

PRIVATE LAW
IN THE INTERNATIONAL ARENA

PRIVATRECHT IN
DER INTERNATIONALEN ARENA

❖ LIBER AMICORUM KURT SIEHR ❖

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T.M.C. ASSER INSTITUUT

PRIVATE LAW
IN THE INTERNATIONAL ARENA

From National Conflict Rules Towards
Harmonization and Unification

❖ **LIBER AMICORUM KURT SIEHR** ❖

Edited by

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Foreword

*Ihr naht euch wieder, schwankende Gestalten,
Die Fröh sich einst dem trüben Blick gezeigt.
Once more you hover near me, forms and faces
Seen long ago with troubled youthful gaze.*

Johann Wolfgang von Goethe,
*Faust, Zueignung/ Dedication**



This book is a dedication made in deep appreciation, long-standing friendship and affection, to Prof. Dr. iur. KURT SIEHR, a true academic scholar, whose pursuit of knowledge has brought him very close to many people from a whole variety of cultures and backgrounds all over the Globe.

This may seem a paradox. Kurt Siehr is first and foremost a man of books. On the door leading to his office is written “Das Paradies habe ich mir immer als eine Art Bibliothek vorgestellt” (Jorge Luis Borges). He has lived most of his life in his own library among the books that he has collected with the deepest interest and care, every visit to bookshops and antiquarian bookstores at home and abroad adding new, cherished treasures which can do nothing however to quench the thirst. Therefore, Siehr’s knowledge seems to be drawn from paper. Even examination questions have often been based on opera libretti, books and occasionally film scripts. Yet, Siehr’s insights and understanding for his fellow mankind is current, present not past. “It’s in a book”, says Alice when accused by Humpty Dumpty of listening at doors and behind trees or down chimneys, or she couldn’t have known it.

Siehr’s love for books comes from home. “In the beginning was the book”. Born in Tilsit, East Prussia on 28 July 1935, Kurt Siehr was raised and fed on books. His

* Translated by Philip Wayne (Penguin 1949) at p. 29.

father, Dr. Friedrich Carl Alfred Siehr, a lawyer, was a passionate collector of first editions. The volumes of the Brockhaus Encyclopedia were devoured by the Siehr children even before they were strong enough to carry them around. Mrs. Else Siehr's bedtime story reading was a favourite family pastime for them all. The war uprooted the family. In the summer of 1944 the Siehrs had to move first to Munich and then to Hohenems (now in Austria). In 1945 it was necessary to make another move to Hamburg and then again to Maschen (near Lüneburg). Finally, the family settled down in Buxtehude in 1949, a year after Dr. Siehr had started his practice as a lawyer and notary there. Although not much had survived from the original book collection, the Siehr family very soon turned their new home into the "Bookstehude" that it still is to this date.

To the family it was always clear that Kurt Siehr would become a lawyer. He was named after his great uncle, Dr. Kurt Siehr, judge and Senatspräsident in Berlin, well-known in legal circles, author of the second edition of *Freiwillige Gerichtsbarkeit* (Berlin 1930), and deeply loved and appreciated by the family. As soon as Kurt Siehr graduated from high school he started studying law and, at the same time, worked as a student at the Max Planck Institute for Foreign Private and Private International Law in Hamburg, thus acquiring access to the great library. Following his first bar examination in 1960, in recognition of his excellent scholarly achievements, Siehr was awarded a Ford Scholarship to study towards a degree of "Master of Comparative Law" (M.C.L.) at the law faculty of the University of Michigan, Ann Arbor in 1962/63. The young scholar was deeply impressed with the American "case method" used in "lectures" and, no less, with the relationship between the American law professors and their students, all lively described in the letter he wrote together with his colleague Hein Kötz, published in *RabelsZ* 28 (1964) 395.

After his return to Germany, Siehr joined the Max Planck Institute in Hamburg first as a research assistant and later as a research associate, passed his second bar examination in 1967 and completed his doctoral dissertation in 1970 on the effects of the law on children born out of wedlock on private international law and international procedural law. It was at the Max Planck Institute that he had his first opportunity to write, together with his colleague Eike von Hippel, a legal opinion on art and law in the famous case of *Kunstsammlungen zu Weimar v. Elicofon* (358 F. Supp. 747), involving two Dürer paintings stolen from the Weimar Art Galleries during the Second World War. These were found later in the apartment of their *bona fide* purchaser, the New York lawyer Edward Elicofon, and eventually returned to Germany, following the lawsuit brought in New York for their recovery.

