

*The International and Comparative  
Law Quarterly*

VOLUME 8

## EDITORIAL BOARD

### JOINT EDITORS

*Private International Law and Comparative Law*

Professor R. H. GRAVESON, LL.D., PH.D., S.J.D.

*Public International Law*

Professor R. Y. JENNINGS, M.A., LL.B.

### ASSISTANT EDITORS

*Private International Law* - Mr. A. J. BLAND, M.A., B.C.L. and  
Mr. GARETH H. JONES, M.A., LL.M.

*Comparative Law* - Dr. A. K. R. KIRALFY, PH.D., LL.M.

*Public International Law* - Mr. E. LAUTERPACHT, M.A., LL.B.

*The International*  
*and*  
*Comparative Law Quarterly*

VOLUME 8

LONDON

THE SOCIETY OF COMPARATIVE LEGISLATION  
under the auspices of  
THE BRITISH INSTITUTE OF INTERNATIONAL AND  
COMPARATIVE LAW

1959

KRAUS REPRINT  
Nendeln/Liechtenstein  
1970

*Published by The Society  
of Comparative Legislation  
and printed in Great Britain  
by The Eastern Press Ltd.  
of London and Reading*

Reprinted with the permission of the original publisher  
by

**KRAUS REPRINT**  
A Division of  
**KRAUS-THOMSON ORGANIZATION LIMITED**  
Nendeln/Liechtenstein  
1970

Printed in Germany  
Lessingdruckerei Wiesbaden

# *Society of Comparative Legislation and International Law*

CHAIRMAN OF THE EXECUTIVE COMMITTEE:

THE RT. HON. LORD DENNING

COUNCIL:

- M. Marc Ancel, Secrétaire Général de la Société de Législation Comparée.
- Sir W. Bernard Blatch.
- The Rt. Hon. Viscount Bruce, C.H., M.C.
- Sir John A. Calder, K.C.M.G.
- Sir Cecil T. Carr, K.C.B., Q.C., LL.D.
- The Hon. Mr. Justice Centlivres, formerly Chief Justice of South Africa.
- Dr. Futting Tien-Hsi Cheng, LL.D.
- Professor G. C. Cheshire, D.C.L., F.B.A.
- J. Christie, Esq., C.M.G., LL.M.
- The Rt. Hon. Sir Winston S. Churchill, K.G., O.M., C.H., M.P.
- The Rt. Hon. Lord Cohen.
- Professor René David.
- Clement Davies, Esq., Q.C., M.P.
- The Rt. Hon. Lord Denning.
- The Rt. Hon. Sir Owen Dixon, Chief Justice of Australia.
- Sir Oscar Dowson, C.B.E., formerly Legal Adviser to the Home Office.
- Sir Harold Duncan, K.C.M.G., Q.C., formerly Legal Adviser to the Colonial Office and the Dominions Office.
- Phanor J. Eder, Esq.
- The Rt. Hon. H. V. Evatt, D.LITT., LL.D.
- The Hon. R. Feetham, C.M.G., formerly Judge of the Appellate Division of the Supreme Court of South Africa.
- E. G. M. Fletcher, Esq., LL.D., M.P.
- Sir Lancelot Graham, K.C.S.I., K.C.I.E., formerly Secretary to the Government of India in the Legislative Department.
- F. N. Keen, Esq.
- The Hon. Mr. Justice Korsah, C.B.E.
- The Hon. Ricardo de Labougle, LL.D. Judge Learned Hand.
- Sir Lynden Macassey, K.B.E., Q.C.
- Sir Henry MacGeagh, O.C.V.O., K.C.B., K.B.E., Q.C.
- The Rt. Hon. Vincent Massey, Governor-General of Canada.
- The Rt. Hon. Lord Reid of Drem.
- The Rt. Hon. T. Rinfret, formerly Chief Justice of Canada.
- Sir J. S. Risley, K.C.M.G., C.B., Q.C., formerly Legal Adviser to the Colonial Office and Dominions Office.
- The Hon. Mr. Justice Sandström.
- Sir John Houldsworth Shaw, formerly Solicitor to the Inland Revenue.
- The Hon. Mr. Justice Fabre-Surveyer, Judge of the Supreme Court, Quebec.
- The Rt. Hon. Lord Thomson.
- Sir Geoffrey Vickers, V.C.
- Professor E. C. S. Wade, LL.D., F.B.A., Downing Professor of the Laws of England.
- Professor B. A. Wortley, O.B.E., LL.D.

