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take steps towards making good the omission by the legislature to consider this initiative in the context of the 2002 reform.

Those familiar with Professor Zimmermann's work will not be surprised to find that this book measures up to his usual excellent standard. It is immensely readable, and perhaps unique in its field in the breadth and depth of insight it provides. It is essential reading for anyone who seeks to further his or her studies in German, or indeed European, private law.

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Régine R Feltkamp, OVERDRACHT VAN SCHULDVORDERINGEN

Antwerp-Oxford: Intersentia (www.intersentia.be), 2005. xxx + 1012 pp. ISBN 90 5095 433 2. €159.

Claudia Rudolf, EINHEITSRECHT FÜR INTERNATIONALE FORDERUNGSABTRETUNGEN

Tübingen: Mohr Siebeck (www.mohr.de), 2006. xxii + 681 pp. ISBN 3 16 148976 4. €99.

Greg Tolhurst, ASSIGNMENT OF CONTRACTUAL RIGHTS

Oxford and Portland, Oregon: Hart Publishing (www.hartpub.co.uk), 2006. lxii + 478 pp. ISBN 978 1 84113 586 1. £50.

What does the *Edinburgh Law Review* have in common with the glossy pages of *Cosmopolitan* or *Vogue*? Readers of this review may hope the less the better. But even these hallowed pages must, to some extent, respond to fashion. For the law, no less than society at large, has its fads. Reflect on some of the "in" subjects of recent years: pure economic loss, the floating charge, judicial review, the constructive trust, unjustified enrichment. A particular subject can become fashionable for different reasons: sometimes a judicial decision is so ground-breaking as to provoke an orgy of academic comment; sometimes good juristic writing promises to give the Morning Star; sometimes both judge and jurist develop a taste for the exotic in tandem. Elsewhere and at other times the catalysts may be economic or political or legislative. And though Edinburgh is no Milan, a Glaswegian can recognise a trend when he sees one. This season's topic (which may ultimately disappoint those hoping for the erotic) is assignation.

Why? Well, as with any fashion, who knows? But some possible answers may be suggested. One is economics: assets worth billions of Euros are assigned every day. Another is harmonisation. Not only is assignation, or assignment, covered by the *Principles of European Contract Law* and the UNIDROIT *Principles of Commercial Contracts* (though assignment is much more than a contract), conventions have been dedicated to specific commercial practices: the UNCITRAL Convention on the Assignment of Receivables in International Trade (2001) and the UNIDROIT Convention on International Factoring (1988). There is focus on assignment as never before.

Throughout Europe, monographs on the law of assignation (*cession de créance*; *Forderungsabtretung*; *anglice*: assignment of choses in action) are appearing. No jurisdiction can do without one. In addition to the subjects of review, there is Elanor Cashin-Ritaine's fine work, *Les cessions contractuelles de créances de sommes d'argent dans les relations civiles et commerciales franco-allemandes* (Paris: LGDJ, 2001), and Maria de Assunção Oliveira Cristas's *Transmissão Contratual do Direito de Crédito* (2005), dealing with Portuguese law. Similarly, titles are appearing on the evolving global rules: for example, M Requejo Isidro, *La cesión de créditos en el comercio internacional* (Universidade de Santiago de Compostela, 2002).

What then of the books under review? At the outset, liability must be limited: it is not possi-

ble in short review to do justice to any of these books. But here is a flavour. The most relevant to Scots law is Feltkamp's *Overdracht van Schuldvorderingen* ("Transfer of Claims for Debt"). Belgian law has, in the second half of the twentieth century alone, produced some immensely fine private law scholarship. This book may be added to the list. A doctoral thesis, it is a hefty tome – equivalent in size to three British PhDs. Indeed, if one criticism may be offered it is that the publisher might perhaps have gently encouraged the author to trim the text. Those with the patience, however, will be rewarded.

Perceptive doctrinal discussion of the nature of cession is found in parts 1 and 2. The discussion is detailed, and is delivered with the intellectual rigour one would expect of a work of the modern *ius commune*. Questions that have been but rarely formulated in Scotland are here discussed with scientific precision. Belgium is of particular relevance to Scotland. It is a small jurisdiction in the shadow of a larger neighbour; its law of cession is, in essence, French; bilingualism permits a flow of private law scholarship from the Netherlands where the most advanced civil code in Europe rules; and, prior to 1994 (see 344 ff for the amendments), debtor notification was a constitutive requirement for transfer (subject to the technicalities of a causal system of transfer). One of Feltkamp's themes is that cession has two aspects. First and foremost cession is a transfer. Unlike with the transfer of other assets, however, in cession there is always the passive third party, the *debitor cessus*, who must be protected. Yet the consequences of the transfer for the cedent, the assignee and their respective creditors need not be mirrored in the consequences for the *debitor cessus* (487 ff).

