

# Contents

<b>1 Introduction</b> . . . . .	1
1.1 Justification of Dealing with Private Enforcement . . . . .	4
1.2 The Choice of US Law as Benchmark and the Choice of Jurisdictions . . . . .	5
1.3 Central Category: Private Enforcement . . . . .	6
1.4 Limits of the Book . . . . .	7
1.5 Terminology: The Meaning of “Self-Help” . . . . .	8
1.6 Methodology . . . . .	8
1.7 The Structure of the Book . . . . .	10
References . . . . .	11
<b>2 General Background and History of Self-Help and Private Enforcement</b> . . . . .	13
2.1 Why Should One Resort to Self-Help . . . . .	14
2.2 Self Help: History and Justification . . . . .	16
2.2.1 Self Help in Ancient Jewish, Greek and Roman Laws . . . . .	16
2.2.2 Self-Help from Middle Ages Until Today . . . . .	18
2.3 Same Purposes, Different Paths . . . . .	20
2.3.1 Common Law Jurisdictions . . . . .	21
2.3.2 Continental Europe . . . . .	31
2.4 DCFR: A Missed Opportunity . . . . .	42
2.5 Conclusion . . . . .	48
References . . . . .	49
<b>3 Self-Help and Contract Law</b> . . . . .	51
3.1 Self-Help in Contract Law: An Introductory Case . . . . .	52
3.2 Attempts to Define the Role of Self-Help in American Contract Law . . . . .	54
3.3 Typology of Self-Help Remedies: Passive v. Active Self-Help Remedies . . . . .	56

3.4	Right to Withhold Performance as Contractual Self-Help	
	Remedy . . . . .	57
3.4.1	The US . . . . .	58
3.4.2	The UK . . . . .	59
3.4.3	France . . . . .	61
3.4.4	Germany . . . . .	64
3.4.5	Romania . . . . .	66
3.5	Liquidated Damages and Penalty Clauses . . . . .	69
3.5.1	The US . . . . .	70
3.5.2	The UK . . . . .	73
3.5.3	France . . . . .	76
3.5.4	Germany . . . . .	79
3.5.5	Romania . . . . .	80
3.6	Extrajudicial Termination . . . . .	83
3.6.1	The US . . . . .	83
3.6.2	The UK . . . . .	85
3.6.3	France . . . . .	87
3.6.4	Germany . . . . .	89
3.6.5	Romania . . . . .	91
3.7	Conclusions: From Passive Self-Help to Active Self-Help . . . . .	93
	References . . . . .	95
<b>4</b>	<b>Active Self-Help: Self-Help Repossession, Administrative Receivership, Private Disposition of Collateral and Strict Foreclosure . . . . .</b>	<b>99</b>
4.1	Self-Help Repossession . . . . .	101
4.1.1	Creditor’s Options upon Debtor’s Default. Election of Remedies Doctrine . . . . .	101
4.1.2	Taking Possession of Collateral . . . . .	104
4.1.3	The Issue of Constitutionality and Human Rights Violations . . . . .	106
4.1.4	The No “Breach of the Peace” Standard . . . . .	113
4.1.5	Restrictions on Self-Help Repossession . . . . .	123
4.1.6	Restrictions of Self-Help Repossession in Romania . . . . .	127
4.2	Rights of the Secured Party: Disposition of Collateral . . . . .	128
4.2.1	Disposition of Collateral in the US . . . . .	128
4.2.2	Disposition of Collateral in the UK . . . . .	129
4.2.3	Disposition of Collateral in Romania . . . . .	129
4.2.4	Debtor Protection Measures . . . . .	130
4.3	The Commercially Reasonable Standard . . . . .	130
4.3.1	The Commercially Reasonable Standard in the US . . . . .	131
4.3.2	Commercially Reasonable Standard in the UK . . . . .	134
4.3.3	Commercially Reasonable Standard in Romania . . . . .	134

