Vorlesung / Course
Introduction to Comparative Law
Einführung in die Rechtsvergleichung

Winter term 2018-2019

http://www.eastlaw.uni-kiel.de
17.10.2018: Basic questions and structures of comparative law
24.10.2018 Structures and methods of comparative law
31.10.2018: Holiday
07.11.2018: Structures (cont’d). Methods of comparative law
14.11.2018: Methods (fin.). Legal families (overview)
21.11.2018: German legal family (deutscher Rechtskreis)
28.11.2018: French legal family
05.12.2018: Anglo-American legal family
12.12.2018: The legal systems in Northern and Eastern Europe
19.12.2018: Legal systems in Asia
09.01.2019: Religious laws, in particular Islamic law
16.01.2019: Contract law I (Vertragsrecht)
23.01.2019: Contract law II
30.01.2019: Torts law (Deliktsrecht)
06.02.2019: Property law (Sachenrecht)
13.02.2019: Civil procedure
Anglo-American legal family

• **Countries of the AA legal family** („common law“)
  - USA
  - UK (England/Wales, [with modification] Scotland, Northern Ireland), British Overseas Territories, Ireland, Commonwealth (Australia, Canada, New Zealand, partly Africa, India, Pakistan, Hongkong and others)

• **Common elements**, in part. UK – USA: **Common Law**: vs. **Civil Law** – vs. **equity**. **History**.

• „Internal“ **differences**: constitutional law, different realizations of common law and statute law. Court system.
UK and USA

United Kingdom of Great Britain and Northern Ireland: 64 million inh., 242.000 km², capital London, constitutional monarchy, union of 4 countries (England, Wales, Scotland, Northern Ireland) with different degrees of autonomy. Plus ca. 14 British Overseas Territories and Crown Dependencies (Isle of Man, Guernsey, Jersey), permanent member of UN Security Council, member of (British) Commonwealth of Nations, member of EU (since 1973).


„Others“: e.g. Commonwealth countries
### Current overseas territories

The fourteen British Overseas Territories are:

<table>
<thead>
<tr>
<th>Flag</th>
<th>Arms</th>
<th>Name</th>
<th>Location</th>
<th>Motto</th>
<th>Area</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Flag_of_Akrotiri_and_Dhekelia.svg/220px-Flag_of_Akrotiri_and_Dhekelia.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_Akrotiri_and_Dhekelia.svg/220px-Arms_of_Akrotiri_and_Dhekelia.svg" alt="Arms" /></td>
<td>Akrotiri and Dhekelia</td>
<td>Mediterranean (Cyprus)</td>
<td>255 km² (98 sq mi)</td>
<td></td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/b/bd/Flag_of_Anguilla.svg/220px-Flag_of_Anguilla.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_Anguilla.svg/220px-Arms_of_Anguilla.svg" alt="Arms" /></td>
<td>Anguilla</td>
<td>Caribbean and North Atlantic Ocean</td>
<td>Strength and Endurance</td>
<td>91 km² (35.1 sq mi)</td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/0/0c/Flag_of_Bermuda.svg/220px-Flag_of_Bermuda.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_Bermuda.svg/220px-Arms_of_Bermuda.svg" alt="Arms" /></td>
<td>Bermuda</td>
<td>North Atlantic Ocean</td>
<td>Quo fata ferunt (Latin: &quot;Whither the Fates carry [us]&quot;)</td>
<td>54 km² (20.8 sq mi)</td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/6/6e/Flag_of_British_Antarctic_Territory.svg/220px-Flag_of_British_Antarctic_Territory.svg" alt="Flag" /></td>
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<td>British Antarctic Territory</td>
<td>Antarctica</td>
<td>Research and discovery</td>
<td>1,709,400 km² (660,000 sq mi)</td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/4/40/Flag_of_British_Indian_Ocean_Territory.svg/220px-Flag_of_British_Indian_Ocean_Territory.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_British_Indian_Ocean_Territory.svg/220px-Arms_of_British_Indian_Ocean_Territory.svg" alt="Arms" /></td>
<td>British Indian Ocean Territory</td>
<td>Indian Ocean</td>
<td>In tutela nostra Limuria (Latin: &quot;Limuria is in our charge&quot;)</td>
<td>46 km² (18 sq mi)</td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/7/7f/Flag_of_Cayman_Islands.svg/220px-Flag_of_Cayman_Islands.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_Cayman_Islands.svg/220px-Arms_of_Cayman_Islands.svg" alt="Arms" /></td>
<td>Cayman Islands</td>
<td>Caribbean and North Atlantic Ocean</td>
<td>He hath founded it upon the seas</td>
<td>264 km² (101.9 sq mi)</td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/7/7e/Flag_of_Falkland_Islands.svg/220px-Flag_of_Falkland_Islands.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_Falkland_Islands.svg/220px-Arms_of_Falkland_Islands.svg" alt="Arms" /></td>
<td>Falkland Islands</td>
<td>South Atlantic Ocean</td>
<td>Desire the right</td>
<td>12,173 km² (4,700 sq mi)</td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/7/7d/Flag_of_Montserrat.svg/220px-Flag_of_Montserrat.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_Montserrat.svg/220px-Arms_of_Montserrat.svg" alt="Arms" /></td>
<td>Montserrat</td>
<td>Caribbean and North Atlantic Ocean</td>
<td>A people of excellence, moulded by nature, nurtured by God</td>
<td>101 km² (39 sq mi)</td>
</tr>
<tr>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/7/7e/Flag_of_Pitcairn_Islands.svg/220px-Flag_of_Pitcairn_Islands.svg" alt="Flag" /></td>
<td><img src="https://upload.wikimedia.org/wikipedia/commons/thumb/3/31/Arms_of_Pitcairn_Islands.svg/220px-Arms_of_Pitcairn_Islands.svg" alt="Arms" /></td>
<td>Pitcairn Islands</td>
<td>Pacific Ocean</td>
<td></td>
<td>45 km² (17 sq mi) (all islands)</td>
</tr>
</tbody>
</table>
Legislation

