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) -> Begriffssjurisprudenz -> 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