

Contents

<i>List of abbreviations</i>	viii
<i>Preface</i>	xi
1 Introduction	1
1.1 <i>Current interest and significance</i>	1
1.2 <i>Why compare law in the religions?</i>	3
1.3 <i>A new academic discipline</i>	5
1.4 <i>Aims and content of this introductory volume</i>	7
1.5 <i>Concept</i>	9
1.6 <i>A discipline at the point of intersection between several fields of scholarship</i>	11
1.7 <i>Demarcation from related disciplines</i>	13
2 Overview of various bodies of religious law	16
2.1 <i>Roman Catholic church law</i>	16
2.2 <i>Orthodox church law</i>	21
2.3 <i>Anglican canon law</i>	26
2.4 <i>Church law of the Evangelical (Protestant) Church</i>	30
2.5 <i>Bodies of law in other Christian communities</i>	36
2.5.1 <i>Oriental-Orthodox church law</i>	36
2.5.2 <i>Old Catholic church law</i>	37
2.5.3 <i>Free-church law</i>	38
2.6 <i>Jewish law</i>	39
2.7 <i>Islamic law</i>	44
2.8 <i>Hindu law</i>	49
2.9 <i>Buddhist law</i>	54
2.10 <i>Other bodies of religious law</i>	59
2.10.1 <i>Bahai</i>	59
2.10.2 <i>Southeast-Asian religions</i>	60
2.10.3 <i>East-Asian religions</i>	62
2.10.4 <i>Indigenous religions</i>	64

3	Various approaches	68
3.1	<i>History-of-religions approach</i>	68
3.2	<i>Religious law as part of comparative law in general jurisprudence</i>	70
3.3	<i>Comparison of religious law as a discipline in its own right</i>	71
3.4	<i>Intercultural law</i>	73
3.5	<i>Legal pluralism</i>	75
3.6	<i>The Lugano School</i>	77
3.7	<i>Summary and classification</i>	79
4	Our approach: research subject	80
4.1	<i>What is law?</i>	80
4.1.1	Trouble-spots in the concept of law	80
4.1.2	Definition attempts	82
4.1.3	Characteristics of law	84
4.1.4	Demarcation of non-legal norms	87
4.2	<i>What is religion?</i>	88
4.2.1	Attempted definitions	88
4.2.2	Diversity of religions	89
4.2.3	Internal delimitation: subgroups	90
4.2.4	External delimitation: religious and secular	90
4.2.5	Religion and religious community	92
4.3	<i>What is internal law of religions?</i>	93
4.3.1	Definition and its problems	93
4.3.2	Definition by “family resemblances”	94
4.3.3	Characteristics of religious law	95
4.3.4	General considerations on characteristic features	100
4.3.5	Spectra within the family resemblances	103
4.3.6	Marginal areas of religious law	106
4.3.7	Usefulness of the category “religious law”	107
5	Methods of comparative law of religions	108
5.1	<i>Methodological approaches</i>	109
5.1.1	Functionalist approach	109
5.1.2	Contextual approach	110
5.1.3	Legal formants	111
5.2	<i>Special features of the law of religions</i>	112
5.3	<i>Practical implementation of comparisons</i>	115
5.4	<i>Macro-comparison</i>	116
5.4.1	Example: sources of law	116
5.4.2	Example: the mutability of religious law	118

5.5	<i>Micro-comparison</i>	121
5.5.1	Examples of micro-comparison	121
5.5.2	Possible explanations for similarities	123
5.6	<i>Synopsis of the methodological elements</i>	125
6	Universality and particularity of the law	126
6.1	<i>Natural law</i>	126
6.2	<i>Human rights</i>	130
6.3	<i>Equality and cultural difference</i>	135
7	The significance of religious law within state law	138
7.1	<i>Foreign law</i>	139
7.1.1	States with partial religious law systems	139
7.1.2	Application of religious law by virtue of international private law	140
7.2	<i>Domestic law</i>	142
7.2.1	Freedom of religion	142
7.2.2	Treaties	147
7.2.3	Special statutory provisions	149
7.3	<i>Private legal relationships</i>	150
7.3.1	Private autonomy	150
7.3.2	Classification of unknown institutions	151
7.3.3	Deficient legal relationships	152
7.4	<i>Courts of religious communities</i>	154
7.4.1	Religious courts as an outworking of internal autonomy	154
7.4.2	Religious courts as mediation forums and arbitration courts	155
7.4.3	Decisions of religious courts recognized by the state	156
7.4.4	Opportunities and risks	157
7.5	<i>Religious law and the European separation model</i>	158
8	Summary and outlook	161
8.1	<i>Summary in key sentences</i>	161
8.2	<i>Outlook</i>	166
	<i>Bibliography</i>	167
	<i>Index</i>	190