This section contains all primary and secondary legislation consolidated to date. Items will continue to be added as and when they become available. The process of consolidation will be on-going with all legislation being amended and placed on the database as soon as possible after it comes into force.

If you are new to this website it is recommended that you first click on the button marked “Help” below for assistance on how to enter search criteria, open and save documents, etc. To search the site click on the “Search” button below and enter the relevant search criteria in the form.

Whilst the Gibraltar Law Office - Admin Office and Gazette has taken considerable care to find all amending enactments if any person finds any inaccuracies please click on the report errors to text link above.

Search for legislation.
Help on how to use the site.
Contact Us to send your comments on this website.
Laws of Gibraltar - Judgments
The Commonwealth of Nations, commonly known as the Commonwealth (formerly the British Commonwealth), is an intergovernmental organisation of 53 member states that were mostly territories of the former British Empire.

The Commonwealth operates by intergovernmental consensus of the member states, organised through the Commonwealth Secretariat and Non-governmental organisations, organised through the Commonwealth Foundation.
Remarks on general history of UK and USA

- **England and UK**: Prehistory (e.g. Stonehenge, Celtic culture) – since 1st century Roman conquest – since 5th century Angles and Saxons - 1066 Norman conquest - 1707 (England + Scotland: UK) – 1801 (Acts of Union: Ireland enters UK) – 1922 (in UK remains Northern Ireland), 1973 UK enters EEC, …

- **USA**: 1492 Christopher Columbus discovers America; USA founded in 1776 (Declaration of Independence, first independence from colonialist England), American Civil War 1861-1865, „superpower“ since WW II.

- **Others**: …
Remarks on the legal history of England and the U.S.

- **England (as part of UK)**
  - Magna Carta 1215 – no written Constitution?
  - Common Law (since 12 century) and Equity – English approach; „writs“; strict observance of precedents.
  - Influence of EU law. **Vote on Brexit (2016).**

- **United States of America**
  - Constitution of 1787 + 10 Amendments (Bill of Rights, 1791), federal state,
  - Common Law and Equity - US approach: more flexible approach as to precedents
  - Great power approach as to international law.
Brexit in the Supreme Court

Can the government launch Brexit without an Act of Parliament? That’s what the UK’s highest court will be asked to consider when the government’s appeal opens on 5 December.

You can watch the entire four-day hearing on the UK Supreme Court’s website and some of it will be shown live on television. So what should you look out for?

