

Schmidt on the Effects of Foreign Legacies in Germany

Jan Peter Schmidt, Senior Research Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg, has posted an article on SSRN that deals with the effects of foreign legacies in Germany. The article is forthcoming in *RabelsZ* and can be downloaded [here](#). The English abstract reads as follows:

Regardless of its long tradition in Roman Law, the legatum per vindicationem, i.e. the legacy that transfers the ownership of an object directly from the testator to the legatee, was abolished in German law at the end of the 19th century with the creation of the German Civil Code (BGB). Ever since then a legatee acquires only a personal right against the heir for the transfer of title. In German private international law, there is a long-standing debate on whether a legatum per vindicationem created under foreign law (e.g. that of France) has to be recognised in case the object is located in Germany. The courts and most authors in legal literature argue that recognition would violate fundamental principles of the German law of property and therefore adapt the legatum per vindicationem to a legacy with obligatory effects.

The problem sketched out touches not only on the conflict between the lex hereditatis and the lex rei sitae, but also on the relationship between universal and singular succession upon death and the principle of Numerus clausus in property law. This article shows that the policy decisions of the law applicable to the succession must be respected as far as possible and not be overturned under the guise of alleged fundamental principles of the lex rei sitae.

This approach is also to be followed under the EU Regulation on Succession. For German law this means that a foreign legatum per vindicationem will have to be recognised in the future, in the same way as it should already be accepted at present under autonomous law.