

COMPARATIVE PRIVATE LAW

PRESENTATION OF THE COURSE

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Definition of comparative law

- Definition often overlaps with justification
- Evolution:
 - Need to justify
 - Denial of need to justify
 - Focus on function as a tool for harmonisation

The work on a common contract law

- Contract law differs from state to state
- Mechanisms to be used in international contracts
- Assumption: state law is not adequate for international contracts
- Proposed solution: a common contract law
- Is the solution totally satisfactory?
- Should the purpose of comparative law be to eliminate differences?

Legal families

- "Systemology":
 - Constant data characterising a legal system
 - Legal "style"
- Classification into families:
 - Civil Law
 - Romanistic
 - Germanic
 - Scandinavian
 - Common Law
 - Socialist Law
 - Islamic law

Legal transplants

- Reception of entire foreign legal systems
- Adoption of a foreign rule
- Legal transplants and different legal families: apparent and real difficulties
 - The example of Russian law

Comparative contract law

- Compared systems:
 - Norway (Scandinavian legal family)
 - Italy (Romanistic legal family)
 - Germany (Germanic legal family)
 - England (Common law legal family)
 - "International" (Vienna Convention, UNIDROIT Principles, PECL)

Comparative contract law

- Compared areas:
 - Formation
 - Interpretation
 - Reasonableness of content
 - Good faith
 - Liability for non-performance
 - Remedies for non-performance

Comparative contract law

- Method
 - Present a case
 - Look at respective solutions
 - Analyse legal techniques (also in light of respective conceptual categories)
 - Comparison: correspondence results/legal techniques/conceptual categories within each system and among systems?