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
Religious laws

- Christian law
- Jewish law: Israel
- Hindu law: model India
- Islamic law (Sharia): e.g. Egypt, Pakistan, Saudi Arabia, ... Not: Turkey (but Islamic traditions in society)
Christian law

• Bible: Old Testament and New Testament
• Roman-Catholic Church, Orthodox Churches, Protestant Churches, others
• Canon law v. legal relations between the State and Churches (religious communities)
• Corpus juris canonici (1917 – 1983)
• Christian personal law in India: Indian Christian Marriage Act 1872
Corpus juris canonici

- General part (e.g. definitions)
- God’s People: rights and duties of all believers, structure of church etc.
- Preaching
- Sacraments
- Property of the Church
- Church penalties
- Procedural law
Codex Iuris Canonici

Auctoritate Ioannis Pauli PP. II Promulgatus
Datum Romae, die xxv Ianuarii, anno MCMLXXXIII

I IntraText Edition CT
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Help: Overview - Text & search - Lists - Concordances - Glossary - For easier reading...

- Table of Contents -

Statistics and graphs (Occurrences: 84012. Words: 13094)

Liber I: De Normis Generalibus (Cann. 1 – 6)

- Titulus I de Legibus Ecclesiasticis (Cann. 7 – 22)
- Titulus II de Consuetudine (Cann. 23 – 28)
- Titulus III de Decretis Generalibus et de Instructionibus (Cann. 29 – 34)
- Titulus IV de Actibus Administrativis Singularibus (Cann. 35 – 93)
  - Caput I Normae Communes
  - Caput II de Decretis et Praeceptis Singularibus
  - Caput III de Rescriptis
  - Caput IV de Privilegiis
  - Caput V de Dispensationibus

- Titulus V de Statutis et Ordinibus (Cann. 94 – 95)
- Titulus VI de Personis Physicis et Iuridicis (Cann. 96 – 123)
  - Caput I de Personarum Physicarum Condione Canonica
  - Caput II de Personis Iuridicis
Jewish law

• Bible (Torah, roughly equivalent to „Old Testament“)
• Talmud (Mishnah – Gemara), ca. 3-5th century CE
• Hallacha - Aggadah
• Examples of contents
• Use of Jewish law today, in particular Israel
• Teaching of Jewish law
The law of Israel

• Existence of the State of Israel since 1948 (declaration of independence)

„Mixed“ jurisdiction:
• elements of Anglo-American law: British tradition in particular in procedural law, US influences partly in public law
• elements of Continental European law, in particular in civil law (project of a Civil Code)
• Family law matters governed by religious law and administered partly by religious courts.
Hindu Law and Indian Law

- **(Legal) history:** Hinduism („caste system“), Buddhism, „Vedas“ (2000 – 1000 BC), shastras, Mogul Empire (since ca 1500 CE). Since 1600 Dutch, then English colonialism, 1947 independence.

- **Common law system** with some „broad“ statutes, e.g. Indian Contracts Act.

- **In family and succession matters religious laws apply,** in particular Hindu and Muslim law. Partly modified by the State (e.g. Hindu Marriage Act and Hindu Widows‘ Remarriage Act). In case of „mixed marriages“ or secular orientation alternative legislation, e.g. Marriage Registration Act.
Islamic law

- Islam (some basics)
- Sharia – Fikh (= Islamic legal scholarship and knowledge)
- Sources of Islamic Law
- Methods of Islamic Law
- Sunnite – Shiite law
- (Sunnite) Legal schools
- The role of the State
- Jurisprudence
Islam (basics)

• Islam (= submission to God)
• Monotheistic religion based on revelations by God to Prophet Muhammad around 600 CE.
• Holy book Koran (Quran) [= revelation], 113 suras in Arabic, written in the last 23 years of the life of Muhammad. Relevance for law.
• Unity of religion, state and society
• Life of Muhammad and succession. 4 „righteous“ caliphs.
• Sunnis – Shiites (Sunni – Shia muslims)
• Islamic countries
Sources of Islamic law

