Vorlesung / Course
Introduction to Comparative Law
Einführung in die Rechtsvergleichung

Winter term 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: postponed
13.11.2019: Methods of comparative law
20.11.2019: Legal families (overview). German (or Germanic) 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: Religious laws (end). 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
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)
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
Home Page » Quran

Quran Subjects

- Faith
- Knowledge
- Previous Nations
- Biography of the Prophet (Sirah)
- Quran
- Morals and Manners
- Acts of worship
- Foods and Drinks
- Dress and Adornment
- Personal status
  - Children
  - Marriage
  - Break-up of marriage
  - Man divorcing his wife by calling her his mother
  - Inheritance
- Transactions
  - Commutative contracts
  - Donations
  - Authorization
  - Restrictions
  - Documentation
  - Guarantees
- Rulings and Judgments
  - Sharia Legal administrator
  - Judgment decisions
  - Testimony
- Crimes
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
The Ottoman Empire in 1683 AD

- Directly administered territory
- Vassal & autonomous territory
- Territory lost before 1683
- Vassal territory lost before 1683
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.
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
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
Chapter One: State

Article One: Afghanistan shall be an Islamic Republic, independent, unitary and indivisible state.

Article Two: The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals.

Article Three: No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.

Article Four: National sovereignty in Afghanistan shall belong to the nation, manifested directly and through its elected representatives. The nation of Afghanistan is composed of all individuals who possess the citizenship of Afghanistan. The nation of Afghanistan shall be comprised of Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujar, Brahwui and other tribes. The word Afghan shall apply to every citizen of Afghanistan. No individual of the nation of Afghanistan shall be deprived of citizenship. The citizenship and asylum related matters shall be regulated by law.
Afghanistan
officially the Islamic Republic of Afghanistan, is a
landlocked country in Asia. Afghanistan is bordered by
Pakistan to the east and south; Iran to the west;
Turkmenistan, Uzbekistan, and Tajikistan to the north; and
China to the northeast. Occupying 652,000 square kilometers
(252,000 sq mi), it is a mountainous country with plains in the
north and southwest. Kabul is the capital and largest city. The
population is 32 million, mostly composed of ethnic Pashtuns,
Tajiks, Hazaras and Uzbeks.

Human habitation in Afghanistan dates back to the Middle
Paleolithic Era, and the country's strategic location along the
Silk Road connected it to the cultures of the Middle East and
other parts of Asia. The land has historically been home to
various peoples and has witnessed numerous military
campaigns, including those by Alexander the Great, …
Muslim Arabs, Mongols, British, Soviets, and by the U.S. …

The political history of the modern state of Afghanistan began
… in the 18th century. In the late 19th century, Afghanistan
became a buffer state in the "Great Game" between British
India and the Russian Empire. … Following the Third Anglo-
Afghan War in 1919 the country was free of foreign influence,
eventually becoming a monarchy under Amanullah Khan, until
in 1973 … a republic was established. In 1978, after a second
coup Afghanistan first became a socialist state and then a
Soviet protectorate. This evoked the Soviet–Afghan War
in the 1980s against mujahideen rebels. By 1996 most of
Afghanistan was captured by the Islamic fundamentalist
group the Taliban, who ruled as a totalitarian regime for over
five years. Following the 11 September 2001 attacks, an
intervention by the US and its allies forcibly removed the
Taliban from power, and a new democratically-elected
government was formed, but the Taliban still control a
significant portion of the country.

Afghanistan is a unitary presidential Islamic republic. The
country has high levels of terrorism, poverty, child
malnutrition, and corruption. It is a member of the United
Nations, the Organisation of Islamic Cooperation, the Group
of 77, the Economic Cooperation Organization, and the
Non-Aligned Movement.
CIVIL LAW
OF THE
REPUBLIC OF AFGHANISTAN

INTRODUCTORY TITLE

CHAPTER 1—APPLICATION OF THE LAW

PART 1—THE LAW AND RIGHT

TOPIC 1—SCOPE OF APPLICATION OF THE LAW

Article 1:

(1) In cases where the law has a provision, the practice of religious jurisprudence is not permitted.

Provisions of this Act are applicable in letter and spirit.

