

Prof. Dr. Alexander Trunk

Vorlesung / Course

Einführung in die Rechtsvergleichung
Introduction to Comparative Law

Winter term (WS) 2014-2015

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

27.10.2014: Basic questions and structures of comparative law

30.10.2014 optional lecture on the legal position of women in China

03.11.2014: Methods of comparative law *[in addition: guest lecture on Russian constitutional law]*

10.11.2014: Methods of comparative law (cont.)

17.11.2014: German legal family (deutscher Rechtskreis)

24.11.2014: German legal family (cont.)

28./29.11.2014 optional possibility to participate in conference „Settlement of international trade disputes in/with countries of the region of Caucasus/Central Asia“ (Landeshaus Kiel)

01.12.2014: French legal family

08.12.2014: Anglo-American legal family

15.12.2014: Anglo-American legal family (cont.). The legal systems in Northern and Eastern Europe

12.1.2015: Legal systems in Asia. Religious laws

19.1.2015: Law of contract

26.1.2015: Law of torts

05.02.2015: Law of property (Sachenrecht)

09.02.2015: Civil procedure and arbitration

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



Property law (overview)

- **Notion of property: Eigentum, Vermögen**
- „Full“ property, „limited“ proprietary (property) rights/rights in rem
- **Systematic position of property law in the legal system.** Constitutional, EU and international law dimension (human rights, investment protection etc.).
- The specific cases of expropriation and privatization

Legal sources of property law

Examples: art.711 French Civil Code vs. § 929 German Civil Code (BGB)

- Germany, Austria, Switzerland, Estonia
- France: Code Civil
- Scandinavia: different specific statutes
- Eastern Europe: e.g. Russia (Civil Code, special Codes)
- UK: Common law, equity, statutes
- USA: Common law, equity, statutes, in particular UCC

Unification of law: DCFR Book VIII Acquisition and loss of ownership of goods, Book IX Proprietary security rights in movable assets, Book X Trusts

Principles of property law

- **Numerus clausus of property rights?** *Mostly yes, in theory not in Denmark. Legislation mostly not dispositive.*
- **Principle of „separation“ of property law and law of obligations:** yes, everywhere
- **Principle of „abstraction“?** *Germany and Estonia*
- **Principle of „speciality“ (Spezialitätsprinzip) in property law:** *mostly yes, but some exceptions in some countries, e.g. general liens in France, Nordic and Baltic countries*
- **Principle of „legal certainty“ (Bestimmtheitsgrundsatz) in property law:** yes, but different ways of realization
- **Principle of „publicity“ (Publizitätsprinzip) in property law:** *very different*

Typical issues of property law

- Distinction movable/immovable (personal/real) property and consequences therefrom; delimitation from and relationship with law of obligations (*e.g. pledge*)
- Acquisition of (full) property in general
- Protection of property (*e.g. rei vindicatio and relationship with contracts law, torts law and unjust enrichment*)
- Good faith transfers (*movables/immovables*)
- Security rights in rem (*e.g. liens, fiduciary ownership, retention of title, „security interest“ under UCC and international treaties*)

Property law: cases

- **Case 1:** Owner O sells car to purchaser P, but does not deliver. How can P get the car?
- **Case 2:** O sells again to P2 and delivers the car to him. Which claims has P against P2?
- **Case 3:** Non-owner NO sells car to P. Can P acquire property?
- **Case 4:** O delivers car to P, but retains property in the car until payment. Valid?
- **Case 5:** P grants a lien (pledge) in the car to bank B, but continues to use the car. Lien valid?
- **Case 6:** P transfers property in the car to bank B as security for a credit. Valid?

Particular legal sources (1)

French Civil Code

BOOK III OF THE VARIOUS WAYS HOW OWNERSHIP IS ACQUIRED **Articles 711 to 2283**

Art.711

Ownership of property is acquired and transmitted by succession, by gift inter vivos or will, and by the effect of obligations.

Art. 1141

Where a thing which one is bound to transfer or deliver to two persons successively is purely movable, the one of the two who has been put in actual possession is preferred and remains owner of it, although his title is subsequent as to date, provided however that the possession is in good faith.

Art. 2279

In matters of movables, possession is equivalent to a title.

Nevertheless, the person who has lost or from whom a thing has been stolen, may claim it during three years, from the day of the loss or of the theft, against the one in whose hands he finds it, subject to the remedy of the latter against the one from whom he holds it.

Legal sources (3)

UK SALE OF GOODS ACT 1979

PART III EFFECTS OF THE CONTRACT

Transfer of property as between seller and buyer

17. Property passes when intended to pass

- (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

Transfer of title

21. Sale by person not the owner

- (1) Subject to this Act, where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

- (2) Nothing in this Act affects—

- (a) the provisions of the Factors Acts or any enactment enabling the apparent owner of goods to dispose of them as if he were their true owner;
- (b) the validity of any contract of sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

Legal sources (3)

USA Uniform Commercial Code

ARTICLE 2 - SALES

PART 4. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

§ 2-403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting".

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

- (a) the transferor was deceived as to the identity of the purchaser, or
- (b) the delivery was in exchange for a check which is later dishonored, or
- (c) it was agreed that the transaction was to be a "cash sale", or
- (d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

Legal sources (4)

USA Uniform Commercial Code

ARTICLE 9 – SECURITY INTEREST

§ 9-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT.

(a) [General effectiveness.] Except as otherwise provided in [the Uniform Commercial Code], a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

§ 9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST ...

(a) [Attachment.] A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) [Enforceability.] Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if :

(1) value has been given; (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and (3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral ...

§ 9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST ... (a)

[General rule: perfection by filing.] ...