

Einführung in die englische Rechtsterminologie

Dr. Moritz Hennemann, M.Jur. (Oxon.)

Albert-Ludwigs-Universität Freiburg



**UNI
FREIBURG**

Dr. Moritz
Hennemann

- Master-Studium in Oxford (Lincoln College) 2010/2011 (M. Jur.)
- Zweijähriger Oberstufenaufenthalt in England (International Baccalaureate) 2001 - 2003

- Studium der Rechtswissenschaften in Heidelberg und Krakau 2004 – 2009
- Akademischer Mitarbeiter bei Prof. Dr. Boris Paal, M. Jur., am Institut für Medien- und Informationsrecht, Abt. I – Privatrecht 2009/2010
- Promotion in Freiburg 2011 („Urheberrechtsdurchsetzung und Internet“)
- Bis 01/2014 Referendariat am Hanseatischen Oberlandesgericht (Hamburg)
- Derzeit Wissenschaftlicher Mitarbeiter am Max-Planck-Institut für ausländisches und internationales Privatrecht (hennemann@mpipriv.de)

Organisatorisches (1/3)



Zeit

- Ende der Vorlesung heute ca. 21:45
- Verlegung des Beginns der Vorlesungen auf s.t.?
- Ende am Samstag um 12:15, wenn Beginn um 09:00 s.t.
- Ende am Montag bis Mittwoch und Freitag um 21:15, wenn Beginn um 18:00 s.t.
- Ende am Donnerstag um 19:30, wenn Beginn um 18:00 s.t.

Anmeldung

- Elektronisches Anmeldeverfahren
- Für die Teilnahme an der mündlichen Prüfung ist eine elektronische Anmeldung über das LSF-Modul („Campus Management“) erforderlich.
- Ggf. Meldung beim Prüfungsamt (insbesondere LL.M. und Erasmus-Studierende)

Scheine

- Sitzschein als Fremdsprachennachweis
- Voraussetzung für den Sitzschein ist die Teilnahme an 5 von 7 Veranstaltungen
- Schein für Fremdsprachenzusatzausbildung
 - zusätzliche mündliche Prüfung am Samstag, den 25.01.2014
 - ca. 5-10 minütige Prüfung (siehe sogleich)

Sprach- und sonstige Vorkenntnisse

- Englisch Grundkurs
- Englisch Leistungskurs
- Sehr vorteilhaft: Auslandschuljahr oder -jahre oder sonstiger längerer Auslandsaufenthalt im englischsprachigen Ausland

Materialien

- Arbeitsmaterialien zur Vorlesung
 - Vorlesungsübersicht
 - Liste der „legal terms“
- Powerpoint-Folien der Veranstaltung werden zeitnah auf der Homepage des LS Paal abrufbar sein
 - Passwörter für die Folien werden jeweils gesondert bekanntgegeben

Veranstaltungsübersicht (1/2)



1.	Einführung, Rechtsgebiete und Rechtstexte sowie Grundlagen der Rechtsvergleichung	Freitag, 17.01.2014
2.	Case Law und Präjudiziensystem Aufbau und Stil von Urteilen	Samstag, 18.01.2014
3.	Contract Law Sales Law	Montag, 20.01.2014
4.	International Sales Law Tort Law und Property Law	Dienstag, 21.01.2014
5.	Constitutional Law European Law	Mittwoch, 22.01.2014

Veranstaltungsübersicht (2/2)



6.

Fallstudie „Vertragsgestaltung“

Donnerstag,
23.01.2014

7.

Rechtsvereinheitlichung und Rechtspolitik
Studium, Ausbildung und juristische Berufsbilder

Freitag,
24.01.2014

Optionale mündliche Prüfung

Samstag,
25.01.2014

Autor	Titel
Lehr- und Studienbücher	
<i>Byrd, B. Sharon</i>	Einführung in die anglo-amerikanische Rechtssprache, Band I: Introduction to Anglo-American Law & Language, 3. Aufl. 2011, EUR 34,00
<i>dies.</i>	Einführung in die anglo-amerikanische Rechtssprache, Band II: Anglo-Amerikanisches Vertrags- und Deliktsrecht, 2. Aufl. 2010, EUR 32,00
<i>Linhart, Karin</i>	Englische Rechtssprache – Ein Studien- und Arbeitsbuch, 2. Aufl. 2012, EUR 25,90

