



German Law – A Comparative Introduction

Summer School in Law & Economics 2018

June 4, 14.15 PM to 6.00 PM • June 5, 9.15 AM to 1.00 PM •
June 5, 2.15 PM to 6.00 PM

University of Hamburg • Von-Melle-Park 5 • Room 1083a • 20146 Hamburg

Syllabus

The course aims to provide students with an understanding of German Basic Law, court procedure, legal reasoning and argumentation, as well as an understanding of the basic features of German private law. This course consists of three parts: (1.) constitutional law and criminal law, (2.) Germany as a civil law country and (3.) German private law with a focus on contract and tort law. The lectures illustrate the origins, structure, practice and mentality of German law. Further emphasis is on the differences to other legal systems and the relationship to European Union law.

June 4 (afternoon session): German Constitutional and Criminal Law

Highlights: history, human dignity, overview of basic rights, effect of the constitution on private law (*Lüth* decision), federation, passing of laws, relationship with European law

Recommended reading:

- overview of the structure and content of the Basic Law (Grundgesetz)
Constitution of the Federal Republic of Germany:
<https://www.btg-bestellservice.de/pdf/80201000.pdf>
- Federal Constitutional Court (Bundesverfassungsgericht, BVerfG), translated *Lüth* decision (1958): http://www.utexas.edu/law/academics/centers/transnational/work_new/german/case.php?id=1369
- Donald P. Kommers and Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd ed., 2012
<https://books.google.de/books?vid=ISBN9780822352662>

Additional reading:

- Werner Heun, *The Constitution of Germany – A Contextual Analysis*, 2010
- Nigel Foster and Satish Sule, *German Legal System and Laws*, 4th ed., 2010
- Howard D. Fisher, *The German Legal System and Legal Language*, 6th ed., 2015
- Hannes Rösler, *Harmonizing the German Civil Code of the Nineteenth Century with a Modern Constitution – The Lüth Revolution 50 Years Ago in Comparative Perspective*, 23 *Tulane European and Civil Law Forum* 1 (2008)

- Hannes Rösler, Dignitarian Posthumous Personality Rights – An Analysis of U.S. and German Constitutional and Tort Law, 26 Berkley Journal of International Law 153 (2008) <http://ssrn.com/abstract=1313654>

June 5 (morning session): German Private Law Tradition in Comparative Perspective

Highlights: Thibaut-Savigny controversy on a German codification, influence of Roman law and the French Code civil, legal education, courts, mentality of legal scholars and practitioners, choose German law?

Recommended reading:

- for an overview of the five parts of German Civil Code (Bürgerliches Gesetzbuch – BGB) see the official translation: http://www.gesetze-im-internet.de/englisch_bgb/index.html (German version also <http://dejure.org>)
- Reinhard Zimmermann, The New German Law of Obligations, 2005, ch. 1: <http://ouclf.iuscomp.org/the-german-civil-code-and-the-development-of-private-law-in-germany>
- court structure: http://www.bmjv.de/SharedDocs/Downloads/EN/courts_of_law.pdf?__blob=publicationFile&v=3 (or via https://e-justice.europa.eu/content_judicial_systems-14-en.do)

Additional reading:

- famous cases: http://www.utexas.edu/law/academics/centers/transnational/work_new/german/toc.php
- forum: <http://www.germanlawjournal.com>
- http://www.lawmadeingermany.de/Law-Made_in_Germany.pdf, 2009
- Lutz-Christian Wolff, Structured Problem Solving: German Methodology from a Comparative Perspective, 14 Legal Education Review 19 (2003-2004) <http://www.austlii.edu.au/au/journals/LegEdRev/2003/3.html>
- Peter L. Murray and Rolf H. Stürner, German Civil Justice, 2004 (TOC: <http://www.cap-press.com/pdf/1331.pdf>)
- Giesela Rühl, [Preparing Germany for the 21st Century: The Reform of the Code of Civil Procedure](#), 6 German Law Journal 909 (2005)
- Ralf Michaels, Comparative Law by Numbers?, 57 American Journal of Comparative Law 765 (2009) <http://ssrn.com/abstract=1543772>

June 5 (afternoon session): German private law in European context

Highlights: BGB in action: reform of 2001, consumer law, good faith as the king of the BGB?, culpa in contrahendo, change of circumstances, tort law (i.a. personality rights), a European Civil Code?

Recommended reading:

- for an overview of the general part of the German Civil Code have a look at §§ 1 et seqq. BGB: http://www.gesetze-im-internet.de/englisch_bgb/index.html
- for an overview of German contract law have a look at §§ 433 et seqq. BGB: http://www.gesetze-im-internet.de/englisch_bgb/index.html

- for an overview of German tort law have a look at §§ 823 et seqq. BGB: http://www.gesetze-im-internet.de/englisch_bgb/index.html

Additional reading:

- Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law*, 3rd ed., 1998, 323 et seqq. (tort law) and 595 et seqq. (contract law)
- Hein Kötz, *European Contract Law*, 2nd ed., 2017
- Hugh Beale, Bénédicte Fauvarque-Cosson, Jacobien Rutgers, Denis Tallon and Stefan Vogenaer, *Cases, Materials and Text on Contract Law*, 2nd ed., 2010, some material available online <http://www.casebooks.eu/contractLaw/about>
- Basil S. Markesinis, Hannes Unberath and Angus Johnston, *The German Law of Contract*, 2006
- Basil S. Markesinis and Hannes Unberath, *German Law of Torts*, 2002
- Thomas Kadner Graziano, *Comparative Contract Law*, 2nd ed., 2019
- Thomas Kadner Graziano, *Comparative Tort Law*, 2018
- Mathias Reimann & Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law*, 2nd ed. 2019
- Hannes Rösler, *Hardship in German Codified Private Law: In Comparative Perspective to English, French and International Contract Law*, 15 *European Review of Private Law*, 483 (2007) <http://ssrn.com/abstract=1154004>
- Hannes Rösler, *Protection of the Weaker Party in European Contract Law – Standardised and Individual Inferiority in Multi-Level Private Law*, 18 *European Review of Private Law* 729 (2010)
- Wolfgang Wurmnest, *Contract Law*, in: Joachim Zekoll and Gerhard Wagner, *Introduction to German Law*, 3rd ed., 2019, 199 et seqq.
- Study Group on a European Civil Code, Research Group on the Existing EC Private Law (Acquis Group) (eds.), *Draft Common Frame of Reference (DCFR), Full Edition, 2009 (Outline Edition January 2009)*: http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf
- UNIDROIT *Principles of International Commercial Contracts and Draft Common Frame of Reference: A Synoptical Table*, 15 *Uniform Law Review* 437 (2009) <http://www.unidroit.org/english/publications/review/articles/2009-3-bonell-peleggi-e.pdf>
- Horst Eidenmüller, Florian Faust, Hans Christoph Grigoleit, Nils Jansen, Gerhard Wagner and Reinhard Zimmermann, *The Common Frame of Reference for European Private Law – Policy Choices and Codification Problems*, 28 *Oxford Journal of Legal Studies* 659 (2008) <http://ojls.oxfordjournals.org/content/28/4/659.abstract>