COMPARATIVE LEGAL TRADITIONS (SYLLABUS)¹

Course description
This course provides students with a basic understanding of the two principal legal traditions in the world: the common law and the civil law traditions. It also offers an overview of the Islamic legal tradition and considers the issue of the globalisation of the law. The methodology of the course will entail a study of the underlying legal philosophies of these traditions through analysis of the sources of law, judicial process and judicial review.

Prerequisites
The course is to be attended by law students exclusively.

By the end of the course the student should be able to:
- Have a good knowledge of the existing legal traditions
- Understand their various sources and their philosophy
- Have the ability to analyse and compare the major elements of each system.

INTRODUCTION

A) Comparative law and legal traditions

1) The scope of comparative law study
   a) Definitions and derivations
   b) The ‘rationale’ for comparative law and its origins

2) The functions and purposes of comparing legal traditions
3) Key concepts in the comparative law methods

B) An overview of legal traditions

1) The classification of legal traditions
2) A brief introduction of the world legal systems

PART I: WESTERN LEGAL TRADITIONS

I) COMMON LAW

A) ENGLISH LAW

1) FOUNDATION AND EVOLUTION OF ENGLISH LAW

1-1) The foundation: The Influence of History
1-2) The evolution: the sources of English law

¹ “The SELF is an upper-division undergraduate level program entirely taught in English. It offers each semester 20 to 25 courses in the following fields: law, political science, business and humanities. The SELF will help students get familiar with the French University system without mastering the language but can also be part of a year-long program of study to help improve their proficiency and study in French the following semester”. For more details visit the self program web site: www.univ-lyon3.fr/fr/international/venir-etudier-a-lyon-3/self-study-in-english-lyon-france
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a) The Doctrine of Precedent
b) The development of other sources

b-1) the development of the statute law or Legislation
b-2) the role of customs and legal writings

2) THE ORGANISATION OF THE ENGLISH LAW SYSTEM

2-1) The legal structure and institutions
a) The constitutional law
b) The courts and procedures

2-2) the legal profession: roles and actors

B) THE COMMON LAW IN THE UNITED STATES

Introduction: Preliminary observations

1) Foundation of the American legal system
a) Foundation of America and American law: the influence of history
b) The foundation of the American law: the constitutional developments

2) Uniformity and diversity in the American legal system
a) Differences and influences
b) The American judiciary

Conclusion: Comparative overview

II) CIVIL LAW

INTRODUCTION

1) The different meaning of ‘civil law’
2) The meaning of codification in the civil law context

1) FOUNDATION AND EVOLUTION OF CIVIL LAW

1-1) The foundation: The Influence of History

1-1-1) Key features of early Roman Law
1-1-2) The development of Roman Law

1-2) The evolution: the sources of Civil law
a) The Pre-eminence of the Constitution towards/ over national laws
b) The development of other sources
     b-1) The role played by courts’ decisions
     b-2) The role of customs and legal writings
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NB: Comparative overview with the UK/US systems

2) THE ORGANISATION OF THE CIVIL LAW SYSTEM

2-1) The courts and procedures (ex of the Criminal Justice process)

Introduction: preliminary remarks

2-1-1) The criminal courts

a) Ruling on a point of fact
b) Ruling on a point of Law: the ‘Cour de Cassation’

NB: The ‘Conseil d’Etat’ and its jurisdiction over both points of law and fact

2-1-2) The procedure: the different stages of the CJ process

2-2) The legal profession: roles and actors

PART II: MUSLIM LAW

1) Distribution of Muslim Law in the world
2) The main features of Islamic law
3) The development of sources of law through history

- The 4 roots

1- The Koran
2- The Sunna
3- The Igma
4- The Qiyas (analogy)

- The ‘Shariah’ based on the law of God

4) Comparative overview

- Comparison with Common law

- English common law
- Law of the United States
- Other comparisons

- Comparison with Civil law

PART III: LEGAL TRADITIONS AND THE GLOBALISATION OF LAW

1) Unification of legal systems

- 3 modes of convergence have been identified
- Examples of convergence and divergence

2) Global Convergence and the FUKUYAMA Thesis
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BIBLIOGRAPHY

➢ BOOKS


- GUTTERIDGE, Comparative Law (1949)


- ZWEIGERT and KOTZ. An introduction to comparative law (1977)

➢ ARTICLES