

COMMON LAW AND COMPARATIVE LAW MASTER PROGRAM

SEMINARS

Module 1 – CONSTITUTIONAL LAW – J. McELDOWNEY (WARWICK UNIVERSITY): *Introduction*

This module allows students to explore and understand the system of public law in the United Kingdom at a time of major constitutional change. How are ministers held to account? What is the role of the courts? Has the United Kingdom developed its own system of administrative law? The role of the courts since the implementation of the Human Rights Act 1998, the introduction of devolution to Scotland, Wales, Northern Ireland and London with changes to the structure of regional local government is considered. Reform of the House of Lords and the role of Parliament is addressed. The law of the European Union and the sovereignty of the United Kingdom are also discussed as is the relationship between local and central government is considered. Mechanisms for citizens' grievances such as the ombudsman are examined. The powers of the police and the security of the state are studied. Topics covered include constitutional law, judicial review, human rights, the rule of law, Parliament and Lords reform, ministerial accountability and the role of Parliament. Also included are the following subject areas such as devolution, sovereignty, the European Union, police powers, the ombudsman and citizens grievances are explained in their legal, social and economic context.

Course content:

- The nature of public law in the United Kingdom;
- The new culture of human rights and how this is reconciled with parliamentary sovereignty;
- The role of administrative law;
- The nature of government and modes of accountability;
- The law on remedies and on judicial review.

Module 2 – PROPERTY I – FR. HANSEN (ARIZONA STATE UNIVERSITY): *Introduction*

The course aims to provide students with some of the basic concepts of property law. These key concepts are not only important to property law itself but also to understandings in related fields such as succession, taxation, water law, native title, trusts and equity, for example. The course explores the concept of the fragmentation of proprietary interests and discusses how interests may be divided spatially according to the doctrine of tenure, and temporarily, according to the doctrine of estates. The course also aims to provide students with an overview of the creation, transfer and acquisition of various types of property interests.
Reading materials

Module 3 – TORT LAW I V. HARPWOOD (CARDIFF UNIVERSITY): *Introduction*

This introductory course on the comparative common law of Tort provides a basis for more detailed study of this dynamic subject within the common law world. The course covers a range of topics, and includes discussion of:

- The conceptual and functional boundaries of Tort
- The aims of Tort law
- The history and evolution of Tort in the UK
- The influence of judicial policy on the development of Tort
- Transplanting Tort across the common law world
- Human Rights and Tort

Deeper comparative analysis of selected areas of Tort – including the law of negligence focusing on professional liability, psychiatric injury and the “compensation culture”

Materials: - V. Harpwood. *Modern Tort Law* 2008, London, Taylor and Francis
- *Cases and Materials on Tort*, Steele, 2008 OUP

Module 4 – CRIMINAL LAW – C. DERRY (LONDON METROPOLITAN UNIVERSITY): *Introduction*

The English Criminal Law course will combine study of the basic principles of English criminal law with in-depth analysis of a range of significant crimes and defences, both common law and statutory. The course will start with examination of the two elements of a crime according to traditional academic analysis, actus reus and mens rea. Strict liability, where mens rea is not required for one or more elements of the crime, vicarious liability, where one individual may be liable for another's acts or omissions, and criminal liability of corporations will be briefly examined. The course will then focus in detail on specific crimes which are significant because of their seriousness (murder and defences specific to murder, involuntary manslaughter, rape) or frequency of commission (offences against the person, criminal damage, theft and theft-related offences). Finally, the course will examine a range of general defences (infancy, insanity, non-insane automatism, self-defence, mistake, duress and necessity). On successful completion of the course, students will have gained knowledge of the basic principles of English criminal law and of a range of crimes and defences, and the ability to apply knowledge to factual scenarios in a problem-solving context.

Course content:

- Introduction
- Actus Reus: conduct and circumstances, liability for omissions, the voluntary nature of the actus reus and automatism, causation
- Mens Rea: the different types of mens rea, intention, recklessness, negligence, and knowledge
- Strict liability, vicarious liability, liability of corporations
- Offences against the person: fatal offences (murder and related defences of provocation and diminished responsibility, involuntary manslaughter), non-fatal offences, and sexual offences
- Offences against Property: criminal damage, theft, robbery, burglary, deception offences
- General defences: infancy, insanity, self-defence, mistake, duress, and necessity

Module 5 – CONTRACT LAW I FR. HANSEN (KENT UNIVERSITY): *English Contract Law*

The seminar will deal in detail with English contract law. From their own knowledge students are also expected to do a comparison with French law. All the main doctrines of the principles of contract law common to the three systems will be examined if time allows. Teaching will take the form of a presentation plus discussion by students of Case Studies in small groups. To benefit from the Case Studies students will be expected to prepare in advance for the Case Studies and to participate actively in discussion. Because of the method of teaching some or all of the assessment will be in the form of problem questions similar to the Case Studies.

