

COMPARATIVE LAW: COMPARATIVE LEGAL SYSTEMS

Spring 2024

Comparative Law: Comparative Legal Systems INT 7407 01
Spring 2024
Tuesday and Thursday 11:20-12:35 p.m. OAKES 207

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SYLLABUS

Course Description:

This course introduces the theory and practice of Comparative Law, and offers reference tool for legal professionals facing international legal problems outside their own area of expertise, with the focus on international transactions, and environmental law.

Comparative Law is a discipline. Unlike most other legal disciplines, Comparative Law is not a body of rules and principles. Comparative law is not the knowledge of existing different laws, but rather, knowledge of how to understand and deal with such laws of different legal systems. This course includes three elements of comparison: macro-comparison (the understanding of whole legal systems and families of such systems), micro comparison (the understanding of specific legal rules or solutions), and methodology and theory.

This course comprises three parts: the nature, history, and sources of comparative law; the methodology for comparative law and comparative legal systems with different traditions; and an introduction to Global Comparative Law with examples of legal solutions adopted on a regional, international, and transactional level.

While Comparative Law is believed somewhat more theoretical than other discipline, which will be explained in the first two parts of this course, the practical use of comparative law will also be offered in this course, especially in international transactions, and environmental law. questions like “Can courts use foreign materials in deciding cases?” “How practicing legal professionals use comparative law in practice?”, will be discussed.

Course Learning Objectives:

Successful completion of this course will enable students to:

- Demonstrate a general understanding of the major legal traditions of the world, with

- particular emphasis on the classical distinction between civil law and common law;
- Demonstrate an understanding of principal methodological considerations in comparative law;
- Demonstrate the understanding of integrative and contrastive comparison between different legal systems;
- Build up comparative law researching skills, and the capability to use databases and portals to access legal resources in key foreign jurisdictions;
- Have a general understanding of the mechanisms through which foreign law may be introduced and considered in the U.S. courts;
- Have a basic understanding of international legal practice and the general resources that are available to lawyers confronted by international legal issues, especially in international transactions, and environmental law;
- Complete a legal research writing project in comparative law.

Course Materials:

1. Text book: Ugo Mattei, Teemu Ruskola & Antonio Gidi, SCHLESINGER’S COMPARATIVE LAW, 7th ed. (2009).
2. Supplemental materials: all the supplemental materials can be found on Canvas under this course.
3. Useful websites:
 - <http://www.worldlii.org/countries.html> (World Legal Information Institute. This offers a collection of freely available full-text databases of primary sources for several countries, and a catalogue of links to lists of resources).
 - <http://www.loc.gov/law/help/guide.php> (Annotated guide to sources of information on government and law for the nations of the world).
 - <https://www.loc.gov/collections/global-legal-monitor/about-this-collection/browse-all-jurisdictions/> (The Global Legal Monitor is an online publication from the Law Library of Congress covering legal news and developments worldwide. It is updated frequently and draws on information from official national legal publications and reliable press sources.).
 - <http://www.juriglobe.ca> (Maps of the different legal systems of the world created by the University of Ottawa).
 - <https://libguides.vermontlaw.edu/FCIL/overview> International and Foreign Law research guides and useful website through VLGS Library resources.
 - Heinonline, accessible through VLGS library database, contains many articles on comparative law.

Course Platform: Canvas. You can find under Resources on VLGS website. All course materials will be uploaded on Canvas.