(2) In cases the law has no provision, the court shall issue a verdict in accordance with the fundamental principles of Hanafi jurisprudence of Islamic shariat to secure justice in the best possible way.

Article 2:
Immediately on taking over cities and communities in Afghanistan, the Taliban imposed its law, based on an interpretation of Sharia or Islamic law that was stricter than in any part of the Islamic world. The interpretation is at wide variance from that of most Islamic scholars.

With very minimal changes, what follows are the Taliban rules, decrees, and prohibitions as posted in Kabul and elsewhere in Afghanistan beginning in November and December 1996, and as translated from Dari by Western non-governmental agencies. The grammar and syntax follows the original.

Those rules still prevail wherever the Taliban is in control – in vast parts of Afghanistan today.
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-Sanhūrī**, 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.
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.
2- Marrying more than one woman is not allowed except with the authorization of the qadi (judge). Granting this authorization is dependent 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.
3- If justice between wives is feared, polygamy may not be allowed. The issue would then be left to the judge’s determination.
4- 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 km$^2$
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.
Contract Law
Comparative contract(s) law

- What is a contract? (notion)
- Where are contracts regulated? (sources, system)
- How is a contract concluded and when is it valid?
- Which are the legal consequences of a contract and its breach?
Steps of comparison

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

Law country 1
• Topic 1: § … BGB - yes
• Topic 2: no
• Topic 3: yes

Law country 2
• Topic 1: sec. … - no
• Topic 2: ?
• Topic 3: differentiated (how?)

Comparison/note
• Topic 1: basically same/fundamentally different …
• Topic 2: unclear
• Topic 3: tendencies/ basic differences, what is better?

Uniform laws (including soft law): compromise? Origin for national laws? Can also be used for comparison

→ Critique of result? Preferred own solution?
Law of contract (contracts law) in comparison

• **Issues:**
• notion of contract
• conclusion
• content/interpretation
• performance
• specific contracts

• See also: conflict of laws as preliminary issue
Notion of contract in comparison

Example:
Three students jointly undertake a journey. They travel together in the car of one of them and share the fuel costs. The driver negligently causes an accident. Is there a contractual basis for liability?
Notion of contract in comparison

- *Merriam-Webster dictionary*: binding agreement (?) between two or more persons or parties
- *BusinessDictionary.com*: A voluntary, deliberate, and legally binding (?) agreement between two or more competent parties.
- *Cornell University Legal Information Institute*: an agreement creating obligations (?) enforceable by law.
- *Rechtswörterbuch.de (in German)*: a legal transaction (?) consisting of coinciding declarations of intent (offer and acceptance) of at least two persons.
Notion of contract (1):
Germany and Switzerland

German Civil Code (1900)
Book 1 General Part
Division 3 Legal transactions (sec.104 et seq.)
Title 3 Contract
Section 145 Binding effect of an offer

Swiss Code of Obligations [Obligationenrecht] (1911)
Art. 1 (1) The conclusion of a contract requires a mutual expression of intent by the parties. …

-- both laws do not legally define the term „contract“
- Contract seen as specific type of "legal transaction"
- Legal transactions (Rechtsgeschäfte) are defined as human acts leading to legal consequences based on the will of the actors
- In order to give the will of an actor legal relevance, a "declaration of will" is required (specific term):
  = "will" to produce legal effects
  = "declaration" of will
- Legal transactions can be unilateral, bilateral or plurilateral
- Contract is main example of bilateral legal transaction, based on offer and acceptance, and which is intended to be legally "binding"
- In cases of doubt: interpretation of acts is necessary
Notion of contract (2): France

French Code Civil (1804/2016)

Art. 1101 A contract is an agreement of wills between two or more persons designated to create, modify, transfer or extinguish obligations.

Le contrat est un accord de volontés entre deux ou plusieurs personnes destiné à créer, modifier, transmettre ou éteindre des obligations.

Earlier (1804): "Le contrat est une convention par laquelle une ou plusieurs personnes s'obligent, envers une ou plusieurs autres, à donner, à faire ou à ne pas faire quelque chose."

Article 420. The Concept of the Contract

1. The contract shall be recognized as an agreement, concluded by two or by several persons on the institution, modification or termination of civil rights and duties.

