

Doctoral thesis

Kolizyjnoprawne aspekty małżeństw mieszanych na przykładzie prawa Zjednoczonych Emiratów Arabskich oraz Sultanatu Omanu

Conflict of laws aspects of mixed marriages on the example of the law of the United Arab Emirates and the Sultanate of Oman

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Abstract

The allocation of governance authority among nations is essential in addressing conflicts of laws within a globalized world. This text is an attempt to present a modern approach to private international law of the United Arab Emirates and the Sultanate of Oman in the field of local family law. Substantive regulations of family law, based on koranic law, are presented, including the sources of the basic concepts of contemporary Muslim law and a comparison of the notions of shari'ah with concepts adopted in the European legal system. Basic issues related to matrimonial law in the oriental world are discussed, such as issues related to the conclusion of marriage, as well as the grounds and effects of divorce, special attention was paid to the provisions governing mixed marriages, talaq divorces and polygamous marriages. The considerations of individual institutions of the koranic family law are conducted by referring to the characteristics of the institution of marriage and divorce presented in the shari'ah family law doctrine, distinguishing the mutual rights and obligations of the spouses, the customary privileges of the man, and the custody rights issues. On the conflict of law level, understanding the specificity of shari'ah is particularly important due to the possible link between the nationality of the parties, which is also used to discuss the applicable conflict of law regulations of the United Arab Emirates and the Sultanate of Oman.

Critical review of the prevailing approach to the conflict of laws in the Gulf states (UAE, Oman) adopts a focused and detail-oriented analysis - being based on a study of private international laws and rules from the European legal system and drawing heavily on the polish doctrine's achievements in respect of the public policy.

This text identifies the difficulties that result from resolving conflicts of laws through broad and unconstrained legislative references through the public policy to Islamic law. It establishes that nationality and closest connection test would be a preferable way to resolve subject conflicts of laws. Specifically, it recommends a modified polish Private International Law, Act of February 4, 2011, as the ideal basis for law reform in this area of private law, promoting the concept of 'closed' private-law facts of a case as a preliminary issue. The law governing the assessment of the 'closed' facts of a case should be determined by applying the conflict of laws rules of the state with which these facts are linked most closely - which has a great merit in the family law context.

Keywords: conflict of laws, choice of law, private international law, international divorce, public policy, Islamic law reform, shari'ah, closest connection test, United Arab Emirates, Sultanate of Oman