The government is challenging the need to pass a law to trigger Brexit

Three senior judges sitting in the Divisional Court (part of the High Court) decided on 3 November that David Davis, who as Brexit Secretary is the minister responsible for exiting the European Union, cannot use the Crown’s inherent powers to trigger Brexit.

It was a victory for the two claimants, Gina Miller and Deir Dos Santos.

The judges were careful not to say what the government needed to do before it could withdraw from the EU. But if ministers cannot use their executive powers to give notice under Article 50 of the Treaty on European Union, then it’s thought that nothing less than an Act of Parliament will do.
Marbury v. Madison, 5 U.S. 137 (1803), is a landmark United States Supreme Court case in which the Court formed the basis for the exercise of judicial review in the United States under Article III of the Constitution. The landmark decision helped define the boundary between the constitutionally separate executive and judicial branches of the American form of government.

The case resulted from a petition to the Supreme Court by William Marbury, who had been appointed Justice of the Peace in the District of Columbia by President John Adams but whose commission was not subsequently delivered. Marbury petitioned the Supreme Court to force the new Secretary of State James Madison to deliver the documents. The Court, with John Marshall as Chief Justice, found firstly that Madison's refusal to deliver the commission was both illegal and remediable. Nonetheless, the Court stopped short of compelling Madison (by writ of mandamus) to hand over Marbury's commission, instead holding that the provision of the Judiciary Act of 1789 that enabled Marbury to bring his claim to the Supreme Court was itself unconstitutional, since it purported to extend the Court's original jurisdiction beyond that which Article III established. The petition was therefore denied.
Art. III US Const. 1787 (on judicial power) (excerpt)

„the Supreme Court shall have original jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and those in which a state shall be a party. *In all other cases, the Supreme Court shall have appellate jurisdiction*.“
Basic elements of the Anglo-American legal family

• Sources of law (selection): US Const. 1787/1789. EU dimension in UK.
• Typical legal institutes/theories of common law: e.g. in contracts, torts, trust
• Methodical characteristics: „doctrine of precedent“ (or doctrine of stare decisis)

• Legal literature:
  • Internet
  • LexisNexis, Westlaw, HeinOnline.
  • OUP, Sweet & Maxwell, Hart Publishing, Butterworths; West Publishing [Thomson Reuters], Matthew Bender [Reed Elsevier]
Particular elements of English law

- History: Magna Carta Libertatum (1215), development of case law since 12 century.
- Distinguish: UK (since 1707) – England/Wales, Scotland, Northern Ireland
- Important figures, e.g. William Blackstone, Lord Denning
- Constitutional law
- Substantive private law (Common Law): e.g. contracts law („consideration“), agency, torts, property, trust
Alfred Thompson "Tom" Denning, Baron Denning, OM, PC, DL, KC (23 January 1899 – 5 March 1999), commonly known as Lord Denning, was a British lawyer and judge. He gained degrees in mathematics and law at Oxford University, although his studies were disrupted by his service in the First World War. He then began his legal career, distinguishing himself as a barrister and becoming a King's Counsel in 1938.

Denning became a judge in 1944 with an appointment to the Family Division of the High Court of Justice and was made a Lord Justice of Appeal in 1948 after less than five years in the High Court. He became a Lord of Appeal in Ordinary in 1957 and after five years in the House of Lords returned to the Court of Appeal as Master of the Rolls in 1962, a position he held for twenty years. In retirement he wrote several books and continued to offer opinions on the state of the common law through his writing and his position in the House of Lords.

One of the most publicly known judges thanks to his report on the Profumo Affair, Denning was held in high regard by much of the judiciary, the Bar and the public, and was noted for his bold judgments running counter to the law at the time. …
Procedural law and legal education in England

- Court system and civil procedure in England
  - Court system: Magistrates Courts - County Courts - High Court, Court of Appeal, Supreme Court (formerly House of Lords)  
    [Supr. Court also for UK]
  - Judicial „style“

- Legal education, legal profession (in part. solicitors and barristers)
The Supreme Court, as well as being the final court in the United Kingdom, also plays a significant role in the UK judicial system. As an appeal court, the Supreme Court cannot consider cases that have already been determined by another court.

