**Comparative Law**



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**IIT Chicago-Kent College of Law**

**Syllabus**

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**General Instructions**

1. This course produces **THREE** credit hours.

2. Students are **required to** **READ** all class assignments, including any handouts. Students are also required to consult any relevant primary sources (statutes or treaties) which will be provided by the instructor.

3. Students should consult the **COURSE WEBSITE** (**Blackboard**) regularly for class letters, PPTs, revised/additional reading assignments, various announcements and other helpful information.

4. Students should heed any **ADMINISTRATIVE** regulations which regard add/drop, pass/fail, exam, etc. The Registrar will assist you with any questions.

5. Final grades will be determined by a combination of two factors: **FINAL EXAM (75%)** and **ATTENDANCE/CLASS PARTICIPATION (25%)**.

6. If students (will) **MISS** a class, they may inform the instructor verbally or via email, in advance or later, to avoid any negative effect on grades. If any student misses more than a **QURATER** (1/4) of classes, his or her final grade shall be “**WP**” (**Withdraw Passing**) or its equivalents regardless of the outcome of his or her final exam.

7. Students are strongly encouraged to email or talk to the instructor for any **CONCERNS** or **suggestions** regarding the course.

8. There are no pre-scheduled **OFFICE HOURS**. Students are strongly encouraged to contact the instructor to make an appointment at their convenience.

9. This syllabus is current as of **MAY 1, 2021**. There may be some adjustments or changes in the syllabus as the course proceeds, in which case the instructor will distribute revised syllabi.

10. The instructor reserves some space for any prolonged class discussions or other relevant special **GUEST LECTURES**.

11. There will be a **take-home exam** at the end of the semester.

**Illinois Tech’s Sexual Harassment and Discrimination Information:**

Illinois Tech prohibits all sexual harassment, sexual misconduct, and gender discrimination by any member of our community. This includes harassment among students, staff, or faculty. Sexual harassment of a student by a faculty member or sexual harassment of an employee by a supervisor is particularly serious. Such conduct may easily create an intimidating, hostile, or offensive environment.

Illinois Tech encourages anyone experiencing sexual harassment or sexual misconduct to speak with the Office of Title IX Compliance for information on support options and the resolution process.

You can report sexual harassment electronically at [iit.edu/incidentreport](http://iit.edu/incidentreport), which may be completed anonymously. You may additionally report by contacting the Title IX Coordinator, Virginia Foster at [foster@iit.edu](mailto:foster@iit.edu) or the Deputy Title IX Coordinator at [eespeland@iit.edu](mailto:eespeland@iit.edu).

For confidential support, you may reach Illinois Tech’s Confidential Advisor at (773) 907-1062. You can also contact a licensed practitioner in Illinois Tech’s Student Health and Wellness Center at student.health@iit.edu or (312)567-7550

For a comprehensive list of resources regarding counseling services, medical assistance, legal assistance and visa and immigration services, you can visit the Office of Title IX Compliance website at <https://www.iit.edu/title-ix/resources>.

**Reading Assignments**

**Part 1: The Grammar and Syntax of Comparative Law**

**Topic 1: Introduction -- What Is Comparative Law? (Jan. 20)**

Catherine Valcke, *Comparative Law as Comparative Jurisprudence: The Comparability of Legal Systems*, 52 Am. J. Comp. L. 713, 720-21, 731-39 (2004);

Jaakko Husa, *Methodology of Comparative Law Today: From Paradoxes to Flexibility?*, Revue Internationale de Droit Comparé (4-2006), at 1099-1110, *available at* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1967406>

Optional Reading:

Martin Krygier, *Law as Tradition*, 5 L. & Phil. 237, 240-51 (1986).

**Topic 2: How to Do Comparative Law? (Jan. 25)**

John C. Reitz, *How to Do Comparative Law?*, 46 Am. J. Comp. L. 617, 617-36;

Rodolfo Sacco, Legal Formants: A Dynamic Approach to Comparative Law, 39 Am. J. Comp. L. 1, 21-25 (1991).

