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REFORM AND  
DEVELOPMENT OF  
PRIVATE  
INTERNATIONAL  
LAW

ESSAYS IN HONOUR OF  
SIR PETER NORTH

EDITED BY  
JAMES FAWCETT

# Reform And Development Of Private International Law Essays In Honour Of Sir Peter North

**Peter Sparkes**



## **Reform And Development Of Private International Law Essays In Honour Of Sir Peter North:**

**Reform and Development of Private International Law** Peter Machin North, J. J. Fawcett, 2002 This collection of essays by his friends and colleagues honours Sir Peter North's remarkable career and outstanding contribution to private international law. It takes as its theme the reform and development of private international law reflecting the three different levels at which the development and reform of private international law takes place. Robin Morse discusses the creeping codification of private international law. Trevor Hartley draws attention to an area of private international law that relating to matrimonial property which is entirely judge made. Joost Blom shows how quickly the judges in this case in the Supreme Court of Canada can develop private international law once they set their mind to it. Sir Lawrence Collins discusses the concept of comity in modern private international law. Writers too have had their part to play in the development of private international law this is the subject of the contribution by Ole Lando. Kurt Siehr looks at the impact of international instruments on national private international law and the problems that this throws up. A number of contributors discuss various aspects of the ever growing Europeanization of private international law. Ian Fletcher focuses on the EC Regulation on Insolvency Proceedings and its impact upon established law and practice in England and Wales. Paul Beaumont examines questions of legal basis and external competence and the best way for the UK and Europe to be represented in issues of private international law globally as well as offering a technical analysis of the contract provision of the Brussels I Regulation. Hans Ulrich Jessurun d Oliveira examines the uneasy relationship between the European Union and private international law and the movement towards eroding the latter. Peter Nygh compares declining jurisdiction under the Brussels I Regulation and the preliminary draft Hague Judgments Convention. Other contributors have concentrated on aspects of the reform of private international law on a world wide basis. Jonathan Harris discusses the Hague Convention on the Law Applicable to Trusts and on their Recognition 1985 in his examination of the trust in private international law. Not surprisingly there is much discussion in this book of the ambitious project that has been absorbing the Hague Conference for nearly ten years namely a Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. David McClean discusses the history of the project and if it does fail a possible way forward. Ron Brand suggests a more modest goal at the Hague Conference namely a choice of court plus recognition convention. Whatever the fate of the Hague Judgments Convention the work undertaken at the Hague can still be used in the future. It can inform the discussion of what we should do in intellectual property cases in private international law which is the subject of James Fawcett's contribution. 2006

Petar Sarcevic, Paul Volken, Andrea Bonomi, 2009-04-27 Current Volume VIII 2006 of the Yearbook of Private International Law is arguably one of the most comprehensive collections of essays in English language of our time. It presents the reader with a broad overview on the status and trends of private international law from the United States to India from France to Tunisia from England to China from Latvia to Qatar from Sweden to Japan. All main areas of law are addressed among others

marriage including same sex marriage adoption and protection of children euthanasia and living wills inheritance contracts torts insolvency Each of the four traditional steps of the conflict process is taken into account adjudicatory jurisdiction international cooperation and procedure applicable law and its various incidents recognition of foreign judgments Practitioners will especially benefit from several contributions on international arbitration Beneficial for scholars lawyers judges notaries lawyers in law departments of international enterprises legal libraries working in the field of Private International Law

**Private International Law** Franco Ferrari, Diego P. Fernández Arroyo, 2019-12-27 Is Private International Law PIL still fit to serve its function in today's global environment In light of some calls for radical changes to its very foundations this timely book investigates the ability of PIL to handle contemporary and international problems and inspires genuine debate on the future of the field

*A Guide to Global Private International Law* Paul Beaumont, Jayne Holliday, 2022-05-05 This book provides a substantial overview of the discipline of private international law viewed from a global perspective The guide is divided into 4 key sections Theory Institutional and Conceptual Framework Issues Civil and Commercial Law apart from Family Law Family Law Each chapter is written by a leading expert The chapters address specific areas aspects of private international law and consider the existing global solutions and the possibilities of improving creating them Where appropriate the chapters are co-authored by experts from different legal perspectives in order to achieve as balanced a picture as possible The range of contributions includes authors from Europe North America Latin America Africa Asia and Oceania An essential resource for academics practitioners and students alike