Module 6 – BUSINESS LAW I A. MICKELS (Winston and Strawn) - *Introduction to International Company Law*

This course is designed to introduce students to theories and concepts associated with the main aspects of company law as it applies in the United States and in other common law countries. The objective of this course is to provide a theoretical foundation for the main legal theories of company law as well as the relevant pragmatic skills required to practice general company law at an international law firm.

This series of seminars will attempt to present the practitioners' perspective on the similarities and differences between common law and civil law transactions by giving students the opportunity to practice drafting client memorandums on company law and corporate governance.

The class will be divided into three main sections:

1. Introduction to Company Law:
 - Forms of business organizations;
 - Aspects of incorporation including separate corporate personality and the concept of limited liability;
 - Main types of transactional activity.
2. Corporate Governance:
 - Corporate bodies;
 - Duties of directors;
 - Shareholder derivative suits.
3. Corporate Social Responsibility:
 - New emerging corporate structures in the US and Europe;
 - Comparing CSR policies in private and public companies.

Module 7 – – BUSINESS LAW II - KATE ROMAIN, ALEXANDERBLACKBURN, JOSE MARIA PEREZ (Avocats associés, Bredin Prat) *International Business Combination Agreements -*

Practitioners in the so-called Mergers and Acquisitions field often comment on the increasing uniformisation, across borders and across legal systems, of the way in which business combination transactions are structured and documented.

The need to provide global market players (corporations, investment banks) with the transaction structures and contractual mechanisms they have become familiar with over the years and which have come to be expected as part of a "sophisticated" market practice, is often singled out as the reason for this undeniable trend.

A closer analysis of the agreements used to bring these transactions to fruition reveals however that certain important differences continue to exist in practice between civil and common law jurisdictions, as well as within common law jurisdictions themselves, as a reflection of enduring legal as well as cultural differences.

This series of seminars will attempt to present the practitioners' perspective on such similarities and differences, essentially by analysing and comparing "real life" agreements covering similar transactions (e.g. share purchase agreements, joint venture agreements, shareholders agreements) drafted by practitioners of different legal backgrounds

Module 8 – BUSINESS LAW III – M. JAFFE, S. DALE (Associés du Cabinet Landwell & Associés): *Comparative tax systems, UK/US/France*

Comparative Tax systems - UK/France - Indirect Taxes:

Evolution of the main indirect taxes, Value Added Tax and Excise duties in both countries, impact of the entry of the UK into the EU, compared to France's founding status; the role of the European Union and the "direct effect" of EU directives on national legislation.

Gradual shift of the tax burden from direct to indirect taxes, types of taxation being introduced and the governmental policies behind their introduction - whether this be from a "social" perspective or a "business friendly" perspective, and how each state has dealt differently with these issues.

Comparative Tax systems - UK/France - Corporate Taxes:

The course will consider the basis of the UK corporate tax system to include an analysis of how corporate tax is managed in the UK, tax administration, timing of tax payments, the Tax Avoidance Disclosure regime and the basic requirements for corporate tax grouping in each case contrasting with the French system. We will then consider some specific elements of UK case law and how these impact on the UK tax system, in particular the claiming of tax allowances for capital expenditure. Finally, we will look at some of the topical aspects in the UK, including the CFC legislation, financing and the deductibility of interest, and stamp duty and stamp duty land tax as well as rates of tax and tax policy in general .

Comparative Tax Systems - US/France - Corporate and Individual Taxes:

The course will consider the basis of the US corporate tax system to include an analysis of how corporate tax is managed in the US, tax administration, timing of tax payments. State taxation and the US approach to International Taxation will also be addressed. We will also cover the basics of Individual Taxation of US citizens abroad as well as Alien taxation. Finally, we will examine the basics of US Estate and Gift Taxation. The course will include a brief description of the US common law system.

