

Comparative Law and Conflict of Laws

UGRA_016217

Departments	Department of International, European Union and Comparative Law, Department of Law
Teaching Languages	English
ECTS	6
Teacher responsible	Verona Tio Perez-Albert - verona.tio@esade.edu

Course Goals

The student is expected to:

- Become aware of the importance of Law as a regulatory system for social relations with significant differences in different parts of the world.
- Recognize the impact that Europeanisation and globalisation have on national legislatures and judicial decisions.
- Develop a critical awareness towards the common law-civil law divide, know its origins and reflect on its actual relevance.
- Be able to identify the factors (historical and cultural) that are at the very root of the differences and similarities between the common law and civil law traditions in general as well as in regard to particular institutions of private law (contract law, and civil procedure).
- Understand the relationship between Comparative Law and Conflict of Laws.
- Explore and understand the limits of the unification of private law in conflict of laws situations.

Previous knowledge

Contract Law and Civil Procedural Law.

Prerequisites

None.

Teaching methodology

Teaching-learning methodology:

The course is based on lecture classes and active class participation. The sessions of the course seek to combine both methods: a lecture on one of the themes of the syllabus of the course and active class participation by the student during the discussion of a reading assignment (journal articles, court decisions) which shall be previously posted on the course website, and a presentation of his/her national legal system.

This methodology ensures that the student will acquire autonomy and the ability for continuous learning.

Description

Short description

The importance of Comparative Law (CL) is today undisputed. National and supranational lawmakers need and use intensively CL in the elaboration of new legislation, to modernize Civil and procedural codes/acts or to unify and harmonize the law of the national legal systems. Additionally, a reference to foreign law or to foreign judgments may be found in a growing number of national court decisions.

CL is an academic discipline. However, it has many practical aims one of which deserves special attention: conflict of laws. Conflict of laws is the branch of every legal system which has as its object private international relationships, i.e., those connected to more than one legal system. Without the results of CL research the application of a foreign law to resolve a dispute as to its merits would be sometimes impossible, as well as to build a European system of PIL or to enact successful international convention.

Comparative Law and Conflict of Laws play an important role in legal education: one can more profoundly understand its home legal system when viewed in juxtaposition with other legal systems, and become aware of the implications of a world divided into sovereign States each of them having their own view on how private relationships should be regulated. The course begins with an introduction to the functions and methods of Comparative Law and its relationship with Conflict of Laws. Then it proceeds with an outlook to the major legal systems which classically are placed under the common law-civil law divide (English and US - French and German) by focusing on their historical evolution. Subsequently, the course analyses the common law-civil law divide in two different contexts: that of legal institutions of private law (contract law and civil procedure), and of conflict of laws (jurisdictional conflicts and conflicts of laws).

Bibliography

Watson, A., Legal Transplants: An Approach to Comparative Law, The University of Georgia Press (Book)

M. Bogdan, Concise Introduction to Comparative Law, Europa Law Publishing (Book)

Cuniberti, G., Conflict of Laws: A Comparative Approach. Text and Cases, Edward Elgar (Book)

Hartley, T.C., International Commercial Litigation: Text, Cases and Materials on Private International Law, Cambridge University Press (Book)

Kischel, U., Comparative Law, Oxford University Press (Book)

Zweigert/Kötz, An Introduction to Comparative Law, Clarendon (Book)

Activities

In-class discussions and debates

Reading Assignments

Written and/or oral exams

Presentations

Group/individual presentation of your National Legal System

Content

#	Topic
1	General Considerations 1. Introduction a) What is Comparative Law ? b) Comparative Law and its clients c) Comparative Law and Conflict of Laws 2. Theory and Methods of Comparative Law a) Functional and cultural methods, and legal transplants. b) The problem of comparability: the tertium comparationis c) The doctrine of legal families: rise and fall of a taxonomic project
2	The Common Law-Civil Law Divide 3. English Law: the cradle of the Common Law tradition a) Historical background b) Development of English procedural tradition c) Statutory interpretation d) Precedent and legal reasoning 4. US Law a) Influence of English Law b) Uniformity c) The Judiciary 5. Historical Background of the Civil Law tradition a) Roman Law b) Germanic Law c) The Ius Commune 6. French and German Law a) Historical background b) Code Napoléon v. the BGB c) The Judiciary and the style of judgment
3	Private Law and Conflict of Laws 7. Contract Law a) Common Law v. Civil Law: the principle of good faith, the remedy of specific performance and penalty clauses. b) Uniformity in Contract Law c) The Choice of Law of Contract 8. Civil Procedure a) Common law v. Civil law b) Principles of Transnational Civil Procedure c) International Commercial Courts
4	Conflict of Laws: A Comparative Outlook 9. Jurisdiction and Choice of Law a) Variety of Rules on Jurisdiction and of Choice of Law b) Approaches to Parallel Litigation: Lis pendens v. Anti-suit Injunctions c) Approaches to Public Policy: US punitive damages v. Penalty Clauses

Assessment

Tool	Assessment tool	Category	Weight %
Other	Active Class Participation	Retake and ordinary round	0.40%
Written and/or oral exams	Exam	Retake and ordinary round	0.60%

PROGRAMS

113-Law Exchange Program (Undergraduates: Law)
113 Year 1 (Optative)

113S-Law Exchange Program (Undergraduates: Law)
113S Year 1 (Optative)

DD05-Double Degree Program (exchange) (Undergraduates: Law)
DD05 Year 1 (Optative)

GBD20-Double Degree in Business Administration and Law (Undergraduates: Law)
GBD20 Year 1 (Optative)
GBD20 Year 5 (Optative)

GDL20-Double Degree in Law and Global Governance, Economics and Legal Order (Undergraduates: Law)
GDL20 Year 4 (Optative)
GDL20 Year 5 (Optative)

GED20-Bachelor in Law (Undergraduates: Law)
GED20 Year 4 (Optative)
GED20 Year 1 (Optative)