Which similarities can be found e.g. with French law?
§1. CONTRACT DEFINED
A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

§2. PROMISE; PROMISOR; PROMISEE...
(1) A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.
(2) The person manifesting the intention is the promisor.
(3) The person to whom the manifestation is addressed is the promisee....

Comments
b. Manifestation of intention.... The phrase "manifestation of intention" adopts an external or objective standard for interpreting conduct; it means the external expression of intention as distinguished from undisclosed intention. A promisor manifests an intention if he believes or has reason to believe that the promisee will infer that intention from his words or conduct.
Restatements of the Law

From Wikipedia, the free encyclopedia

In American jurisprudence, the Restatements of the Law are a set of treatises on legal subjects that seek to inform judges and lawyers about general principles of common law. There are now four series of Restatements, all published by the American Law Institute, an organization of judges, legal academics, and practitioners founded in 1923.

Contents

1 Overview
2 Impact
3 Criticism
4 Editions
5 Current versions
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7 External links

Overview

Individual Restatement volumes are essentially compilations of case law, which are common law judge-made doctrines that develop gradually over time because of the principle of stare decisis. Although Restatements of the Law are not binding authority in and of themselves, they are highly persuasive because they are formulated over several years with extensive input from law professors, practicing attorneys, and judges. They are meant to reflect the consensus of the American legal community as to what the law is, and, in some cases, what it should become. As Harvard Law School describes the Restatements of the Law:

The ALI's aim is to distill the "black letter law" from cases, to indicate a trend in common law, and, occasionally, to recommend what a rule of law should be. In essence, they restate existing common law into a series of principles or rules.[1]

Each Restatement section includes a black letter principle, Comments and Illustrations, and, in the form of Reporters' Notes, a detailed discussion of all the cases that went into the principle summarized in that one section. By citing a Restatement section in a legal brief, a lawyer may bring to the attention of a judge a carefully studied summary of court action on almost any common law legal doctrine. The judge can then consider the Restatement section and make an informed decision as to how to apply it in the case at hand. While courts are under no formal obligation to adopt Restatement sections as the law, they often do because such sections accurately restate the already-established law in that jurisdiction, or on issues of first impression, and are persuasive in terms of demonstrating the current trend that other jurisdictions are following.

Restatements are rare in common law jurisdictions outside of the United States. Former Justice of the High Court of Australia William Gummow attributes the requirement for Restatements in the United States to the lack of a nationwide court of final common law adjudication.
Notion of contract (5): China

Chinese General Principles of Civil Law (1986)
CHAPTER IV Civil Juristic Acts and Agency
Section I Civil Juristic Acts

Article 54 A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Chinese Contract Law (1999)
Article 2 A contract in this Law refers to an agreement establishing, modifying and terminating the civil rights and obligations between subjects of equal footing, that is, between natural persons, legal persons or other organizations.

Agreements involving personal status relationship such as on matrimony, adoption, guardianship, etc. shall be governed by the provisions of other Laws.

Which similarities with German and French law? Which peculiar elements? How can these be explained?
Notion of contract – a comparison

Existence of official legal definition

• No: Germany, Switzerland, UK
• Yes: France, Russia, USA

Basic structure

• Offer and acceptance generally used
• Applicability only in law of obligations?
• Based on „legal transactions“: Germany, Switzerland, France, China (*Civil Law approach*).
• Based on „promises“: USA (*Common Law approach*)

Legislative definition of limits: no in these legal systems
Sources of contract law in comparison

• **National law**
  - Civil Codes (continental tradition: „legal transaction“ – contract)
  - Contract Law Acts (e.g. China, Sweden, India)
  - Common law and equity

• **(International) uniform law**
The Indian Contract Act, 1872

(Act no. 9 of 1872)

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Chapter II: Of certain kinds of agreements and of liabilities connected therewith
Swedish substantive laws
The SCC provides unofficial translations of the Swedish substantive laws. These translations were made possible by the financial support of the SCC and are now more accessible for foreign users.

Swedish Sales of Goods Act (SFS 1990:934)

Swedish Contracts Act (SFS 1915:218)

Swedish Interest Act (SFS 1975:635)
Unification of contract law (in comparison)

International uniform law

- CISG (1980)
- DCFR (2008)
- Scandinavian Contracts Act Act (1915), Sale of Goods Act 1905
Welcome

In the years since its establishment, UNCITRAL has been recognized as a system in the field of international trade law. A legal body with universal reform worldwide for over 40 years, UNCITRAL’s business is the modernization of business.