Module 9 – BUSINESS LAW IV – B. JURATOWITCH : Freshfields Bruckhaus Deringer (Paris) : *International Arbitration, A.D.R. and Conflict of laws*

This series of seminars will be split into two parts. The first part will provide a practitioner's perspective on four processes by which international legal disputes are adjudicated, those being proceedings before the International Court of Justice, inter -state arbitral proceedings, investment treaty arbitration and international commercial arbitration. Selected cases adjudicated by each process will be discussed. The second part of the series will address two issues that cut across these dispute settlement processes. The first issue will be how an international tribunal dealing with one area of international law, should deal with overlapping rules coming from another area of law. For example, how should an investment arbitration tribunal deal with issues of human rights law that affect the issues in dispute? The second will be an analysis of intertemporal issues in public international law. For example, as new norms of international law emerge, should existing treaties be interpreted consistently with those new norms?

Module 10 – BUSINESS LAW IV – R. FLANIGAN : Mayer & Brown (Paris) : *Bank & Finance, Capital markets comparisons*

Module 11 – TRUSTS AND EQUITY – G. WATT (WARWICK UNIVERSITY): *Introduction*

This course will follow the following scheme:

Examination of the history of the relationship between law and equity and the historical origins of the trust, including observations on the social significance of the trust.

Explanation of the modern relationship between law and equity and the co-existence of legal and equitable ownership in the trust.

A comparison between the trust and other legal ideas, such as gift and contract, with some observations on equivalents of the trust in Non-English jurisdictions.

Demonstration as to how a trust is created by express intent

Demonstration as to how trusts may arise unintentionally

Examination of the relevance of public interests to private trusts

Consideration of the fiduciary principle

Identification of the obligations of trusteeship, with particular attention to the duty of careful investment

Explanation of trustee liability for breach of trust and third party liability for receiving trust property and assisting in breach of trust, including discussion of how misapplied funds are traced.

Reading materials : (2006) *Trusts and Equity*, (2d edn) Oxford University Press

<http://www.oup.com/uk/catalogue/?ci=9780199285327>

Sample chapter http://www.oup.com/uk/orc/bin/9780199285327/watt_tande_ch12.pdf

Module 12 – RESTITUTION – E. O'DELL (TRINITY COLLEGE DUBLIN): *Introduction*

In the Common Law world, after Contract and Tort, the Law of Restitution for Unjust (or Unjustified) Enrichment is emerging as the third head of the private law of obligations; it is concerned with those actions which have as their aim the reversal of an unjust or unjustified enrichment. The course therefore considers the common law principle against unjust enrichment.

Hour 1. Introduction (pp1 -11), the General Approach to Unjustified Enrichment (pp31-34), the grounds for restitution (pp252-254), and the principle of subsidiarity (p425)

Hour 2. Enrichment (pp104-114) at the expense of the plaintiff (impoverishment) (pp171-174) and the causal connection between the parties (p208)

Hour 3. Grounds for restitution 1: Mistake (pp255-269)

Hour 4. Grounds for restitution 2: Duress (pp270-281) and Public Authorities (pp320-321)

Hour 5. Grounds for restitution 3: Legal Compulsion (pp282 -284), Practical

Hour 6. Grounds for restitution 4: Failure of Consideration (pp296-318)

Hour 7. Restitution for wrongs (pp524-538)

Reading materials : <http://www.ucc.ie/law/restitution/>, Beatson and Schrage (eds) *Cases, Materials And Texts On Unjustified Enrichment* (Ius Commune Casebooks for the Common Law of Europe) Hart Publishing : Oxford, 2003.

Module 13 – FAMILY LAW – A. PARKES (NATIONAL UNIVERSITY OF IRELAND CORK): *Irish Family law*

Ireland is a Common Law jurisdiction broadly similar to England. Irish Family law is regulated by common law principles, statutory laws and more importantly, constitutional laws. The *Irish Constitution* has a major influence on how family law is judicially interpreted. The superior courts in Ireland have developed sophisticated legal principles in the context of marriage law and child law. Such judicial activism is the hallmark of a common law regime. This course aims to provide students with an understanding of the academic and legal principles which underpin Irish Family Law. The course will also focus on specific Cases.

The course adopts the following scheme:

1. The nature and scope of Irish Family Law,
2. The Family, Marriage and the Constitution
3. Formalities and capacity of marriage. Nullity of marriage law
4. Breakdown of marriages: Judicial Separation Decree. 6 options
5. Divorce Law. 'No-Clean break' model. Assets, property and finance
6. Child Law. Private Law Aspects. (i) Guardianship (ii) Custody (iii) Access
7. Child Care Law. Public Law aspects
8. Non-Marital Families: recognition/non-recognition principles

Reading materials : <http://www.ucc.ie/law> Click at 'Law on line at UCC'.