Grading:

Letter grades are based on class activities, and assignments. Class activities include class preparation, attendance, participation, and exercises. Assignments will be evaluated during the whole semester with various research, writing, and analytical focus. The weight of the class participation and assignments are listed below:

- Class participation 10%
- One short paper introducing your chosen legal system 20%

- One long final paper 50%
- One paper presentation (15 minutes) 20%

More specifically:

1. Class participation includes attending classes and meetings on time, participating in class discussion, completing all the assignments and meeting all the deadlines. Pursuant to Vermont Law and Graduate School (VLGS) academic regulations, students who are absent from 20% of the regularly scheduled classes (in our case more than 5 classes) or who fail to complete required hours for other work shall be automatically withdrawn from the course with a grade of F-Wd. See VLGS attendance policy in the Student Handbook for additional information on class attendance. Please extend the courtesy of notifying me in advance that you will not be attending class, unless it proves impossible to do so.
2. **Tuesday classes** begin with an update of the weekly researching progress of each student. **Thursday classes** begin with an introduction of one article related to the research that the student(s) would like to share to the whole class. It is recommended that the presenting student(s) share the article to all members of the class before Thursdays as context reading.
3. Short paper introducing your chosen legal system: ***Due February 23, 2024, at 5:00 p.m.*** This assignment is a short paper introducing the legal system of a single country other than the United States. This paper should provide some of the essential background you will need for your final paper, i.e., a brief history of how the legal system developed through different eras; the constitutional system or lack thereof; the sources of law; structure of the legal system, etc. This paper should not exceed seven pages (double spaced, 12 points, Times New Roman), plus a one page bibliography.
4. Long final paper: ***Due May 6, 2024, at 5:00 p.m.*** The final paper is an application of the methodologies, techniques, knowledges and approaches that you have learned through this semester to a real comparative study research. It should involve at least a comparison of legal systems of two countries. This paper should be no fewer than 20 pages, and no more than 25 pages (double spaced, 12 points, Times New Roman).
5. Paper presentation: Each student will present the long final paper in the last week of class (***April 25, 2024***). It is understood that the paper is still a work in progress by then, but should be very closed to be finalized.

Application of the Honor Code:

The Vermont Law and Graduate School Honor Code governs students work and conduct in this course. Whenever using the words or ideas of another writer, students must acknowledge the original source. The assignments students submit must be their own work product.

Classroom etiquette: During class, please turn off cell phones and please do not surf the internet, text, or read your email.

Class schedule:

<p>Week 1 Introducing comparative law</p>	<p>Session 1 01/16;:Readings: 1. Mathias Siems, <i>The Power of Comparative Law: What Types of Units Can Comparative Law Compare?</i> American Journal of Comparative Law, December 2019. Available on Canvas</p>
<p>Week 2 - Comparative law and the neighboring Discipline - Comparative law in practice (functions)</p>	<p>Session 2 01/18 Readings: 1. Klaus-Dieter Borchardt, <i>The ABC of European Union Law</i> (2017), available at https://op.europa.eu/en/publication-detail/-/publication/5d4f8cde-de25-11e7-a506-01aa75ed71a1, pages 43-57, 89-110. Also available on Canvas.</p> <p>Session 1 01/23 Readings: 1. <i>Schlesinger's Comparative Law</i>: Pages 2, 7-16 (bottom of page), 42-47</p> <p>Session 2 01/25 Readings : 1. <i>Schlesinger's Comparative Law</i>: Pages 48-68</p>
<p>Week 3 - Tools of Comparative Law: The Common Core - The Common Core in Practice: Good Faith - Comparative Law Research</p>	<p>Session 1:01/30 1. <i>Schlesinger's Comparative Law</i>: Pages 95-109</p> <p>Session 2: 02/01 1. <i>Schlesinger's Comparative Law</i>: Pages 109-118</p> <p>Session 3: 02/02 8:30 OAKES 211 Guest lecture: International and Comparative Law research, by Professor Jennifer Sekula</p>
<p>Week 4 - Contrastive Comparison: Structure and Language - What Shapes Legal System: Diffusion of Law</p>	<p>Session 1:02/06 1. <i>Schlesinger's Comparative Law</i>: Pages 144 – 163</p> <p>Session 2: 02/08 1. <i>Schlesinger's Comparative Law</i>: Pages 177-190</p>
<p>Week 5 - What Shapes Legal System: Legal Transplant - At the Roots of the Western Legal Tradition</p>	<p>Session 1:02/13 1. <i>Schlesinger's Comparative Law</i>: Pages 237-248, 258-267</p> <p>Session 2:02/15 1. <i>Schlesinger's Comparative Law</i>: Pages 310-323,330-341</p>
<p>Week 6 - Roman Law as a</p>	<p>Session 1: 02/20 1. <i>Schlesinger's Comparative Law</i>: Pages 341-348, 351-362</p>

