

Labour Law - What we teach and how we teach it: a comparative study

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Preliminary remark

German scholars tend to define their topic before going into it; a useful thing to do, especially if you intend to re-define the areas the topic will cover. What we teach and how we teach it calls for a consideration of who "we" is and what is meant by teaching. As for the latter, I will slightly extend the topic to cover assessments as well; the reason for this will be obvious. At the same time, I will restrict the topic to undergraduate teaching; the reason being that teaching at postgraduate level is much more diverse and often follows the research interests of specific members of staff, making comparisons difficult and rather pointless.

As a German scholar who has been teaching in the UK for three years, "we" in my case shall be an experience of the applied teaching approaches gained from Germany and England, so I intend to talk about both countries, comparing their teaching from a personal point of view.

Topics

What the syllabus of a course on employment law covers is determined by the legislation, the case law and the issues which arise in day to day application of the law.

The typical topics of a course on employment law in Germany include:

- individual employment law, especially: formation of contract, rights and duties under the contract, breach of contract and remedies, termination and unfair dismissal, transfer of undertakings;
- recognition of trade unions;
- collective agreements;
- Industrial action;
- the law of employee participation in undertakings;
- European and international labour law and

- legal procedure before employment tribunals.

This is very similar to the content of an English course, the main difference being that employee participation in undertakings is, more or less, unheard of in England.

Apart from that, the significance of the topics and of specific questions within the topics may vary, according to specific legal issues in the respective countries. For instance, when it comes to industrial actions then the English course will discuss at length the immunity of trade unions from liability in tort, whereas the German course will discuss the justification of industrial action generally and refer to tort law only as a minor point. Sometimes issues are discussed in one legal system but not in the other without any obvious reason for this being so; for instance the English course would discuss continuity of employment but the German course would not. Many issues are addressed however in both countries, acknowledging their practical relevance. This is for instance true for transfer of undertakings or unilateral amendments of the employment contract.

So by and large I think it is fair to say that what we teach is pretty much the same.

Of course in both countries it can be observed that there is a shift towards the recognition of international aspects of labour law. When I first studied labour law in Germany back in 1993, there was hardly any reference to European Labour Law, let alone international labour law outside Europe. More to the point although EU law belonged to the core syllabus, there was no lecture on EU law, so nobody studied it and relied on the fact that it would not be assessed. This has changed. Not only is EU law as a general topic now taught and assessed; also the specific aspects of EU law within a labour law course are discussed in depth. A German student studying labour law will nowadays in most places receive a whole module on EU labour law. While in English universities EU labour law is certainly not discussed to the same extent, it can be said that it has found its way into the syllabuses.

Teaching

The way employment law is taught in England and Germany cannot be properly understood unless the general structure of legal studies in both countries is briefly explained. In doing so, I will make generalisations and focus on a programme which I consider to be a typical one.

In England, a law student will undergo three years of study, leading to a bachelor's degree, the LLB. In these three years, he or she will have to study four subjects per year; so 12 subjects in total over three years. Seven or eight out of those 12 subjects are core subjects which every student has to take (ELIM,

contract law, criminal law, public law, tort law, equity and trusts, EU law and land law). This leaves the student with five subjects to choose. Every law school offers a variety of topics to choose from, typically including subjects such as company law, family law, Human Rights law and, of course, employment law.

In Germany, a law student will undergo four years of study, leading to the first state exam. After three years, the general part of the state exam is taken, covering the core areas (private law, criminal law and public law). In the fourth year, students choose a specialism and take assessments at the university during and after this last year. Many universities offer employment law as a specialism, often combined with either trade and company law or with the law of social benefits.

This general framework makes it already obvious that students in Germany are taught employment law much more intensive than English students. To make it even clearer, I would like to outline the details of typical courses:

In England, a student taking employment law as a subject, typically in their third year, will receive between 20 and 32 hours of lecture. Additionally, they will have between five and eight seminars, one hour each, to discuss specific questions in smaller groups. In total, they will have no more than 40 hours of teaching.

In Germany, it is up to the universities to decide on how to deliver their specialisms. However, looking at some institutions in different parts of Germany a pattern can be found.

In Trier, students receive teaching as follows:

45 hours lecture on individual employment law;

45 hours lecture on collective employment law I;

30 hours lecture on European labour law;

30 hours lecture on collective employment law II;

15 hours discussion of complex problem questions;

30 hours research seminar.

This adds up to a total of 195 teaching hours. Pretty much the same teaching pattern can be found in Bonn, Hamburg and Munich.

While most of the teaching is in form of lectures, two other formats of teaching call for an explanation. The first one is the "Übung", that is discussion of complex problem questions. In its general

structure, it is comparable to a seminar in England insofar as the purpose of the teaching session is to train the application of general knowledge and to learn how to do well in the exam. However, there are two main differences. The first one is that the teaching is delivered for all students rather than for small groups of students. This of course leads to the students having less opportunity to contribute to the teaching. Secondly, the topic to be discussed over 2 teaching hours will not be several separate questions within a certain area of labour law but only one complex problem question. This links in with the way of assessment in Germany, as exams always call for a consideration of the legal status arising out of such a complex scenario.