The Supreme Court:
- is the final court of appeal for all United Kingdom courts except for the courts of Northern Ireland.
- hears appeals on arguable points of law or fact arising from judgments of the High Court of Justice and other courts in England, Wales, and Northern Ireland.
- concentrates on cases of the greatest public importance.
- maintains and develops the role of the highest court in the legal system.

The Supreme Court hears appeals from the following jurisdictions:
- England and Wales
- Northern Ireland
- Inner London Family Division

The Supreme Court also has a role in the UK Judicial system:
- UK Judicial system
- The Supreme Court and Europe
- Introductory film

Corporate information

Who’s who
United States law

• History
• Important figures, e.g. Joseph Story, Karl N. Llewellyn, Louis Brandeis, Benjamin Cardozo, Richard Posner

• Substantive private law:
  - fed. and state statutes. Uniform Laws, e.g. UCC.
  - Common Law. Particular example: protection of privacy. Restatement of the Law
Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938), is a landmark decision by the Supreme Court of the United States in which the Court held that federal courts did not have the judicial power to create general federal common law when hearing state law claims under diversity jurisdiction. In reaching this holding, the Court overturned almost a century of federal civil procedure case law, and established the foundation of what remains the modern law of diversity jurisdiction as it applies to United States federal courts.
Joseph Story was an American lawyer. At the age of only 32 years he became in 1811 the youngest ever judge at the US Supreme Court. He is well-known both as a judge and as a legal writer.
Procedural law and legal education in the US

- **Court system and civil procedure**
  - Court system: federal courts, state courts.
  - Some characteristic elements: jury trial, pre-trial discovery, contempt of court, class actions, „American rule of costs“, contingency fee
  - Judicial style

- **Legal education**, legal profession.
State Court Organization Chart

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York, Civil
New York, Criminal
New York, Civil
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
South Dakota
Tennessee
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
Texas

California Court Structure

State High Court
Court(s) of Last Resort
Supreme Court

Intermediate Court
Intermediate Appellate Court(s)
Court of Appeals

Trial Court
Court(s) of General Jurisdiction*
Superior Court

* When courts of general jurisdiction act in an appellate capacity, their decisions may appear in the Intermediate Court Zone of the history display.

Colorado Court Structure

State High Court
Court(s) of Last Resort
Supreme Court

Intermediate Court
Intermediate Appellate Court(s)
Court of Appeals

Trial Court
Court(s) of General Jurisdiction*
Superior Court

* When courts of general jurisdiction act in an appellate capacity, their decisions may appear in the Intermediate Court Zone of the history display.
US Supreme Court
John Roberts, Chief Justice US Supreme Court (since 2005)

John Glover Roberts, Jr. (born January 27, 1955) is the 17th and current Chief Justice of the United States. He has served since 2005, having been nominated by President George W. Bush after the death of Chief Justice William Rehnquist. He has been described as having a conservative judicial philosophy in his jurisprudence.

Roberts grew up in northern Indiana and was educated in a private school before attending Harvard College and Harvard Law School, where he was managing editor of the Harvard Law Review. After being admitted to the bar, he served as a law clerk for Judge Henry Friendly and then Justice Rehnquist before taking a position in the Attorney General's office during the Reagan Administration. He went on to serve the Reagan Administration and the George H. W. Bush administration in the Department of Justice and the Office of the White House Counsel, before spending 14 years in private law practice. During this time, he argued 39 cases before the Supreme Court.

In 2003, he was appointed as a judge of the D.C. Circuit by President George W. Bush, where he was serving when he was nominated to be an Associate Justice of the Supreme Court, initially to succeed retiring Justice Sandra Day O'Connor. When Chief Justice Rehnquist died before Roberts's confirmation hearings, Bush renominated Roberts to fill the newly vacant center seat.
## List of 100 largest law firms by revenue

This is a list of the world's largest law firms by revenue.[1]