EXECUTIVE COMMITTEE :

Sir W. Bernard Blatch.	R. A. Lynex, Esq.
*Professor G. C. Cheshire, D.C.L., F.B.A.	Sir Lynden Macassey, K.B.E., Q.C.
The Rt. Hon. Lord Cohen.	*N: S. Marsh, Esq.
J. Cohen, Esq., <i>Hon. Treasurer.</i>	Richard O'Sullivan, Esq., Q.C.
*Dr. C. J. Colombos, Q.C.	Professor Sir David Hughes Parry, Q.C., D.C.L., LL.D.
*The Rt. Hon. Lord Denning, <i>Chairman.</i>	Sir Kenneth Roberts-Wray, K.C.M.G.
*Sir Harold Duncan, K.C.M.G., Q.C.	*Dr. G. Schwarzenberger, PH.D., DR.JUR.
Sir Gerald Fitzmaurice, K.C.M.G.	*Dr. C. Sluzewski.
*Professor R. H. Graveson, LL.D., PH.D., S.J.D.	Professor E. C. S. Wade, LL.D., F.B.A.
*Professor C. J. Hamson.	*Professor C. H. M. Waldock, C.M.G., O.B.E., Q.C., D.C.L.
*Professor R. Y. Jennings, M.A., LL.B.	*E. H. Wall, Esq., T.D., <i>Hon. Secretary.</i>
F. N. Keen, Esq.	*R. O. Wilberforce, Esq., C.M.G., O.B.E., Q.C.
William Latey, Esq., Q.C.	
*Professor F. H. Lawson, D.C.L.	*Professor B. A. Wortley, O.B.E., LL.D.

Those marked \* are members of the Editorial Sub-Committee

*The Editors and the members of the Editorial Sub-Committee do not hold themselves in any way responsible for the views expressed by contributors.*

## **NOTICE**

On November 17, 1958, the new British Institute of International and Comparative Law was incorporated. It brings into one joint Institute the Society of Comparative Legislation and International Law and the Grotius Society. It is formed of three divisions, and will deal with the three subjects:

- (i) Public International Law;
- (ii) Comparative Law (including Foreign Law);
- (iii) Private International Law.

The International and Comparative Law Quarterly will continue, as heretofore, to contain articles and notes of interest in all these fields.

We feel sure that the combination of the two Societies will bring strength and vigour to the study of these subjects.

**DENNING**

*(Chairman of the Council of Management  
of the British Institute of International  
and Comparative Law).*

