21/9/2015

Assistant Professor Monika Prusinowska
Winter term 2015
Master thesis

- Already think about it – Topic? Supervisor?
- Approach your professors!
Efficient online research – exercise
- What is UNHCR?
- What is/are the VAT tax rate(s) in UK?
VAT rates

The standard VAT rate is 20%

VAT rates for goods and services

<table>
<thead>
<tr>
<th>Rate</th>
<th>% of VAT</th>
<th>What the rate applies to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard</td>
<td>20%</td>
<td>Most goods and services</td>
</tr>
<tr>
<td>Reduced rate</td>
<td>5%</td>
<td>Some goods and services, eg children's car seats and home energy</td>
</tr>
<tr>
<td>Zero rate</td>
<td>0%</td>
<td>Zero-rated goods and services, eg most food and children's clothes</td>
</tr>
</tbody>
</table>

The standard rate of VAT increased to 20% on 4 January 2011 (from 17.5%).

Some things are exempt from VAT, eg postage stamps, financial and property transactions.

The VAT rate businesses charge depends on their goods and services.
- If the fees in a legal case are based on the value of claim, what should be the fee if the claim is less than EUR 500?
- What is the name of the legal act?
  - Primary source of law?

- Is it the most recent law?
Übersetzung durch Eileen Flügel.
Translation provided by Eileen Flügel.

Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 5 Abs. 7 des Gesetzes vom 10.10.2013 (BGBl. I S. 3799).

Version information: The translation includes the amendment(s) to the Act by Article 5 para. 7 of the Act of 10.10.2013 (Federal Law Gazette I p. 3799).

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Law on the Remuneration of Attorneys
(Gesetz über die Vergütung der Rechtsanwältinnen und Rechtsanwälte - RVG)


The Law was promulgated by the Bundestag with the approval of the Bundesrat, as Article 3 of the Act of 5.5.2004 I 718 (Act to Modernise the Law on Costs - Kostenrechtsmodernisierungsgesetz - KostRMoG). It shall enter into force on 17.2.2004 pursuant to Article 8, first sentence of this Act.

Part 1
General provisions

Section 1
Scope

(1) The remuneration (fees and expenses) for attorneys' professional activities shall be assessed pursuant to this Law. This shall also apply to activities as a curator ad litem pursuant to sections 57 and 58 of the [German] Code of Civil Procedure (Zivilprozessordnung - ZPO). Other members of a Chamber of Lawyers, partnerships of attorneys and other companies shall be considered equal to an attorney within the meaning of this Law.

(2) This Law shall not apply to activities as a guardian, custodian, curator, guardian ad litem (Verfahrens pfleger oder Verfahrensbeistand), executor, insolvency administrator, trustee, member of a committee of creditors, administrator of an estate, enforced receiver, fiduciary agent or arbitrator or to any similar activity. Section 1835 (3) of the [German] Civil Code (Bürgerliches Gesetzbuch - BGB) shall remain unaffected.
Welcome to the German Federal Ministry of Justice and Consumer Protection

The Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz, BMJV) is primarily a ministry of legislation, also advising the other Federal Ministries in the preparation of legislative proposals.

THE MINISTRY

Structure and Organisation

The broad range of tasks carried out by the Federal Ministry of Justice and Consumer Protection is reflected in its structural organisation.

DIRECTORATES GENERAL

- Judicial System (General I)
- Civil Law (General II)
- Criminal Law (General II)
- Commercial and Economic Law (General III)
- What are the candidate countries to join EU?
Countries

Member states of the EU (year of entry)

- Austria (1955)
- Belgium (1958)
- Bulgaria (2007)
- Cyprus (2004)
- Croatia (2013)
- Czech Republic (2004)
- Denmark (1973)
- Finland (1995)
- France (1958)
- Germany (1998)
- Greece (1981)
- Ireland (1973)
- Italy (1958)
- Luxembourg (1958)
- Malta (2004)
- Netherlands (1958)
- Poland (2004)
- Portugal (1986)
- Romania (2007)
- Slovakia (2004)
- Slovenia (2004)
- Spain (1986)
- Sweden (1995)
- United Kingdom (1973)

On the road to EU membership

Candidate countries

- Albania
- The former Yugoslav Republic of Macedonia
- Montenegro
- Serbia
- Turkey

Potential candidates
ART OF COMPARING
– comparative perspective toward research
What is comparative law about?

