Quasi-Security Devices in Insolvency.....	415
a) Prior Cases.....	415
b) <i>Lefebvre</i>	416
c) <i>Ouellet</i>	418
d) Amendments to the <i>Bankruptcy and Insolvency Act</i>	418
3. <i>Bank Act</i> Security Interest	420
4. The Creditor's Insolvency	421
IV. Quistclose Trusts	421
C. The Claimant's Non-Security Title in Insolvency.....	423
D. Proprietary Restitution and Insolvency	424
I. Impact of the Constructive Trust.....	424
1. Canadian Law.....	427
a) <i>Ellingsen</i>	427
b) <i>Ascent</i>	428
2. American Law	429
II. Avoiding the Constructive Trust	430
1. Canadian Law.....	430
a) General Consideration	430
b) Awarding a Constructive Trust in Bankruptcy Court.....	431
2. American Law	431
a) Bankruptcy Law Considerations	432
b) Equitable Limits	432
c) Limiting Through Tracing Requirements	433
d) Limiting Through Trustee's Long-Arm Power.....	433
3. Conclusion	436
III. Different Approaches to the Problem of Constructive Trusts.....	436
1. The Unjust Enrichment Model.....	436
2. The Assumption of Insolvency Risk Approach	438
3. The Common-Pool Approach	439
IV. Bankruptcy and Proprietary Remedies in Family Law Matters.....	440
V. Analysis	441
E. Conclusion	444
 Part V: Horizontal Co-ordination.....	 446
§ 17 <i>International Property Law</i>	446
A. Characterizing Property.....	447
B. The <i>Lex Situs</i> Rule	447
I. Common Law and the <i>Lex Situs</i> Rule	447
1. Principle.....	447
2. Equitable Property Rights and the <i>Lex Situs</i> Rule.....	448

II. Civil Law and the <i>Lex Situs</i> Rule.....	449
C. The <i>Conflit Mobile</i>	450
I. Principle	450
1. Scenarios of <i>Conflits Mobiles</i>	450
2. Recognition and Transposition of Property Rights.....	451
II. Common Law and the <i>Conflit Mobile</i>	452
III. Civil Law and the <i>Conflit Mobile</i>	453
D. Vested Rights.....	453
I. Theory of Private International Law	453
1. Comity and Vested Rights	453
2. Conflicts Revolution.....	455
3. Economic Analysis of International Property Law.....	456
II. Property Rights as Vested Rights	456
E. International Trust Law	457
I. Common Law	457
II. The <i>Hague Trusts Convention</i>	457
III. Québec Law	458
1. The Rule.....	458
2. Recognition of Trusts	458
a) Effects of the Trust.....	459
b) Comparable Rights in Québec Law.....	459
aa) Conveyance and Delivery of the Trust Property.....	459
bb) Following.....	460
cc) Tracing	460
dd) Publicity of the Trust.....	460
§ 18 International Secured Transaction Law	462
A. Conflict of Laws of Secured Transactions in Common Law.....	462
I. <i>Lex Situs</i>	462
1. Collateral Covered by the <i>Lex Situs</i>	462
2. Scope of the <i>Lex Situs</i>	463
3. Change of <i>Situs</i>	463
a) <i>Conflit Mobile</i>	463
b) Continued Perfection	465
aa) Basic Rule	465
bb) The Good-Faith Purchaser Exception.....	466
II. <i>Lex Destinati</i>	467
III. <i>Lex Domicilii</i>	468
1. Collateral Covered by the <i>Lex Domicilii</i>	468
a) Mobile Goods	468
b) Non-Possessory Security Interests in Money and Negotiable Documents	469
c) Intangibles	469
2. Concept of Domicile	470

3. Scope of the <i>Lex Domicilii</i>	471
4. Change of Domicile.....	472
IV. Security Interests in Securities and the Conflict of Laws in the <i>PPSA</i>	472
B. Conflict of Laws of Secured Transactions in Civil Law	473
I. <i>Lex Situs</i>	474
1. Principle	474
2. Scope of the <i>Lex Situs</i>	474
3. Change of <i>Situs</i>	474
a) <i>Conflit Mobile</i>	474
b) Continued Perfection	474
II. <i>Lex Destinati</i>	475
III. <i>Lex Domicilii</i>	475
1. Collateral Covered.....	475
2. Change of Domicile.....	476
IV. Hypothecs in Securities and the Conflict of Laws in the <i>Code civil</i>	476
V. Hypothecs in Monetary Claims.....	477
C. Analysis	478
I. Co-ordination at the Choice-of-Law Level.....	478
1. Different Treatment of Goods in Transit	478
2. The Application of <i>Lex Originis</i> as a Recognition of Vested Rights	479
3. The Different Meanings of Domicile	479
4. The Tendency Towards Special Rules.....	480
II. Co-ordination when Applying the Substantive Law.....	481
1. The Exclusion of <i>Renvoi</i>	481
2. Quasi-Security Devices	481
3. <i>Conflits Mobiles</i>	483
 § 19 <i>International Proprietary Restitution Law</i>	484
A. Characterization of Proprietary Restitution	484
I. Trusts Approach.....	486
1. <i>Hague Trusts Convention</i>	486
a) Scope of the <i>Hague Trusts Convention</i>	486
b) Recognition of Court-Declared Trusts	487
c) The Connection.....	487
2. Common Law International Trust Law	488
II. Unjust Enrichment Approach.....	488
1. Common Law	488
2. <i>Rome II Regulation</i>	489
III. Property Law Approach	490
1. Distinguishing Personal and Proprietary Effects of Constructive Trusts	490
2. Proprietary Characterization	491

IV. Analysis.....	492
B. <i>Situs</i> of the Property.....	495
C. Proprietary Restitution and Change of <i>Situs</i>	496
I. Recognition of Proprietary Restitution in Civil Law	497
1. Type A <i>Conflit Mobile</i>	497
2. Type B <i>Conflit Mobile</i>	498
3. Type C <i>Conflit Mobile</i>	498
4. Type D <i>Conflit Mobile</i>	499
II. Limits on Proprietary Restitution and the <i>Conflit Mobile</i>	499
III. Rescission	500
 Conclusion.....	 502
 <i>Bibliography</i>	 505
 <i>Table of Cases</i>	 539
 <i>Index</i>	 551