

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 Basic structures of comparative law (contd.)

03.11.2015: Methods of comparative law

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)

12.01.2016: Islamic law

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

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

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.

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

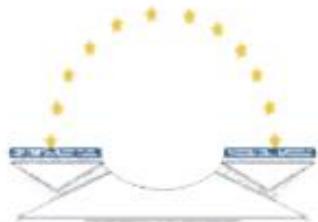
- 1) Formulate the research question
- 2) Find the applicable legal norms or jurisprudence. *Quote exactly!*
- 3) Common elements
- 4) Differences
- 5) Which are the underlying (possibly diverging) values?
- 6) Make your own evaluation
- 7) Consequences, e.g. proposal de lege ferenda

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 ...



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- ◆ The language can be changed at the bottom of the page.
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Did you know?

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