**Topic 3: What to Compare? And, Why to Compare? (Jan. 27)**

David J. Gerber, *System Dynamics: Toward a Language of Comparative Law*, 46 Am. J. Comp. L. 719, 726-37 (1998).

**Topic 4: Acceptance of (or Tolerance to) Foreign Law in the Domestic Legal System (Feb. 1) -- A Guest Lecture by Prof. Steve Heyman (C-K)**

Mark V. Tushnet, *Referring to Foreign Law in Constitutional Interpretation*, 35 U. Balt. L. Rev. 299, 299-312 (2006).

**Topic 5: Diffusion and Communication of Law (Feb. 3)**

*In Re Shoop* (1920), *available at* <https://www.lawphil.net/judjuris/juri1920/nov1920/maxshoop_1920.html> (except for footnotes).

**Topic 6: Comparative International Law (Feb. 8)**

L. Amede Obiora, *Toward an Auspicious Reconciliation between International and Comparative Analyses*, 46 Am. J. Comp. L. 669, 669-82 (1998);

Anthea Roberts, *With Blinders On?: How International Law Casebooks Teach Students in the United States*, Just Security (Oct. 11, 2017), *available at* <https://www.justsecurity.org/45825/blinders-on-international-law-casebooks-teach-students-united-states/>

Optional Reading:

*Statement on Human Rights*, 49 Am. Anthropologist 539, 539-43 (1947)

**Part II: The Common Law v. the Civil Law**

**Topic 7: A Research Guide for Comparative Law (Feb. 10) -- A Guest Lecture by Jean Wagner (Director of C-K Law Library) and Mandy Lee (C-K Law Librarian)**

No Reading Assignments

**Topic 8: Overview (Feb. 15)**

Joseph Dainow, *The Civil Law and the Common Law: Some Points of Comparison*, 15 Am. J. Comp. L. 419, 419-35 (1967);

Caslav Pejovic, *Civil Law and Common Law: Two Different Paths Leading to the Same Goal*, 32 Victoria U. Wellington L. Rev. 817, 837-40 (2001).

**Topic 9: Judicial Interpretation/Decision-Making (Feb. 17)**

Mitchel Lasser, Anticipating *Three Models of Judicial Control, Debate and Legitimacy: The European Court of Justice, the Cour de cassation and the United States Supreme Court*,

Jean Monnet Working Paper 1/03 (2003), pp 1-36, *available at* <https://jeanmonnetprogram.org/archive/papers/03/030101.pdf>

**Topic 10: The German Legal System (Feb. 24) -- A Guest Lecture by Mr. Andre Fiebig**

TBD

**Topic 11: Legal Precedent (Mar.1)**

Jan Komárek, *Reasoning with Previous Decisions: Beyond the Doctrine of Precedent*, 61 Am. J. Comp. L. 149, 149-71 (2013).

**Topic 12: Substantive Law (Mar. 3)**

*Greenspan v. Slate* (1953) (New Jersey Supreme Court), *available at* <https://law.justia.com/cases/new-jersey/supreme-court/1953/12-n-j-426-0.html>.

**Topic 13: Procedural Law (Mar. 8)**

David J. Gerber, *Comparing Procedural Systems: Toward an Analytical Framework*, *in* Law and Justice in a Multistate World: Essays in Honor of Arthur T. Von Mehren 665, 665-74 (J. Nafziger & S. Symeonides eds., 2002), *available at* <https://works.bepress.com/david_gerber/48/>;

Caslav Pejovic, *Civil Law and Common Law: Two Different Paths Leading to the Same Goal*, 32 Victoria U. Wellington L. Rev. 817, 830-37 (2001)

**Topic 14: A Special Guest Lecture (“U.S. Foreign Relations Law from the Outside In”) by Prof. Ryan Scoville (Marquette Univ. Law School) (Mar. 10)**

TBD (\* This guest lecture will be held from 11 am to noon due to the speaker’s schedule.)

**Topic 15: Collective Memory and Comparative Law (Mar. 15)**

TBD

**Part III: The East Asian Legal System**

**Topic 16: What Is “Law”? – Revisited (Mar. 17)**

Karen G. Turner, *Introduction: The Problem of Paradigms*, *in* The Limits of the Rule of Law in China 3-9 (Karen G. Turner et al. eds., 2000);

William P. Alford, *Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law*, 23 Mod. China 398, 399-401, 411-14 (1997).