Autor	Titel
Wörterbücher	
<i>Dietl, Clara- Erika/Lorenz, Egon</i>	Wörterbuch für Recht, Wirtschaft und Politik, Band I: Englisch-Deutsch, 7. Aufl. vorgesehen für 2014, EUR 158,00; Band II Deutsch-Englisch, 6. Aufl. vorgesehen für 2014, EUR 160,00
<i>Köbler, Gerhard</i>	Rechtsenglisch, 8. Aufl. 2011, EUR 15,00
<i>Law, Jonathan/ Martin, Elizabeth</i>	Oxford – A Dictionary of Law, 7. Aufl. 2013, EUR 13,95
<i>Linhart, Karin</i>	Wörterbuch Recht Englisch, 2010, EUR 29,00
<i>Romain, Alfred/ Bader, Hans/ Byrd, B. Sharon</i>	Wörterbuch der Rechts- und Wirtschaftssprache, Teil I: Englisch-Deutsch, 5. Aufl. 2000, EUR 76,00

Literatur (3/3)



Autor	Titel
Sonstiges	
<i>Bugg, Stuart G.</i>	Contracts in English, 2. Aufl. 2013, EUR 75,00
<i>Triebel, Volker/ Vogenauer, Stefan</i>	Englisch als Vertragssprache, vorgesehen für 2014, ca. EUR 35,00

And now...



Deutsch



English

What ist not covered...



The following topics are not covered by this course...

- Family Law
- Law of Succession
- Corporate Law
- Criminal Law
- Employment Law
- Commercial Law
- Civil Procedure Law
- Criminal Procedure Law

Optional oral exam

Saturday,
25.01.2014

- The oral examination will take 5 to 10 minutes in groups of 3 to 5 students.
- You might be asked to explain a specific topic covered in this lecture.
- You might be asked to read a short legal text and to summarise its content.
- You might be asked to explain a specific legal term.
- The oral examination examines whether the candidate has achieved the goals of this lecture.

Goals of this lecture



Students shall

- be able to work with an English legal text.
- be able to answer legal questions in English.
- be able to discuss a legal problem in English.
- learn the most important legal terms and the respective context of the terms.
- – pars pro toto – get an distinct insight into different fields of law in order to demonstrate the usage of English legal terminology.
- improve their understanding of English legal texts.
- use this lecture as a preparation for others lectures in substantive Anglo-American Law.
- use this lecture as a first preparation for undergraduate or postgraduate studies abroad.

Today's lecture



1.

Introduction, Fields of Law and Legal Texts Introduction to Comparative Law Terminology

- German Law in English
- Pitfalls in Translation
- Areas of Law
- Types of Legal Texts
- Sources of Law
- Terminology of Norms
- Comparative Law Terminology
- etc. ...

First of all...



The following is of utmost importance...

- This lecture might also enable you to communicate in English about issues of German Law:
 - to write and to communicate about German Law in English is nowadays of vital importance to all lawyers - working on any level – nationally or internationally.
 - this does – in fact – nearly include every German lawyer.
 - a simple reason is the European Union (EU) and the EU Law – the same is true for other supranational or international bodies.
 - although official texts of the EU are translated into German, English is the key language at the stage of political discussion in Brussels.
 - even any politician or civil servant in a German ministry has to communicate in English in these cases.

First of all...



The following is of utmost importance...

- Another reason for everyday communication about German Law in English is our globalised world:
 - any law firm advising clients at an international level about German Law issues has to do so in English.
 - it is said that a German lawyer in a big Frankfurt law firm tends to work nearly 80 % in English.
 - to get an insight in to the BGB in English please visit http://www.gesetze-im-internet.de/englisch_bgb/7
 - the translation of the names of German statutes is a bit tricky
 - either you use the German name and the respective abbreviation
 - e. g. BGB
 - or you use an English translation and the respective abbreviation
 - e. g. GCC (German Civil Code)



“legal terms cannot – or can hardly – be translated”

- Legal terms are concepts (notions) which are bound to a legal system.
- A “direct translation” of a German legal term into English might be (a) false (friend).
- The legal concept of the translated German term might be very different from the legal concept behind the English term used in English law.

Be aware

- Legal terms which do relate to one law and do not describe a similar concept in the other law cannot be translated.
 - Terms should not be translated or the translation should indicate the foreign law background.
- Legal terms with a similar concept in both laws can be translated (e. g. contract).
- Legal terms which do not relate a legal concept in the other law can be translated.
 - Classical example: punitive damages ('Strafschadenersatz').

