Comparative Private Law

Introduction
WELCOME!
Herman Bruserud

- Cand. jur. 2002 (UoO), Ph.D 2010 (UoO) on thesis on contract law
- Associate lawyer in the law firm Haavind AS, 2002 – 2004
- Research fellow (UoO), 2004 – 2008
- Lawyer in the law firm Kluge DA, 2008 – 2011
- Senior advicer in the Legislation Department in The Ministry of Justice, 2011 – 2012
- Associate professor at DoPL (UoO) – august 2012 –
The Main Lecturer – Professor Schwenzer
Responsible for the Course – Professor Mads Andenæs
Syllabus / Achievement requirements

The aim of the course is to focus on the main features of the law of contracts in various legal systems of the world, to show the common features and the main differences. A proper understanding of the relevant legal systems is necessary, first of all, if one is involved in an international legal relationship. However, insight in various legal systems is very useful also to understand and develop one’s own legal system, especially in light of the stronger and stronger internationalization of the legal sources.

A proper understanding of various legal systems assumes that these are studied with the correct method. It is not useful to use one’s own legal categories as a starting point, and look for corresponding rules in the foreign system. Often it will not be possible to find corresponding rules, but the foreign system will achieve similar results by adopting other legal mechanisms, that are peculiar to that particular system.

The course will focus on the contract law of the common law and the civil law legal families (which again are to be divested into Romanistic, Germanic and Nordic systems), with references also to the system of the Former Soviet Union and the process that this is undergoing. Attention will also be devoted to the most important instruments of harmonization of contract law on an international level.

Achievement requirements
Achievement requirements for master’s level (10 credits):
Knowledge
Syllabus / Achievement requirements

• Be aware of different requirements for master’s level and bachelor’s level
Reading List

With web links and other features that may be helpful.

• Cordero-Moss, G.: Lectures on Comparative Law (160 pages) (to be found in the bookstore Akademika published in "Stensilserien for Institutt for Privatrett-nr 166 IfP “ (160 pp)
• M Andenas and D Fairgrieve, ‘There is A World Elsewhere’ — Lord Bingham and Comparative Law in M Andenas and D Fairgrieve (eds) Tom Bingham and the Transformation of the Law (Oxford University Press 2009), 402 (Available as ebook from the University Library by using "BIBSYS ASK" online-system and on http://works.bepress.com/mads_andenas/5/)
• Sacco, R.: Legal Formants: A Dynamic Approach to Comparative Law, in 39 American Journal of Comparative Law (1991), pages 1-34,343-402 (Available from the University Library by using "BIBSYS ASK" online-system)
• Sacco, R.: One Hundred Years of Comparative Law, in 75 Tulane Law Review (2001) 1159-1176 (Available from the University Library by using "BIBSYS ASK" online-system)
Reading List

- Cordero-Moss, G.: International Commercial Law, Institute of Private Law, Oslo 2010, pages 101-205 (to be found in the bookstore Akademika published in "Stensilserien for Institutt for Privatrett"/"copy series from the Institute of Private Law" no 185)
  http://cadmus.eui.eu/bitstream/handle/1814/20485/LAW_2012_04_ERPL_03.pdf?sequence=3
Supplementary Reading

Supplementary Reading


Supplementary Reading

- Zimmermann, M., Reimann, The Oxford Handbook of Comparative Law, Oxford University Press, 2006
Lecture Outline

Schedule

Plenary sessions
- Lectures

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Activity</th>
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<tr>
<td>28.08.13</td>
<td>08:15-10:00</td>
<td>Lectures</td>
<td>DN 709 Aud 7</td>
<td>H. Bruserud</td>
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<td>09.09.13</td>
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<td>14:15-16:00</td>
<td>Lectures</td>
<td>DN 709 Aud 7</td>
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Lecture Outline

• 1. Introduction (Bruserud)
• 2. Aims and Methods of Comparative Law (Schwenzer)
• 3. Overview of Legal Families – Legal Transplants (Schwenzer)
• 4. Remedies for Breach of Contract – General and Specific Performance (Schwenzer)
Lecture Outline

• 5. Regional and Global Unification of Contract Law (Schwenzer)
• 6. Remedies for Breach of Contract – Avoidance (Schwenzer)
• 7. Remedies for Breach of Contract – Damages (Schwenzer)
• 8. Formation of Contracts (Bruserud)
• 9. Interpretation, Reasonableness and Good Faith (Bruserud)
Lecture Outline

• 10. Interpretation, Reasonableness and Good Faith cont. (Bruserud)

• 11. Common European Sales Law (CESL) (Andenæs)
Examination and past papers

JUS5240 - Autumn 2013

Examination: Time and place

For some courses, the time and place for exams has not yet been decided. Information about these exams will be published as soon as it is available.

