

Selected Essays on Comparative Law and Conflict of Laws

Ausgewählte Schriften von Prof. Dr. Peter Hay

Bearbeitet von
Prof. Dr. Hans-Eric Rasmussen-Bonne, Dr. Dr. Manana Khachidze

1. Auflage 2015. Buch. XII, 976 S. In Leinen
ISBN 978 3 406 68543 9
Format (B x L): 16,0 x 24,0 cm

[Recht > Zivilrecht > Internationales Privatrecht](#)

Zu [Leseprobe](#)

schnell und portofrei erhältlich bei


DIE FACHBUCHHANDLUNG

Die Online-Fachbuchhandlung [beck-shop.de](#) ist spezialisiert auf Fachbücher, insbesondere Recht, Steuern und Wirtschaft. Im Sortiment finden Sie alle Medien (Bücher, Zeitschriften, CDs, eBooks, etc.) aller Verlage. Ergänzt wird das Programm durch Services wie Neuerscheinungsdienst oder Zusammenstellungen von Büchern zu Sonderpreisen. Der Shop führt mehr als 8 Millionen Produkte.

beck-shop.de
Peter Hay
Selected Essays
DIE FACHBUCHHANDLUNG

beck-shop.de
DIE FACHBUCHHANDLUNG

beck-shop.de
PETER HAY
DIE FACHBUCHHANDLUNG

SELECTED ESSAYS
ON COMPARATIVE LAW
AND CONFLICT OF LAWS

Edited by
Hans-Eric Rasmussen-Bonne
and
Manana Khachidze





beck-shop.de
DIE FACHBUCHHANDLUNG

www.beck.de

ISBN 978 3 406 68543 9

© 2015 Verlag C.H. Beck oHG
Wilhelmstraße 9, 80801 München

Bildnachweis: Barbara Beauvais, Berlin

Druck und Bindung: Beltz Bad Langensalza GmbH
Neustädter Straße 1–4, 99947 Bad Langensalza

Satz: Textservice Zink, 74869 Schwarzach

Gedruckt auf säurefreiem, alterungsbeständigem Papier
(hergestellt aus chlorfrei gebleichtem Zellstoff)

Peter Hay has taught in the United States and Germany for nearly fifty-five years. Born in Berlin in 1935, he emigrated to the United States in 1953 and received his college and law school education at The University of Michigan, returning to Germany for some postgraduate legal studies in 1959. Since 1960 he has been in full-time teaching, with his first appointment as assistant professor in 1961 at the University of Pittsburgh. Subsequently he taught at the University of Illinois for twenty-eight years (where he also served as associate dean for five and as dean of the law faculty for ten years) and then at Emory University for twenty-one years, including one-year as interim dean. He holds emeritus status in both institutions.

Since the late 1960s, Peter Hay's career became "transatlantic." He regularly taught in Europe – often in Freiburg (where he became *Honorarprofessor* in 1975), as well as a Fulbright professor and subsequently as the Jean-Monnet Professor at the University of Bonn. From 1994–2000, and concurrently with his chair at Emory, he held the Chair for Civil Law, Foreign and Private International Law, and Comparative Law at the Technical University of Dresden, also serving as dean from 1997–2000. Since 1994, he annually teaches at Central European University in Budapest in May and June and, since 2005, at Bucerius Law School, Hamburg, in September. In recognition, the Alexander von Humboldt Foundation in Germany awarded him its Research Prize in 1989 and the University of Pécs (Hungary) and Bucerius Law School, Hamburg, awarded him doctorates *honoris causa* in 2012 and 2014, respectively. He is a titular member (by election) of the International Academy of Comparative Law, a member of the board of editors of the *American Journal of Comparative Law* and the *European Legal Forum*, and is a co-editor of the *Studies in European and International Economic Law*. He is a member of a number of professional associations, has been a consultant to the U.S. State Department in matters relating to the Hague Conference on Private International law, and has been an expert and consultant in private litigation.

Best known among his books are his *Law of the United States – An Overview*, the original version of which goes back to 1975 and which is now published in original English and German versions by C.H. Beck Verlag, as well as in Qingkun Xu's Chinese translation by Beijing University Press, and the treatise *Conflict of Laws* (West Publishing), of which he is now the lead co-author.

