

**COMPARATIVE LAW FALL 2000**  
(Professor Francesco Parisi)

**Reading Material**

Suggested Texts: K. Zweigert & H. Kötz, *An Introduction to Comparative Law*, 3<sup>rd</sup> ed., (Oxford, 1998)  
R. Cooter-T. Ulen, *Law and Economics*, 2<sup>nd</sup> ed. (Wesley, 1997)  
U. Mattei, *Comparative Law and Economics*, (Michigan, 1997)

Optional Readings: J.M. Kelly, *A Short History of Western Legal Theory*, (Oxford, 1992)  
P. Stein, *Roman Law in European History*, (Cambridge, 1999)

**Course Description**

If we are to understand the effect of different legal rules, the obvious way to do this is to compare what happens in different legal systems with different legal rules. This course utilizes the analytical methods of law and economics for the understanding of different legal institutions in a comparative perspective.

After a survey of the basic historical developments of the Western legal systems (from pre-Roman legal systems through the legal Renaissance, and Legal Humanism), this course considers the general features of foreign systems belonging to the Civil law tradition. The tradition includes all of the Continental European and Latin American countries. At least one third of the course focuses on selected problems of private law in civil and common law countries, comparing theoretical frameworks and judicial interpretive methods.

**Requirements**

This course counts as a three-credit hour writing seminar. The course requires the completion of a major paper, and occasional short writing assignments. The subject matter for the final paper must fall within one of the areas covered in the syllabus (no exceptions). Students may extend their research to non-Western, ancient, or religious legal systems, as long as the subject-matter requirement indicated above is fulfilled. Active class participation is expected and may count for a +/- 3 point grade adjustment.

**Schedule**

Class meets on \_\_\_\_\_. First class will meet on \_\_\_\_\_.

**Reading Assignments**

The attached program provides you with an overview of the course coverage. Possible changes will be announced in class.

## COMPARATIVE LAW

### Week I **An Introduction to Comparative Law and Economics**

Readings: Cooter-Ulen, pp. Chapters 1 and 2; Mattei, Chapter 1  
Excerpts (0): Levmore, *Rethinking Comparative Law*, (Tulane LR, 1986)  
Herbert Hovenkamp, *The Economics of Legal History*, (Minn. LR, 1983).

### Week II **The Evolution of Law in Early Societies**

Readings: Kelly (1992), pp. 1-38.  
Excerpts (I): S. Diamond, *The Rule of Law versus the Order of Custom*, (1971), pp. 42-71.  
F. Parisi, *The Genesis of Liability in Ancient Law*, (Manuscript, 1999)  
R. Posner, *A Theory of Primitive Society*, (JLE, 1980).

### Week III **Law and Legal Theory of the Romans: Property, Contracts, and Torts**

Readings: Stein, pp. 1-37; Kelly (1992), pp. 39-78

### Week IV **Glossators, Commentators, and Legal Humanists**

Readings: Stein, pp. 38-103; Kelly (1992), pp. 79-202

### Week V **Feudal Law, Mercantile Law, and Maritime Law**

Excerpts (II): H.J. Berman, *Law and Revolution*, (Harvard, 1983), pp. 295-315 and 333-354

### Week VI **Rationalist Jurisprudence and the Codifications: French and German Models**

Readings: Stein, pp. 104-132; Kelly (1992), pp. 203-347; Zweigert-Kötz (1998), pp. 64-179

### Week VII **Customary Law in the Age of Legislation**

Readings: Mattei, Chapter 4  
Excerpts (III): B.L. Benson, *Customary Law as a Social Contract*, (Public Choice, 1992).  
F. Parisi, *Toward a Theory of Spontaneous Law*, (Constitutional Political Economy, 1995).  
Id., *Customary Law*, (New Palgrave of Economics and the Law, 1998).  
R.D. Cooter, *Structural Adjudication and the New Law Merchant*, (Int. Rev. of Law & Econ., 1994).

### Week VIII **Issues in Comparative Property Law**

Readings: Cooter-Ulen, Chapters 4 and 5  
Excerpts (IV) Parisi et al., *Duality in Property: Commons and Anticommons* (Manuscript, 1999)  
Smith, (JLS, 2000)

- Week IX      **Issues in Comparative Contract Law (I): Formation and Typology**  
Readings:      Cooter-Ulen, Chapter 6; Zweigert-Kötz (1998), pp. 323-469.  
Excerpt (V):    F. Parisi, *Autonomy and Private Ordering in Contract Law*, (EJLE, 1995).
- Week X      **Issues in Comparative Contract Law (II): Effects and Remedies**  
Readings:      Cooter-Ulen, Chapter 7; Zweigert-Kötz (1998), pp. 470-536.
- Week XI      **Negotiorum Gestio, Duty to Rescue, and Unjustified Enrichment**  
Readings:      Zweigert-Kötz (1998), pp. 537-594.  
Excerpts (VI)    P. Gallo, *Unjust Enrichment*, (1992).  
                      R.A. Pascal, *Unsolicited Action on Behalf of Others*, (1968).  
                      S.J. Heyman, *Foundations of the Duty to Rescue*, (VLR, 1994).
- Week XII     **Issues in Comparative Tort Law (I): Liability and Defences**  
Readings:      Cooter-Ulen, Chapter 8; Zweigert-Kötz (1998), pp. 595-708  
Excerpt (VII):    F Parisi, *Alterum non Laedere: An Intellectual History of Civil Liability*, (AJJ, 1994:3).
- Week XIII    **Issues in Comparative Tort Law (II): Damages**  
Readings:      Cooter-Ulen, Chapter 9
- Note:            Term Papers are due in class on last seminar session