Trade means faster growth, higher living standards, and new opportunities worldwide, UNCITRAL is formulating modern, fair, and efficient international rules. These include:

- Conventions, model laws and rules which are acceptable worldwide
- Legal and legislative guides and recommendations of great practical value
- Updated information on case law and enactments of uniform commercial law
- Technical assistance in law reform projects
- Regional and national seminars on uniform commercial law

What's new at UNCITRAL?

The Commission

The Commission carries out its work at annual sessions, which are typically held in New York and at the Vienna International Centre at the Alternate center. The Commission typically holds one or two sessions a year, depending on the subject matter.
CONVENTION RELATING TO A UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS (1964, THE HAGUE)

Last Updated: 30 September 2013

Convention relating to a Uniform Law on the International Sale of Goods
(The Hague, July 1, 1964)

The States signatory to the present Convention,

Desiring to establish a uniform law on the international sale of goods,

Have resolved to conclude a convention to this effect and have agreed upon the following provisions:

Article I

1. Each Contracting State undertakes to incorporate into its own legislation, in accordance with its constitutional procedure, not later than the date of the entry into force of the present Convention in respect of that State, the Uniform Law on the International Sale of Goods (hereinafter referred to as "the Uniform Law") forming the Annex to the present Convention.

2. Each Contracting State may incorporate the Uniform Law into its own legislation either in one of the authentic texts or in a translation into its own language or languages.
UNIDROIT
International Institute for the Unification of Private Law

UNIDROIT PRINCIPLES
OF INTERNATIONAL COMMERCIAL CONTRACTS
2010
Some examples of contract law – comparative approach

Buyer B in Kiel wants to buy a box of wine … from seller S, who is domiciled in Switzerland [or France, UK, USA, China, Russia]. On 1.10. he sends S a letter containing an order. S receives the letter on 5.10.

1) Can B still withdraw his order?

2) S accepts the offer by letter of 6.10. The letter gets lost by the post. Is there a valid contract?

3) S accepts the offer by sending an email. Is the contract formally valid?

4) What kind of contract have the parties concluded?
Conclusion of contracts in comparison

• Offer and acceptance as the basic rule
• Binding effect of offer?
  - „consideration“ English/U.S. law
  - Withdrawal/revocation (revocal) of the offer
• Conclusion of contract by acceptance.
  Mailbox rule of English and U.S. law
• Own evaluation?
Example 1: Is an offer binding?

Buyer B, who is domiciled in Kiel, wants to buy some boxes of wine from seller S, who is domiciled in Switzerland [or Austria, France, UK, USA, China, Russia]. On 1.10. he sends S a letter containing an order. S receives the letter on 5.10.

Can B still withdraw his order?
Swiss Code of Obligations (1911)

Art. 9

6. Withdrawal of offer and acceptance

1 An offer is deemed not to have been made if its withdrawal reaches the offeree before or at the same time as the offer itself or, where it arrives subsequently, if it is communicated to the offeree before he becomes aware of the offer.

2 The same applies to a withdrawal of an acceptance.

Compare with sec.130 German Civil Code (BGB)
English law

1) Offer usually not binding (no „consideration“)

2) But binding

= when made by „deed“ (formal legal document signed, witnessed, and delivered to effect a conveyance or transfer of property or to create a legal obligation or contract). Often relating to land.

= or after acceptance
Deed (under Common Law)

From Wikipedia:
At common law, to be valid and enforceable, a deed must fulfill several requirements:
- It must state on its face that it is a deed, using wording like "This Deed..." or "executed as a deed".
- It must indicate that the instrument itself conveys some privilege or thing to someone.
- The grantor must have the legal ability to grant the thing or privilege, and the grantee must have the legal capacity to receive it.
- It must be executed by the grantor in presence of the prescribed number of witnesses, known as instrumentary witnesses (this is known as being in solemn form).
- In some jurisdictions, a seal must be affixed to it. Originally, affixing seals made persons parties to the deed and signatures optional, but seals are now outdated in most jurisdictions, so the signatures of the grantor and witnesses are primary.
- It must be delivered to (delivery) and accepted by the grantee (acceptance).
French Code Civil (1804/2016)

Art. 1101 A contract is an agreement of wills between two or more persons designated to create, modify, transfer or extinguish obligations.

