

CONTENTS

Foreword	9
----------	---

PART ONE

PRIVATE INTERNATIONAL LAW AS A SOCIAL PHENOMENON

Chapter 1	
A General Survey	13

Chapter 2	
The Legal and Sociological Aspects of Private International Law	22
/1/ Ontological and Gnoseological Aspects	22
/2/ Private International Law as a Social Phenomenon	24
/3/ The Prerequisites of the Origin and Existence of Private International Law	28
/4/ Private International Law and the Plurality and Co-Existence of States	31
/5/ The Problem of Foreign Element in Legal Relations	35
/6/ Prospects of Development	38

PART TWO

HISTORICAL DEVELOPMENT OF THE CONCEPTS OF PRIVATE INTERNATIONAL LAW

Chapter 1	
The Situation Prior to the Emergence of the Statutory Theory of Private International Law	46
/1/ The Law of the Slave State and the Conflicts of Law	46
/2/ The Emergence of Tribal Laws and the Personal Principle	48
/3/ Feudalism and the Territorial Principle	49

Chapter 2	
The Emergence and Initial Progress of the Statutory Theory	51
/4/ The Economic and Political Prerequisites	51
/5/ The Glossators	52
/6/ The Post-Glossators	53
/7/ Bartolus and Baldus	57
/8/ Bartholomeus de Saliceto, Paulus de Castro, Rochus Curtius	59
/9/ Conclusions	61

Chapter 3	
French and Dutch Statutory Theory	64
/10/ Charles Dumoulin — the French Successor of Bartolus	64
/11/ Reaction to Dumoulin's Doctrine — d'Argentré	68

/12/ French Authors of the 18th Century	70
/13/ The Statutory Theory in the Netherlands	70
/14/ Echoes of the Statutory Theory in Germany	74
/15/ Final Conclusions Regarding the Statutory Theory	75

Chapter 4

Development in the Period of Capitalism 78

/16/ General Comments	78
/17/ The French and Austrian Civil Codes	79
/18/ Wächter	80
/19/ Savigny's Theory	80
/20/ The Influence and Importance of Savigny	85
/21/ Mancini and His "National" School	88
/22/ Joseph Story and His Doctrine	91

PART THREE

"UNIVERSALISM" AND "NATIONALISM" IN THE MODERN DOCTRINE OF PRIVATE INTERNATIONAL LAW ESPECIALLY IN NON-SOCIALIST STATES

Chapter 1

Introduction 96

/1/ General Survey	96
/2/ Basic Historico-Sociological View	99

Chapter 2

The Main Views of the Doctrine of Public International Law on Private International Law 106

/3/ Basic Division	106
/4/ The Concept of Subjection of Private International Law to Public International Law	110
/5/ The Endeavour to Overcome the Extreme Position of Monistic Universalism	112
/6/ The Delegation Theory	114
/7/ An Assessment of the Monistic and Dualistic Concepts of Private International Law	116
/8/ Conclusion	122

Chapter 3

The Main Concepts of the Doctrine of Private International Law 127

/9/ The Controversy Between "Universalist" and "Nationalist" Trends	127
/10/ "Universalism" in the Doctrine of Private International Law	129
/11/ The Main Trends of the "Nationalist" Doctrine	138

Chapter 4	
The Comparative Trend in Private International Law	151

PART FOUR

THE OBJECT AND CHARACTER OF PRIVATE INTERNATIONAL LAW AND ITS PLACE IN THE SYSTEM OF LAW

Chapter 1	
Introduction	158

Chapter 2	
The General Characteristics of Private International Law and the Question of Its Object	163

Chapter 3	
Links Between Private International Law and Other Branches of Law and the Question of the Place Private International Law Occupies in the System of Law	175

/1/ Theories Considering Private International Law as a Part of Public International Law and Their Evaluation	175
---	-----

/2/ Theories Which Consider Private International Law as a Part of Municipal Law and Their Evaluation	183
---	-----

/3/ The Soviet Discussion on the Object and Character of Private International Law	187
--	-----

Chapter 4	
The Place of Private International Law in the System of Law	192

PART FIVE

COMPARATIVE JURISPRUDENCE, PRIVATE INTERNATIONAL LAW AND THE LAW OF INTERNATIONAL TRADE

Chapter 1	
General Survey	200

Chapter 2	
(Excursus)	
Some Problems of Comparative Jurisprudence	205

/1/ The Development of Comparative Law	205
--	-----

/2/ The Theoretical Discussion on the Nature of Comparative Jurisprudence	214
---	-----

/3/ The Contemporary Problems, Character and Some Tasks of Comparative Jurisprudence	221
--	-----

Chapter 3	
The Role of Comparative Jurisprudence in Private International Law	233
Chapter 4	
Some Notes on the Law of International Trade	246
PART SIX	
THE SUBSTANCE AND CHARACTER OF APPLICATION OF FOREIGN LAW	
Chapter 1	
Application of Foreign Law as the Consequence and Culmination of the Conflict Rule	258
Chapter 2	
Application of Foreign Law and Domestic Law	268
/1/ The Anglo-American Doctrine and Practice	268
/2/ The Theory and Practice of European States	275
/3/ A Critical Assessment of the Opinion that Foreign Law Is a Fact	282
/4/ "Reception" of Foreign Law by Domestic Law	287
/5/ Conclusions	290
Bibliography	294
Index	304