Areas of Law



German Law

Private Law

Public Law

Criminal Law

English Law

Civil Law

Public Law

English Law

Civil Law

- Three different meanings
 - Roman Law
 - “a legal system based on Roman law, as distinct from the English system of common law”
 - Private law, as opposed to public law, military law, criminal etc.
 - “the part of the law that deals with such aspects of relationships between individuals that are of no direct concern to the state”

English Law

Public Law

- “the part of the law that deals with the constitution and functions of the organs of central and local government, the relationship between individuals and the state, and relationships between individuals that are of direct concern to the state” (including criminal law)

Subareas of English Law (1/6)



Subareas of English Law

Jurisprudence

- “the theoretical analysis of legal issues at the highest level of abstraction”

Law of Obligations

- Term unknown to English law
- Term to describe the regulation of obligations, contractual or other, in civil law systems
 - e.g. German Schuldrecht
- In English Law the equivalent rules are found in different areas (contract law, unjustified enrichment)

Law of Succession

- “the law and procedures under which beneficiaries become entitled to property under a testator’s will”

Subareas of English Law (2/6)



Subareas of English Law

Tort law

- concerned with “a wrongful act or omission for which damages can be obtained in a civil court by the person wronged, other than a breach of contract. The Law of Tort is mainly concerned with providing compensation for personal injury and property damage caused by negligence”

Unjustified Enrichment/ Restitution

- “the return of property to the owner or person entitled to possession.”

Commercial law

- Term used in Common Law
- Equivalent parts in German Law are *Handelsrecht*, *Wertpapierrecht* or *Kreditsicherungsrecht*

Subareas of English Law (3/6)



Subareas of English Law

Company Law

- Concerned with “an association formed to conduct business or other activities in the name of the association”

Intellectual Property Law

- Concerned with “intangible property that includes patents, trade marks, copyright, and design rights”

Conflict of Laws/Private International Law

- The part of the national law “that establishes rules for dealing with cases with a foreign element”
- Terms often used for the same meaning
- However, Private International Law – instead of Conflict of Laws – also encompasses question of the relevant jurisdiction, i. e. the competent court to decide

Subareas of English Law (4/6)



Subareas of English Law

Competition Law (UK)/Antitrust Law (US)

- the branch of law concerned with the regulation of anticompetitive practises, restrictive trade practises, and abuses of a dominant position or market power”

European Law

- Law of the European Union
- Law of the European Council
 - European Convention of Human Rights

International Law

- “the system of regulating the interrelationship of sovereign states and their rights and duties with regard to one another”

Subareas of English Law (5/6)



Subareas of English Law

Constitutional Law

- “the rules and practise that determine the composition and functions of the organs of central and local government in a state and regulate the relationship between the individual and the state”

Administrative Law

- “the branch of law of public law governing the exercise of powers and duties by public authorities”

Subareas of English Law (6/6)



Further subareas of English Law

Property Law

Legal History

Civil Procedure
Law

Comparative Law

Criminal
Procedure Law

Tax Law

Family Law

Contract Law

Criminal Law

Types of Legal Texts (1/2)



Legal Texts

- Codification
 - “a statute that sets out the whole of the existing law”
- Statute/Act
 - “a document that sets legal rules” (normally by a parliament)
- EU Directive
 - “directives are addressed to member states and require them to achieve (by amending national law if applicable)”
- EU Regulation
 - “regulations are of general application, binding in their entirety, and directly applicable in all member states without the need for individual member states to enact them”
- Judgement
 - “a decision made by a court in respect of the matter before it; judgments may be interim, deciding a particular issue prior to the trial of the case, or final, finally disposing of the case”

Types of Legal Texts (2/2)



Legal Texts

- Contracts
 - “a legally binding agreement”
- Will
 - “a document by which a person (called the testator) appoints executors to administer his estate after his death, and directs the manner in which it is to be distributed to the beneficiaries he specifies”
- Standard Forms
 - “a contract that is concluded on terms issued by the offeror in standard form and allows no effective negotiations”
- Legal Writings
 - academic articles/books

Sources of Law (1/2)



Types of Legal Sources

'Positive Law'

- Statutes/Acts
 - Legislative Power
 - parliamentary
 - by a legislative body
 - Executive power
 - Regulation

Draft

- to pass an act
- to enact
- to come into force
- to enter into force

Case Law

- Sometimes is Case Law of one jurisdiction also influential in another jurisdiction.

Sources of Law (2/2)



Types of Sources

Customary Law

Usages

Legal writings

- Doctrine/views
- Law (review) articles
- Law journal/law review

Hierarchy of Sources of Law

Primary Sources
of Law

- Constitution
- Statutes/Act
- Case law (depending on the legal system)
 - Be aware: Hierarchy of Courts

Secondary
Sources of Law

- Legal writings

“Terminology of Norms”



Articles and other...

