

## 50242 COMPARATIVE PRIVATE LAW

Classe impartita in lingua inglese

Programs: CLMG (9 crediti - I sem. - OBS I 9 cfu - IUS/02)

Class: 31 (I sem.)

Department: Law

Course director: PIETRO SIRENA

### Classe 31

GABRIELE GAGLIANI

Department of Law

Università Bocconi, Milan, Italy

gabriele.gagliani@unibocconi.it

HAO JIANG

Department of Law

Università Bocconi, Milan, Italy

hao.jiang@unibocconi.it

*Attenzione! Il programma di seguito riportato è da considerarsi valido SOLO per l'anno accademico 2021/2022.*

## SUGGESTED BACKGROUND KNOWLEDGE

In order to feel comfortable with this course, it is recommended that students are already familiar with the fundamentals of Private Law and Public Law.

## MISSION

Students are expected to gain a working knowledge of the main features of foreign and uniform private law and to get significantly acquainted with the principles of European private law. They should acquire the ability of assessing costs and benefits in applying foreign and uniform law and the principles of European law, compared to domestic law. Module 1 (general part) is aimed to depict the cultural and historical background of the Western legal tradition, as well as to illustrate the goals and methodology of comparative law. The concept and content of a 'common core' of European law will be discussed on the basis of the 'principles' that have been collected to enshrine it; heed will be paid also to the projects of a European civil code. The sources of uniform private law will be covered, particularly the UNIDROIT Principles of International Commercial Contracts (PICC) and the Convention on Contracts for the International Sale of Goods (CISG). Module 2 (special part) is aimed to carry out a comparative

analysis of the main institutes of private law, with a specific focus on contract, tort and unjustified enrichment.

## COURSE CONTENT DETAILED - SCHEDULE

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### General Part of the Course - Instructor: Gabriele Gagliani

Lesson	Topic	Reading material of reference
Monday 06 Sep.	Introduction to the course	---
Tuesday 07 Sep.	Law and Society	Ch.I of the book P. Sirena, Introduction to Private Law (3rd edn., Il Mulino 2021)
Wednesday 08 Sep.	The Western Legal Tradition	Ch.II of the book P. Sirena, Introduction to Private Law (3rd edn., Il Mulino 2021)
Tuesday 14 Sep.	Recap + National and International Law	Ch.III paras.1 through 3 of the book P. Sirena, Introduction to Private Law (3rd edn., Il Mulino 2021)
Wednesday 15 Sep.	National and International Law: private international law & uniform law	Ch.III paras.4 and 5 of the book P. Sirena, Introduction to Private Law (3rd edn., Il Mulino 2021)
Monday 20 Sep.	Civil law and common law jurisdictions	Ch.IV paras.1 through 3 of the book P. Sirena, Introduction to Private Law (3rd edn., Il Mulino 2021)
Tuesday 21 Sep.	Civil law and common law jurisdictions	Ch.IV paras.4 and 5 of the book P. Sirena, Introduction to Private Law (3rd edn., Il Mulino 2021)
Wednesday 22 Sep. Monday 27 Sep.	Recap Rules, Principles, Legal Systems: rules and legal systems	Chs.I through IV Ch.VI paras.1 and 2 of the book P. Sirena, Introduction to Private

Tuesday 28 Sep.	Rules, Principles, Legal Systems: the principles of law	Law (3rd edn., II Mulino 2021) Ch.VI para.3 of the book P. Sirena, Introduction to Private Law (3rd edn., II Mulino 2021)	
Wednesday 29 Sep.	Private law and its sources: the divide of public and private law and the sources of national law et al.	Ch.VII paras.1 and 2 of the book P. Sirena, Introduction to Private Law (3rd edn., II Mulino 2021)	
Monday 04 Oct.	Private law and its sources: the legislature and the judiciary; legal education; law and economics	Ch.VII paras.3 through 5 of the book P. Sirena, Introduction to Private Law (3rd edn., II Mulino 2021)	
Tuesday 05 Oct. (Double Lesson)	European law: introduction and the <i>acquis commune</i>	Ch.VIII para.2 of the book P. Sirena, Introduction to Private Law (3rd edn., II Mulino 2021)	
Tuesday 05 Oct. (Double Lesson)	European law: the perspective of a European codification of private law	Ch.VIII para.3 of the book P. Sirena, Introduction to Private Law (3rd , II Mulino 2021)	
Wednesday 06 Oct.	European law: the perspective of a European codification of private law	Ch.VIII para.3 of the book P. Sirena, Introduction to Private Law (3rd , II Mulino 2021)	
Monday 11 Oct.	Presentation of group assignments		---

### Special Part of the Course - Instructor: Hao Jiang

Lesson	Topic	Reading material of reference
Tuesday 12 Oct.	Structure of Contract Law;  Offer and Acceptance;	J. Gordley, H. Jiang, A.T. von Mehren,

