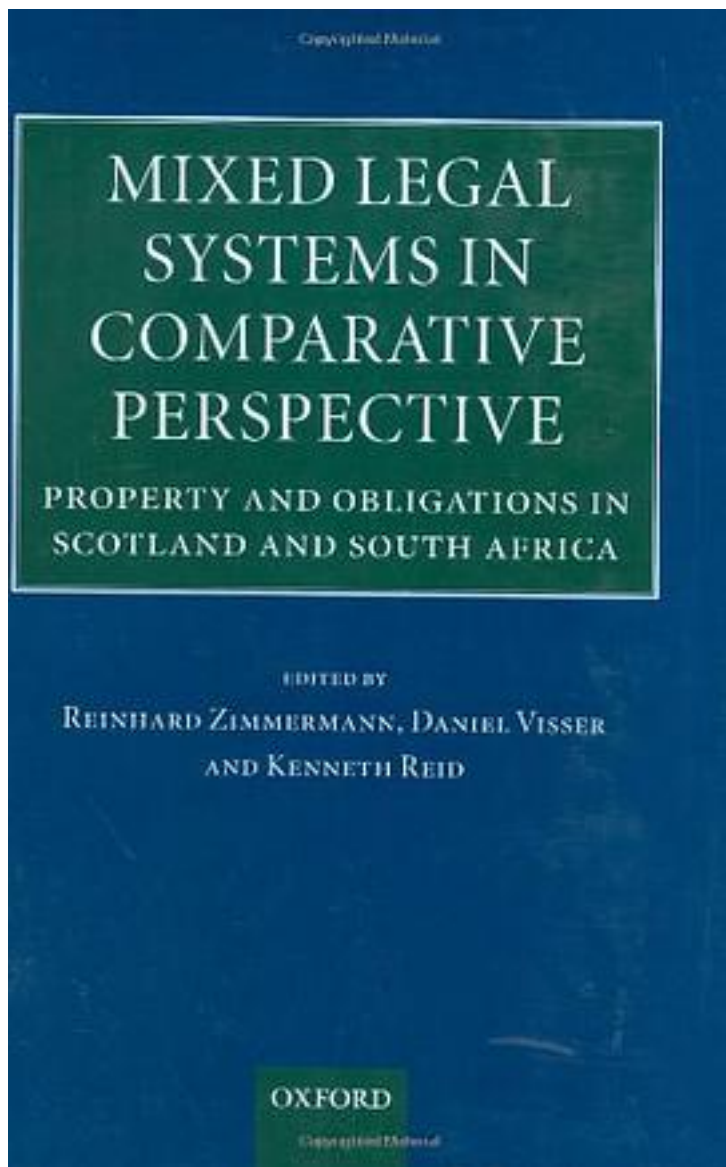


Mixed Legal Systems in Comparative Perspective



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Placed uniquely at the intersection of common law and civil law, mixed legal systems are today attracting the attention both of scholars of comparative law, and of those concerned with the development of a European private law. Pre-eminent among the mixed legal systems are those of Scotland and South Africa. In South Africa the Roman-Dutch law, brought to the Cape by the Dutch East India Company in 1652 was, from the early nineteenth century onwards, infused with and re-moulded by the common law of the British imperial master. In Scotland a more gradual and elusive process saw the Roman-Scots law of the early modern period fall under the influence of English law after the Act of Union in 1707. The result, in each case, was a system of law which drew from both of the great European traditions whilst containing distinctive elements of its own. This volume sets out to compare the effects of this historical development by assessing whether shared experience has led to shared law. Key topics from the law of property and obligations are examined, collaboratively and comparatively, by teams of leading experts from both jurisdictions. The individual chapters reveal an intricate pattern of similarity and difference, enabling courts and legal writers in Scotland and South Africa to learn from the experience of a kindred jurisdiction. They also, in a number of areas, reveal an emerging and distinctive jurisprudence of mixed systems, and thus suggest viable answers to some of the great questions which must be answered on the path towards a European private law.

作者介绍:

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标签

评论

豆瓣上竟然有这本书。这是我在上课时任课教师指定的阅读教材，每周读一章，读了大半本有余。说实话，南非法和苏格兰法离我们的法律体系过于遥远。尽管在法理上、法史上，讨论这种混合法系的制度，应该具有某种纯粹学术研究的快感。但是在急躁着要写论文的今天，哪有时间这样仔细阅读一本与本国法律体系基本没有关联的书籍啊。这本书在写作上，是服务于欧洲统一私法运动的，如果能够把混合法系探讨清楚，那么欧洲统一私法的可能性就更高了。但是，南非法和苏格兰法有时候还是显得非常落后的，比如侵权中的三个要件，不断重复地判断可预见性，可以说在理论上升层面上，显得非常落后。

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