

PREMIERE COMMISSION
La substitution et l'équivalence en droit international privé

FIRST COMMISSION
Substitution and Equivalence in Private International Law

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RESOLUTION

The Institute of International Law,

Recalling that ensuring the harmony and continuity of legal relationships across borders is a fundamental objective of private international law;

Considering that achieving that objective calls for the taking into account of similarities of legal relationships notwithstanding differences between the laws involved;

Adopts the following Resolution:

Article 1

Substitution allows a legal relationship or act originating in a given State to entail all or part of the effects attached to a similar relationship or act under the law of another State.

Article 2

Equivalence is the decisive requirement in matter of substitution. It is based on a functional comparison between the rules of the law governing the effects of the legal relationship or act and the rules of the law under which the legal relationship or act was created.

Article 3

Substitution does not require the laws under consideration to be identical; a similarity between the aims and interests respectively pursued by those laws is sufficient.

Article 4

Equivalence is determined according to the law applicable to the effects of the legal relationship or act which is the object of the comparison.

The possibility and scope of substitution are determined by that same law.

Article 5

To an act requiring the intervention of an authority such as a judge, notary, or registrar, an equivalent act by the authority of another State is substituted if the respective authorities exercise the same or similar functions. As the case may be, such authority may be a religious authority.

Article 6

In respect of the form of acts, if the local law does not know the type of act as provided for by the law applicable to the substance, it is sufficient to comply with the requirements as to form determined by the local law in respect of an act that is functionally equivalent.