Vorlesung / Course
Introduction to Comparative Law
Einführung in die Rechtsvergleichung

Winter term (WS) 2019-2020

http://www.eastlaw.uni-kiel.de
23.10.2019: Basic questions and structures of comparative law
30.10.2019 Structures and methods of comparative law
06.11.2019: Methods of comparative law (continued): *to be postponed*
13.11.2019: Legal families (overview)
20.11.2019: German legal family (deutscher Rechtskreis)
27.11.2019: French legal family
04.12.2019: Anglo-American legal family
11.12.2019: The legal systems in Northern and Eastern Europe
08.01.2020: Religious laws, in particular Islamic law
15.01.2020: Contract law I (Vertragsrecht)
22.01.2020: Contract law II
29.01.2020: Torts law (Deliktsrecht)
05.02.2020: Property law (Sachenrecht)
12.02.2020: Civil procedure
You work in a German enterprise, which intends to set-up an establishment in Ukraine. The enterprise would like to use its German-based general contract terms also in its relations to Ukrainian customers and asks whether this is possible. You have to check the German terms on the basis of Ukrainian law, in particular art.634 of the Ukrainian Civil Code.

(1) A contract of adhesion is a contract the terms of which are set by one of the parties in forms or other standard formats and which may be concluded only by way of the other party joining the proposed contract as a whole. The other party may not propose its own contract terms.

(2) The joining party can request modification or termination of the contract if the contract deprives it of its usual rights under such contracts, excludes or restricts the liability of the other party or contains other provisions obviously burdensome for the joining party. …

(3) If a claim to modify or terminate a contract is brought forward by a party joining it in connection with its business activity, the other party may refuse to satisfy these claims if it proves that the joining party was aware or could be aware of the provisions of the contract.
Notion and object of comparative law

1) Differences between legal orders
2) Comparative law (Rechtsvergleichung (droit comparé)) = science of comparing national and assimilated legal orders
3) Object: law of all legal disciplines. *Here*: Comparison in the field of civil law.
Tasks of comparative law

- Scientific function
- Forensic-practical function
- Legislative function

Problem of guiding interests and and expected outcomes, in particular in case of „legal transplants“/processes of „reception“ of foreign law
Range and intensity of comparative research

- Macro-comparison vs. micro-comparison
- Rule-oriented comparison – practice-oriented comparison
- Bilateral comparison – multilateral comparison
- Law-only comparison – interdisciplinary comparison
Legal literature

- Overview monographs (e.g. Zimmermann/Reimann, Zweigert/Kötz), „Casebooks“, introductions into the law of particular countries, comparative studies on specific topics
- Law journals: e.g. British International and Comparative Law Quarterly, American Journal of Comparative Law, (German) Zeitschrift für vergleichende Rechtswissenschaft, (Austrian) Zeitschrift für Rechtsvergleichung, Revue internationale de droit comparé, …
- Internet!! LexisNexis, Westlaw, HeinOnline, Garant.
**Welcome** to Westlaw International

Lawyers and legal professionals in more than 60 countries worldwide turn to Westlaw International for legal, news and business information every day. Designed to support the increasing global needs of the world's legal and business community, Westlaw International delivers content from internationally renowned and trusted sources via the latest and most intelligent online technology. Key highlights include:

