SCHOOL OF LAW  
Year 2015-2016 – Term 1

LAW203 – COMPARATIVE LEGAL SYSTEMS

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COURSE DESCRIPTION

In the present era of globalisation, the need for comparative legal research can hardly be overstated. The preparation of new legislative initiatives increasingly includes an investigation into the practices and policies established elsewhere to see what guidance may be derived therefrom; a growing number of court decisions make reference to foreign law; and legal professionals engaged in the drafting of transnational rules habitually begin their work by considering the laws in force in a variety of States. At the same time, comparative law serves an important role in legal education: one can better understand and appreciate one’s own national law when this is juxtaposed to the regimes found in other countries.

In that vein, this course is designed to cultivate your awareness of the operation of legal systems in countries other than Singapore, including the underlying value judgements that influence the design and functioning of legal rules in practice. The course is not designed to be prescriptive as to which foreign legal rules or institutions are “the best” for regulating a particular situation and ought accordingly to be emulated by other jurisdictions, including Singapore. At the same time, when identifying and debating the choices made by different countries in shaping their legal systems to address similar issues (such as: what should be the default remedy in the event of a breach of contract; or: how should the relationship between the State and religion be framed) it is essential to adopt an open-minded approach and acknowledge that other legal systems may offer valuable lessons from which our own system can learn.

The course begins with an introduction to the theory and methodology of comparative law. Against this framework, we will proceed to consider how various countries deal with a suite of classic legal questions in fields such as contract law, tort law and public law. The course ends by considering the role that comparative legal research plays in efforts to bring about some form of regional or even global legal integration.
Your experience in examining and analysing a range of legal questions and approaches with the help of a comparative perspective will stand you in good stead for confidently tackling the comparative law inquiries awaiting you in the remainder of your studies and in your legal careers.

COURSE OBJECTIVES

By the end of this course, students should:

- Have established a firm foundation in the major methodological concepts and intellectual discourse related to comparative legal research;
- Have developed a critical awareness of the core features of the common-civil law divide and debate its contemporary relevance;
- Understand the different choices that have been made by a variety of Asian and non-Asian countries in devising the fundamentals of their legal systems;
- Appreciate the role and relevance of comparative legal research in the making of a transnational body of rules.

PRE-REQUISITE / CO-REQUISITE / MUTUALLY EXCLUSIVE COURSE(S)

None

READINGS

There is no single textbook that will be used in this course: instead, for each seminar you will be asked to read chapters in leading comparative law handbooks, journal articles and consult relevant primary materials.

Handbooks

The growing interest in comparative law has resulted in a proliferation of handbooks dealing with this topic in recent years. Key texts to which reference will be made include:

Understanding the common law – civil law divide


Comparative law and private law (contract, tort)


Comparative law and public law (constitutional law, administrative law)

- Tom Ginsburg and Rosalind Dixon (eds), *Comparative Constitutional Law* (Cheltenham: Edward Elgar, 2011)
- Rosalind Dixon and Tom Ginsburg (eds), *Comparative Constitutional Law in Asia* (Cheltenham: Edward Elgar, 2014)

Journal articles

English-language legal journals with an explicit comparative aim and focus include:

- American Journal of Comparative Law
- Asian Journal of Comparative Law
- International & Comparative Law Quarterly
- Journal of Comparative Law

When journal articles are indicated as mandatory reading, you are expected to use the Library database to locate the full-text version of the relevant article. More information on how to use the Library databases to find law journal articles, you may consult the Research Guide “How do I Locate Law Journal Articles?”, available at: [http://researchguides.smu.edu.sg/content.php?pid=128577&sid=1103323](http://researchguides.smu.edu.sg/content.php?pid=128577&sid=1103323).

Additional readings may be assigned. Students are expected to keep abreast of current developments, including in the Asia-Pacific region by reading leading (online) newspapers and weeklies like the Financial Times, the BBC website, The Guardian, The New York Times and The Economist.

Primary materials

In addition to books and journal articles, this course will also make regular reference to primary legal materials, in particular legal provisions found in constitutions or statutes and case law. Several of the handbooks mentioned above contain English translations of foreign
primary materials. In addition, the following links provide access to a range of translated primary materials for France and Germany:

- [http://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations](http://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations) - website of the French government where you can find translations of the main French codes and statutes
- [http://www.gesetze-im-internet.de/Teilliste_translations.html](http://www.gesetze-im-internet.de/Teilliste_translations.html) - website of the German ministry of justice and consumer protection which offers translations of the main German codes and statutes
- [http://www.utexas.edu/law/academics/centers/transnational/work_new/](http://www.utexas.edu/law/academics/centers/transnational/work_new/) - a database which inter alia includes translated statutes and court decisions from France and Germany

