

Prof. Dr. Alexander Trunk

Vorlesung / Course
Introduction to Comparative Law
Einführung in die Rechtsvergleichung

Winter term (WS) 2016-2017

<http://www.eastlaw.uni-kiel.de>

18.10.2016: Basic questions and structures of comparative law

25.10.2016 Structures of comparative law (cont'd). Methods of comparative law

01.11.2016: Methods of comparative law (continued)

08.11.2016: Legal families (overview)

15.11.2016: German legal family (deutscher Rechtskreis)

22.11.2016: French legal family

29.11.2016: Anglo-American legal family

06.12.2016: The legal systems in Northern and Eastern Europe

13.12.2016: Legal systems in Asia. Religious laws (overview)

20.12.2016: Islamic law I

10.01.2017: Islamic law II

17.01.2017: Contracts law

24.01.2017: Torts law (Deliktsrecht)

31.01.2017: Property law (Sachenrecht)

07.02.2017: Civil procedure and arbitration

14.02.2017: Free topic

Methods of comparative 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

Methods of comparative law

- Necessity: **Cognizance of the foreign law.** If possible work in original languages. Make use of legislative materials, Internet.
- **Object of comparative research:**
 - = Comparison of legal norms – comparison of legal practice
 - = Macrocomparison - microcomparison: „Legal families (Rechtskreise)“
- 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.

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

Introductory example for comparative research

Please compare sec.823 of the German BGB with art.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 2283)

CHAPTER II. DELICTS AND QUASI-DELICTS

Article 1382

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

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. 1382 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?

Principles, Definitions and Model Rules of European Private Law

Draft Common Frame of Reference (DCFR)

Outline Edition

Prepared by the
Study Group on a European Civil Code
and the
Research Group on EC Private Law (Acquis Group)

Based in part on a revised version of the Principles of
European Contract Law

Edited by
Christian von Bar, Eric Clive and Hans Schulte-Nölke
and
Hugh Beale, Johnny Herre, Jérôme Huet, Matthias Storme,
Stephen Swann, Paul Varul, Anna Veneziano and Fryderyk Zoll

DCFR

Book VI: Non-contractual liability arising out of damage caused to another

Chapter 1: Fundamental provisions

VI. – 1:101: Basic rule

(1) A person who suffers legally relevant damage has a right to reparation from a person who caused the damage intentionally or negligently or is otherwise accountable for the causation of the damage.

(2) Where a person has not caused legally relevant damage intentionally or negligently that person is accountable for the causation of legally relevant damage only if Chapter 3 so provides.

Chapter 2: Legally relevant damage

Section 1: General

Section 2: Particular instances of legally relevant damage

VI. – 2:201: Personal injury and consequential loss

(1) Loss caused to a natural person as a result of injury to his or her body or health and the injury as such are legally relevant damage.

Comparative analysis of case law

- Finding the case or cases
- Understanding the case
- Interpreting the case from a comparative perspective