

**Conversations with Kurt Lipstein, Emeritus Professor of Comparative Law:
Some reminiscences over seventy years of the Squire Law Library and the Faculty of
Law, University of Cambridge**

by
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Fourth Interview, Professor Lipstein's Research.

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These interviews were conducted by Lesley Dingle with Professor Lipstein in their shared room on the third floor of the library between 14th April and 1st June 2005. They are preserved on a CD. In this publication we present our transcribed conversations, together with annotated explanations, and have compiled brief biographies of the people mentioned. We also include an index of the sections in which these persons are mentioned.

Questions are italicized, and Professor Lipstein's replies are in plain text. Comments added later are in square brackets in italics – those from the authors are attributed to LD, and where extra information comes directly from Professor Lipstein, KL. Each question is consecutively numbered and it is the basis for the Index. A total of four interviews were held.

70.

We've spoken about the library. I wonder if we could concentrate today on your own research, a great deal of which was conducted in the library. I gather you were the first academic in the UK to introduce the teaching of EU law. It was a very insightful thing to do. What made you take this step, which in retrospect has proved so important?

I wonder myself. I certainly realised this was something very new and different from anything that had happened before and that is why I offered to give a course which was non examinable and open to the whole university on this new Treaty and that developed into a course of lectures and in due course people really felt they must know something about it because when this country joined the Treaty, lawyers had to know something. Only I realised it a little earlier.

71.

You also published a text-book in 1974 on EU law. Was this the first of its kind?

There were books on it before, on the Treaty, especially on its constitutional and judicial aspects and the procedural aspects. Mine only touched on that when necessary. I tried to show the effect of the European Treaty and of the subordinate legislation by Brussels on Private Law in the countries concerned.

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72.

In his article in the recently published work "Jurists Uprooted", Dr Forsyth picks out your Hague lectures in 1972. Great scholarship was displayed here, using mainly original sources. Von Bar says it was the best essay on the development of private international law. Can you recall the circumstances in which you gave these lectures?

I was invited and it is always rather a compliment to be invited by the Curatorium of the Hague Academy to do so, but what I did was I fell back on my lectures in Cambridge, perhaps enlarging certain parts of it in order to make them more acceptable to the continental audience. But it was indeed the result of some of my lectures and my work in Cambridge. One had to go there for a week or two and give a lecture a day and for the rest one was free.

73.

In 1998 you became the Reporter on a Commission set up by the Institute de Droit International which considered the problem of renvoi. Two previous commissions had considered the problem but not resolved it. According to Dr Forsyth your report was a tour de force and a personal triumph.

I never realised it at the time. I went about it systematically and again relying on my experiences as a lecturer at Cambridge. It's true there had been two attempts before to tackle it, but they'd both been theoretical attempts. I tried to do the matter in a practical and pragmatic way. I solved the problem at least in one way, showing how it could be done, not trying to lay down absolute rules.

74.

And Dr Forsyth wasn't the first to describe it as a tour de force?

No, Mr Justice Collins who attended the lectures said something very similar.

75.

*Dr Forsyth also says that judges do not often acknowledge reliance upon academic work but Lord Denning used your conclusions on the criteria for recognition of foreign governments in the case of *Hesperides Hotels v Aegean Holidays* in 1979. This picked up on an idea which you first developed in the 1950s. Do you think that the following of academic ideas is a desirable thing for judges to do?*

If you can write clearly and decisively as to the rules which you are dealing with. If you merely start a long theoretical discussion it doesn't help.

76.

Do you recall how you felt when this judgement came out?

I knew that I was on good terms with Denning. I knew that he was sympathetic with my ways and I was sympathetic with his.

77.

Did you meet him?

Yes I knew him – a very nice man.



78.

Any recollections particularly?

I don't think so. I think I met him always in an official capacity.

79.

You revisited the area of Conflict of Laws before international tribunals sixty years later in a paper you wrote in 2002 (75 Jahre Max-Planck-Institut für Privatrecht). According to Dr Forsyth you are the leading scholar in this area. What made you go back to this topic 60 years later?

There is a general burden on all teachers, namely to write when some of their colleagues reach the age of 60, 70 or 80 to get a book devoted to their life. You have to find a topic which is not too long and doesn't cover what you are just working on a bigger scale. So I saw that there was more practice and I knew I had written on it at length to see how this topic had developed over the last 60 years. [LD: *Christopher Forsyth (now Professor) has mentioned subsequently to me that during the period 1975-76, when he was reading for his LLB, both Kurt Lipstein and Otto Kahn Freund (who was visiting Goodhart Professor), were a great influence upon him when he took courses in Comparative Law and Conflict of Laws*].

80.

You were appointed by the Lord Chancellor to advise the UK Government on the Hague Treaties. How difficult was it working with a Government department?

The Government departments are very practical and they were not always in sympathy with the international ways I had dealt with. I did my work independently. Whether or not I succeeded in getting it translated into English law is another matter. I think I dealt with the administration of estates.

81.

You have also written on the reception of western law into Turkey and India. You must have read widely on these jurisdictions. Although the Squire has reasonable coverage of Indian materials, the Turkish collection is weak. How did you obtain your material?

My topic was the reception of Swiss law in Turkey, therefore I only had to find out how far Swiss law was taken over in Turkey and then look how it operated. So it only meant looking at Swiss law in another country.

82.

*You appeared before the International Court of Justice in *Liechtenstein v Guatemala (The Nottebohm Case)*. Was it difficult to procure material for such a case?*

I didn't have to because the case was prepared by Lauterpacht's father who was at that time was still an advocate and not yet judge at the International Court of Justice. I took over from him when he became a judge and couldn't continue. Therefore I was merely an inheritor.



83.

As I understand you procured a very beautiful car which you still have today?

That is correct. And it is known after the case - was named after the Nottebohm case. But I shouldn't forget that my first work was with Gutteridge on unjustifiable enrichment in the Conflict of Laws. We both wrote that together. I prepared it and he supervised it. And that filled the gap in Private International Law.

84.

Dr Forsyth's article in "Jurists Uprooted", concludes that your wealth of experience cannot be achieved again by anybody because you were brought up in the continental tradition and yet spent so much of your life immersed in the Common Law. Do you think this is a valid point?

Yes because it means that you have to face people who are willing to change from one country to another, to change their lifestyle. It has happened before. After all, Oppenheim moved from Germany and became an English lawyer. And it can happen again. But it does happen mainly if there are technical disturbances in the world which force people to change from one country to another. That doesn't happen that often. So there always will be people who change from one system to another. But to the extent that it happened in the 30s and 40s it is unlikely to happen again.

85.

Is there something lost because academics with such a background are not around anymore?

I am sure there is. I have said somewhere that the massive experience which people brought who moved in the 30s, 40s and 50s will not easily be replaced because this mass movement is most unlikely to happen again.

86.

What in your opinion has been the highlight of your academic career?

I aimed at an academic career. Therefore being appointed to Cambridge Faculty was probably the best and the earliest. Two things which I aimed at in my later life was I was to have the title of Queen's Council, and became a member of The Institute of International Law, and I achieved that too, though later in my life. Those three things were the three highlights