	Pre-contractual Liabilities	<i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>  (2nd edn, CUP 2021), pp.133-146; 152-156; 160-175
Wednesday 13 Oct.	Structure of Contract Law;  Offer and Acceptance;  Pre-contractual Liabilities	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>  (2nd edn, CUP 2021), pp.133-146; 152-156; 160-175
Monday 25 Oct.	Pre-contractual Liabilities;  Mistake;  Fairness	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>  (2nd edn, CUP 2021), pp.160-175; 178-193; 193-217
Tuesday 26 Oct.	Pre-contractual Liabilities;  Mistake;  Fairness	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>  (2nd edn, CUP 2021), pp.160-175; 178-193; 193-217
Wednesday 27 Oct.	Pre-contractual Liabilities;  Mistake;  Fairness	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>

Monday 01 Nov.	Fairness; Excuses for non-performance	(2nd edn, CUP 2021), pp.160-175; 178-193; 193-217 J. Gordley, H. Jiang, A.T. von Mehren, <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
Tuesday 02 Nov.	Fairness; Excuses for non-performance	(2nd edn, CUP 2021), pp.227-233; 240-263 J. Gordley, H. Jiang, A.T. von Mehren, <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
Wednesday 03 Nov.	Fairness; Excuses for non-performance	(2nd edn, CUP 2021), pp.227-233; 240-263 J. Gordley, H. Jiang, A.T. von Mehren, <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
Monday 08 Nov.	Remedies	(2nd edn, CUP 2021), pp.227-233; 240-263 J. Gordley, H. Jiang, A.T. von Mehren, <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
Tuesday 9 Nov.	Remedies	(2nd edn, CUP 2021), pp.267-297 J. Gordley, H. Jiang, A.T. von Mehren,

		<i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp.267-297
Wednesday 10 Nov.	Remedies	J. Gordley, H. Jiang, A.T. von Mehren,
		<i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp.267-297
Monday 15 Nov.	Structure of Tort law; Harm to dignity; Invasion of Privacy	J. Gordley, H. Jiang, A.T. von Mehren,
		<i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp.301-313; 316-328; 328-382
Tuesday 16 Nov.	Structure of Tort law; Harm to dignity; Invasion of Privacy	J. Gordley, H. Jiang, A.T. von Mehren,
		<i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp.301-313; 316-328; 328-382
Wednesday 17 Nov.	Structure of Tort law; Harm to dignity; Invasion of Privacy	J. Gordley, H. Jiang, A.T. von Mehren,
		<i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>

		(2nd edn, CUP 2021), pp.301-313; 316-328; 328-382
Monday 22 Nov.	Purely Economic Harm; Intentional Torts; Negligence	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp. 408-441; 441-459; 459-482
Tuesday 23 Nov.	Purely Economic Harm; Intentional Torts; Negligence	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp. 408-441; 441-459; 459-482
Wednesday 24 Nov.	Purely Economic Harm; Intentional Torts; Negligence	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp. 408-441; 441-459; 459-482
Monday 29 Nov.	Strict Liability; Unjust Enrichment	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>
		(2nd edn, CUP 2021), pp.482-519; 526-539
Tuesday 30 Nov.	Strict Liability;	J. Gordley, H. Jiang, A.T. von Mehren,

	Unjust Enrichment	<i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>  (2nd edn, CUP 2021), pp. 482-519; 526-539
Wednesday 01 Dec.	General Recap	J. Gordley, H. Jiang, A.T. von Mehren,  <i>An Introduction to the Comparative Study of Private Law: Readings, cases, materials</i>  (2nd edn, CUP 2021) - all pages indicated above

## TEACHING METHODS

### Selection:

- Face-to-face lectures
  - face-to-face lectures
  - with use of new technology
- Online lectures
  - synchronous
- Guest speaker's talks (in class or in distance)
  - in-class
  - in distance
- Exercises (exercises, database, software etc.)
  - in-class exercises
- Case studies /Incidents (traditional, online)
  - traditional case studies
- Individual assignments
  - case analysis
  - presentation
- Group assignments
  - case analysis
  - presentation
- Interactive class activities (role playing, business game, simulation, online forum, instant polls)
  - instant polls



- Guest speakers will speak about their own field of expertise in class or give separate lectures.
- Exercises will involve research of printed and/or electronic legal resources.
- Case studies will be illustrated and discussed in class.
- Group assignments will consist in drawing up a memorandum supported by a PwP presentation.
- Interactive class activities will consist in discussing memoranda and peer evaluating them.