**Essays in International Litigation for Lord Collins** Jonathan Harris, Campbell McLachlan, Paul David Mora, 2022 This collection is in honour of the remarkable career of Lord Collins The book offers a set of unique insights into the conduct of cross border litigation the judicial role in international cases the shape of English private international law the conduct of international arbitration and the interface with public international law

European Land Law Peter Sparkes, 2007-11-30 In his remarkable path breaking new book Peter Sparkes takes stock of the development of a distinctive body of European land law taking as his starting point the idea that methods of land holding permitted by a legal system both shape and reflect the attitudes of the land owners and society in general However it quickly becomes very difficult to test that idea when the society in question is governed by an internal market composed of 30 countries the EU 27 including Bulgaria and Romania and the EEA 3 whose property systems differ so markedly and which reflect such widely differing cultures Yet the internal market has already effected a gradual equalisation and standardisation across Europe as foreign capital spreads to create equality of yield We all become better off by joining a larger trading block but the social consequences will be profound Brits will need to emigrate to the continent to afford a home Bulgarians will need to make way for them along the Black Sea coast and title deeds will be reshuffled all over Europe on a giant Monopoly board writes the author in his preface before embarking on a dispassionate examination of the beginning of that process of profound change The opening chapters are

devoted to an explanation of how the internal market has created a substantive European land law Chapter 3 examines the rise of a distinctive European land law and the development of conflicts principles applying to recovery of land Chapters 5 to 9 on the marketing and sale of land focus upon Community competence on consumer protection The decision to treat land as a product like any other in the Unfair Commercial Practices Directive will have wide ranging and far reaching implications and apart from marketing of land and of timeshares other chapters deal with conveyancing contracting and the emerging market in mortgage credit The book concludes with a miscellany of conflicts rules which are gradually coalescing and form the elements from which a substantive European land law can be forged A number of topics which it is not possible to cover in detail VAT other taxes environmental controls and agriculture are touched on briefly and the same is true of international aspects of trusts and succession

*Rethinking Unjust Enrichment* Warren Swain, Sagi Peari, 2024-01-07 This interdisciplinary volume brings together scholars from across the globe to challenge the dominant position of unjust enrichment and suggest more satisfactory alternatives *Rethinking Unjust Enrichment* includes a broad range of voices from the UK US Australia Canada China Singapore Germany Ireland New Zealand Hong Kong and South America The book includes voices of sceptics who think that the current unjust enrichment doctrine must be seriously qualified and others who think that it should be eliminated altogether The contributions cast doubt on the various parameters of unjust enrichment from an analytical standpoint representing four interrelated perspectives history sociology doctrine and theory The four limb structure of the book provides readers with a clear understanding of the current problems of unjust enrichment at the deepest levels of its history sociological forces doctrinal fallacies and normative deficiencies This treatment of the subject serves as the basis for a comprehensive reform across jurisdictions Comprehensive and multi faceted *Rethinking Unjust Enrichment* is interesting to both sceptics and supporters of the unjust enrichment It facilitates a critical and constructive dialogue between the two

**Promoting Foreign Judgments** Pontian N. Okoli, 2019-10-07 In many African countries litigants experience significant uncertainty in their attempts to enforce foreign judgments Drawing on the experiences of the United Kingdom and the United States vis vis efforts to attain an effective global legal framework on foreign judgments this book undertakes a comparative analysis of how South African and Nigerian courts can promote the recognition and enforcement of foreign judgments in a fair manner This comparative analysis is made considering both African countries as paradigms of their respective legal traditions The author a legal consultant and academic in private international law analyses stage by stage the challenging process that litigants face when they seek to enforce foreign judgments in South Africa and Nigeria This analysis includes insightful consideration of broader issues such as the following how challenges faced by judgment creditors may be circumvented practical issues impeding the free movement of foreign judgments impact of globalisation increase in international commercial transactions and regionalism on private international law application of fairness how territorial sovereignty and State interests in international commerce impede the free movement of foreign

judgments and qualified obligation under which courts would presumptively enforce foreign judgments subject to certain exceptions and to the balancing of competing interests between private litigants and the State The comparative analysis is undergirded by relevant case law spanning decades in Africa and centuries in Europe and the United States In summary the author projects a clear case for predictability and certainty in the recognition and enforcement of foreign judgments as well as how to go about it thus offering lawyers a strategic position to weigh their options in contemplating enforcement of foreign judgments in any jurisdiction even beyond the African region This innovative approach will also be of particular value to policymakers at national levels international and regional economic organisations as well as scholars in private international law and international commercial law generally This is regardless of their specific legal area or niche especially considering the dearth of literature in African private international law