• Koran (Quran): „holy book“
• Sunnah – Hadith: sayings and deeds of Muhammad
• Idjma: consensus of Islamic community
• Quiyas: analogy
• Ijtihad: independent reasoning
Schools of Islamic Law

- (Sunnite) legal schools
- Hanefit: Abu Hanifa (died 767 CE): Turkey, Central Asia, India
- Shafiit: Al-Shafii (767 — 820 CE): Indonesia, Egypt, Somalia ...
- Hanbalit: Ahmad ibn Hanbal (780 – 855 CE): Saudi Arabia

See also: Wahhabism, Salafism
Islamic Law and the State

• Role of state laws („kanun“, turk.)
• Mejelle (Ottoman Empire, 1876 et seq.)

= the Civil Code of the Ottoman Empire in the late 19th and early 20th centuries. It was the first attempt to codify a part of the Sharia-based law of an Islamic state.

See also Anglo-Muhammadan law.
Mecelle (Mejelle etc.)

1.1 Book 1: Sale
1.2 Book 2: Hire
1.3 Book 3: Guarantee
1.4 Book 4: Transfer of Debt
1.5 Book 5: Pledges
1.6 Book 6: Trust and Trusteeship
1.7 Book 7: Gift
1.8 Book 8: Wrongful Appropriation and Destruction
1.9 Book 9: Interdiction, Constraint and Pre-emption
1.10 Book 10: Joint Ownership
1.11 Book 11: Agency
1.14 Book 14: Actions
1.15 Book 15: Evidence and Administration of an Oath
1.16 Book 16: Administration of Justice by the Courts
Law of Iraq

- **Constitutional law:** The current Constitution of Iraq was approved in a national referendum in October 2005 and stipulates the format of the new republican government, and the rights, and responsibilities of the Iraqi people. The Constitution promises several civil liberties including freedom of speech, freedom of religion, freedom of peaceful assembly, freedom of expression, a free press, and a right to have a private life. All such personal liberties contain two main exemption clauses: the Iraqi Council of Representatives has the power to define what these freedoms mean, and, that no freedom may conflict with Islamic morality. Islam is the official state religion, and no law may be enacted or enforced that violates the "undisputed" teachings of Islam.

- **Civil Code:** The Iraqi Civil Code was principally drafted by Abd El-Razzak El-Sanhuri, a French-educated Egyptian jurist who was also the principal drafter of the Egyptian Civil Code. In 1943, almost a decade after the push for a comprehensive modern code began in Iraq, Al-Sanhūrī was invited to Iraq by the Iraqi government and asked to complete the Civil Code. Working as the chairman of a committee of Iraqi jurists, using the Egyptian Civil Code as a model, he completed a draft of what would become the modern Iraqi Civil Code. The Iraqi Code is based on the Egyptian and before that French Code Civil. Although it incorporates Islamic elements, its overall structure and substance is principally based on continental civil law.
Examples of rules of Islamic Law

• Contracts law: „keep the contracts“ (Quran), prohibition of taking interest in loans (Islamic banking)
• Family law: limited validity of marriages with non-Muslims, tetragamy, talaq, mahr
• Law of inheritance: limited validity of wills, limited inheritance rights of women
General provisions

Article 1

1- The legislative texts in this law apply to all the issues discussed in these texts in letter and spirit.

2- If there is no applicable legislative text, the judgment shall be adjudicated in accordance with the Islamic Shari’a principles that are most relevant to this law.

3- Courts find guidance in all of this in the stipulations adopted by the judiciary and the Islamic jurisprudence (Fiqh) in Iraq and other Islamic countries where laws are close to Iraqi ones.

Chapter 1 – Marriage

Section 1 – Marriage and Betrothal

Article 3

1- Marriage is a contract between a man and a woman who is lawfully permissible to him, the purpose of which is to establish a bond for a mutual life and procreate children.

