Prof. Dr. Alexander Trunk

**Vorlesung / Course**

*Introduction to Comparative Law*

*Einführung in die Rechtsvergleichung*

Winter term (WS) 2019-2020

[http://www.eastlaw.uni-kiel.de](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
Tasks of comparative law
(repetition)

- Scientific function
- Forensic-practical function
- Legislative function

Problem of guiding interests and expected outcomes, in particular in case of „legal transplants“/processes of „reception“ of foreign law
Sources of information on comparative law

- **Legal literature**: comparative/national, general/specific
- **Internet** *(including databases)*, different degrees of reliability and actuality
- **Legislation, treaties, soft law, usages, contract practice/general contract terms*
- **Jurisprudence**: national, international, European
Legal literature

• Overview monographs (e.g. Zimmermann/Reimann, Zweigert/Kötz, Bogdan), „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:

**Cases**
- United Kingdom from 1865
- United States (Federal & State) from 1658
- European Union from 1952
- Australia from 1903
- Hong Kong from 1905
- Canada from 1825

**Statutes**
- United Kingdom Statutes from 1267 (fully consolidated)
- United States Code (fully annotated)
- Comprehensive European Union Legislation
- Hong Kong Legislation from 1997
- Canada Legislation (fully consolidated)

**Over 1,000 Journals and Law Reviews**
- Harvard Law Review
- European Competition Law Review
- Criminal Law Review
- McGill Law Review
- Melbourne University Law Review
- Hong Kong Law Journal

**News**
- New York Times
- Financial Times
- Thomson Financial News
- AP Newswires
- Economist
- Transcripts from major news channels
Legislation

- Online guides, Wikipedia, …
- EU: EUR-Lex
- National law gazettes/bulletins/journals
- Internet

Sometimes (official/non-official) translations available. Online translation machines.
Constitution

- International Constitutional Law. Armenia (external link) (Universität Bern Institut für Öffentliches Recht) offers English translation of the 1999 constitution, the 1997 Law on the Constitutional Court, plus Background Note.

Executive

- President (external link)
- Government (external link)
Welcome

The German Law Archive publishes cases, statutes, literature and bibliographies in the English language.

After a period in which we had allowed both content and design to collect dust, we are pleased to welcome our users to our new design, launched on 6 August 2015. We hope you will find it more user friendly. We will now work on an update of content. Feedback to the editors (see below) is welcome!

The German Law Archive became the first law website at the University of Oxford when it went on-line in December 1997 and was publicised in March 1998. It was officially inaugurated in a ceremony at Gray's Inn Great Hall, London, in the presence of Lord Justice Scrutton, President of the Queen's Bench Division.

ATTENTION / REDIRECTION

Dear user,
if you have been transferred here from the old German Law Archive at www.iuscomp.org/gla, please update your bookmarks. We are currently in the process of switching to a new design. The entire content of the German Law Archive is from now on available at this site.

Best wishes,
Oxford
Jurisprudence in the field of comparative law

- Jurisprudence in different countries as *tool and 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.
COMPARATIVE CASE LAW

DOCTRINAL STUDIES

ACADEMIC EVENTS

ECtHR - DEPORTATION TO TUNISIA OF A PERSON DEEMED TO BE A THREAT TO NATIONAL SECURITY TO GERMANY
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
Member State case law

The courts of the Member States of the European Union (EU) apply and interpret the law of the relevant Member States as well as EU law. Therefore, it is in the interest of citizens and legal practitioners to have access not only to case law of their own Member State, but also to that of other EU Member States.

Most Member States have one or more databases of the decisions and opinions of their courts - regarding EU law, national law and also regional and/or local law. The information available on the web may sometimes be restricted to certain courts (for instance, supreme courts) or to certain types of decisions.

You can search for Member State case law either via a Member State database by selecting one of the flags listed on the right hand side you will be redirected to the relevant national page; or you can use one of the European databases (the following list may not be exhaustive):

- "JURE", a database created by the European Commission, contains case law on jurisdiction in civil and commercial matters and on the recognition and enforcement of judgments in a State other than the one where the judgment was passed. This includes case law on relevant international conventions (i.e. 1968 Brussels Convention, 1988 Lugano Convention) as well as EU and Member State case law.

- The Association of Councils of State and Supreme Administrative Jurisdictions of the European Union ("ACA Europe") provides two databases of Member State case law which deal with the application of EU law, called "JuriFast" and "DecNat". Decisions are provided in the original language, with a summary in English and French. The "DecNat" database also contains references and analyses of national decisions which have been supplied by the Research and Documentation Service of the European Court of Justice.

- Via the website of the "Network of the Presidents of the supreme judicial courts of the EU", you can find the sites of a number of national databases (and also of some candidate countries) containing the case law of the supreme courts of those Member States.
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)
GENERAL PRESENTATION

INTERNATIONAL ACADEMY OF COMPARATIVE LAW

PROMOTING COMPARATIVE LAW - SINCE 1924


garnet may be relatively new.

Academy was founded in The Hague is also notable because that city

was at the forefront of legal development and international cooperation

in the early 20th century. The date, 1924, is significant because it

coincides with the movement towards a renaissance of law which

followed World War I.

MEMBERSHIP

As pointed out above, the Academy is a body of scholars. According to

the Statutes it is composed of Titular Members, elected by the Titular

Members preceding them. Associate Members join the Titular Members to

form the membership of the Academy. The group of Associate Members is

larger than the number of Titular Members but they do not have the same

status. Associate Members are drawn from all over the world and represent

a cross-section of scholarship in comparative law.
• 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).
D. Samuel Reyher, J.C.

Kurz gefasste Allgemeine Rechts-Geschichte.

Oder:
HISTORIA JURIS UNIVERSALIS.

HAMBURG,
Von Benjamin Schiller,
Buchhändler im Schum / 1704.
Joseph Story

Ernst Rabel

Katharina Boele-Woelki
President of Int‘l Academy of Comparative Law

René David
Neighbouring disciplines

- History of law
- Sociology of law
- Economic analysis of law
- Legal politics (e.g. unification of law)
- Private international law (including procedure)
- Others, e.g. legal ethnology, legal philosophy
Methods of comparative law: tasks of comparative law

- Scientific function
- Forensic-practical function
- Legislative function
Methods of comparative law


- Object of comparative research:
  = Comparison of legal norms – comparison of legal practice
  = Macrocomparison - microcomparison: „Legal families (Rechtskreise)“

- Necessity: Cognizance of the foreign law. If possible work in original languages. Make use of legislative materials, Internet.
Steps of comparison

1) Formulate the research question
2) Find the applicable legal norms or jurisprudence. *Quote exactly!*
3) **Common elements**
4) **Differences**
5) Which are the **underlying** (possibly diverging) **values**?
6) Make your **own evaluation**
7) **Consequences**, e.g. proposal de lege ferenda