

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>**

23.10.2019: Basic questions and structures of comparative law

30.10.2019 Structures of comparative law (*continued*)

06.11.2019: *Methods of comparative law: to be postponed*

## **13.11.2019: Methods of comparative law**

20.11.2019: Legal families (overview). 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

18.12.2019: Legal systems in Asia.

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

# Methods of comparative law:

*tasks of comparative law*

- **Scientific function**
- **Forensic-practical function**
- **Legislative function**

# Methods of comparative law

- Core elements of comparison: **„functional“ approach**. *Knowledge of one's own law as a precondition. Precaution with use of seemingly well-known „own“ legal terms or legal structures.*
- **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

# Comparative analysis: „abstract“ topic

- Determine and interpret topic
- Find good structure
- Choose and analyse relevant legal provisions and, as far as reasonable, legal practice
- Comparison *stricto sensu*
- Result of comparison?

# Some aspects relating to research question

- The research question should be formulated as exactly possible. It determines the content of the research (no under-research, no over-research; but limitation may be acceptable and even necessary)
- Which legal systems should be compared?
- Which specific aspects should be compared?
- Terms may have to be interpreted, e.g. term „German law“ usually includes international treaties and EU law (if not: German „autonomous“ law). European law may include EU law, Council of Europe law or even national legal orders in Europe.
- Is the research question limited to legal norms or does it also include jurisprudence?

# Additional remarks on structuring a comparative analysis

- Analysis must answer the research question fully
- Logical and clear structure, e.g. separated according to different legal systems + final comparison or separation of topics + separate comparison + general summary/outlook
- Clear wording
- Clear analysis
- Good balancing
- Do not forget jurisprudence. Explain relevance or selection of jurisprudence. Depth of analysis depends on relevance of the respective case law.

# Example for comparative research

Please compare **sec.823** of the German BGB with **art.1240** [*since 2016*; former **1382**] of the French Civil Code.

## **BGB (Germany) Title 27 Torts - Section 823 BGB Liability in damages**

(1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.

(2) The same duty is held by a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

## **Code Civil (France) - BOOK III: OF THE VARIOUS WAYS HOW OWNERSHIP IS ACQUIRED (arts.711 to 2278)**

### **TITLE II: ON SOURCES OF OBLIGATIONS (arts.1100 – 1303-4) SUBTITLE II: EXTRACONTRACTUAL LIABILITY (arts.1240 to 1252)**

#### **Article 1240**

Every act whatever of man that causes damage to another, obliges him by whose fault it occurred to repair it.

# Comparative tort(s) law

- What is a tort? (notion)
- Where are torts regulated? (sources, system)
- What are the prerequisites of tortious liability?
- Which are the legal consequences of a tort?

# Comparison of legal provisions

## § 823 BGB

- **Parallels**

codification; system issue 1, relevance of fault

- **Differences**

System issue 2; limited abstractness, two (three) general clauses

- **Underlying values?**

- Differentiated approach, legal security, balancing interests

- **Proposals?**

- Partial improvements, radical change, DCFR?

## Art. 1240 C.civ. (France)

- **Parallels**

- Codification, system 1, relevance of fault

- **Differences**

- System 2; abstract, „simple“, one general clause

- **Underlying values?**

- Clear and simple, democratic, flexible

- **Proposals?**

- Partial improvements, radical change, DCFR?

# Comparative analysis of case law

- Finding the relevant case or cases
- Understanding the case(s)
- Interpreting the case from a comparative perspective



# CISG Database



## About the Albert H. Kritzer CISG Database

Established over twenty-years ago at Pace Law, the CISG Database provides a comprehensive global collection of legal materials on the UN Convention on Contracts for the International Sale of Goods (CISG).

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## Pace Law Albert H. Kritzer CISG Database

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is the law governing cross-border sale of goods transactions among the majority of the world's trading nations. The Pace-IICL developed and maintains the CISG Database to promote cross-border trade and the rule of law. Access to this comprehensive legal collection is universal and free of charge.



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## CISG Treaty Text and Legislative History

- [Text of CISG \(in multiple languages\)](#)
- [Identification of Contracting States](#)
- [Diplomatic Conference Texts \(Legislative History\)](#)
- [Antecedent International Sales Law](#)



## Cases on the CISG

- [Cases Organized by Country](#)
- [UNCITRAL Case Law Digest](#)
- [CISG Translation Network](#)
- [Recent Updates to CISG Database](#)



# Example for comparative analysis of court decisions

Please compare the judgment of the **German Supreme Court** of 28 May 2014, VIII ZR 410/12 (<http://cisgw3.law.pace.edu/cases/140528g1.html>) with the judgment of the **US Supreme Court** of ..., **A. v. B.** (554 U.S. 222 (2008)).

Or: Please give an analysis of the judgment of the **French Cour de cassation** of ... and compare it with [e.g.] **German law** ...

Or: Please give a comparative analysis (from the perspective of [e.g.] **German law**) to the judgment of the **European Court of Human Rights** of ...

# Case law analysis, e.g. foreign court, several courts, international court

- The problem
- The facts
- The decision: contents, structure, procedure (e.g. preceding decisions), argumentation.
- The issues in context of the relevant legal norms and other jurisprudence
- Critique
- Possibly comparison
- Conclusions, e.g. evaluation of the decisions, legislative proposals

# Citation technique

- 1. Principle:** quote everything which you have not imagined yourself. Even in „introduction“.
- 2. Sources of your own country:** quote as usual.  
When publishing in foreign language, follow quotation style of target country.
- 3. Foreign sources:** in principle according to the standards of the source country,
  - **Laws/treaties etc.** 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

# List of citations and abbreviations

- Distinguish between legal literature, sources of law and jurisprudence. Numbering of sources not necessary. Sources of law and jurisprudence not necessarily mentioned in the list of citations, but only in the main text
- Literature should be quoted as exactly as usual and necessary. It may be usual or required to include Internet sources in the list of citations or only in the main text (ask!). Sub-structure of literature list may differ, e.g. source in different languages or on different countries.
- Abbreviations: all uncommon abbreviations and abbreviations for terms under foreign law are necessary. General language abbreviations need not be included in the list of abbreviations.

DE GRUYTER

# KIRCHNER ABKÜRZUNGS- VERZEICHNIS DER RECHTSSPRACHE

LEHRSTUFE

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## Rabels Zeitschrift für ausländisches und internationales Privatrecht

The Rabel Journal  
of Comparative and International Private Law

**McGrath, Colin Peter, and Helmut Koziol:**  
*In Style of Reasoning a Fundamental Difference  
Between the Common Law and the Civil Law?*

**Renner, Moritz:**  
*Transnationale Wirtschaftsverflechtung*

**Domini, Valentina M.:** *Protection of Writen  
Parties and Economic Challenges – An Overview  
of Arab Countries' Consumer Protection Law*

**Lieder, Jan:** *Die Aufrechnung im Internationalen  
Privat- und Verfahrensrecht*

**Corneloup, Sabine:** *Rechenschaftung im  
internationalen Privatrecht der EU:  
Überlegungen am Frankisch*



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# THE BLUEBOOK

A Uniform System of Citation

Eighteenth Edition