---

## INDEX OF CONTRIBUTORS OF ARTICLES AND NOTES

ANDERSON, J. N. D., CONFLICT OF LAWS IN NORTHERN NIGERIA	442
BATSTONE, R. K., THE UTILISATION OF THE NILE WATERS	528
BENJAMIN, P., INTER-INSTITUTIONAL AGREEMENTS DESIGNED TO EXTEND EXISTING FACILITIES FOR INTERNATIONAL COMMERCIAL ARBITRA- TION	289
BLAND, A. J., Private International Law Committee's Fourth Report on the Formal Validity of Wills	213
BLOM-COOPER, L. J., THE SOUTH AFRICAN TREASON TRIAL	59
BROWNLIE, I., RECENT APPRAISALS OF LEGAL REGULATION OF THE USE OF FORCE IN INTERNATIONAL DISPUTES	707
CARSWELL, R. D., THE DOCTRINE OF VESTED RIGHTS IN PRIVATE INTER- NATIONAL LAW	268
COTRAN, E., SOME LEGAL ASPECTS OF THE FORMATION OF THE UNITED ARAB REPUBLIC AND THE UNITED ARAB STATES	346
DELANTY, V. T. H., IRISH AND SCOTTISH LAND RESETTLEMENT LEGISLATION	299
DRUCKER, A., German Studies in the Law of Communist States	783
FITZMAURICE, SIR G., THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE	73
GRAVESON, R. H., THE SEVENTH DICEY The Hague Convention on the Form of Wills	1 559
GRIEW, E. J., The Adoption Act, 1958: Some Conflict Implications	569
GRODECKI, J. K., THE ENFORCEMENT OF FOREIGN MAINTENANCE ORDERS (FRENCH AND ENGLISH PRACTICE)	18
GUTTMAN, E., THE STATUS OF LEGITIMACY IN COMPARATIVE CONFLICT OF LAWS	678
JOHNSON, D. H. N., THE PREPARATION OF THE 1958 GENEVA CONFERENCE ON THE LAW OF THE SEA	122
JONES, G. H., The Legitimacy Act, 1959	723
KIRALFY, A. K. R., THE RULE OF LAW IN COMMUNIST EUROPE	465
LAUTERPACHT, E., THE CONTEMPORARY PRACTICE OF THE UNITED KINGDOM IN THE FIELD OF INTERNATIONAL LAW (VII)	146
LAWSON, F. H., Laws of Marriage and Divorce in the British Common- wealth	391
LIPSTEIN, K., THE HAGUE CONVENTIONS ON PRIVATE INTERNATIONAL LAW, PUBLIC LAW AND PUBLIC POLICY	506
MANN, M., THE DOMICILE BILLS	457
MARSHALL, O. R., West Indian Law	393
MEGRAH, M., A UNIFORM CODE FOR DOCUMENTARY CREDIT PRACTICE	41
MÜLLER-FREIENFELS, W., EQUALITY OF HUSBAND AND WIFE IN FAMILY LAW	249
PATCHETT, K. W., SOME ASPECTS OF MARRIAGE AND DIVORCE IN THE WEST INDIES	682
ROBERTSON, A. H., The European Court of Human Rights	396
SABBATH, E., DENIAL OF RESTITUTION IN UNLAWFUL TRANSACTIONS	486, 689
SCHWEBEL, S. M., THE ALSING CASE	320
VALLINDAS, P. G., A PLEA FOR AN INTERNATIONAL LEGAL SCIENCE	613
YUGOSLAVIA, Foreign Trade Arbitration in Yugoslavia	727



## INDEX OF CASES NOTED

*(Names of contributors are inserted in brackets)*

Adams v. National Bank of Greece and Athens, S.A. (G. H. Jones) . . . . .	741
De Demko v. Secretary of State for Home Affairs (P. O'Higgins) . . . . .	412
Jordan Investments, Ltd. v. All-Union Foreign Trade Corp. (G. W. Haight) . . . . .	416
Matthews v. Kuwait Bechtel Corp. (G. H. Jones) . . . . .	741
Mayo-Perrott v. Mayo-Perrott (P. R. Webb) . . . . .	744
Mountbatten v. Mountbatten (P. R. H. Webb) . . . . .	404
Philipson-Stow v. I. R. C. (A. J. Bland) . . . . .	577
Public Prosecutor v. Tan Kool Choon (H. Calvert) . . . . .	754
Quareshi v. State of Bihar (J. D. M. Derrett) . . . . .	221
R. v. Governor of Brixton Prison (P. O'Higgins) . . . . .	413
Tennekoon v. Duralsamy (J. D. M. Derrett) . . . . .	218
Union Nationale, etc v. Robert Catterall & Co., Ltd. (G. H. Jones) . . . . .	743
R $\sigma$ United Railways of the Havana and Regla Warehouses, Ltd. (A. J. Bland) . . . . .	412