4- Marrying more than one woman is not allowed except with the authorization of the qadi (judge). Granting this authorization is dependant on the fulfillment of the following two conditions:

a- the husband should have the financial capacity to provide for more than one wife

b- there is a legitimate interest.

5- If justice between wives is feared, polygamy may not be allowed. The issue would then be left to the judge’s determination.

6- Each person who concludes a marriage contract with more than one wife, contrary to the stipulations of paragraphs 4 and 5, shall be sentenced to no more than one year of imprisonment or charged with a fine not exceeding 100 Dinars or both.
Syria:

Area: ca 185,000 km²
Population 18 Mio 
(2018 estimate; from 21 Mio in 2010)

Religion: 87 %
Muslim, others

Civil War since 2011

President Bashar al-Assad 
(since 2000)
Law in Syria

Legal system/history: Syria centre of Umayyad caliphate until Abbasid Revolution of 756. Succession of Arab, Crusader, Kurdish, and Mamluke rulers, then under **Ottoman control from 1516**. Following expulsion of Ottomans after WWI, League of Nations declared **French mandate over region in 1922**, from which Syria gained **independence in 1946**. Syrian Law of Personal Status 1953 covers matters of personal status, family relations and intestate and testamentary succession. Article 305 of SLPS directs that residuary source of law is most authoritative doctrine of Hanafi school. Major amendments made to SLPS in 1975, particularly relating to areas of polygamy, dower, maintenance, mut’a [temporary marriage], cost of nursing, custody of children, and guardianship.

Important laws: Constitution 2012 (following 1973); Civil Code 1949; Law of Personal Status 1953 (as amended by Law no. 34/1975); Code of Civil Procedure 1953.
GENEVA (AP) — A U.N. humanitarian aid official said Thursday that Syria’s government has withdrawn a controversial law that allowed authorities to seize property left behind by civilians who fled the country’s civil war, calling it a good sign that “diplomacy can win — even in Syria.”

Jan Egeland said he was told of the decision by Russia, a key ally of Syrian President Bashar Assad.

Egeland also said Assad’s government has agreed to allow convoys of aid to enter the desolate Rukban area near Syria’s border with Jordan. He said the U.N. and its partners haven’t gotten access since January to the area where up to 50,000 civilians have been stuck for months, calling it one of Syria’s most “desperate places.”

Egeland, who heads aid issues in the office of U.N. Syria envoy Staffan de Mistura, but whose day job is leading the Norwegian Refugee Council, also confirmed he will leave the U.N. post in November. He spoke a day after de Mistura told the U.N. Security Council that he himself is leaving for “personal” reasons.

State Department spokeswoman Heather Nauert heaped praise on de Mistura, saying he had worked tirelessly to try to end the Syria crisis. She said his aim to “finally convene” a committee to write a new Syrian constitution in the final weeks of his tenure would mark an “important step forward in the political process.”
Those who devour usury will not stand except as stands one whom the Evil One by his touch hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offence) are Companions of the Fire; they will abide therein (forever).

Allah will deprive usury of all blessing, but will give increase for deeds of charity; for He loveth not creatures ungrateful and wicked.

Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their Lord: on them shall be no fear, nor shall they grieve.

O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.

If ye do it not, take notice of war from Allah and His Messenger: but if ye turn back, ye shall have your capital sums; deal not unjustly, and ye shall not be dealt with unjustly.

If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.
Procedural law

• Qadi

• Mejelle (Ottoman Empire, 1876 et seq.)
  • **Book 14: Actions**
    • This book is based on actions, where an action is a claim against a person made by another person in court. This book includes conditions and fundamental rules relating to an action and the defense, as well as limitations to actions.
  • **Book 15: Evidence and Administration of an Oath**
    • This book is composed of four chapters that include law on the nature of evidence, documentary evidence and presumptive evidence, administering an oath, and preferred evidence and administration of an oath to both parties.
  • **Book 16: Administration of Justice by the Courts**
    • This final book of the Mecelle is based on the legal administration of justice including codification of judges, judgement, retrial, and arbitration.

• Sharia courts in different countries