

**Course syllabus**

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| Subject name | Comparative Law and Private Law: The Civilian Tradition and the Common Law. |
| Field of study | Private Law. |
| ECTS credits | 6 |
| Semester | 2 (Spring) |
| Language | English |
| Professor/s | José Javier de los Mozos Touya |
| Department | Dpto. de Derecho Penal e Historia y Teoría del Derecho |
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1. Description

The course sets out an introduction into legal comparison in the field of private general law. In a first part, after a short introduction into legal comparison, the principal features of the Civil Law systems are studied, starting with the cultural and political circumstances leading to the codification. Then, some classes also deal with the non-Western legal cultures. The second part is devoted to the Common Law, including a short history of its development, the peculiarities of its sources of law and the main institutions of private law.

2. Course learning objectives

The course is aimed to make students aware: of the similarities and differences between different jurisdictions, due to common roots and peculiar circumstances of the different peoples; of common roots, provided by a common human nature allowing – sometimes -mutual understanding, and by common social conditions and legal traditions; of the importance of legal science in creating a legal culture and in shaping legal institutions; of the possibility of making things differently and of learning from other peoples' experience.

3. Contents / Programme



Introduction

1. The birth and development of comparative law.
2. Horizontal and vertical comparison. Micro and macro comparison. Comparative law as method and as discipline. Legal transplants.

The Civilian Tradition and the non-Western Legal Cultures

3. The Civil Law and the Common Law. The role of the Institutes in the building of the Civilian system of law. The Enlightenment and the rationalist philosophy.
4. The first wave of the Codification of Civil Law: Bavaria, Prussia, Austria and France.
5. Friedrich Carl von Savigny and the Historical School. The German Codification. The Swiss Civil Code and the Law of Obligations.
6. The Italian Codification: 1865 and 1942.
7. The method of law-finding after the Codification.
8. Private law and constitutional law in the civilian jurisdictions.
9. The non-Western legal traditions: Muslim law, Indian law and Chinese law.

The Common Law

I

10. English law before the Norman Conquest. The Norman rule. The development of the Equity.
11. Organization of the Judiciary in England and Wells. The legal professions.
12. Precedents and statutory law.

II

13. Contracts: general ideas; capacity; consent; required conditions for the validity of contracts, consideration and intention to create a legal obligation; content of the contract, terms and representations, conditions, warranties and intermediate terms; implied terms.
14. Contracts: vitiating factors, mistake, misrepresentation, duress and undue influence; interpretation; agency; contracts for the benefit of third persons.
15. Contracts: discharge; limitation of action; frustration; breach of contract.
16. The sale of goods; transfer of ownership; content, risk and defects.



17. Standard form contracts and unfair terms.
18. Torts: trespass; conversion; negligence; nuisance; public nuisance; protection of honor.
19. Property: real property and personal property; real property and land register; adverse possession; real interests; easements and profits à prendre; possession; bailment; co-ownership.
20. Credit guarantees: mortgage and floating charge; retention of title; chattel mortgage and pledge; hypothecation and lien. Assignment and personal guarantees.
21. General features of successions law.
22. Trusts: history; position of beneficiary and trustee in modern law; duration of the trust; constructive trust and resulting trust; conditions and functions of the trust.

4. Bibliography

AJANI, Gianmaria *et alii*, *Sistemas jurídicos comparados: lecciones y materiales*, Barcelona: Univ. De Barcelona, 2011.

ALTAVA LAVALL, Manuel Guillermo, *Lecciones de derecho comparado*, Castellón de la Plana: Publicacions Universitat Jaume I, 2003.

DAVID, René / BLANC JOUVAN, Xavier, *Le droit anglais*, Paris: Presses Universitaires de France, 1998.

DAVID, René, *Los grandes sistemas jurídicos contemporáneos*, trad. esp., Madrid: Aguilar, 1973.

GAMBARO, Antonio / SACCO, Rodolfo, *Sistemi giuridici comparati*, Torino: Utet Giuridica, 1994.

MOCCIA, Luigi, *Comparazione giuridica e diritto europeo*, Milano: Giuffrè, 2005.

REIMANN, Mathias / ZIMMERMANN, Reinhard (ed.), *The Oxford Handbook of Comparative Law*, New-York: Oxford University Press, 2006.

VARANO, Vincenzo, *La tradizione giuridica occidentale. Volume 1: testo e materiali per un confronto civil law common law*, Torino: Giappichelli, 2006.

WATSON, Alan, *The Making of the Civil Law*, Cambridge, Mass. - London: Harvard Univ. Press, 1981.

ZWEIGERT, Konrad / KÓTZ, Heinz, *Introduction to Comparative Law*, Engl. transl. from German original, Oxford: Clarendon Press, 1998, 2 vol.

5. Workload distribution



| Activities | Hours |
|--|------------|
| Classroom-based activities (Lectures, seminars and practical sessions) | 46 |
| Exam | 2 |
| Independent study | 102 |
| Total | 150 |

6. Assessment criteria

| TOOLS | % | OBSERVATIONS |
|--------------------|-----|--|
| Ongoing assessment | 40% | Class participation, practical exercises, presentations. |
| Final exam | 60% | Exam. |