Module 14 – PROPERTY II – T.HERRERA (ASU): *Intellectual Property - Copyright*

How do artists and thinkers lay claim to their works of original creation? How does the legal system encourage or discourage creative innovation, and when do those incentives have a tangible effect on creativity in the marketplace? How does the legal system handle claims of creative infringement and what does it mean to infringe the copyright of another? This short intensive course in copyright law will help students to explore these and other questions. The course will begin by establishing the basic rules of copyright, the nature and duration of copyrights and the policy supporting copyright creation. The course will then go on to explore how and when copyright infringement is determined. The course will focus on understanding arguments that support a finding of copyright infringement and the policy rationale that justify such findings. In developing a foundation in the basics of copyright law, students will be exposed to the American case-law method, and will develop a working understanding of how copyright claims are argued under the American common law system.

The course will use real examples of findings of infringement and failed infringement claims. The course will use examples from popular culture to help students develop an understanding of when and why infringements claims are typically brought before American courts. To that end, the course will allow students to examine music samples, paintings, and other creative works, in addition to the case-law and other materials on which the course will rely.

By the end of the course, students should be able to define the basic rules for the establishment of copyright and the test for copyright infringement. Students should also be able to make legal arguments on both sides of a copyright infringement claim, and should be familiar with both the law and the adversarial method used to argue such issues in the common law courts of the United States.

The final examination will ask students to apply their knowledge of copyright law and the common law system of argument to a novel fact pattern. The exam will draw on the course examples and the structure of arguments used in the American adversarial tradition. Using a novel set of facts, students will be asked to apply what they have learned, arguing both for and against the establishment of copyright and the claim of copyright infringement. By the end of the course, students should have a working knowledge of copyright basics such that they are able to make these and other arguments; students should also have the skills they need to be able to follow each of their arguments to its logical end-point in before reaching a set of well-developed and thoroughly supported

Module 15 – EUROPEAN UNION LAW – S. MILLNS (UNIVERSITY OF SUSSEX): *EULaw From a Common lawperspective*

This seminar investigates, from a common law perspective, the dynamic nature of European legal integration against a backdrop of economic, social and political developments that have characterised the evolution of the European Union over half a century. In doing so the module comprises three main parts. The first provides an overview of theoretical approaches to the unique process of European legal integration focussing in particular upon the role of the European Court of Justice and its jurisprudence as a motor of integration. The second and third parts examine instances of the application of these theories in two key, but quite different, aspects of EU law and policy that is constitutionalism and the internal market.

Module 16 – COMPARATIVE LAW I G. SAMUEL (KENT): *Methodological introduction* (12hours)

An increasing familiarity with a second legal system – and particularly a legal system that belongs to a different tradition like the common law (as opposed to the civil law) – inevitably leads the legal researcher and the established jurist into the domain of comparative law. However there are enormous intellectual and methodological challenges that emerge when two very different legal traditions such as French and English law come face-to-face and these challenges are in fact encapsulated in two broad questions implied by the term 'comparative law' (or *droit comparé*) itself. What is meant by 'comparison'? And what is meant by 'law'?

Associated with the first question, are issues of method and of approach. How should one go about comparing? What presumptions should the comparatist who is researching an issue in the 'other' system adopt? What methodological schemes of intelligibility should the comparatist apply? For example is the only viable method – as one introductory textbook claims – a functional approach or are there other methods to be applied. Indeed, what are the alternatives to functionalism? Then there is the question of 'law'. Does one assume that the 'other' system has the same notion or idea of law as the comparatist's own system? What are the dangers of such an attitude? How important is culture in an appreciation of the term 'law' and how should the researcher go about understanding cultural and *mentalité* difference? All of these kinds of question, now discussed and debated in an increasingly sophisticated literature, show how comparative law is, today, a subject that raises fundamental epistemological questions about law and legal systems. It is a subject that stresses the importance of acquiring a deep understanding of social science methodology when research in two or more legal systems is undertaken. This course on comparative law methodology is thus designed to introduce the

students on the common law programme to such a deeper understanding. It will look at the main debates taking place among comparative law theorists and it will indicate how these theory debates are of fundamental importance to practical comparative law projects such as attempts at harmonisation in Europe and (or) at 'transplanting' of a legal concept, rule and (or) institution from one system to another. Equally, of course, it will indicate how a legal researcher should go about undertaking a project that involves two or more legal systems.