**The Hague Judgments Convention and Commonwealth Model Law** Abubakri Yekini, 2021-08-12 This book undertakes a systematic analysis of the 2019 Hague Judgments Convention the 2005 Hague Choice of Court Convention 2005 and the 2017 Commonwealth Model Law on recognition and Enforcement of Foreign Judgments from a pragmatic perspective The book builds on the concept of pragmatism in private international law within the context of recognition and enforcement of judgments It demonstrates the practical application of legal pragmatism by setting up a toolbox pragmatic goals and methods that will assist courts and policymakers in developing an effective and efficient judgments enforcement scheme at national bilateral and multilateral levels Practitioners national courts policymakers academics students and litigants will benefit from the book s comparative approach using case law from the United Kingdom and other leading Commonwealth States the United States and the Court of Justice of the European Union The book also provides interesting findings from the empirical research on the refusal of recognition and enforcement in the UK and the Commonwealth statutory registration schemes respectively

*The Choice of Law Contract* Maria Hook, 2016-09-22 This book offers a contractual framework for the regulation of party autonomy in choice of law The party autonomy rule is the cornerstone of any modern system of choice of law embodying as it does the freedom enjoyed by parties to a cross border legal relationship to agree on the law applicable to it However as this study shows the rule has a major shortcoming because it fails to give due regard to the contractual function of the choice of law agreement The study examines the existing law on choice of law agreements by reference to the law of both common and civil law jurisdictions and international instruments Moreover it suggests a new coherent approach to party autonomy that integrates both the law of contract and choice of law This important new study should be read with interest by private international law scholars

*Direct Jurisdiction* Anselmo Reyes, Wilson Lui, 2021-08-26 The second thematic volume in the series Studies in Private International Law Asia looks into direct jurisdiction that is the situations in which the courts of 15 key Asian states Mainland China Hong Kong Taiwan Japan South Korea Malaysia Singapore Thailand Vietnam Cambodia Myanmar the Philippines Indonesia Sri Lanka and India are prepared to hear a case involving cross border elements For

instance where parties are habitually resident abroad and a dispute has only some little or no connection with an Asian state will the courts of that state accept jurisdiction and hear the case and if so on what conditions More specifically the book's chapters explore the circumstances in which different Asian states assume or decline jurisdiction not just in commercial matters but also in other types of action such as family consumer and employment disputes The Introduction defines terminology and identifies similarities in the approaches to direct jurisdiction taken by the 15 Asian states in civil and commercial litigation Taking its cue from this the Conclusion assesses whether there should be a multilateral convention or soft law instrument articulating principles of direct jurisdiction for Asia The Conclusion also discusses possible trajectories that Asian states may be taking in respect of direct jurisdiction in light of the COVID 19 pandemic and the political tensions currently besetting the world The book suggests that enacting suitable rules of direct jurisdiction requires an Asian state to strike a delicate balance between affording certainty and protecting its nationals At heart direct jurisdiction involves

sometimes difficult policy considerations and is not just about drawing up lists of jurisdictional grounds and exceptions to them Rome I Regulation Franco Ferrari, Stefan Leible, 2009-11-16 Will the new Rome I Regulation meet its goals to improve the predictability of the outcome of litigation to bring certainty as to the law applicable and the free movement of judgments to designate the same national law irrespective of the country of the court in which an action is brought The most important features of this instrument were outlined and discussed by distinguished legal experts from all over Europe and beyond at the conference The Rome I Regulation held in Verona on March 2009 This first book in English on the Rome I Regulation contains the papers submitted to that conference Civil Procedure and EU Law Eva Storskrubb, 2008 Examining a burgeoning policy area of the EU the regulation of cross border civil and commercial litigation this title analyses the EU's specific legislative measures and assesses their impact on litigation procedure particularly due process rights

**International Co-operation in Civil and Criminal Matters** David McClean, 2012-06-14 The growth of international crimes pose a substantial threat to the economies and stabilities of states This study draws on international events legislation and important developments under the aegis of the EC but retains an awareness of both civil and criminal dimensions