<table>
<thead>
<tr>
<th>Cases</th>
<th>Over 1,000 Journals and Law Reviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>- United Kingdom from 1865</td>
<td>- Harvard Law Review</td>
</tr>
<tr>
<td>- United States (Federal &amp; State) from 1658</td>
<td>- European Competition Law Review</td>
</tr>
<tr>
<td>- European Union from 1952</td>
<td>- Criminal Law Review</td>
</tr>
<tr>
<td>- Australia from 1903</td>
<td>- McGill Law Review</td>
</tr>
<tr>
<td>- Hong Kong from 1905</td>
<td>- Melbourne University Law Review</td>
</tr>
<tr>
<td>- Canada from 1825</td>
<td>- Hong Kong Law Journal</td>
</tr>
<tr>
<td>Statutes</td>
<td>News</td>
</tr>
<tr>
<td>- United Kingdom Statutes from 1267 (fully consolidated)</td>
<td>- New York Times</td>
</tr>
<tr>
<td>- United States Code (fully annotated)</td>
<td>- Financial Times</td>
</tr>
<tr>
<td>- Comprehensive European Union Legislation</td>
<td>- Thomson Financial News</td>
</tr>
<tr>
<td>- Hong Kong Legislation from 1997</td>
<td>- AP Newswires</td>
</tr>
<tr>
<td>- Canada Legislation (fully consolidated)</td>
<td>- Economist</td>
</tr>
<tr>
<td></td>
<td>- Transcripts from major news channels</td>
</tr>
</tbody>
</table>
Sources and citation technique

1. German sources: as usual
2. Foreign sources: in principle according to the standards of the source country, e.g. laws in original title with date of adoption and entering into force, last amendment, official bulletin, auxiliary: Internet (last consulted on ...).

Example literature: Collins, L., Some Aspects of Service out of the Jurisdiction, (1972) 21 ICLQ 656 (658 f.)

Example jurisprudence: Cass Civ, 4.3.1980, Bull Civ I Nr. 72
Jurisprudence in the field of comparative law

• Jurisprudence in different countries as object of comparative research. *Internet! Translation?*

• Foreign or comparative law in national or international jurisprudence: e.g. ECJ. „IPRspr.“ (German courts), law journals.

• See also „IPG“ (expert opinions of German universities on foreign law) and comments on jurisprudence.
Common portal of case law

About the Portal
The meta-search engine of National Case Law was created by the Network of the Presidents of the European Supreme Courts. It has been released in April 2007 and allows to simultaneously query several search engines.

Reproduced and adapted from the original language editions of the Eurovoc Thesaurus (Edition 4.3) European Communities, 2009 Responsibility for the reproduction and adaptation lies entirely with the Network of the Presidents of the Supreme Judicial Courts of the European Union.

Search Instructions

- Make sure you are entering your search words with the right language.
- The language can be changed at the bottom of the page.
- Use the quotes, the meta-search engine is still in development stage.
- So every term has to be entered between quotes e.g. "torture" and "kidnapping".

Research Assistance
IPG – Gutachten zum internationalen und ausländischen Privatrecht
Institutions for comparative law

- Universities
- Research institutes (e.g. Max Planck Institutes)
- Scientific and practitioners’ associations
- International organizations (e.g. UNCITRAL, Unidroit, EU)
Historical sketch

- Aristoteles, Platon
- Middle Ages: universalist legal orders
- Modern Ages: natural law doctrine; rise of comparative law in the 19th century:
  - Comparative law as an instrument of legal politics (e.g. AGHGB 1861)
  - 1846 Chair of comparative criminal law at Paris Sorbonne University
  - 1869 foundation of the Société de législation comparée
    - J. Story, W. Burge, W. Mittermaier, J.-J. Foelix
- Intensive use of comparative law since mid 20th century (UN suborganisations, EU and others).
HAMBURG,

By BENJAMIN SCHILLERN.

Buchhändler im Schuh / 1704.

SAMUELI REYHERI, JC.

DE UNIVERSE CHRISTIAN-ALBERTINE

ANTCESSORIS, CODICIS ET MATHEMATUM

PROFESSORES,

HISTORIA

LURIUM

UNIVERSALIS,

S IN QUA

GENUINIS

JURIJ NATURAE, GENTIUM ET CIVILITATUM PRINCIPIIS PRÆMISSIS,

JURA

DIVINAE ET HUMANAE,

Nec non plurimum

IMPERIUM, REGNORUM, PRINCIPATUM ET

REPUBLICARUM

JURAE ET JURIS CONSULTI

RECENSUNT,

CVVM

PERSONARUM ET JURIS TEXTUA INDICIBUS.

ANNO DOMINI

K. L.

Typis Bartholdis Scuetheri, Academ. Typogra.