Closing date
7 November

Examination system

Written examination
21 November at 10:00 (4 hours).

The examination candidates must be present at 08.30 (90 minutes prior to the time the examination is scheduled to begin) so that the students auxiliary material can be inspected for notes.

Announcement of results: 12 December

Practical information about time and place

The places of your examinations/assessments will be published at least one week before the examination takes place. Some courses require that you log on to the StudentWeb for information about the time and place of your examination(s). In the event of information about the place of your exam being given by other means than the StudentWeb, you will be notified. See map of UiO to find your exam location.
Examination and past papers

Previous exam papers for JUR1240 and JUS5240 - Comparative Private Law

This course changed course code from JUR5240 to JUS5240 autumn 2011. The change resulted in a reduction in credits from 15 to 10, but the learning requirements remained the same.

Autumn 2012
- Exam

Autumn 2011

Compare the rules about the formation of contracts in the transnational restatements, principles, international conventions and the European Commission’s proposal for a Common Sales Law Regulation. You find some relevant texts attached, and you may wish to make reference to one or more systems of national law to support your argument.

Previous exam papers for JUR1240 and JUR5240

Autumn 2010

Compare the approach to issues of (1) interpretation and (2) formation of contracts in the transnational restatements, principles and international conventions on contract law. You may wish to look into one or more systems of national law to support your argument.

Autumn 2009

Please explain the approach to interpretation of contracts taken by the transnational restatements of contract law.

Autumn 2008

Please explain the major differences and similarities between two systems of law of
Examination and past papers

• A paper will be posted on the web site
  – May be handed in and will be commented
  – More information to come
Introduction to some of the main Regional and International Instruments

  – Convention of April 11th 1980
  – Transnational sales between parties in nations which have acceded the convention
  – 79 parties
  – Norway
    • Is not bound by Part II (Formation of contracts) – will probably be changed in the near future
    • Nordic sales contracts
Introduction to some of the main Regional and International Instruments

- **UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles / UPICC)**
  - General model rules for international commercial contracts
  - Current version from 2010
  - Prepared by academics
  - Might be utilized by the parties
  - Expression of common international contract law principles?
Introduction to some of the main Regional and International Instruments

• Principles of European Contract Law (PECL)
  – General model rules for contracts
  – Prepared by academics (“Lando Commission”)
  – Might be utilized by the parties
  – Expression of common European contract law principles?
Introduction to some of the main Regional and International Instruments

- Draft Common Frame of Reference (DCFR) – 2009
  - Study Group on a European Civil Code (van Bar) + Aquis Group
  - Black letter rules
  - Comments
  - Comparative notes
Introduction to some of the main Regional and International Instruments

- Draft Common Frame of Reference (DCFR) cont.
  - Contents
    - Book I General provisions
    - Book II Contracts and other juridical acts
    - Book III Obligations and corresponding rights
    - Book IV Specific contracts and the rights and obligations arising from them
    - Book V Benevolent intervention in another’s affairs
Introduction to some of the main Regional and International Instruments

- Draft Common Frame of Reference (DCFR) cont.
  - Contents cont.
    - Book VI Non-contractual liability arising out of damage caused to another
    - Book VII Unjustified enrichment
    - Book VIII Acquisition and loss of ownership in movables
    - Book IX Proprietary security rights in movable assets
    - Book X Trusts
Introduction to some of the main Regional and International Instruments

• Common European Sales Law (CESL)
  – Proposal for regulation: COM(2011) 635 final
  – An optional “2\textsuperscript{nd} regime” for cross-border contracts
  – Scope: sales of goods, supply of digital content, related services
  – Its fate has not yet been decided on a European level
Introduction to some of the main Regional and International Instruments

• Common European Sales Law (CESL) cont.
  – Application (as the proposal stands now)
    • Chosen by the parties
    • Cross-border contract (unless otherwise decided)
    • At least one party in a Member State
    • Contract for the sale of goods, for the supply of digital content, related services
    • Trader and consumer or SMB (unless otherwise decided)