

Prof. Dr. Alexander Trunk

Vorlesung / Course

Einführung in die Rechtsvergleichung
Introduction to Comparative Law

Winter term (WS) 2015-2016

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

20.10.2015: Basic questions and structures of comparative law
27.10.2015: Methods of comparative law
03.11.2015: Methods of comparative law (continued)
10.11.2015: Legal families (overview)
17.11.2015: German legal family (deutscher Rechtskreis)
24.11.2015: French legal family
01.12.2015: Anglo-American legal family
08.12.2015: The legal systems in Northern and Eastern Europe
15.12.2015: Legal systems in Asia. Religious laws (overview)
22.12.2015: Islamic law I
12.01.2016: Islamic law II
19.01.2016: Contracts law
26.01.2016: Torts law
02.02.2016: Property law (Sachenrecht) (*date under reservation*)
09.02.2016: Civil procedure and arbitration
16.02.2016: Free topic

Introductory example

You work in a German enterprise, which intends to set-up an establishment in Ukraine. The enterprise would like to use its German-based general contract terms also in its relations to Ukrainian customers and asks whether this is possible. You have to check the German terms on the basis of Ukrainian law, in particular art.634 of the Ukrainian Civil Code.

Art.634 Ukrainian Civil Code (2003): Contract of adhesion

(1) A contract of adhesion is a contract the terms of which are set by one of the parties in forms or other standard formats and which may be concluded only by way of the other party joining the proposed contract as a whole. The other party may not propose its own contract terms.

(2) The joining party can request **modification or termination** of the contract if the contract deprives it of its **usual rights** under such contracts, **excludes or restricts the liability** of the other party or contains other **provisions obviously burdensome** for the joining party. ...

(3) If a claim to modify or terminate a contract is brought forward by a party joining it in connection with its **business** activity, the other party may refuse to satisfy these claims if it proves that the joining party was aware or could be aware of the provisions of the contract.

Notion and object of comparative law

- 1) Differences between legal orders
- 2) Comparative law (Rechtsvergleichung (droit comparé) = science of comparing national and assimilated legal orders
- 3) Object: law of all legal disciplines.
Here: Comparison in the field of civil 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

Legal literature

- Overview monographs (e.g. Zimmermann/Reimann, Zweigert/Kötz), „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.



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- 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

Citation technique

1. German sources: as usual
2. Foreign sources: in principle according to the standards of the source country.

e.g. Laws 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, 21 ICLQ 656 (658 f.)*

Example jurisprudence: Cass Civ, 4.3.1980, Bull Civ I Nr. 72

Jurisprudence, institutions of comparative law

- Jurisprudence: „IPRspr.“ (German courts), law journals. See also „IPG“ (expert opinions of German universities on foreign law). **Internet!**
- Institutions of comparative law: scientific and practitioners's associations, universities, research institutes (e.g. Max Planck Institutes), international organizations (e.g. UNCITRAL, Unidroit, EU).

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