

Gerhard Dannemann

Die ungewollte Diskriminierung in der internationalen Rechtsanwendung

Zur Anwendung, Berücksichtigung und Anpassung von Normen aus unterschiedlichen Rechtsordnungen

[Accidental Discrimination in the Conflict of Laws.]

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Cases connected to different legal systems can get a rough ride, simply because applicable rules are not dovetailed to each other. This is frequently the case if one of the systems involved belongs to the common law and the other to the civil law world. In combination, they can produce results which are not intended by either system involved – insufficient maintenance or benefits, heirs receiving more or less than they should, criminals punished too harshly, marriages which cannot be divorced, cases which no court wants to hear.

It is argued that courts are empowered to modify or ignore applicable rules in order to avoid such accidental discrimination, to the degree that legislators would be prevented from deliberately discriminating international cases under higher ranking principles of equality of treatment. On the other hand, the author criticizes Continental doctrine and court practice which seeks to give the same far-reaching powers to courts in other complex international situations.

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