Parts three and four, unusually for a European doctrinal work, bring detailed discussion of commercial law: negotiable instruments, secured claims, factoring, securitisation. Such subjects can usually only be well-discussed with experience of practice and are thus seldom the topics for the *Wissenschaftler*. But Feltkamp is both jurist and practitioner. There is much to learn here, particularly for a small legal system like Scotland where so much commercial practice gravitates towards London or, even if it does not, is governed by English law. Feltkamp's book provides a goldmine of material showing how a small Civil Law system copes – and copes efficiently – with modern commercial practices. And although Feltkamp is writing primarily from a Belgian rather than a comparative perspective, she is, like all good jurists, well read in foreign laws, particularly the Dutch and French. She has done her legal system a great service. No other book in any language from any legal system treats the law of cession in such breadth, depth and detail. For the specialist, Feltkamp's work will be a life-long companion. But perhaps the highest compliment one can pay this book is that it has, for this subject, put Belgian law on the map. Anyone seriously contemplating the law of cession must now ask, "What do the Belgians do?" To which the reply will be, "look at Feltkamp".

Feltkamp's book is monumental. But history may show it to be just that: a monument, though beautiful, to the old ways, to the rational and the national. For the law of assignment is fast developing without reference to nationality (and, in some areas at least, even without much reference to rationality). Autonomous rules are developing for international assignments. Alba Ltd's receivables, subject to Scots law, may be assigned to Invoice Discounting Inc under New York law and then again to ABC Faktor GmbH under German law. It is these rules which are the subject of Claudia Rudolf's *Habilitationsschrift* on the unification of rules on international assignments. Only Liberia, Luxembourg, Madagascar and the United States of America have signed up to the UNCITRAL Convention on the Assignment of Receivables in International Trade. But other countries should be aware of it. In Scotland, where the law of assignation is now on the Scottish Law Commission's agenda, the UNCITRAL Convention is a major benchmark against which reform must be considered.

Rudolf's book is the most detailed examination of the Convention available. Helpfully, her discussion provides detailed references in the footnotes to national laws. Because the UNCI-

TRAL Convention is practically driven and limited in scope, this book provides illuminating and practically useful discussion of, for example, debtor protection and intimation. Even where debtor notification is not required for constitutive purposes, it is important in practice and is usually attempted. The Convention contains provisions on intimation and assignment instructions. In modern practice any professionally drafted notice both intimates the assignee and informs the *debitor cessus* of the account into which the money is to be paid (not always the assignee's). Rudolf's discussion of this (381 ff) is therefore of particular interest. So too is the discussion of successive assignments (105 ff), or "assignment-chains" as Rudolf describes them (*Kettenabtretungen*, or "subsequent assignments" in the language of the Convention), a phenomenon once common in Scots law but now only infrequently encountered in practice.

To the uninitiated, the Anglo-Commonwealth law of assignment is a shock to the system. Claims (*créances/creditos; Forderungen/vorderingen*) are not the objects of an English assignment. English assignments are of the wonderfully esoteric "choses in action". This is the law of another time. Not only were law and equity apparently fused in 1875 (by the Supreme Court of Judicature Act 1874), but that same Act also permitted assignments at law for the first time. Ironically, however, there can be few branches of English law where the divide between law and equity is of such continued practical relevance. Every assignment question may have to be asked twice. Is the assignment effective at law? If not, is it effective in equity? To say nothing of the characterisation of the chose as legal or equitable; or the characterisation of the assignor's interest in the chose which, again, may be legal or equitable. So there may be transfer of legal title to the chose in law or in equity; and where there is an equitable assignment of the legal title, creating an equitable interest in the assignee, this equitable interest may be assigned too, either in law or in equity. The English law of assignment has little to commend itself to the commercial world. A more outdated, technical morass can hardly be imagined. The cases are conflicting. Terminology is used inconsistently in similar contexts. It is a testimony to the greatness of English lawyers, not that they created this body of nonsense, but that English law has retained its hold on international commerce in spite of it.