<p>Common Western Heritage</p> <ul style="list-style-type: none"> - Development of French and German Law - Codification: Sources of Law, System and Organization of the Codes 	<p>Session 2: 02/22</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 384-424
<p>Week 7</p> <ul style="list-style-type: none"> - Codes: How They Change - Codes Worldly - Codes: Comparing Tort Liability 	<p>Session 1:02/27</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 428-441, 444-455
	<p>Session 2:02/29</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 455-468, 473-476
<p>March 4-8 NO CLASS SPRING BREAK</p>	
<p>Week 8</p> <ul style="list-style-type: none"> - Case Law and Sources of Law: Court Structure in Civil Law Countries - Appeal Cassation, Revision: How Do They Differ 	<p>Session 1:03/12</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 477-505 2. Assignment: Bring to class a sketch of the court system in your country of research. Be prepared to discuss how your system uses decisional law as a source of law.
	<p>Session 2:03/14</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 505-518 2. Sofie M. F. Geeroms, "Comparative Law and Legal Translation: Why the Terms Cassation, Revision and Appeal Should Not Be Translated," 50 <i>American Journal of Comparative Law</i> 201, 204-208, 214-218 (2002) (Available on Canvas)
<p>Week 9</p> <ul style="list-style-type: none"> - High Courts; Judicial Review - Administrative Courts and Judicial Review 	<p>Session 1:03/19</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 518-310
	<p>Session 2:03/21</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 530-554
<p>Week 10</p> <ul style="list-style-type: none"> - How Case Law Develops - Analogy and the Limits of <i>Stare Decisis</i> - Civil Procedure 	<p>Session 1: 03/26</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 554-563,573-582,594-626
	<p>Session 2: 03/28</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 707-746
<p>Week 11</p> <ul style="list-style-type: none"> - Civil Procedure 	<p>Session 1:04/02</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 756-795

	<p>Session 2:04/04</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 809-823
<p>Week 12</p> <ul style="list-style-type: none"> - Contract - Security of Transactions 	<p>Session 1: 04/09</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 872-906, 912-913
	<p>Session 2:04/11</p> <ol style="list-style-type: none"> 1. <i>Schlesinger's Comparative Law</i>: Pages 920-936
<p>Week 13</p> <ul style="list-style-type: none"> - Discussion of the draft long paper - International Environmental Law 	<p>Session 1:04/16</p> <ol style="list-style-type: none"> 1. Robert Percival & Zhao Huiyu, "<i>The Role of Civil Society in Environmental Governance in the U.S. and China</i>," 24 <i>Duke Environmental Law & Policy Forum</i> 142 (2014). Available on Canvas. 2. Amy Pickering and Yanmei Lin, <i>A Perfect Storm: How China's Taizhou Case Marks the Beginning of a New Era of Environmental Enforcement</i>, in <i>The Impact of Environmental Law: Stories of the World We Want</i> 154 (Eisma-Osorio, Kirk & Albin, eds. 2020). Available on Canvas.
	<p>Session 2:04/18</p> <ol style="list-style-type: none"> 1. Climate Litigation Handbook 4.2 (Available on Canvas)
<p>Week 14</p> <ul style="list-style-type: none"> - Class Review - Paper presentation 	<p>Session 1:04/23 Class Review</p>
	<p>Session 2:04/25 FINAL PRESENTATION</p>