

Sierd J. Schaafsma, Intellectual Property in the Conflict of Laws; The Hidden Conflict-of-law Rule in the Principle of National Treatment

This book presents a new explanation as to the conflict-of-law rule in the field of intellectual property. In addition, it also provides new insights into the history of the conflict-of-laws, aliens law and their relationship.

The book focusses on the difficult question whether the Berne Convention (on copyright) and the Paris Convention (on industrial property) contain a conflict-of-law rule. Opinions differ widely on this matter today. However, in the past, for the nineteenth-century authors of these treaties, it was perfectly self-evident that these treaties contain a conflict-of-law rule, namely in the 'principle of national treatment' as it is called. How is that possible? These are the fundamental questions at the heart of this book: does the principle of national treatment in the Berne Convention (article 5(1)) and the Paris Convention (Article 2(1)) contain a conflict-of-law rule? And if so, why do we no longer understand this conflict-of-law rule today?

The study reveals a ground-breaking new explanation why the principle of national treatment in these treaties contains a conflict-of-law rule: the *lex loci protectionis*.

Key to understanding is a paradigm shift. The principle of national treatment was developed as a doctrine-of-statute solution addressing a doctrine-of-statute problem. In that way of thinking, it is self-evident that the principle of national treatment contains a conflict-of-law rule. However, today we have started to think differently, i.e. within the paradigm of Von Savigny. This causes a problem: we look at an old, statist solution through Savignian glasses, and as a result the conflict-of-law rule in the principle of national treatment is out of the picture. Meanwhile, we are not even aware that we are looking through Savignian glasses

and that these glasses narrow our field of vision - and as a result, this conflict-of-law rule is beyond our reach. The explanation in this book results in a comprehensive and consistent interpretation of the respective provisions in these treaties, and it explains why we no longer understand this conflict-of-law rule today (see especially paragraph 5.1.2).

The search for this new explanation has, in addition, generated several new insights into the history of the conflict of laws in general (see especially paragraph 5.2.3), aliens law, and the relationship between these two fields of law.

Finally, the book is also detailed and authoritative explanation of the intersection of the conflicts of law and intellectual property law, providing a full and detailed analysis of the current state of affairs of the intersection of these fields of law. It also deals with less common themes such as material reciprocity (Chapter 6).

This book is an English translation of Sierd J. Schaafsma's book, which appeared in Dutch in 2009, and is now updated with the most significant case law and legislation.

Elgar, 2022; see Elgar website.