4.4	Strict Foreclosure . . . . .	135
4.4.1	Strict Foreclosure in the US . . . . .	135
4.4.2	Strict Foreclosure in France . . . . .	136
4.4.3	Strict Foreclosure in Germany . . . . .	137
4.4.4	Strict Foreclosure in Romania . . . . .	137
4.4.5	Consumer Goods with Substantial Equity . . . . .	138
4.4.6	Other Consequences of Strict Foreclosure . . . . .	140
4.5	Sanctions Against the Secured Party for Wrongful Repossession and Failure to Observe Debtor's Rights . . . . .	141
4.5.1	Criminal and Tort Liability . . . . .	141
4.5.2	Secured Party's Statutory Liability . . . . .	143
4.6	Administrative Receivership (The Right to Administer Debtor's Assets) . . . . .	146
4.6.1	Character and Conditions of the Administrative Receivership and the Right to Administer the Debtor's Goods . . . . .	148
4.6.2	Who Can Act as Receiver . . . . .	150
4.6.3	Status of Receiver . . . . .	151
4.6.4	Powers of the Receiver . . . . .	153
4.7	Conclusions: Death of the Repo Industry or a More Efficient System? . . . . .	156
	References . . . . .	159
<b>5</b>	<b>Factoring, Bad Debt and Collection Agencies . . . . .</b>	<b>163</b>
5.1	Factoring . . . . .	164
5.1.1	Historical Background and Development . . . . .	164
5.1.2	Factoring Consumer Debt . . . . .	166
5.1.3	Factoring and Debt Collection: The Issue of Pseudo- Factoring . . . . .	167
5.1.4	Obstacles to Factoring . . . . .	173
5.2	Collection Agencies . . . . .	189
5.2.1	An Ever-Growing Business . . . . .	190
5.2.2	Who Are the Debt Collectors? . . . . .	192
5.2.3	Primary and Secondary Markets: New Players on the Scene . . . . .	193
5.2.4	Collecting the Debt . . . . .	196
5.3	Bad Debt . . . . .	201
	References . . . . .	206
<b>6</b>	<b>Abusive Debt Collection Practices and the Building Blocks of an Efficient Debt Collection Regime . . . . .</b>	<b>209</b>
6.1	Current Legal Framework Concerning Abusive Debt Collection . . . . .	210
6.1.1	General Consumer Protection v. Sector-Specific Legislation: Why the EU Consumer Protection Regime Against Unfair Commercial Practices Is Insufficient . . . . .	211

6.1.2	Substantive Law Versus Regulation . . . . .	217
6.1.3	The Legal Framework Concerning Abusive Debt Collection in the US . . . . .	218
6.1.4	The Legal Framework Concerning Abusive Debt Collection in the UK . . . . .	220
6.1.5	The Legal Framework Concerning Abusive Debt Collection in France . . . . .	225
6.1.6	The Legal Framework Concerning Abusive Debt Collection in Germany . . . . .	227
6.1.7	The Legal Framework Concerning Abusive Debt Collection in Romania . . . . .	228
6.2	The Building Blocks for an Efficient Debt Collection Regime . . . .	230
6.2.1	Definition of Debt Collectors . . . . .	231
6.2.2	Licensing and Registration of Debt Collectors . . . . .	235
6.2.3	Abusive Debt Collection Practices . . . . .	238
6.2.4	Open-End and Functional Definitions of Abusive Practices . . . . .	262
	References . . . . .	263
<b>7</b>	<b>Remedies Against Abusive Practices and Calls for Reform . . . . .</b>	<b>265</b>
7.1	Remedies . . . . .	265
7.1.1	Civil Liability and Incentives for Private Action . . . . .	266
7.1.2	Administrative Enforcement . . . . .	274
7.2	Need for Reform . . . . .	283
7.2.1	Call for Reformation of the FDCPA . . . . .	283
7.2.2	Need for Reform in the UK . . . . .	297
7.2.3	Reform in France and Germany . . . . .	299
7.2.4	Call for Reformation in Romania . . . . .	300
7.3	Conclusions . . . . .	303
	References . . . . .	304
<b>8</b>	<b>Conclusions . . . . .</b>	<b>307</b>
	References . . . . .	311
	<b>Annexes . . . . .</b>	<b>313</b>