Art. 1113 The contract is concluded by the meeting of an offer and an acceptance, in which the parties manifest their will to bind themselves.

Art. 1115: [The offer] can be freely withdrawn as long as it has not reached its addressee.
Titre III : Des sources d'obligations

Article 1100 Les obligations naissent d'actes juridiques, de faits juridiques ou de l'autorité seule de la loi. …

Article 1100-1 Les actes juridiques sont des manifestations de volonté destinées à produire des effets de droit. Ils peuvent être conventionnels ou unilatéraux. Ils obéissent, en tant que de raison, pour leur validité et leurs effets, aux règles qui gouvernent les contrats.

Article 1113 Le contrat est formé par la rencontre d'une offre et d'une acceptation par lesquelles les parties manifestent leur volonté de s'engager.

Article 1114 L'offre, faite à personne déterminée ou indéterminée, comprend les éléments essentiels du contrat envisagé et exprime la volonté de son auteur d'être lié en cas d'acceptation. A défaut, il y a seulement invitation à entrer en négociation.

Article 1115 Elle peut être librement rétractée tant qu'elle n'est pas parvenue à son destinataire.

Article 1116 Elle ne peut être rétractée avant l'expiration du délai fixé par son auteur ou, à défaut, l'issue d'un délai raisonnable.

La rétractation de l'offre en violation de cette interdiction empêche la conclusion du contrat. Elle engage la responsabilité extracontractuelle de son auteur dans les conditions du droit commun sans l'obliger à compenser la perte des avantages attendus du contrat.
Uniform Commercial Code

From Wikipedia, the free encyclopedia

The Uniform Commercial Code (UCC), first published in 1952, is one of a number of uniform acts that have been put into law with the goal of harmonizing the law of sales and other commercial transactions across the United States of America (U.S.) through UCC adoption by all 50 states, the District of Columbia, and the U.S. territories.

While largely successful at achieving this ambitious goal, some U.S. jurisdictions (e.g., Louisiana and Puerto Rico) have not adopted all of the articles contained in the UCC, while other U.S. jurisdictions (e.g., American Samoa) have not adopted any articles in the UCC. Also, adoption of the UCC often varies, although to different degrees, from one U.S. jurisdiction to another. Sometimes this variation is due to alternative language found in the official UCC itself. At other times, adoption of different revisions to the official UCC contributes to further variation. Additionally, some jurisdictions deviate from the official UCC by tailoring the language to meet their unique needs and preferences. Lastly, even identical language adopted by any two U.S. jurisdictions may nonetheless be subject to different statutory interpretation by each jurisdiction's courts.

Goals

The goal of harmonizing state law is important because of the prevalence of commercial transactions that extend beyond one state. For example, goods may be manufactured in State A, shipped to State B, and sold to buyers in State C. Without harmonization, there would be conflicts between the state laws of each state, which can lead to unpredictable results. The UCC seeks to provide a set of uniform rules that will facilitate commerce across state lines.
UCC § 2-204. Formation in General.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

§ 2-205. Firm Offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.
Art.13 The parties shall, in making a contract, take the form of offer and acceptance.

Art.14 An “offer” is an intent indication showing the desire to enter into a contract with others, and the intent indication shall conform to the following provisions: (1) the content indicated shall be concrete and definite; (2) the offeror shall, as is indicated, be bound by the intent indication upon its acceptance by an offeree.

Art.16 An offer becomes effective when it reaches the offeree. If a contract is made in the form of text in electronic data and the receiver has designated a special receiving system to receive such data text, the time at which the text in electronic data enters the designated special system shall be the time of arrival; if no special receiving system is designated, the time at which the text in electronic data first enters any of the receiver’s systems shall be the time of arrival.

Art.17 An offer may be withdrawn. The withdrawal notice of an offer shall reach the offeree before or at the same time as the arrival of the offer at the offeree.