Tolhurst manfully wrestles with some of the same issues addressed by Feltkamp and Rudolf. As befits the product of doctoral studies, Tolhurst's scholarly – and thus critical – approach is commendable. He has asked more penetrating questions of the law of assignment than any before anywhere in the Commonwealth. It is clear, however, that this is a skilled workman with poor tools. English law, in this area more than most, is the product of practice rather than rational debate. It is perhaps therefore not surprising that the cases thus prove remarkably resistant to rational analysis. Tolhurst's theme is that assignment is a transfer (of ownership, whether legal or equitable) of the chose. That may hold true for completed legal assignments. But, be that as it may, it is difficult to fit equitable assignments of legal choses into the language of transfer; or, since the decision in *Dearle v Hall* (1828) 3 Russ 1, even equitable assignments of equitable choses. Indeed, as Lord Reid once observed, there is a "difficulty in finding any sufficient reason why the position of the second assignee should be improved by the historical accident that his assignor once had some right which he had no longer at the time he made the second assignment" (*BS Lyle v Roscher* [1959] 1 WLR 8 at 20).

A number of themes emerge from these fine books. Of first note is that all three are the product of doctoral study; honourable testimonies to the benefits doctoral research may bestow on a legal system. Second, it is Feltkamp's and Rudolf's work that provides stimulus for modern law. It must be recognised, however, that few, in Scotland at any rate, will be able to access this rich body of learning. Libraries may, and should, acquire Tolhurst but are unlikely to acquire Feltkamp or Rudolf. Yet there can be few areas of English law that remain as foreign to the Scots lawyer as the English law of assignment. Finally, and most importantly, the Scots law of assignment, although sometimes perceived to be archaic, compares favourably with these

rigorous modern benchmarks. There are, needless to say, anachronisms here and there that ought now to be weeded out, and other aspects, the law of assignation in security in particular, need clarification. Feltkamp, Rudolf and Tollhurst have provided valuable tools to be employed in fashioning Scotland's existing and often mature rules to the vagaries of modern financial practice.

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Thomas Glyn Watkin, THE LEGAL HISTORY OF WALES

Cardiff/Caerdydd: University of Wales Press (www.uwp.co.uk), 2007. x + 332 pp.
ISBN 978 7083 2064 8. £29.

To what extent can the legal history of Wales be said to be a subject? Medieval Welsh law is certainly a subject. But from Henry VIII's reign to Elizabeth II's, there has been no separate Welsh law or legal system. There have been only a few Welsh footnotes to English law and legal system. Examples in the twentieth century, before devolution, include the Welsh Church Act 1914, the Welsh Courts Act 1942, the Welsh Language Act 1967, and the Welsh Language Act 1993. Then came devolution: the Government of Wales Act 1998 and the Government of Wales Act 2006.

What counts as a distinct law and legal system is a matter of impression. But it would be difficult to argue that Wales has yet crossed the line, wherever that line is drawn. There is no separate judicial system. There is no separate legal profession. Private law remains English private law, and not much public law is different. "When was Wales?" famously asked Gwyn A Williams, and if the same question is asked of Welsh law and legal system, the answer is "not yet". Medieval English expansionism was directed against all four of its main neighbours. Against Ireland and Wales it succeeded. Both lost most of their legal identity, though the existence of a subordinate Irish Parliament meant that the juridical conquest was never absolute. France and Scotland, though both on occasion seemingly defeated, eventually survived. They have their own laws and legal systems. So, by the way, do Guernsey and Jersey, perhaps because they were never conquered. But explanations are problematic, for Man was also not conquered, but Manx juridical evolution was like Ireland's: Man retained its own subordinate Parliament and developed a law and legal system similar to, though not identical with, England's. Had Owain Glyndwr ultimately succeeded, what then? Scotland's partial Civilian reception cannot be precisely dated – indeed, in some ways it is still happening today – but clearly the reigns of James IV and James V were important. That something similar might have happened under Glyndwr's great grandchildren is at least not wholly unimaginable.

So what does the book cover? Professor Watkin gives a chronological account, beginning with a chapter on the pre-Roman period (about which really nothing is known from a legal standpoint), followed by a chapter on Roman law, on the basis that that was in force in Wales from the first century of our era (or, at any rate, from the *Constitutio Antoniniana*) to the fifth century. The author claims to see possible traces of Roman law surviving into the medieval period. That this should have been so has a *prima facie* probability. There was no barbarian conquest, and so one would have expected that West Roman vulgar law should have survived. Yet real evidence is lacking. Professor Watkin offers some possible examples, but the sceptic will be unconvinced. Indeed, one could argue it the other way round: the fact that no unambiguous traces of West Roman vulgar law can be found in the medieval period suggests either that in the post-Roman period there was a juridical disruption which we can now neither identify nor explain, or that Roman law had never been fully received in western Britannia. The author acknowledges that the *Constitutio Antoniniana* did not necessarily bring about legal uniformity