- **Why** do we compare?
- **What** do we compare?

→ How can **comparative law research** be **useful**?
  What for?

→ What are some possible **problems** to be encountered?
Usefulness of comparative law research

- **Existing legal problems** and searching for possible solutions in other legal orders

- **Understanding** → globalization

- **Harmonization**
  - EU Law
Comparative law, Conflict of laws and Unification
/Harmonization of law

- These three topics are **distinct** but closely **related**.

- **Conflict of laws**, or private international law, concerns national or domestic legal rules applicable in situations involving the law of another jurisdiction.

- **Unification of law** (harmonization) is a process that grew out of the need to simplify conflict of law rules, often by international conventions, and has acted on both the national and international levels.
E-consumer protection in the US - The same jungle as in Europe
by Tamas Dezso Czigler

Abstract

With use of the Internet, a new form of contract has appeared: the electronic contract, which is concluded online. In most cases, two parties are present: a consumer, who is in a relatively exposed position and a business entity. This article focuses on the protections given to consumers in the US. […]

Principal questions are the following: do consumers in the US receive the same protections as consumers in Europe when purchasing goods online? When we buy goods from the US here in Europe through the Internet and have them shipped over, do we receive the same protections as in Europe? And what options exist for protecting ourselves? What are the rules and remedies that help us? Last, but not least: what can we learn from the US system, if anything?
Critical thinking

- Comparative research is not only about finding similarities & differences

- Once you have undertaken the study of the similarities and differences, explore the reasons behind them, evaluate their significance and the context

- **Function** – you must know how legal rules, institutions and systems function somewhere else

- **Context** – you cannot know how they function without situating them in their legal, economic and cultural context
What is the legal system to compare with?

→ Comparative research is not only comparison between common law system and civil law system

- Do not automatically go to American/German system
- Do not analyze primary sources of law only

**WHY DO YOU EXPECT TO GET THE ANSWER IN THE PARTICULAR COUNTRY’s SYSTEM?**

- „I do compare with American system because it is well developed” (?)
- Does law work effectively in practice?
- How do you measure the efficiency of law in particular country?
Methodology

→ There is no generally agreed or systematically elaborated comparative law methodology. However, there are some approaches / techniques that you may find helpful.

→ Comparative law itself is said to be a method to study law, legal problems.
Techniques

- Study and interpretation of authoritative texts such as statutes, treaties, guidelines, and case law.
  - Remember about reliability of sources → use for example: official translations, .gov domains etc., Law Library of World Bank: http://www.doingbusiness.org/law-library

- **Empirical research** is a way of gaining knowledge by means of direct and indirect observation or experience. It derives knowledge from actual experience rather than from theory.
  - Data analysis, interviews…

→ COLLECTING THE EVIDENCE TO ANSWER THE QUESTION

The hypotheses are tested against the gathered information (Forming & Testing Hypotheses)
When “comparing”: FEW TIPS

- Understand the “legal family” each country belongs to;

- Understand historical, socio-economic, political, cultural, demographic etc. **distinctions** between the countries;

- Organize your paper so it is a truly **integrated comparison**, not simply two papers with one common title, intro and conclusion;

- You can start your research from **secondary sources** in order to provide yourself with an introduction to other legal order.
WHAT IS THE PROBLEM?
Is there a **problem**? Why do we ask the **questions**?

- Legal uncertainty: problems that still have not been addressed
  - Lack of regulation? New legal question
  - Lack of definitions?
  - Ambiguous terms?

- New factual twist – not solved situation
- Social, economical problem?
- Needs for unification?