## INDEX OF BOOK REVIEWS

Alexandrowicz, C. H. Constitutional Developments in India, 1957	763
A Bibliography of Indian Law, 1959	764
Ancel, M. and Radzinowicz, L. Introduction au Droit Criminel de l'Angleterre, 1959	778
Apelt, W. (dedicated to). Staat und Bürger, 1958	597
Aupin, B. Der Juristische Hochschulunterricht in Frankreich, 1958	606
Babinski, L. Problems of Contemporary Polish Private International Law, 1958	756
Becker, W. Gegenopfer und Opferverwehrung, 1958	596
Bedjaoui, M. Fonction Publique Internationale et Influences Nationales, 1958	438
Bohannon, P. Judgment and Justice among the Tiv, 1957	238
Cairns, Sir D. S. Legal Penalties, The Need for Revaluation, 1959	772
Cherubini, A. Dottrine e Metodi Assistenziali, 1789-1848, 1958	771
Copinger, etc. The Law of Copyright, 1958	602
De Smith, S. A. Judicial Review of Administrative Action	775
Domke, M. International Trade Arbitration, 1958	435
Draper, G. I. A. D. The Red Cross Conventions, 1958	776
Farren, C. The Principles of Scots and English Land Law, 1958	593
Foighel, I. Nationalization: A Study in the Protection of Property in International Law, 1957	242
Friedrich, C. The Philosophy of Law in Historical Perspective, 1958	585
Garreau, R. Le Local Government en Grande-Bretagne, 1958	767
Garrigues, J. Contratos Bancarios, 1958	769
Ginsberg, M., et al. Law and Opinion in England in the Twentieth Century, 1959	758
Gwyer, Sir M. and A. Appadorai. Speeches and Documents on the Indian Constitution, 1957	763
Hall, J. Studies in Jurisprudence and Criminal Theory, 1958	589
Heining, A. Besteuerung der Ausländer, 1956	241
Jerusalem. International Lawyers Convention in Israel, 1959	775
Jowitt, Earl, and C. Walsh. The Dictionary of English Law, 1959	609
Kirchner, H. Abkürzungsverzeichnis der Rechtssprache, 1957	608
Klingmüller, E. Rechtsfragen der Individualversicherung, 1957	235
Leibholz, G. Jahrbuch des öffentlichen Rechts der Gegenwart, 1958	601
McWhinney, E. Canadian Jurisprudence, 1959	773
Maasdorp, ed. C. G. Hall. Institutes of South African Law, vol. 1, 1958	604
Mahmud, I. Muslim Law of Succession and Administration, 1958	603
Nagendra Singh. Termination of Membership of International Organizations, 1958	782
Nussbaum, A. American-Swiss Private International Law, 1958	584
Pellerin, P. and J. French Law of Wills, 1958	599
Polay, E. Harom Munkaberszerződés a romai Daciabol, 1958	774
Potter, H., ed. A. Kiralfy. Historical Introduction to English Law (4th ed., 1958)	610
Reinkemeyer, H. Die sowjetische Zwölfmeilenzone in der Ostsee, etc., 1955	481

Schmidt, F. <i>Scandinavian Studies in Law</i> , vol. 2, 1958	586
Schmitz, R. C. A. <i>Kommentar zum Internationalen Steuerrecht der Bundesrepublik Deutschland</i> , 1957	237
Schnitzer, A. <i>Handbuch des Internationalen Privatrechts</i> , 1957-58	427
Sohn, I. B. <i>Cases and Materials on United Nations Law</i> , 1956	785
<i>Basic Documents of the United Nations</i> , 1956	785
Soonavala, R. <i>A treatise on the law of Execution Proceedings</i> , 1958	591
Stein, P. <i>Fault in the Formation of Contract in Roman and Scots Law</i> , 1958	590
Stern, D. <i>Mexico, a Symposium on Law and Government</i> , 1958	605
Szirmai, Z. <i>Law in Eastern Europe</i> , 1959	600
Toussaint, C. E. <i>The Trusteeship System of the United Nations</i> , 1956	433
Vallindas, P. G. <i>The acquisition of Greek nationality by marriage</i> , 1957	424
<i>Selected Texts on Private International Law</i> , 1958	424
Wahlendorf, H. von. <i>Struktur und Funktion der sog. Zweiten Kammer</i> , 1958	592
Waldock, C. H. M. <i>British Year Book of International Law (1957)</i> , 1958	779
Wallach, K. <i>Research in Louisiana Law</i> , 1958	595
Wilhelm, W. <i>Zur Juristischen Methodenlehre im 19 Jahrhundert</i>	425
Wortley, B. A. <i>Expropriation in Public International Law</i> , 1959	611
Wright, C. A. <i>Cases on the Law of Torts</i> , 1958	768

# SUBJECT INDEX OF ARTICLES, NOTES AND DECISIONS

[Titles of Articles are printed in CAPITALS; (n) indicates Note;  
(d) indicates Decision.]