<table>
<thead>
<tr>
<th>Rank</th>
<th>Name</th>
<th>Revenue</th>
<th>Office Reach</th>
<th>Headquarters</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ▲</td>
<td>Baker &amp; McKenzie</td>
<td>$2,419.0m [2]</td>
<td>International</td>
<td>USA (Chicago, IL)</td>
</tr>
<tr>
<td>2 ▲</td>
<td>Skadden, Arps, Slate, Meagher &amp; Flom</td>
<td>$2,320.0m [3]</td>
<td>International</td>
<td>USA (New York, NY)</td>
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<tr>
<td>3 ▲</td>
<td>Norton Rose Fulbright</td>
<td>$2,090.0m [4]</td>
<td>International</td>
<td>UK</td>
</tr>
<tr>
<td>4 ▲</td>
<td>Linklaters</td>
<td>$1,940.0m [5]</td>
<td>International</td>
<td>UK (London)</td>
</tr>
<tr>
<td>5 —</td>
<td>Freshfields Bruckhaus Deringer</td>
<td>$1,930.0m [5]</td>
<td>International</td>
<td>UK (London)</td>
</tr>
<tr>
<td>5 ▲</td>
<td>Allen &amp; Overy</td>
<td>$1,930.0m [5]</td>
<td>International</td>
<td>UK (London)</td>
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<tr>
<td>6 ▼</td>
<td>Clifford Chance</td>
<td>$1,874.5m</td>
<td>International</td>
<td>UK (London)</td>
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<tr>
<td>7 ▼</td>
<td>Latham &amp; Watkins</td>
<td>$1,821.0m</td>
<td>International</td>
<td>USA (Los Angeles, CA)</td>
</tr>
<tr>
<td>8 ▲</td>
<td>Hogan Lovells</td>
<td>$1,718.0m</td>
<td>International</td>
<td>UK (London) USA (Washington, DC)</td>
</tr>
<tr>
<td>9 —</td>
<td>Jones Day</td>
<td>$1,520.0m</td>
<td>International</td>
<td>USA (Cleveland, OH)</td>
</tr>
<tr>
<td>10 ▲</td>
<td>Kirkland &amp; Ellis</td>
<td>$1,428.0m</td>
<td>International</td>
<td>USA (Chicago)</td>
</tr>
<tr>
<td>11 ▼</td>
<td>Sidley Austin</td>
<td>$1,357.0m</td>
<td>International</td>
<td>USA (Chicago)</td>
</tr>
<tr>
<td>12 ▼</td>
<td>White &amp; Case</td>
<td>$1,307.0m</td>
<td>International</td>
<td>USA (New York)</td>
</tr>
<tr>
<td>13 ▲</td>
<td>Weil, Gotshal &amp; Manges</td>
<td>$1,233.0m</td>
<td>International</td>
<td>USA (New York)</td>
</tr>
<tr>
<td>14 ▲</td>
<td>Greenberg Traurig</td>
<td>$1,173.0m</td>
<td>International</td>
<td>USA (Miami, FL)</td>
</tr>
<tr>
<td>15 ▼</td>
<td>Mayer Brown</td>
<td>$1,118.0m</td>
<td>International</td>
<td>USA (Chicago)</td>
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<tr>
<td>16 ▲</td>
<td>Reed Smith</td>
<td>$1,080.0m</td>
<td>International</td>
<td>USA (Pittsburgh)</td>
</tr>
<tr>
<td>17 ▼</td>
<td>Morgan, Lewis &amp; Bockius</td>
<td>$1,068.5m</td>
<td>International</td>
<td>USA (Philadelphia, PA)</td>
</tr>
</tbody>
</table>
Please add your own comparison of court systems

<table>
<thead>
<tr>
<th>Comp. Questions</th>
<th>France</th>
<th>Germany</th>
<th>UK</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number inh., size</td>
<td>63 mio, 670 tkm²</td>
<td>80 mio, 357 tkm²</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unitary/federal</td>
<td>Unitary</td>
<td>Federal: top level central, lower level state</td>
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<tr>
<td>Divisions in court system</td>
<td>General courts – administrative courts – others</td>
<td>General courts – administrative courts – others</td>
<td></td>
<td></td>
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<tr>
<td>Instances</td>
<td>3</td>
<td>3 (4 layers)</td>
<td></td>
<td></td>
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<tr>
<td>Legislation</td>
<td>Code de l’org. jud.</td>
<td>Court Org. Act</td>
<td></td>
<td></td>
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<tr>
<td>Number of courts</td>
<td>3300 j.p.</td>
<td>700 AG</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>500 t.i.</td>
<td>120 LG</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>200 t.g.i.</td>
<td>24 OLG</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>35 c.a.</td>
<td>1 BGH</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>1 C.cass.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Evaluation?</td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

UK

USA