**Topic 17: The Modern Chinese Legal System (Mar. 22)**

Ling Li, The Chinese Communist Party and People’s Courts: Judicial Dependence in China, 64 Am. J. Comp. L. 37, 59-72 (2016);

Carl F. Minzner, *China's Turn Against Law*, 59 Am. J. Comp. L. 935, 935-40, 975-79 (2011);

Charlotte Lim, *Chinese Bolshevism: The Ripples of the Russian Revolution*, The Historian (Apr. 2, 2017), *available at* <https://thehistorianjournal.wordpress.com/2017/04/02/chinese-bolshevism-the-ripples-of-the-russian-revolution/>

**Topic 18: China and the WTO (Mar. 24)**

Timothy Webster, *Paper Compliance: How China Implements WTO Decisions*, 35 Mich. J. Int’l L. 525, 525-47 (2014);

*WTO Head: China Has Delivered an A+ Performance since Entering WTO*, People’s Daily Online (Oct. 19, 2011);

*US Business Groups Claim WTO Rules Cannot Stop Unfair Chinese Trade Tactics*, S. China Morning Post (Oct. 5, 2017).

**Topic 19: The Korean Legal System (Mar. 29)**

Chaihark Hahm, *Law, Culture, and the Politics of Confucianism,* 16 Colum. J. Asian L. 253, 273-80 (2003);

Rosa Kim, *The “Americanization” of Legal Education in South Korea: Challenges and Opportunities*, Suffolk Law School Legal Studies Research Paper Series (Feb. 28, 2012), pp 1-30, *available at* <http://ssrn.com/abstract=2012667>

**Part IV: International Comparative Law and Other Notable Contemporary Debates on Comparative Law**

**Topic 20: The Law of ASEAN Economic Integration (Mar. 31)**

Sungjoon Cho & Jürgen Kurtz, *Legalizing the ASEAN Way: Adapting and Reimaging the ASEAN Investment Regime*, 66 Am. J. Comp. L. 233, 251-65 (2018);

Paul J. Davidson, *The Role of Soft Law in the Governance of International Economic Relations in Asia*, 24 Chinese (Taiwan) Y.B. Int’l L. & Aff. 1, 5-14 (2006).

**Topic 21: The Law of the World Trade Organization (I) (Apr. 5)**

TBD

**Topic 22: The Law of the World Trade Organization (II) (Apr. 7)**

TBD

**Topic 23: Law and Development (Apr. 12)**

Kevin E. Davis & Michael J. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 56 Am. J. Comp. L. 895, 895-98, 938-46 (2008);

Donald C. Clarke, *Economic Development and the Rights Hypothesis: The China Problem*, 51 Am. J. Comp. L. 89, 89-90, 109-11 (2003).

**Topic 24: The Int’l Rule of Law Debate (Apr. 14)**

Simon Chesterman, *An International Rule of Law?*, 56 Am. J. Comp. L. 331, 331-42, 355-61 (2008);

Paul Gewirtz, *What China Means by ‘Rule of Law’?*, NY Times (Oct. 19, 2014).

**Topic 25: Comparative Constitutional Law (Apr. 19) -- A Guest Lecture by Prof. Christopher Schmidt (C-K)**

Ran Hirschl, *Editorial: From Comparative Constitutional Law to Comparative Constitutional Studies*, 11 Int’l J. Const. L. 1, 1-12 (2013), *available at* <https://academic.oup.com/icon/article/11/1/1/776238?login=true>.

**Topic 26: Going Deeper into the Context: Competing Paradigms of Thought (Apr. 21)**

Shu-Yun Ma, *Political Science at the Edge of Chaos? The Paradigmatic Implications of Historical Institutionalism*, 28 Int’l Pol. Sci. Rev. 57, 57-78 (2007).

**Part V: Wrap-Up**

**Topic 27: Final Review (I) (Apr. 26)**

TBD

**Topic 28: Final Review (II) (Apr. 28)**

TBD