## ASSESSMENT METHODS

Selected methods:	Continuous assessment	Partial exams	General exam
Written individual exam (traditional/online)		<b>x</b>	<b>x</b>
Open and/or closed answers questions exam		x	x
Active class participation (virtual, attendance)	<b>x</b>		

## ATTENDING STUDENTS

- Attending students must take two partial exams: partial and end-of-semester. Each of them will consist of 25 multiple-choice questions and 2 open-ended questions. For each multiple-choice question, four possible answers will be suggested, only one of them being the right one. Each right answer will be awarded 1/30 point; no penalty for wrong or missing answers will be given. Answers to open-ended questions will be evaluated up to 3/30 points each.
  - The program of each partial exams for attending students will be comunicated in class.
  - The registered grade will be the average between the grades of the two partial exams. The average may be increased up to 3/30 points for group assignments.
  - Students failing to pass either of the two partial exams, will have to take a general exam, consisting of 25 multiple-choice questions and 2 open-ended questions. For each multiple-choice question, four possible answers will be suggested, only one of them being the right one. Each right answer will be awarded 1/30 point; no penalty for wrong or missing answers will be given. Answers to open-ended questions will be evaluated up to 3/30 points each.
  - The program of the general exam for attending students is indicated in the section on teaching materials for attending students (see below). Exams are purported to verify that students have achieved a certain knowledge of: the general principles and rules applicable to the most important branches of private

- law; the main differences between civil law and common law of contract, tort, and unjust enrichment; the relevant issues related to international contracts; and the impact that legal rules can produce in the market and on the behavior of businesses and consumers.
- Group assignments are purported to verify that students have achieved the necessary skills and abilities to: use the terminology of civil and common law; assess legal rules from a social and economic point of view; and draw up a document dealing with legal issues and to present it orally.

## NON-ATTENDING STUDENTS

- Non-attending students must take two partial exams: partial and end-of-semester. Each of them will consist of 25 multiple-choice questions and 2 open-ended questions. For each multiple-choice question, four possible answers will be suggested, only one of them being the right one. Each right answer will be awarded 1/30 point; no penalty for wrong or missing answers will be given. Answers to open-ended questions will be evaluated up to 3/30 points each. The registered grade will be the average between the grades of the two partial exams.
- The program of the partial exam for non-attending students is the following: P. SIRENA, *Introduction to Private Law* (3rd edn, il Mulino 2021): Chapters 1–6. The program of the end-of-semester partial exam is the following: P. SIRENA, *Introduction to Private Law* (3rd edn, il Mulino 2021), Chapters 7–11. The parts of the text that are printed in a smaller font and indented, as well as the footnotes can be read for sake of information but must not be covered for evaluation purposes.
- Students failing to pass either of the two partial exams will have to take a general exam, consisting of 25 multiple-choice questions and 2 open-ended questions. For each multiple-choice question, four possible answers will be suggested, only one of them being the right one. Each right answer will be awarded 1/30 point; no penalty for wrong or missing answers will be given. Answers to open-ended questions will be evaluated up to 3/30 points each.
- The program of the general exam for non-attending students is indicated in the section on teaching materials for non-attending students (see below).
- Exams are purported to verify that students have achieved the knowledge of: the general principles and rules applicable to the most important branches of private law; the main differences between civil law and common law of contract, tort, and unjust enrichment; the relevant issues related to international contracts; and the impact that legal rules can produce in the market and on the behavior of businesses and consumers.

## TEACHING MATERIALS

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**ATTENDING STUDENTS**

- P. SIRENA, *Introduction to Private Law* (3rd edn, il Mulino 2021): chapters I-IV, chapters VI-VII, paragraphs 2-3 of chapter VIII. The parts of the text that are printed in a smaller font and indented can be read for sake of information but must not be covered for assessment purposes. The same applies to footnotes.
- Law of obligations part of J. GORDLEY, H. JIANG, A.T. VON MEHREN, *An Introduction to the Comparative Study of Private Law: Readings, cases, materials* (2nd edn, CUP 2021).

**NON-ATTENDING STUDENTS**

- P. SIRENA, *Introduction to Private Law* (3rd edn, il Mulino 2021). The parts of the text that are printed in a smaller font and indented can be read for sake of information but must not be covered for evaluation purposes. The same applies to footnotes.
- Law of obligations part of J. GORDLEY, H. JIANG, A.T. VON MEHREN, *An Introduction to the Comparative Study of Private Law: Readings, cases, materials* (2nd edn, CUP 2021).

**HONOR CODE**

Bocconi University conceives of education as an ongoing process that stretches across a person's entire professional life. The University hopes that the entire Bocconi community will respect the values of fairness and correctness associated with it, values which inspire and guide the conduct of all community members as they pursue common objectives and a shared mission. The Bocconi University Honor Code is published at <http://www.unibocconi.eu/honorcode>. We encourage all students to read it.

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