- according to/pursuant to
- Article
 - Statutes
 - Constitutions
 - “Art”
- Section
 - German “Paragraph”
 - “Sec”

- Paragraph
 - German “Absatz”
 - “para”
- Subparagraph
 - European Law
- Litera
 - as in German Law
 - “lit”

Introduction

- One main reason for learning the English legal terminology is the understanding of the respective foreign law.
 - You will mainly deal with this topic in other lectures on substantial Anglo-American law.
- One other main reason for learning English legal terminology is the access to comparative law questions.
 - In order to tackle the relevant questions we have to be aware of the essential English Comparative Law terminology

Comparative Law

- What is comparative law dealing with?
 - Comparative law is – first of all – dealing with “laws”
 - What is “Law”?
 - “The enforceable body of rules that govern society”
 - “Law in the books”
 - “Law in practise”
 - “Law” can also mean a specific act of parliament
- What are the goals of Comparative Law?
 - The comparison might be normative or descriptive.
- What is the prevailing method of Comparative Law?
 - Functional Method

Comparative Law

- What is the function of comparative law?
 - Assistance to a court
 - national level
 - international level
 - supranational level
 - Assistance to a legislator
 - national level
 - international level
 - supranational level
 - soft law
 - harmonisation
 - Assistance to academics and to lawyers

Legal Systems

- The most prominent legal systems are the Common Law system and the Civil Law system.
 - This is a distinction mainly drawn from a private law perspective.
- Other possibilities of distinguishing are the following:
 - Legal systems from a religious perspective
 - religious law and secular law
 - Legal systems from an economic perspective
 - capitalist and socialist legal systems
 - Legal systems in different phases of development
 - “ethno laws”

Legal Families

- Distinction according to
 - historical origin
 - legal institutions
 - legal sources
 - methods of reasoning
 - ideology

Common Law Family (1/2)

- The Common Law system is the legal system in England and especially in its former colonies, the US and Australia for example
 - England & Wales, Scotland, (Northern) Ireland
 - To talk of British Law is misleading and therefore normally not correct.

Common Law Family (2/2)

- Main Criteria
 - motion of continuity – legal development from 1066
 - as England has a long and unbroken history of legal judgments it might be possible that the relevant precedent cases of a case to decide today might be 300 or 400 years old
 - centralised (London)
 - law applied evenly in the territory
 - strong judiciary
 - fewer statute law
 - legal education by practitioners

Civil Law Family (1/3)

- Historical roots
 - Roman law (Canon law) and the reception of Roman law - ius commune
 - Territorial fragmentation and subsequent unification of law
 - Codification on the basis of Roman law
 - to codify

Civil Law Family (2/3)

- Styles
 - Code
 - Generalisation or casuistry
 - (Simple) Statute
 - Generalisation or casuistry
 - Problems
 - Linguistic determinacy
 - Interpretation of statutes and judicial law making

Civil Law Family (3/3)

- Germanic Law Family
 - Germany, Austria, Switzerland, Turkey, Japan, (Italy)
 - Reception of Roman Law and lack of unifying powers
 - Strong influence of academic scholarship
- Romanistic Law Family
 - France, Spain, Portugal, (Italy)
- Nordic Law Family
 - Sweden, Danmark, Norway

Other legal families

- Chinese Law
- Japanese Law
- Hindu Law
- Islamic Family

- Mixed/hybrid legal systems
 - South Africa
 - Scotland
 - Israel



Comparative Law Questions of Today (1/4)

- Gradual convergence?
- Legal cultures?
- Legal reasoning?
- Findings subject to specific area of law and to time?
- Legal system down to legal players?

Comparative Law Questions of Today (2/4)

- Legal system down to legal players?
 - Interplay between actors and institutions as a factor contributing to the “style” of a legal system
- Possible players
 - Legislator
 - national
 - Germany (in most parts of the law) and France
 - International and supranational
 - United Nations and European Union

Comparative Law Questions of Today (3/4)

- Legal system down to legal players? – Possible players (cont.)
 - Judges
 - Common Law system
 - “No need for statutes”?
 - “No need for academics”?
 - European Union law?
 - German Law in some areas of law (Labour Law)

Comparative Law Questions of Today (4/4)

- Legal system down to legal players? – Possible players (cont.)
 - Legal scholars
 - Germany
 - Strong and decisive tradition of legal scholarships and legal writings
 - Advocates
 - Civil servants
 - German Law to some extent
 - European Union to some extent