**QUESTION ➔ ANSWER**
Transplantation immediately???
EXAMPLES OF COMPARATIVE RESEARCH QUESTIONS
Deposit guarantee insurance has been a very debated topic both in the USA and in Europe. Deposit guarantee insurance is considered to be a highly important mechanism to prevent bank runs and to restore depositor confidence, which is why both in the USA and in Europe during the financial crisis measures were taken to increase the coverage amounts. Interestingly, China is also considering the introduction of a deposit guarantee system. China has indeed known many cases of bank failures recently. Until approximately 20 years ago, this may not have been a big problem in China for the simple reason that all banks were state owned and an implicit guarantee system was provided via the state. However, with privatization of financial markets also occurring in China, bank runs and resulting bank failures have also begun to occur in this country.

Attempts have been taken to introduce a deposit guarantee scheme, but they were put on hold because of the financial crisis. This article looks at the particular situation of China, not only addressing some of the instances of bank failures but also studying the particular design problems that may arise in the Chinese context, in the light of experiences in the USA and Europe. Indeed, from the US and European experience, it is well known that, on the one hand, deposit insurance may have many beneficial aspects (preventing bank runs), but, on the other hand, it may also create problems of its own (in particular, creating a moral hazard on the side of financial institutions and neglect on the side of depositors). The article examines how these problems may play out in China and also argues that given the fact that the big five Chinese banks are still state owned introducing risk dependent contributions (which is now advocated in the USA and Europe) may not be appropriate in China.

http://cjcl.oxfordjournals.org/content/1/2/256.abstract
Citizenship in the age of globalisation

by Graziella Romeo

Abstract

The mass migration phenomenon calls into question the meaning of citizenship status in contemporary constitutional democracies as it represents a quest for a kind of global solidarity.

This article explores the transformation of the concept of status civitatis from a European comparative perspective. The emerging role of citizenship in today political communities will be examined through the legislations concerning the recognition and protection of social rights of non citizens since: whilst on the one hand they are tied to citizenship through a nexus of principle, on the other hand they entail individual legal rights recognised under case law as having universal status. Relevant provisions of Italian, Spanish, French, Belgian and Dutch laws will be analysed with a view of sketching a map of problems and (possible) solutions. The comparison among European legal systems is, at the end, put to the test of theories that suggest moving beyond the idea of citizenship as a solution to the human rights/universal rights dialectic.

Strange Bedfellows or Soulmates:
A Comparison of Merger Regulation in China and Australia

by Deborah J. Healey

Abstract

China and Australia are extremely significant trade partners and investors. Australia has a very well established competition law, now called the Competition and Consumer Law 2010, with a well-established merger regime. China has a relatively new competition law, the Anti-Monopoly Law 2007.

This article compares merger control in the two jurisdictions. The Ministry of Commerce (MOFCOM) has already referred to an Australian decision in rejecting a merger, the only reference to a foreign decision to date, which confirms the utility of the comparison.

This article critically evaluates the determinations of MOFCOM and compares the approach of the Australian Competition and Consumer Commission (ACCC), the Australian regulator. It assesses the transparency and predictability of procedures and decision-making in the two jurisdictions.
EXAMPLES OF COMPARATIVE RESEARCH QUESTIONS

- COMPARATIVE ALTERNATIVE DISPUTE RESOLUTION FOR INDIVIDUAL LABOR DISPUTES IN JAPAN, CHINA, AND THE UNITED STATES: LESSONS FROM ASIA?

- The Right to Strike: A Comparative Perspective. A study of national law in six EU states

- Foreign Direct Investment Inflows to India since the 1990s - Issues and Challenges: Comparison with China
ADDITIONAL READING about comparative law

1) Considerations about comparative law with the emphasis put on comparative civil procedure:

Reading for the next week !!!

- Academic Skills and Resources: Avoiding Plagiarism - p. 62
- Examples of Plagiarism and of Appropriate Use of Others’ Words and Ideas - p. 67
THANK YOU!!!