

LAWS50123 Comparative Law

Credit Points:	12.5																										
Level:	5 (Graduate/Postgraduate)																										
Dates & Locations:	This subject is not offered in 2016. This subject has a quota of 60 students. Details on quota subject selection are available on the JD website.																										
Time Commitment:	Contact Hours: 36 hours. Total Time Commitment: 144 hours.																										
Prerequisites:	<table><tr><th>Subject</th><th>Study Period Commencement:</th><th>Credit Points:</th></tr><tr><td>LAWS50023 Legal Method and Reasoning</td><td>February</td><td>12.50</td></tr><tr><td>LAWS50024 Principles of Public Law</td><td>Semester 1</td><td>12.50</td></tr><tr><td>LAWS50025 Torts</td><td>November, Semester 2</td><td>12.50</td></tr><tr><td>LAWS50026 Obligations</td><td>Semester 1</td><td>12.50</td></tr><tr><td>LAWS50027 Dispute Resolution</td><td>Semester 1</td><td>12.50</td></tr><tr><td>LAWS50028 Constitutional Law</td><td>Semester 2</td><td>12.50</td></tr><tr><td>LAWS50029 Contracts</td><td>Semester 2</td><td>12.50</td></tr></table>			Subject	Study Period Commencement:	Credit Points:	LAWS50023 Legal Method and Reasoning	February	12.50	LAWS50024 Principles of Public Law	Semester 1	12.50	LAWS50025 Torts	November, Semester 2	12.50	LAWS50026 Obligations	Semester 1	12.50	LAWS50027 Dispute Resolution	Semester 1	12.50	LAWS50028 Constitutional Law	Semester 2	12.50	LAWS50029 Contracts	Semester 2	12.50
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Corequisites:	None																										
Recommended Background Knowledge:	None																										
Non Allowed Subjects:	<table><tr><th>Subject</th><th>Study Period Commencement:</th><th>Credit Points:</th></tr><tr><td>LAWS70016 Comparative Law</td><td>August</td><td>12.50</td></tr></table>			Subject	Study Period Commencement:	Credit Points:	LAWS70016 Comparative Law	August	12.50																		
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Core Participation Requirements:	<p>The Melbourne Law School welcomes applications from students with disabilities. It is University and Law School policy to take all reasonable steps to enable the participation of students with disabilities, and reasonable adjustments will be made to enhance a student's participation in the School's programs. The inherent academic requirements for the study in the Melbourne Law School are: The ability to attend classes and actively engage in the analysis of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students must possess behavioural and social attributes that enable them to participate in a complex learning environment. Students are required to take responsibility for their own participation and learning. They also contribute to the learning of other students in collaborative learning environments, demonstrating interpersonal skills and an understanding of the needs of other students. Assessment may include the outcomes of tasks completed in collaboration with other students. Students who feel their disability will prevent them from participating in tasks involving these inherent academic requirements are encouraged to contact the Disability Liaison Unit: www.services.unimelb.edu.au/disability/.</p>																										
Contact:	Email: law-aso@unimelb.edu.au (mailto:law-aso@unimelb.edu.au) Phone: +61 3 8344 4475 Website: www.law.unimelb.edu.au/jd (http://www.law.unimelb.edu.au/jd)																										
Subject Overview:	Comparative Law is both a substantive area of intellectual engagement as well as a methodology with professional, academic and policy-making import. As an academic subject,																										

Comparative Law has appeared, in various iterations, on academic curricula around the world, in Europe, the United Kingdom, Canada and the United States, for over a hundred years. However, with increasing globalisation and economic and legal interdependency, Comparative Law provides a key to understanding normative forces at work in Australian law as well as legal systems elsewhere.

Comparative Law is inherently interdisciplinary and can cut across the entire spectrum of the legal curriculum. In particular, Comparative Law is closely related to Legal History, Private International Law and Legal Theory. For example, Comparative Law shares its insistence on locating law in time and place with Legal History, and its use of multiple perspectives to view any one issue with Private International Law.

There are numerous approaches to considering Comparative Law. Traditionally, it has involved a consideration of that which is alien and different from the viewpoint of one's own system. American and English courses often look to Continental European systems, and Continental European courses look to the English and American common law. However, more recently, with the rise in interest in legal pluralism and the recognition of the multi-layered, hybrid nature of many legal systems, particularly those of Asia, some comparativists, such as H.P. Glenn, have been adopting a much broader perspective.

This subject adopts the latter approach and will have four main components.

First, there will be a consideration of the goals, purposes and methodology of comparative legal research, including consideration of current issues.