## 1. PRIVATE INTERNATIONAL LAW

<p><b>ADOPTION</b></p> <p style="padding-left: 2em;">Conflict Implications of the Adoption Act, 1958 (Griew) (n) 569</p> <p><b>ARBITRATION</b></p> <p style="padding-left: 2em;">Enforcement of foreign arbitration orders and s. 37 (1) (d) Arbitration Act, 1950 (G. H. Jones) (d) 743</p> <p><b>BANKING LAW</b></p> <p style="padding-left: 2em;">A UNIFORM CODE FOR DOCUMENTARY CREDIT PRACTICE? (Megrah) 41</p> <p><b>CONVENTIONS</b></p> <p style="padding-left: 2em;">HAGUE CONVENTIONS ON PRIVATE INTERNATIONAL LAW, PUBLIC LAW AND PUBLIC POLICY (Lipstein) 506</p> <p style="padding-left: 2em;">Hague Draft Conventions on the legalisation of foreign documents and the form of wills (Graveson) (n) 559</p> <p><b>DIVORCE AND OTHER MATRIMONIAL CAUSES</b></p> <p style="padding-left: 2em;">ENFORCEMENT OF FOREIGN MAINTENANCE ORDERS (Grodecki) 18</p> <p style="padding-left: 2em;">Recognition of a foreign divorce decree, recognised by court of wife's "ordinary residence" (Webb) (d) 404</p> <p style="padding-left: 2em;">Recognition in Ireland of the incidents of an English divorce decree (Webb) (d—Ireland) 744</p> <p><b>DOMICILE</b></p> <p style="padding-left: 2em;">Application for citizenship and domicile (Derrett) (d—Ceylon) 218</p> <p style="padding-left: 2em;">THE DOMICILE BILLS (Mann) 457</p>	<p><b>ESTATE DUTY</b></p> <p style="padding-left: 2em;">And the proper law governing wills of immovables (Bland) (d) 577</p> <p><b>FAMILY LAW</b></p> <p style="padding-left: 2em;">EQUALITY OF HUSBAND AND WIFE IN FAMILY LAW (Müller-Freienfels) 249</p> <p><b>FOREIGN DOCUMENTS</b></p> <p style="padding-left: 2em;">Hague Draft Conventions on legalisation of wills (Graveson) (n) 559</p> <p><b>FOREIGN JUDGMENTS</b></p> <p style="padding-left: 2em;">Enforcement in Ireland of English judgment for taxed costs arising from a divorce suit (Webb) (d—Ireland) 744</p> <p style="padding-left: 2em;">ENFORCEMENT OF FOREIGN MAINTENANCE ORDERS (Grodecki) 18</p> <p><b>GENERAL</b></p> <p style="padding-left: 2em;">A PLEA FOR AN INTERNATIONAL LEGAL SCIENCE (Vallindas) 618</p> <p style="padding-left: 2em;">THE BRITISH INSTITUTE 245</p> <p style="padding-left: 2em;">THE SEVENTH DICEY (Graveson) 1</p> <p><b>JURISDICTION</b></p> <p style="padding-left: 2em;">Contract made in England within Ord. 11 r. 1 (e), whether action for injuries sustained abroad maintainable (G. H. Jones) (d) 741</p> <p><b>LEGITIMACY</b></p> <p style="padding-left: 2em;">The 1959 Act (G. H. Jones) (n) 722</p> <p style="padding-left: 2em;">THE STATUS OF LEGITIMACY IN COMPARATIVE CONFLICT OF LAWS (Guttman) 678</p>
---	---

## NORTHERN NIGERIA

- CONFLICT OF LAWS IN NORTH-  
ERN NIGERIA: A NEW START  
(Anderson) 442

## THEORY

- THE DOCTRINE OF VESTED  
RIGHTS IN PRIVATE INTER-  
NATIONAL LAW (Carswell) 268

## WILLS

- Fourth report of the P.I.L.  
Committee on formal valid-  
ity of, (Bland) (n) 218  
Hague Draft Conventions on  
form of wills  
(Graveson) (n) 559  
Proper Law (for English  
estate duty) governing wills  
of foreign immovables: ex-  
clusion of *lex situs*  
(Bland) (d) 577