The second teaching format which needs to be explained is the research seminar. In a research seminar, students will write a research paper of about 10,000 words on a specific research question which has either been chosen for them by the seminar leader or which they have developed themselves. The seminar will take place weekly or fortnightly; in each session, one or two students will present their project in half an hour or three quarters of an hour, followed by a discussion of their paper within the seminar group for another half an hour. So this “seminar” has nothing to do with what is called a “seminar” in England. The equivalent of this module would be the final year dissertation; the difference being that in Germany presentation and discussion of the research paper forms part of the assessment.

Assessment

The typical way of assessing students in the UK is by means of coursework and exams. At Brunel, students take coursework towards the end of the first teaching term and they take exams after teaching has finished. The coursework question will often be an essay question, asking for a critical discussion of a particular topic, e.g. ‘Discuss the development of the concept of harassment as a form of discrimination in UK law’. In the exam, students would be asked to answer three out of six or more questions within two hours, giving them on average 40 minutes to answer each question. An example of an exam question is: ‘Implied terms in employment contracts almost always favour the employee and seldom the employer. Critically analyse this statement.’ Exam papers usually consist of a mix of essay questions and problem questions, while problem questions are seldom used when it comes to coursework. The reason for this seems to be that essay questions are more open, giving students more room to elaborate on a general topic. The downside of this approach is of course that plagiarism is a

common problem. In 2008, a study in Cambridge revealed that 62% of their law students had plagiarised in their studies; only five percent having been caught¹.

In Germany, assessment of the specialism is taken at the university but forms part of the state exam. It seems to be common that students have to take one exam and one piece of assessment by research, either in the form of coursework or in the form of a research seminar. Some universities require students to take an oral exam on top of this. Exams are usually five hour exams; students are required to elaborate on a complex problem scenario. There is only one question, so students do not have a choice. Anything within the syllabus might come up. As students have five hours to answer one question, this question is complex and calls for an in-depth-consideration of normally more than one legal issue. Typically such problem scenarios are informed by some decisions of the German Supreme Court for Labour Law (Bundesarbeitsgericht, BAG), and students are expected not only to refer to those cases but also to critically discuss them. Often the problem question makes a variation to the facts of the scenario to test whether students can spot the difference and how they address the issue of distinguishing the case. As mentioned before, a research paper is equivalent to a final year dissertation; the difference being that the project needs to be presented and defended in the following discussion within the seminar. If the assessment by research is in form of coursework, then the coursework question will again be a problem question; of course there will be embedded at least one major legal issue in the answer to the question, giving students the opportunity to elaborate thoroughly on this point, making use of case law, literature and any other relevant material. The oral examination finally takes place in a small group of typically four or five students; the duration allowing for each student to be questioned about 15 or 20 minutes. Often the examiner will present a small problem scenario to students and have them take turns while going through the legal issues raised by the question. Where appropriate, the examiner will go deeper into some questions or beyond the scope of the actual question to test the broader knowledge of students. The English reluctance to have students take oral examinations is based on the fear of the examiner being, if involuntarily, subjective rather than objective or even biased. This does not seem to be a major concern in Germany.

Conclusive remarks

Making a comparison between what is taught in England and Germany and how it is taught, I think the following points can be made:

¹ <http://chronicle.com/article/Cambridge-Survey-Finds-That/41887>, retrieved on 16 May 2010.

- the topics which are dealt with are by and large the same;
- students in England take employment law in their third year at the latest; students in Germany take employment law in their fourth year, having taken the major part of the first state exam before that;
- students in Germany focus on one specialism only while students in England study employment law as one of four optional modules;
- teaching in Germany is much more intensive than it is in England;
- assessments in Germany are much more demanding than they are in England.

As a result of this, I am inclined to think that employment law modules in Germany and England are not really equivalent. We should not think of the equivalent to a German employment law course being the English LLB module on employment law. It makes much more sense to compare the German employment law course with an LLM in employment law. This conclusion seems to be justified on the basis that German students studying employment law have taken the major part of the first state exam after their third year, so being in a similar position as an English law student after graduation; German students will receive approx. 195 hours of teaching on their course, spread out over different topics within the area of employment law, while a LLM student at Brunel would receive 128 hours of teaching (32 hours in each of four modules); German students are required to produce a research paper, being more or less comparable to a masters dissertation.

This conclusion as to the question how we teach sheds of course light on the question what we teach. When I mentioned earlier that by and large the topics are the same, then this needs to be qualified in light of the teaching methods and intensity. To give only one example, the topic of European Labour Law is dealt with in England within the module, so only a couple of hours can be spent on this. In German universities, European Labour Law is a module on its own with 30 hours of lectures. Although at face value the topic is the same, the depth and breadth provided by the German course differs from the English equivalent to such an extent that it can hardly be regarded as being an equivalent topic. The bottom line in my view is this: studying labour law gives the student in an English University a clue, but makes the German University student an expert.