

George Mason University School of Law

Law 346

Comparative Law

Fall 2004

Instructor: Charles N.W. Keckler

(3-8042)

Room 310

Syllabus

Subject

Comparative law is the study of alternative legal systems, and of our own legal system in the context of those alternatives. As you already know, even studying *one* legal system fully, in your own culture, is an arduous task, and in comparative law we, technically, are responsible for knowing all about the many, many systems that have existed around the world and across time. So we must be selective, and focus on general features and main variants of law, and on the dominant contemporary systems.

My approach to this course is anthropological, by which I mean that for me the process of comparison has its goal the identification of common characteristics of legal systems (“universals”) as well as learning where they diverge in how they treat a specific social concern. Moreover, for both commonalities and differences, the next step is to try to understand *why* something is universal or *why* some society chooses one rule over another, and to turn this hypothetical explanation into a testable theory of legal patterns. Not all areas of law are amenable to this method (as good as it might sound), but you may be surprised at the extent to which islands of intellectual order can be identified among the hodge-podge of rules.

Structure

Each week, we will study one particular area of law: contract, torts, and so on. The Tuesday lecture will deal with the subject generally and give some background on any broad-brush differences between the common-law system and the European Civil Law, or where relevant, Islamic law or the systems commonly employed in authoritarian regimes. The Thursday lecture will focus on comparing and contrasting how legal systems (unrestricted as to type) deal with a particular problem, and (perhaps) explain why people use the rules that they do. For instance, I will first discuss family law generally and talk a bit about Islamic and Civil law in this area, and then, two days on, we will compare and contrast incest restrictions on marriage or sexual activity, where I'll talk about Eskimos and Egyptians and whatever seems relevant that I know about.

Grading

You are responsible for doing the reading and showing up on time. Class discussion will be important, and an OVERALL class discussion grade is 10% of your score. Although I sometimes teach by the Socratic method, your responses to this are not key to this grade, so relax and play along. Grading will be 60% based on either the final exam, or if you prefer, a substantial (15-20 page) paper on an agreed-to topic developed by you. The final 30% of your grade will be based on the mid-term exam, or if you prefer, a short (7-10 pages) paper on a topic set by me.

Since you're lawyers, here's some fine print. Yes, you can do one paper or one test, or two tests, or two papers. And yes, theoretically you could do both the exam and the written alternative, in which case you would get the higher of the two grades. I discourage this, and so make them due on the same day, but it's not forbidden. By the end of the class you'll know all about the difference between discouraging and forbidding.

Materials

Unless otherwise noted, readings are from the course pack or on reserve under LAW 346

<u>The Civil Law Tradition</u> , 2 nd Ed.	J.H. Merryman	(CLT)
<u>Comparative Criminal Justice Systems</u> , 4 th Ed.	P.L Reichel	(CCJ)
<u>Comparative Law and Economics</u>	U. Mattei	(CLE)
<u>The Red Lamp of Incest</u>	R. Fox	(RLI)

Schedule

August 17-19 Introduction Geoffrey C. Hazard, *Substance, Procedure and Practice in Comparative Law*, pp. 1091-1099; **RLI**, Chap. 1, pp. 1-14, Jane Goodall, **The Chimpanzees of Gombe**, pp. 284-85, 351-2; Leonard Posposil, **Anthropology of Law**, pp. 87-96; Robert Spencer, **The North Alaskan Eskimo**, pp. 97-123. On Thursday, I will be presenting, with commentary, the film *Atanarjuat "The Fast Runner"* (2001), omitting scenes to fit the film into class time.

August 24-26 Comparative Method J. Merryman, *Comparative Law and Scientific Explanation*, 477-502; **CLT**, Ch. I-IV, pp. 1-25; **CCJ**, Ch. 4, pp. 104-48; For Thursday, also read text of the Hittite Laws, pp. 217-237, and compare to **The Code of Hammurabi**, (<http://www.yale.edu/lawweb/avalon/medieval/hamframe.htm>)

August 31-September 2 Criminal Law M. Lippman, **Islamic Criminal Law & Procedure** (excerpts); **CCJ** Ch. 5., 149-188; **CCJ**, Ch. 8, 284-328; W. Van Alstyne, *Civil Rights and Civil Liberties: Whose "Rule of Law?"*

September 7-9 Criminal Procedure B. McKillop, *Anatomy of a French Murder Case*, **CLT** 124-133, **CCJ**, Ch. 7, pp. 231-283; G. Van Kessel, *European Perspectives on the Accused as a Source of Testimonial Evidence*

September 14-16 Evidence M. Damaska, **Evidence Law Adrift** (available electronically); K. Clermont & E. Sherwin, *A Comparative View of Standards of Proof*
September 21-23 Family Law C. Schneider, *The Channeling Function in Family Law*, M. Glendon, **The Transformation of Family Law** (excerpt), M. Cammack, L. Young, & T. Heaton, *Legislating Social Change in an Islamic Society – Indonesia's Marriage Law*, **RLI** Ch. 2 & 6, pp.15-50, 135-165

September 28-30 Civil Procedure J. Langbein, *The German Advantage in Civil Procedure*; O. Chase, *Some Observations of the Cultural Dimension in Civil Procedure Reform*; J. Jackson, *Playing the Culture Card in Resisting Cross-Jurisdictional Transplants*; **CLT** 26-55, 111-123

October 5-7 Court Organization **CLT** 56-110; **CLE** 69-88; TBD (fee-shifting)

October 14 -----MIDTERM (or paper due)

October 19-21 Contracts M. Lewis & L. Algaoud, **Islamic Banking**, Chs. 2-3, 5 (available electronically); K. Pistor, *Supply and Demand for Contract Enforcement in Russia*, **CLE** 179-199.

October 26-28 Torts **CLE** 223-256, TBD (product liability in emerging economies)

November 2-4 Constitutional Law P. Ordeshook, *Are 'Western' Constitutions Relevant to Anything Other than the Countries They Serve?* TBD (rights specification)

November 9-11 Property **CLE** 201-221; C. Keckler, *A Functional Interpretation of Roman Testamentary Freedom*; TBD (inheritance)

November 16-18 Convergence and Conflict in Legal Systems TBD (by student interest)

November 23 ---- Last Day Review (no assignment)