Art.18 An offer may be revoked. The revocation notice of an offer shall reach the offeree before the dispatch of an acceptance notice by the offeree.

Art.19 An offer may not be revoked under any of the following conditions: the offeror has specified a time limit for the acceptance, or has explicitly indicated in any other manner the irrevocability of the offer; there are grounds for the offeree to maintain the irrevocability of the offer and the offeree has made preparations for the fulfilment of the contract.
Comparison of the approaches?

- Interests of offeror
- Interests of offeree
- Balance of interests
- Predictability and stability of legal exchange?
- Necessary or superfluous differentiation?
Form of contracts
Form of legal transactions, in particular contracts – comparative aspects

- **Distinguish:** necessity of form – types of form, form requirements in detail, legal consequences of form defects

  - **English/U.S. law:** consideration or deed, Statute of Frauds 1677, recent statutes, in particular UCC
  
  - **French law:** art.1359 C.civ. (2016) Writing required for all transactions over a value set by Government Decree (with exception of commercial transactions). If form is not observed, in principle only testimony by witness excluded.
Please compare the provisions of German law on the form of a contract with U.S. law.

**Germany:** §§ 125 – 129 BGB, § 311 b BGB …, § 350 HGB

**USA:** UCC § 2-201. Formal Requirements; Statute of Frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) …

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).
Article 10 Forms of Contract; Writing Requirement
A contract may be made in a writing, in an oral conversation, as well as in any other form. A contract shall be in writing if a relevant law or administrative regulation so requires. A contract shall be in writing if the parties have so agreed.

Article 11 Definition of Writing
A writing means a memorandum of contract, letter or electronic message (including telegram, telex, facsimile, electronic data exchange and electronic mail), etc. which is capable of expressing its contents in a tangible form.
Interpretation of contracts

• „Common intent“ of the parties as guiding principle: German law, sec.133, 157 German BGB
• „Wording of contract“ as primary principle: Russian law, Art.431 Russian Civil Code
• Intermediate position: French law, art.1188 – 1192 (formerly 1156 – 1164) Code civil
• English law
  • From Wikipedia:
  • Objectivity: For some time it had been orthodox to take an objective view of interpretation, best demonstrated by Smith v Hughes (1871). Where Mr Smith thought, after testing a sample, he was buying old oats but in fact was buying green oats, he was not able to assert that he was unbound by his agreement. Blackburn J said …
  • Purpose and context: The move to a contextual, or purposive approach to construing contracts is a recent feature of English contract law. For instance in 1911, in Lovell & Christmas Ltd v Wall Lord Cozens-Hardy MR stated, …
Interpretation of contracts
Interpretation of contracts under French law

TITLE III. CONTRACTS OR CONVENTIONAL OBLIGATIONS
IN GENERAL

CHAPTER III. THE EFFECT OF OBLIGATIONS

Section 5. Interpretation of agreements

Article 1188 (formerly 1156)
One must in agreements seek the common intention of the contracting parties, rather than stop at the literal meaning of the words.

Article 1191 (formerly 1157)
When a clause is susceptible of two meanings, it shall be understood to mean that which may produce some effect, rather than according to the meaning which would produce none.
Specific (nominate) contracts

Is this a „sale“?
Specific contracts

Germany
• sales contracts
• exchange contracts
• loan contracts
• contracts of donation
• lease contracts
• contracts for services
• work contracts (in principle also applicable to labour contracts)
• ...

France
• contracts of donation (art.931 et seq.
• marriage contracts (art.1497 et seq.)
• sales contracts (art.1582 et seq.)
• exchange contracts (1702 et seq.)
• contracts of lease (louage), art.1708 et seq, including lease of things and lease of works
• loan contracts (art.1874 et seq.
• ...
• ...
Summary

• **Notion of contract** by and large generally accepted, details may differ.

• **Sources of contract law**: partly Civil Codes, partly specific legislation, partly Common Law and equity

• **Sphere of application** of contract law: primarily law of obligations, other areas of the law may be unclear

• **Conclusion of contract**: offer and acceptance, different approaches as to binding character of offer („consideration“ under Common Law), revocability and acceptance (eg „mailbox rule“ of Common Law)

• Deeply different approaches as to **interpretation of contracts**: wording of contract v. common intent of parties