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Insolvency close-out netting: A comparative study of English, French and US laws in a global perspective

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Propositions relating to the dissertation

INSOLVENCY CLOSE-OUT NETTING:

*A Comparative Study of English, French and US Laws
in a Global Perspective*

by Bernadette Muscat

1. Having originated as a risk-mitigation market tool, and loosely based on domestic set-off rules, close-out netting is nowadays not a simple economic outcome but is an autonomous legal concept regulated on its own right under national law. (Ch. 7.4)
2. Although it is traditionally assumed that close-out netting provisions, especially in master agreements, are best governed by the law of common law jurisdictions (either by law or by choice of law), this assumption may not always be correct. (Ch. 7.4)
3. It is more probable that legislators will allow contractual enhancements to set-off in the recognition of close-out netting provisions where set-off is subject to invocation or notification. (Ch. 8.6)
4. Whilst debates on the moral justification of preferences given to netting creditors prevailed in common law jurisdictions, market competitiveness dominated the recognition of close-out netting provisions in others. (Ch. 8.6)
5. Basic characteristics of legal systems will not invariably perpetuate themselves in new legal concepts where those systems are confronted with the globalisation of new legal techniques.
6. Modern *lex mercatoria* is formed by standard agreements of market associations and the recommendations of international authorities.
7. Whilst it is stated that close-out netting principally evolved from the concept of set-off, the link between the two concepts is not as intrinsic as is sometimes declared in doctrine.
8. Whilst traditional insolvency law reflects the specific philosophies of each legal system, the formulation of State insolvency goals to uphold new legal techniques has brought some convergence in modern insolvency laws.
9. History repeats itself: reactions of legislators of centuries ago to market techniques may perpetuate themselves in the way today's legislators consider new mechanisms.
10. Passion for the subject-matter of a doctorate research is key to persistence and endurance in completing it.