Introductory reading:

Legrand, P, *Le droit comparé*, PUF, Paris, 2009, 3e éd, Que sais-je? n¹/⁴ 3478

Legrand, P, How to Compare Now (1996) 16 *Legal Studies* 232 (or Comparer [1996-2] *Revue Internationale de Droit Comparé* 279)

Samuel, G, Comparative Law as a Core Subject (2001) 21 *Legal Studies* 444

Samuel, G, Droit comparé et théorie du droit [2006.57] *Revue Interdisciplinaire d'Études Juridiques* 1

Further reading :

Legrand, P (sdd), *Comparer les droits, résolument*, PUF, Paris, 2009

Ponthoreau, M-C, *Droit(s) constitutionnel(s) comparé(s)*, Economica, Paris, 2010

Module 17 – COMPARATIVE LAW II – M. LASSER (CORNELL) *Ð Judicial systems in Common law countries* (12hours)

Module 18 – COMPARATIVE LAW III – S. VEITCH (University of Hong Kong) : *Scots law, English Law: How United a Kingdom?*

This module of 12 hours will give an insight into the present situation of the Scots law tradition compared to that of England. It will contextualise the evolution of these common law traditions as they simultaneously face fragmentation (towards devolved, local laws) and uniformisation (towards global laws). How can we best characterise a small jurisdiction such as Scots law in that perspective ? Is it distinctive, and if so how and according to what specific influences? Or does it merely reflect and embody broader changes and social forces in Europe or globally?

These seminars use a comparison of the Scots and English traditions to reflect on these comparative questions, questions that are of more general jurisprudential interest and concern. They do so through a number of key case studies drawn from public and private law, and through institutional differences studied in the context of a fragmented unitary state.

Module 19 – COMPARATIVE LAW IV – M. DE WAAL (STELLENBOCH University, South Africa) : *Introduction*

The Law of South Africa has a 'hybrid' or 'mixed' legal system, made of the interweaving of a number of distinct legal traditions: a civil law system inherited from its Dutch colonisers, a common law system from its English colonisers, and indigenous law, often termed African customary law. These traditions have had a complex interrelationship, with the English influence most apparent in procedural aspects of the legal system and methods of adjudication, and the Roman-Dutch influence most visible in its substantive private law. [1] As a general rule, South Africa follows English Law in the areas of Procedural Law, the Law of Contracts and the Law of Evidence, while Roman-Dutch Common Law is followed in the South African Law of Delict (tort), Law of Persons, Law of Things, Family Law etc. Today, another strand has been added to this weave: the Constitution.

Module 20 – CONTRACT LAW II – C. CALLEROS (ASU): *Comparative Law and Resolution of Conflicts of Law*

Professor Calleros will lead the class in examining (1) selected differences between U.S. and French contract laws, (2) the choice-of-law rules that may be employed to resolve conflicts in the absence of international law, and (3) the extent to which the U.N. Convention on Contracts for the International Sale of Goods successfully resolves conflicts by providing a unifying sales code that borrows from both civil law and common law traditions.

Reading materials <http://homepage.law.asu.edu/~charlesc/Conferences.htm>

Module 21 – COMPARATIVE LAW V – R. TSOSIE (ASU): *American Indian Law and the United States Federal System*

This course will cover the fundamentals of Federal Indian law, which is a system of federal law in the United States that governs the interaction of American Indian tribal governments with the United States and the various state governments. The course will provide a historical overview of the treaty relationship that exists between many American Indian nations and the United States, as well as the development of Federal power to regulate Indian nations and tribal lands. The course will then move to a discussion of territorial sovereignty and political status, as they exist today for tribal governments with a reservation landbase. The course will differentiate the laws of the American Indian nations ("tribal law") from the laws of the federal and state governments, explaining the interaction of tribal courts with federal and state courts in areas such as land use regulation, domestic relations, and commercial transactions. The readings for the course will focus on the cultural and political differences between American Indian nations and the United States, as illustrated by court cases and the studies of legal scholars.

ENGLISH PRACTICE – M. HERBERT (PARIS DESCARTES)

The English courses during the second (M2) year of the Masters programme are scheduled to correspond to the programme of seminars on law topics. In the weeks preceding each teaching module, the English courses introduce, practice and revise the specific legal vocabulary relevant to that module, and offer participants an opportunity to discuss recent current affairs events and topical issues related to the field of law in question. The courses are devised to give participants a maximum of opportunities to practice their speaking skills, and there is a high degree of emphasis on performance in tasks analogous to real-life situations encountered by legal practitioners: debates, negotiation, presentation of information on the law, legal arguments, explanation and clarification of laws, and interview practice. The aim of the courses is therefore to prepare participants to follow closely and participate actively in the law seminars of the Masters and to consolidate the language skills necessary to practice the law in English speaking environment.