*Cambridge Yearbook of European Legal Studies, Vol 9, 2006-2007* Catherine Barnard, 2007-12-18 The Cambridge Yearbook of European Legal Studies provides a forum for the scrutiny of significant issues in EU Law the Law of the Council of Europe and Comparative Law with a European dimension and particularly those issues which have come to the fore during the year preceding publication The contributions appearing in the collection are commissioned by the Centre for European Legal Studies CELS Cambridge a research centre in the Law Faculty of the University of Cambridge specialising in European legal issues The papers presented are all at the cutting edge of the fields which they address and reflect the views of recognised experts drawn from the University world legal practice and the civil services of both the EU and its Member States Inclusion of the comparative dimension brings a fresh perspective to the study of European law and highlights the

effects of globalisation of the law more generally and the resulting cross fertilisation of norms and ideas that has occurred among previously sovereign and separate legal orders The Cambridge Yearbook of European Legal Studies is an invaluable resource for those wishing to keep pace with legal developments in the fast moving world of European integration

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Recueil Des Cours, Collected Courses, Volume 295 (2002) Arthur Taylor Von Mehren, Academie de Droit International de la Haye, 2003-06 The Academy is an institution for the study and teaching of Public and Private International Law and related subjects Its purpose is to encourage a thorough and impartial examination of the problems arising from international relations in the field of law The courses deal with the theoretical and practical aspects of the subject including legislation and case law All courses at the Academy are in principle published in the language in which they were delivered in the Collected Courses of the To access the abstract texts for this volume please click here

International Litigation in Intellectual Property and Information Technology Arnaud Nuyts, 2008-02-20 This is the first book to emphasize the role of the judicial cooperation aspect of cross border intellectual property litigation Starting from European private law as it is currently evolving the authors focus intensively on the issues surrounding such central questions as the following How different should the treatment of IP litigation be from other transnational private activity How different should the treatment of different IP forms be at least from a private international law perspective How do the answers to these questions relate to methodological shifts within the discipline of private international law itself How should the doctrinal solutions we give integrate substantive values such as the EC basic freedoms or new ideas about the meaning of property in the context of intellectual works What should the relationship be between the rules on jurisdiction and the rules on applicable law How global or how distinct do we want the European legal regime in this area to be What should be the coordination and or allocation of competences between the various international institutions and instruments

**Legal Aspects of Economic Integration in Africa** Richard Frimpong Oppong, 2011-07-07 Richard Frimpong Oppong challenges the view that effective economic integration in Africa is hindered by purely socio economic political and infrastructural problems Inspired by the comparative experiences of other regional economic communities and imbued with insights from constitutional public and private international law he argues that even if the socio economic political and infrastructural challenges were to disappear the state of existing laws would hinder any progress Using a relational framework as the fulcrum of analyses he demonstrates that in Africa s economic integration



processes community state inter state and inter community legal relations have neither been carefully thought through nor situated on a solid legal framework and that attempts made to provide legal framework have been incomplete and sometimes grounded on questionable assumptions To overcome these problems and aid the economic integration agenda that is essential for Africa s long term economic growth and development the author proposes radical reforms to community and national laws

**On Arbitration** Samuel Wordsworth, Marie Veeder, 2023-08-29 This volume brings together the most important articles lectures and essays of Van Vechten Johnny Veeder a towering figure in the worlds of international commercial arbitration and arbitration between States and foreign investors As noted by Judge Stephen Schwebel in his introduction to the volume Johnny Veeder was unsurpassed as an arbitrator tribunal chairman expositor analyst and historian of international arbitration The writings in this collection address a wide range of topics in the field including the historical context of international arbitration and its influence on the modern day practice the role and responsibilities of the arbitrator and the principles upholding international arbitration The included works span the length of Johnny s career drawing on his extensive learning and practical engagement They analyse the past and present while asking prescient questions about arbitration s future in a changing global context The reader of Johnny s essays and other contributions will profit by his extraordinary legal insight and by the breadth and depth of his devotion to the arbitral process The volume also gives a sense of his humanity of his warmth and wit Loved by his colleagues his students and indeed all those who came to know him this volume is in celebration of the extraordinary achievements of this remarkable jurist teacher and human being

Perspectives for the Unification and Harmonisation of Family Law in Europe Katharina Boele-Woelki, 2003 Is the unification and harmonisation of international family law in Europe necessary Is it feasible desirable and possible Reading the different contributions to this book may certainly inspire those who would like to find the right answers to these questions

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