He has published many articles and book reviews. Their focus has been mainly on the Conflict of Laws (Private International Law and Procedure, both American and European) and on comparative aspects of some areas of private law. Because his career pattern involved two Continents, his contributions to the periodical literature appear in varied places, some of them not readily accessible to readers in other countries.

On the occasion of Professor Hay's 80th birthday in September 2015, the editors therefore decided to compile and publish his most important articles and book re-

views in a single volume in order to facilitate access to his immense productivity. The present volume, made possible by the generous support of institutions with which he has been affiliated, as well as of colleagues and friends, is the result of this effort.

We selected the articles and five book reviews included in this collection with a view to the interest a reader might have both in the topics and in the development of some of the author's ideas over the years. We did include one article that is indeed quite outdated – the article written together with the author's mentor, the late Professor Eric Stein (Michigan) – because it was one of the first comprehensive treatments of the topic in English anywhere. Articles not included appear in the complete bibliography at the end of the volume.

We arranged our selections in a few topical groups. These are necessarily somewhat arbitrary since most articles are not exclusively “comparative” or “conflicts law,” but overlap. In presenting our selections, we left them in the form originally published and did not undertake to bring about any overall uniformity in terms of headings, subheading and the like.

We are very grateful for the generous contributions we received that made this volume possible. We also thank the publishers and editors of journals and compilations for their approval to reprint material that previously appeared in their publications.

Berlin, May 2015

*Hans-Eric Rasmussen-Bonne
Manana Khachidze*



beck-shop.de

DIE FACHBUCHHANDLUNG

ACKNOWLEDGMENTS

This book was sponsored by Adam L. Hoeflich, Esq., of Chicago, Illinois; Bucerius Law School of Hamburg and the University of Illinois College of Law at Urbana/Champaign, all of whom provided major support.

Additional important support was contributed by Dresden International University, by Professors Frank S. Alexander, Thomas C. Arthur, William J. Carney, Morgan Cloud, Richard D. Freer, Polly J. Price, Dean Robert A. Schapiro, Professors Charles A. Shanor and John Witte Jr., all of Emory University School of Law, Atlanta; by Cedric Hay, Esq., of Florida; Thomas Hay of Lübeck; by Freunde und Förderer der Juristischen Fakultät der TU Dresden e.V.; by the Friends of Illinois Law School e.V., Dr. Dr. Manana Khachidze, Uta Loeschcke and Professor Dr. Hans-Eric Rasmussen-Bonne, all of Berlin; by Weitnauer Rechtsanwälte, Munich/Berlin/Heidelberg/Hamburg/Düsseldorf and by Professor Dr. Tibor Várady, of Budapest, Hungary. At the Beck Verlag in Munich Dr. Johannes Wasmuth was very supportive.

The Editors wish to express their sincere gratitude to all who helped with the realization of this Project.

beck-shop.de
DIE FACHBUCHHANDLUNG

TABLE OF CONTENTS

A. EUROPEAN LAW (GENERAL)

1. Legal Remedies of Enterprises in the European Economic Community	1
2. Federal Jurisdiction of the Common Market Court	49
3. International and Supranational Organizations: Some Problems of Conceptualization	69

B. PRIVATE LAW

I. American

1. Zum Wegfall der Geschäftsgrundlage im anglo-amerikanischen Recht	105
2. Zur extraterritorialen Anwendung US-amerikanischen Rechts – Zugleich eine Anmerkung zu der Entscheidung in <i>Hartford Fire Ins. Co. v. California</i>	141

II. German

1. Frustration and its Solution in German Law	157
2. Zivilrechtliche Eigenhaftung staatlicher Mitarbeiter für DDR-Unrecht	185

III. Comparative

1. Unjust Enrichment in the Conflict of Laws: A Comparative View of German Law and the American Restatement, Second	197
2. Book Review: Rudolf B. Schlesinger (ed.), <i>Formation of Contracts: A Study of the Common Core of Legal Systems</i>	247
3. Book Review: Reinhard Zimmermann (Hg.), <i>Amerikanische Rechtskultur und europäisches Privatrecht – Impressionen aus der Neuen Welt</i>	253

