

Garland: American-Brazilian Private International Law

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BOOK REVIEW

American-Brazilian Private International Law (Bilateral Study No. 9 for the Parker School of Foreign and Comparative Law). By PAUL GRIFFITH GARLAND. New York: Oceana Publications, 1959. Pp. 125.

The task which faced the author in his explorations of the unmarked labyrinth of Brazilian conflict law might well be likened to the labors of a civil engineer who would undertake to survey a trail through the almost impenetrable reaches of the *pantanales* (swamplands) in Brazil's Mato Grosso. With practically no organized material on the subject to serve either as a guide or as an adequate reference, the author has ably performed the task of producing a well organized whole from the near chaotic fragments which have constituted Brazilian conflict law.

In view of Brazil's rapidly expanding industrialization and foreign commerce, in both of which Americans are playing such important roles, and of the present influx into Brazil of American citizens, the current publication of this work is most timely. The author has restricted his study almost exclusively to a survey of Brazilian law. This position was well taken, because inclusion of a restatement of American conflict rules would have rendered the work more ponderous and thus have detracted from its usefulness as a ready reference for a succinct statement of Brazilian law. The author is to be complimented for the production of a terse and pithy, but nonetheless adequate, introduction to Brazilian conflict law.

The author has two avowed purposes for his study: (1) to aid in the development of Brazilian conflict law, and (2) to remedy the almost complete lack of English material dealing with it. In my opinion he has made a noteworthy contribution to both, but it is my belief that the author has rendered a real service to the attorney in the United States who handles litigation which is concerned with a reference to Brazilian law. While such litigation has been quite rare in the past, it is to be expected that its volume will noticeably increase as a result of the rapid development of communication between the two countries. This service is rendered both by the text itself and by the reference material which is cited.

However, it is the writer's opinion that the author has made his greatest contribution to counsel who is called upon to advise corporate and individual clients in matters of increased personal or business contact with this great South American neighbor. After a brief and informative introduction consisting of eleven pages, in which are reviewed facts relative to Brazil as a country, its constitutional heritage and structure, its legal institutions, and the influence of the *Bustamante* Code and the Law of Introduction to the Brazilian Civil Code upon Brazilian conflict law, the author devotes the balance of his study to a succinct and well-organized survey of the principles of Brazilian law.

The discussion of Family Law and Matters of Status is of great importance to anyone who contemplates taking up permanent residence (domicile) in Brazil in view of the fact that "Brazilian law attributes considerably more importance to the personal law of the individual than does American law." Under this topic the author considers the capacity for and the effect of marriages performed in Brazil and of those celebrated abroad, marital property

law, the effect of foreign divorce decrees, and the distribution of estates. He points out that, since absolute divorce is forbidden in Brazil, a citizen of that country cannot obtain a foreign divorce which will be effective as such in Brazil and that the right to remarry in Brazil is denied to both parties to a foreign divorce where one of the parties is Brazilian. It is of interest that the civil law *legítima* in some instances restricts the right of a testator to dispose of his estate.

The chapters on Contracts and Party Choice of Law and on Commercial Law discuss matters which should be of major concern to, and point up the practical legal problems facing, individuals or companies in the United States who contemplate expanded trade with Brazilian firms or who plan to establish sales representation, methods of distribution, or a subsidiary in that country. Since capacity to contract is determined by domiciliary law, the author points out that "if an American or Brazilian, domiciled in Brazil, enters into a contract in New York, where capable of doing so, he may not be successfully sued upon it in Brazil if he was incapable at the time under Brazilian law." Practical suggestion is given as to how best to avoid, in a contract, the uncertainty of Brazilian rules of conflict.

In the treatise on Commercial Law is found a discussion of the standing of a foreign corporation under Brazilian law, individual and corporate taxes of residents and non-residents, foreign currency problems including exchange controls and capital transfers, imports and exports, conflict problems involving negotiable instruments, and the protection afforded to foreign patents, trademarks and copyrights.

The study is completed by the treatment of Procedural and Jurisdictional Problems which includes an adequate consideration of the international jurisdiction of Brazilian courts, the choice by the parties of a domestic or foreign court, and the effect and enforcement of foreign judgments.

In the form of an "Annex" is appended a brief consideration of *Renvoi* and Characterization which is concluded with: "The sensible and flexible application of foreign law in Brazilian courts is handicapped by extreme provisions of the law of Introduction which outlaw *renvoi* yet require characterization under foreign law, with no mention of the *lex fori*. Both provisions are out of keeping with historical practice in Brazil and it is to be hoped that the courts will not find themselves handicapped by them in arriving at just decisions."

The Appendices include the author's translation from the original Portuguese of the text of the Law of Introduction to the Brazilian Civil Code, adopted in 1942 and currently in force, "which today is the basic source of conflict law," and also, for the purpose of comparison, the Introduction to the Civil Code, which was adopted in 1916 but replaced in 1942.

Thus, despite a great dearth of source material, the author has done an admirable job of weaving into a beautiful tapestry of Brazilian conflict law the woof of scattered case law and the warp of inadequate statutory provision. This work should serve both as a blazed trail and as a ready compass for those who in the future will retravel and reinvestigate the underdeveloped area which is the Brazilian conflict law.

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