

Latest Issue of RabelsZ: Vol. 80 No. 1 (2016)

The latest issue of “Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law” (RabelsZ) has just been released. It contains the following articles:

Armin Steinbach, *Investor-Staat-Schiedsverfahren und Verfassungsrecht* (Investor-State Dispute Settlement and Constitutional Law)

Investment treaties allow foreign investors to claim damages against states before tribunals of investor-state dispute settlement (ISDS). More frequently, such dispute settlement procedures tend to replace proceedings before national courts. This has given rise to the heated debate surrounding the ongoing negotiation about the free trade agreements between the European Union and the United States of America. This article identifies and discusses the constitutional law implications of such tribunals. The composition of the tribunals of private persons, the lack of a legal ground for public policy reasons to override investors' rights, the dynamic development of the adjudication based on vague legal terms and the lack of publicity and transparency in the proceedings – all this raises questions from the perspective of democratic principle and rule of law. Based on democratic principle doctrine, this article classifies rulings of tribunals as acts of public authority and highlights the lack of material and personal legitimacy and examines whether a state monopoly of adjudication can be derived from the separation of powers principle. It discusses the publicity and control of ISDS tribunals as an obligation enshrined in the democratic principles and highlights the missing legal reviewability of ISDS rulings compared to tribunals established under German administrative law. Finally, the article explores possible compensatory instruments addressing the identified deficits based on an application of investments treaties in line with constitutional law principles.

Reinhard Zimmermann, *Das Ehegattenerbrecht in historisch-vergleichender Perspektive* (The Intestate Succession Rights of the Deceased's Spouse in Historical and Comparative Perspective)

The coordination of the position of the surviving spouse with that of the deceased's (blood-) relatives is one of central problems faced by the intestate succession systems of the Western world. While the succession of the relatives essentially follows one of three different systems (the "French" system, the three-line system, and the parentelic system) which have remained relatively stable, the position of the surviving spouse has, over the centuries, become ever more prominent. Roman law, at the time of Justinian, took account of the surviving spouse only in exceptional situations, medieval customary law often not at all. Today, on the other hand, she (much more often than he) has worked her way up, in most countries, to the position of main beneficiary under the rules of intestate succession, for small and medium-sized estates sometimes even to the position of exclusive beneficiary.

The present essay (based on the author's Rudolf von Jhering lecture at the University of Gießen) traces this development. In doing so it attempts, in the spirit of Jhering, not to line up the laws in the various epochs of our legal history "like pearls on a pearl string" but to look at them as part of a development and to trace their interconnections. The same idea can also be applied to comparative law in view of the fact that the modern national legal systems do not coexist in isolation but in a "system of mutual contact and influence" and, as may be added, on the fertile soil of a common legal culture. Today we find a wide-spread desire to allow the surviving spouse to remain in her familiar environment and to continue to enjoy the standard of living she has become accustomed to. Legal systems still differ as to the way in which best to achieve this aim, i.e. as to the details of the surviving spouse's intestate succession right. An important guideline for assessing the various solutions to be found in the national legal systems is what the average deceased typically regards as reasonable, as far as the distribution of his estate is concerned. This can sometimes be gauged from the way in which wills are commonly drafted, and it has indeed guided the reforms in a number of countries. In Germany, the so-called "Berlin will" is particularly popular. Nonetheless, it does not appear to offer a satisfactory cue for the regulation of the law of intestate succession. In spite of a certain degree of arbitrariness inherent in this way of proceeding, the surviving spouse will have to be given a share (e.g. one half) of the estate. In addition, she should be granted the right to retain the right to continue to live in the family home.

Talia Einhorn, *The Common Law Foundations of the Israeli Draft Civil Code – A Critical Review of a Paradigm-Shifting Endeavor*

(no English abstract available)

Diegeo P. Fernández Arroyo, *Main Characteristics of the New Private International Law of the Argentinian Republic*

(no English abstract available)