C. PRIVATE INTERNATIONAL LAW – CONFLICT OF LAWS

I. American

1. International Versus Interstate Conflicts Law in the United States: A Summary of the Case Law	257
2. Reflections on Conflict-of-Laws Methodology	319
3. Full Faith and Credit and Federalism in Choice of Law	351
4. Die Anwendung US-amerikanischer jurisdiction-Regeln als Verweisungsnorm bei Scheidung von in Deutschland wohnhaften Amerikanern	371

5. Die Qualifikation der Verjährung im US-amerikanischen Kollisionsrecht	381
6. The American “Covenant Marriage” in the Conflict of Laws	397
7. Harold Berman and Conflicts Law – An Appreciation	423
8. Comments on Public Policy in Current American Conflicts Law	427
9. The Use and Determination of Foreign Law in Civil Litigation in the United States	443
10. European Conflicts Law After the American “Revolution” – Comparative Notes	473
 <i>II. Comparative</i>	
1. Agency in the Conflict of Laws and the 1978 Hague Convention	495
2. The Situs Rule in European and American Conflicts Law: Comparative Notes	541
3. Contemporary Approaches to Non-Contractual Obligations in Private International Law (Conflict of Laws) and the European Community’s “Rome II” Regulation	561
4. Comparative and International Law in the United States – Mixed Signals	593
5. Review Essay: Friedrich Juenger and the Conflict of Laws	611
6. Book Review: Eckart Gottschalk, Ralf Michaels, Giesela Ruhl, Jan von Hein (eds.), Conflict of Laws in a Globalized World	623
 <i>III. European</i>	
1. From Rule-Oriented to “Approach” in German Conflicts Law – The Effect of the 1986 and 1999 Codifications	631
2. Entschädigung und andere Zwecke – Zu Präventionsgedanken im deutschen Schadensersatzrecht, punitive damages und Art. 40 Abs. 3 Nr. 2 EGBGB	651
3. Book Review: Axel Flessner, Interessenjurisprudenz im internationalen Privatrecht	663
 D. INTERNATIONAL CIVIL PROCEDURES	
<i>I. American</i>	
1. Comments on <i>Burdell v. Canadian Pacific Airlines</i> and the Constitutionality of the Warsaw Convention	671
2. Le projet anglo-américain de convention sur la reconnaissance des décisions et la convention communautaire	683
3. The Interrelation of Jurisdiction and Choice-of-Law in United States Conflicts Law	703
4. Judicial Jurisdiction Over Foreign-Country Corporate Defendants – Comments on Recent Case Law	727
5. Transient Jurisdiction, Especially Over International Defendants: Critical Comments on <i>Burnham v. Superior Court of California</i>	749

6. Fremdwährungsansprüche und -urteile nach dem US-amerikanischen Uniform Act	761
7. On Merger and Preclusion (<i>Res Judicata</i>) in U.S. Foreign Judgments Recognition – Unresolved Doctrinal Problems	775
8. Reviewing Foreign Judgments in American Practice – Conclusiveness, Public Policy, and <i>Révision au fond</i>	787
<i>II. Comparative</i>	
1. On Comity, Reciprocity and Public Policy in U.S. and German Judgments Recognition Practice	803
<i>III. European</i>	
1. The Common Market Preliminary Draft Convention on the Recognition and Enforcement of Judgments – Some Considerations of Policy and Interpretation	817
2. The Case for Federalizing Rules of Civil Jurisdiction in the European Community	843
3. The Recognition and Enforcement of American Money-Judgments in Germany – The 1992 Decision of the German Supreme Court	859
4. The Development of the Public Policy Barrier to Judgments Recognition in the European Community	881
5. Recognition of a Recognition Judgment Within the European Union – “Double <i>Exequatur</i> ” and the Public Policy Barrier	893
6. Favoring Local Interests – Some <i>Justizkonflikt</i> -Issues in American Perspective	913
7. Einheitliche Auslegung und Anwendung von Brüssel-I und Lugano am Beispiel der Zuständigkeit bei “Ansprüchen aus Vertrag” in Verbraucherverträgen	931
8. Notes on the European Union’s Brussels-I “Recast” Regulation – An American Perspective	941
<i>Curriculum Vitae and Bibliography</i>	