

Comparative Private Law I

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Overview

- Concept of Comparative Law
- Aims and Methods of Comparative Law
- Legal Families – Legal Transplants
- Remedies for Breach of Contract – General and Specific Performance
- Remedies for Breach of Contract – Avoidance
- Remedies for Breach of Contract – Damages

Concept of Comparative Law

- CL and Private International Law
- CL and Public International Law
- CL, Legal History and Legal Ethnology
- CL and Sociology

Aims of Comparative Law

- Knowledge
- Domestic legislation
- Interpretation of domestic law
- Legal education
- Legal practice
- Unification of law

Unification of Law

- Necessities of trade
- Different levels; Private international law -> substantive law
- ICC; Incoterms / UCP 600
- UNIDROIT / PICC
- UNCITRAL / CISG
- Lex mercatoria?

Methods of Comparative Law

- Macrocomparison; spirit and style, methods of thoughts and procedures
- Microcomparison; specific legal institutions or problems
- Functional approach – Examples
- Which legal systems?
- Criticism

Legal Families

- Criteria for classification
- Aims of classification
- Civil Law / Common Law

Civil Law

- Romanistic Legal Family
- Germanic Legal Family
- Nordic Legal Family

Common Law

- England & Wales
- British Commonwealth
- USA

Mixed Jurisdictions

- Private law – Public law
- Historical developments
- Examples; Louisiana, Québec, Scotland, South Africa
- CISG Legal Family?
- Religious Legal Systems
- Local traditions

Legal Transplants

- Octroi
- Transplanting
- Voluntary adoption
- Creeping assimilation

Romanistic Legal Family

- France and related systems
- Central; Code civil 1806
- Natural Law – Comparison to Austrian and Prussian Codes
- Roman and Germanic influences
- Characteristic traits
- Belgium, Netherlands, Germany, Switzerland, Italy, Spain, Portugal, Colonies, Latin America, North America

Germanic Legal Family

- Germany and related systems
- Medieval Roman law
- 19th century; German Historical School (von Savigny) -> Begriffsjurisprudenz -> Pandectists
- German Civil Code 1900 (BGB)
- Structure and values
- Characteristic traits

Germanic Legal Family

- Austria
- Austrian Civil Code (ABGB) 1812
- Structure and style
- Switzerland
- Historical development
- Swiss Civil Code (ZGB/OR) 1912
- China, Japan -> Korea, Thailand, Greece, Portugal, Italy, Brazil
- Swiss CC -> Turkey

The English Common Law

- Starting point 1066 (battle of Hastings)
- Centralization of justice and unification of law
- Foundations; writs
- Common law <-> equity
- 19th century legislation
- Stare decisis doctrine

US American Law

- Distinct development
- 19th century legislation
- Sociological jurisprudence -> legal realism
- Federal <-> state law /courts
- Unification tendencies
- Peculiarities of US civil litigation (jury, American rule, contingency fee)

The Expansion of Common Law

- Settled <-> conquered/ceded colonies
- Australia / New Zealand
- Canada
- India
- Africa (Western <-> Eastern A.), OHADA
- South Africa
- Israel

Basic Differences Between Civil Law and Common Law

- Basic approach (dogmatic <-> pragmatic)
- Style of decisions (relevance of facts, pure logic <-> emotions, personality of judges, headnotes, ethics)
- interpretation of statutes (analogy <-> restrictive interpretation, relevance of case law, relevance of legal writings)
- Education

Nordic Legal Family

- Denmark, Finland, Iceland, Norway, Sweden
- Between Civil and Common Law
- Close interrelationship
- Old Germanic law – little Roman influence
- Nordic co-operation