## 2. COMPARATIVE LAW

## ENGLAND

- The British Institute of Inter-  
national and Comparative Law 245

## EUROPE AND UNITED STATES

- A UNIFORM CODE FOR DOCU-  
MENTARY CREDIT PRACTICE  
(Megrah) 41

- EQUALITY OF HUSBAND AND  
WIFE IN FAMILY  
(Müller-Freienfels) 249

## FRANCE

- THE ENFORCEMENT OF FOREIGN  
MAINTENANCE ORDERS  
(Grodecki) 18

- DENIAL OF RESTITUTION IN  
UNLAWFUL TRANSACTIONS  
(Sabbath) 486, 689

## INDIA

- M. H. Quareshi v. State of  
Bihar (Derrett) 221

## IRELAND

- IRISH AND SCOTTISH LAND  
RESETTLEMENT LEGISLATION  
(Delany) 299

IRELAND—*cont.*

- Effects of English Divorce  
(Webb) 744

## SCOTLAND

- IRISH AND SCOTTISH LAND  
RESETTLEMENT LEGISLATION  
(Delany) 299

## UNION OF SOUTH AFRICA

- THE SOUTH AFRICAN TREASON  
TRIAL (Blom-Cooper) 59

UNITED STATES (*see* EUROPE  
and UNITED STATES)

## U.S.S.R.

- THE RULE OF LAW IN COM-  
MUNIST EUROPE (Kiralffy) 465

## WEST INDIES

- SOME ASPECTS OF MARRIAGE  
AND DIVORCE IN THE WEST  
INDIES (Patchett) 682

## YUGOSLAVIA

- Rules of Foreign Trade Arbi-  
tration 727

## 3. PUBLIC INTERNATIONAL LAW

- |                       |                    |                           |     |
|-----------------------|--------------------|---------------------------|-----|
| Access,               |                    | Bays                      | 82  |
| enclaves              | 171                |                           |     |
| land-locked countries | 189                | Cairo Declaration         | 186 |
| Aggression            | 708 <i>et seq.</i> | <i>Carolina Case</i>      | 720 |
| <i>Alsing Case</i>    | 820                | Contiguous zone           | 108 |
| Arab unions           | 346 <i>et seq.</i> | <i>Corfu Channel case</i> | 708 |

Delictual liability and U.A.R.	868	Recognition— <i>cont.</i>	
Domestic jurisdiction	160	German Democratic Republic	158
		multilateral treaties	159
Expropriation	611	of governments	158
Extradition	185, 418	of states	157
Fishery rights	118	Sea, Law of the	
Force, use of	201, 707, 716, 721	Geneva Conference, 1958	78 <i>et seq.</i>
Foreign property,		preparation of Geneva Confer-	
treatment of	184	ence	122 <i>et seq.</i>
Formosa	186	Self-defence	709 <i>et seq.</i>
Guardianship of infants	506	State responsibility	506
Hague Codification Conference	110	indemnity clause	183
Hot pursuit	115	Straits, international	100
Human Rights,		Succession	
European Commission on	197	to treaties	159
Immunity, tax exemptions,	164	Telecommunications Convention	165
Innocent passage,	79, 90	Territorial sea,	
fishing vessels	97	baseline	78
government and merchant ships	108	China	182 n.
non-innocent passage	94	delimitation	76 <i>et seq.</i>
Intergovernmental Maritime Con-		Denmark	171
sultative Organization	195	Iceland	175
International Agreement on Olive		submarine	98
Oil, 1956	196	suspension, right of	100
International Organization, and		warships, passage of	102
United Arab Republic	357	Territorial waters,	
Intervention	148	islands	85
		Nile waters	527 <i>et seq.</i>
Jurisdiction of I.C.J.,		Treaties,	
U.K. Declaration of Nov. 26,	197	abrogation	193
1958		duration	191, 192
Kellog-Briand Pact	708	entry into force	187
		scope of operation	191
Nationality, and U.A.R.	372, 880	termination	190, 341
<i>Norwegian Fisheries</i> case	40, 76, 77,	and U.A.R.	351, 379
	81, 84, 90 n.	United Arab Republic and	
		United Arab States	346 <i>et seq.</i>
Occupation,		United Nations, Charter.	
status of Berlin	202	Art. 2	709, 717
Olive Oil, Agreement on, 1956	196	„ 51	717, 718
Pescadores	186	United Nations,	
Public policy	520, 522	collective action	202
		General Assembly, Sixth Con-	
<i>Rebus sic stantibus</i>	341	mittee	712
Recognition	158	status of S.W. Africa	193
diplomatic	157	trusteeship system	433
		War, effect on treaty	339
		Warships, passage in straits	101