At the Max Planck Institute the man of books turned out to be not only an ardent reader but also a close and intent listener to music, especially operas, to the sounds of different languages, and, in particular, to people. Kurt Siehr, who diligently worked there day and night, made the Institute a second home to many visitors, whom he would invite to excellent cups of fresh tea, and then use the time to

befriend, share and instruct. It was through his eyes that they came to regard the Institute as the Paradise from which one is never expelled for eating from the Tree of Knowledge. For many of those, who considered themselves not only “Kurzbesucher” of the Institute but no less his personal “Kurts-Besucher”, Siehr’s departure to Zurich in 1991 has left a sense of longing that can hardly be subdued.

One of these visitors, the late Ze’ev Zeltner, Professor of Law at Tel-Aviv University and President of the Israeli District and Appellate Court in Tel Aviv, initiated the life-long bond with Tel-Aviv University. Another visitor, Prof. Dr. Max Keller from the University of Zurich, not only became impressed with Siehr, but also managed to persuade him to join the law faculty there. It was therefore at Zurich that Siehr obtained his Habilitation in 1979. Privatdozent Siehr then became an extraordinary Professor, and finally in 1991 – the academic successor of Max Keller, a truly extraordinary Ordinarius. Many students have had the good fortune to hear his lectures and participate in his seminars in Zurich. The luckiest of them all were, of course, those (more than 100 in number!) who became his doctoral students, and for whom he has been a mentor and a friend, the coach they could not and would not do without, the severe critic who would not hesitate to condemn the student who dares just to play with words instead of conveying the true understanding which results from serious research. “In the beginning was the thought”.

The writings of Kurt Siehr not only speak volumes. They read volumes! The reader of this book would be well-advised to turn first to the list of publications of its Jubilar at the very end of this book. The list is not comprehensive as it does not contain works edited by Siehr. Those, though clearly bearing his stamp, are not even mentioned by Siehr among his works. But the reader will find in the list the many subjects that have preoccupied their author and made him deeply appreciated not only in Germany and Switzerland where he has resided and worked, but also carried his name all over Europe, East and West, to the United States, the Far East and the Middle East. Siehr has become a most favoured guest lecturer in places as far apart as Hamburg, Oslo, Tel-Aviv, Rome, Bari, Naples, Dubrovnik, and The Hague, to name just a few. Academics and practitioners alike have drawn numerous answers from this fountain of knowledge. Siehr has taken an active part in law reforms of private international law in many countries. Keller/ Siehr’s short introduction to private international law is a masterpiece of clarity and conciseness. Keller/ Siehr’s *Allgemeine Lehren des internationalen Privatrechts* is a masterpiece of thoroughness and deep understanding. There are two more books in preparation on the teachings of private international law, clarifying their intricacies and making their very difficult subject-matter a pleasure to study. If we do not mention other writings here it is only for lack of space not merit.

Of special interest and importance are Siehr’s contributions in the field of cultural property law. His able mind has brought the treasures of Helen of Troy under the canopy of the teachings of law. As is clearly manifest in his fascinating Hague Lectures, accompanied at the time by colourful slides (published, alas

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without those illustrations, in the *Recueil des Cours* 1993-VI), this subject requires intimate knowledge of private and public international law, as well as a good understanding of the substantive laws of different countries. Siehr has been the perfect person to master this field, not least because of his passionate love for art and aesthetics combined with his high moral and ethical standards. His chronicles of art and law published twice a year in the *International Journal of Cultural Property* are often the highlight of that publication.

In addition, Siehr has been a member of the German Society of International Law, the Swiss Association of International Law, the International Law Association (Swiss Branch), the International Cultural Property Society, the International Academy of Estate and Trust Law, the Turkish Law Association, the International Association of Judicial Law, the Association of Family Law, the Association of Procedural Law, the German Association of Comparative Law, Groupe européen de droit international privé, German Council of Private International Law, the ILA (International Law Association) Committee on International Civil and Commercial Litigation and the ILA Cultural Heritage Law Committee. Siehr is also a Corresponding Member of UNIDROIT, Rome, and an Honorary Member of the European Law Students Association (ELSA). His membership is an active one. He never fails to come up with new ideas concerning subject-matters deserving further study and then to carry out an appreciable part of the research himself.

This book is dedicated to a rich man. “All that the castle holds within its depths is his already . . . Treasure upon treasure heap in fair array.” Kurt Siehr’s richness is of the kind that cannot be misappropriated. Quite the contrary! It can – lo, ein Wunder! – be shared ten times more and just keep growing every time it is being further shared.

Yet, we firmly believe that a special gift to make is NOT useless. Therefore, dear Kurt, we give you this modest book with the confidence that you will repay us manifold with your books, articles, legal opinions, and, not least of all, with all those delightful moments that you will continue to share with us in the future.

Jürgen Basedow

Isaak Meier

Anton K. Schnyder

Talia Einhorn

Daniel Girsberger

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