Secondly, using the H.P. Glenn text, *Legal Traditions of the World*, there will be an investigation of the characteristics of and interrelationships among several of the major legal traditions: indigenous or chthonic traditions, civil law, common law, Talmudic, Islamic, Asian. Issues and questions considered may include:

- # What do the Inuit and Aboriginal cultures share in terms of a legal tradition?
- # How do very old chthonic traditions, such as those of the Roma, persist in modern societies?
- # How do legal traditions, such as the Talmudic and the Islamic, address legal change?
- # What are the characteristics of modern Islamic law?
- # Are all Western legal traditions ultimately derived from Roman law?
- # How do civil law systems diverge from common law systems?
- # Why does US common law, as a system, differ so markedly from Commonwealth legal systems?
- # Hong Kong and China: one country, two systems?
- # How do Asian centrally planned economies adapt European civil law?
- # Are there indications that legal systems are diverging or converging? What are the forces operating in each instance?

Thirdly, there will be a more detailed analysis and comparison of the origins and sources of the two major Western legal traditions, the Anglo-American common law and the Roman law tradition, as found in continental Europe but also Latin America, Africa, Asia and even North America. Issues and questions considered may include:

- # How has the common law been influenced by Roman law?
- # What is the relationship between written law and customary law?
- # What are the origins of the great 19thC codes of law?
- # What are the characteristics of a code and how do codes differ from one country to another?
- # What is the role of the judiciary in non-common law systems?
- # Is the United States still a common law jurisdiction?

Finally, through problem solving exercises using real cases and real legislation, and in particular, the modern Civil Code of Quebec, students may investigate some substantive areas of the law (for example, property, obligations) from a comparative perspective. Issues and questions considered may include:

- # Does good faith operate differently in contract law in different systems?
- # How do systems operate without fiduciary principles?
- # Are there doctrines which supplement the codes and what is their interaction with them.

Learning Outcomes:

Comparativist legal scholars are of the opinion that one can never fully understand one's own legal system; there are too many powerful, hidden assumptions, rarely acknowledged and only implicitly understood, operating below the surface. By investigating other legal systems, in

	<p>addition to the substantive understanding gained of those systems, Comparative Law exposes these hidden assumptions, resulting in a more profound appreciation of one's own system. At its most fundamental level, Comparative Law will inform and deepen students' understanding of all their substantive law school courses.</p> <p>On completion of the subject students should have developed the following skills:</p> <ul style="list-style-type: none"> # The ability to identify the origins and major characteristics of a legal system (so as to assist, for example, in the technical characterisation of a legal issue arising in a foreign system in the context of litigation, professional practice or academic research); # The ability to compare legal concepts and institutions across systems (so as to be able, for example, to make use of them in a professional capacity in policy initiatives and legal reform efforts); # The ability to apply legal concepts drawn from a non-domestic law system to a fact based problem (such as may be encountered in professional practice); # An appreciation of legal pluralism and varying forms of normativity (so as to assist, for example, in dispute resolution, domestically and internationally); # A greater understanding of the origins and development of domestic Australian law (so as to be able, for example, to formulate sophisticated professional judgments, both for private clients and governmental initiatives); # The capacity to undertake research in a foreign legal system (for example as an academic researcher, a legal professional or government policy maker); # The capacity to undertake a critical and sophisticated professional analysis of non-domestic legal principles applicable to a specific legal problem; # The capacity to place law and regulation, irrespective of subject area, within a global context, now a necessary professional skill in a globalised world; # The capacity to develop, sustain and reference argument in regard to issues of both domestic and foreign law by recognising similarities and differences originating in different legal systems; and # The ability to identify and resolve theoretical and practical problems concerning the application of law in multi-jurisdictional situations typical of sophisticated professional legal practice.
Assessment:	Preparation, in advance, of written responses to problem-based exercises in class (2,000 words, in total). To be conducted in teams (the size of which will depend on class size) (20%); 3 hour examination (80%).
Prescribed Texts:	H.P. Glenn, <i>Legal Traditions of the World</i> (4th ed, Oxford University Press, 2010); Specialist printed materials may be made available by Melbourne Law School.
Breadth Options:	This subject is not available as a breadth subject.
Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Generic Skills:	<p>On completion of the subject students should also have acquired and demonstrated:</p> <ul style="list-style-type: none"> # Advanced and specialised knowledge and skills in non-domestic legal systems which may be applied: (i) in multi-jurisdictional professional practice; (ii) as a foundation for multi-systemic research in an advanced academic setting; or (iii) as the foundation for further graduate level studies, in Australia or elsewhere in the world; # Advanced and integrated understanding of the operation and interaction of the world's legal systems, essential for sophisticated cross-border practice or research; # Specialised cognitive and technical skills in multiple legal systems; # Capacity to work effectively both collaboratively and autonomously as responsible professionals; # The ability to critically analyse legal problems from a variety of multi-jurisdictional perspectives that will foster creativity and initiative in new situations in professional practice or further learning; # Advanced skills in written communication, in particular solving hypothetical legal problems using comparative materials.
Related Course(s):	Juris Doctor