Note further that the Library has made available legal research guides for Australia, Canada, Hong Kong, India, China, Singapore, the United Kingdom, the United States and Vietnam. These guides offer an excellent overview of available legal resources (legislation, books and journals) concerning the particular country and a host of links to government websites (including the courts). The country research guides can be found at: [http://researchguides.smu.edu.sg/searchtags.php?iid=931&tag=law%20country%20guide](http://researchguides.smu.edu.sg/searchtags.php?iid=931&tag=law%20country%20guide)

Less detailed country overviews for a wider range of jurisdictions can be found at: [http://www.nyulawglobal.org/globalex/index.html#](http://www.nyulawglobal.org/globalex/index.html#)

**ASSESSMENT METHOD**

1. Written assignment (an individual essay) 25%
2. Group project 20%
   - More information will be made available during the first seminar
   - Students will be free to form their own groups but must inform the class TA of group membership
   - There shall be no more than 2 exchange students in each group
   - Group membership must be finalised by the end of week 2
3. Class participation and contribution 15%
   To be based on:
   - Consistent and punctual attendance;
   - Constructive participation in class discussion;
   - Clear evidence of preparation and reading
4. Final examination (three-hour, open book) 40%

**COURSE METHODS**

Class instruction and learning will involve a mix of
a. Mini-lectures (typically an introduction to a theme or topic);
b. Presentations on a weekly theme by class members;
c. Group discussions

This course takes seriously SMU’s commitment to a participatory style of learning, which means that ample time will be devoted to dialogue and conversation regarding the topics
examined. In this vein, the “class participation” grade should be seen as a contribution grade, in which I will assess not merely the number of times you spoke up, but also the contribution you made to the conversation and development of ideas.

The use of mobile phones and other electronic devices is not allowed during class.

As for the written assignment, do note that late submission will result in a reduction of your grade. I also encourage you to allow yourself ample time to submit your assignment via eLearn to address any IT problems that may arise. Assignments will only be accepted via eLearn: attachments to emails sent to me shall not be accepted.

I will be available in the class break as well as 15 minutes before and after class should you have a query which you would prefer to address on an individual basis. Should you require further guidance, I am available for consultations and ask that these are arranged by prior appointment. Consultations will in principle be kept to a maximum of 20 minutes.

**ACADEMIC INTEGRITY**

All acts of academic dishonesty (including, but not limited to, plagiarism, cheating, fabrication, facilitation of acts of academic dishonesty by others, unauthorised possession of exam questions, or tampering with the academic work of other students) are serious offences.

All work (whether oral or written) submitted for purposes of assessment must be the student’s own work. Violation of this policy may result in the student receiving zero marks for the component assessment or a fail grade for the course.

When in doubt, students should consult the instructor. Details on the SMU Code of Academic Integrity may be accessed at [http://www.smuscd.org/resources.html](http://www.smuscd.org/resources.html).

**CLASS SCHEDULE**

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<tr>
<th>Week No.</th>
<th>Topic</th>
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<tr>
<td>1</td>
<td>The Uses and Contemporary Relevance of Comparative Law</td>
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<td>- History of comparative law</td>
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<td></td>
<td>- Contemporary relevance of this discipline</td>
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<td>- Aims of comparative law</td>
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<td>- “Consumers” of comparative law</td>
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<td>2</td>
<td>Comparative Legal Theory: The (Un)Feasibility of Legal Transplants and the Importance of Contextual Factors</td>
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<td>- Notions of legal transplant, legal irritant, “migration” and “borrowing”</td>
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<td>- The debate between Pierre Legrand and Alan Watson</td>
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<td>- Contextual factors: legal culture and legal tradition</td>
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| 3 | Comparative Law Methodology  
|   | - Notions of *tertium comparationis* and legal formants  
|   | - The legal families approach and mixed legal systems  
|   | - Functional method of comparative law and its critique  
|   | - Researching foreign legal materials  
| 4 | The Civil-Common Law Divide: Origins and Core Features  
|   | - Stages and protagonists in the development of the civil law and common law tradition  
|   | - Contrasting the key tenets of civil law and common law traditions  
|   | - Differences within the common law / civil law traditions  
| 5 | The Civil-Common Law Divide: Issues in Contract Law I  
|   | - Contractual mistake  
|   | - Consideration and *causa*  
| 6 | The Civil-Common Law Divide: Issues in Contract Law II  
|   | - Good faith  
|   | - Remedies for breach of contract  
| 7 | The Civil-Common Law Divide: Issues in Tort Law  
|   | - The general approach to tortious liability  
|   | - Causation  
|   | - Revisiting the existence of a civil-common law divide  
| 8 | MID-TERM BREAK  
| 9 | Examining the Foundations of Legal Systems: Comparative Influences in Constitution-Making and Interpretation  
|   | - Constitutional borrowing / foreign influence in constitution-making  
|   | - Factors and actors influencing the reception of foreign ideas and principles  
|   | - Constitutional convergence  
|   | - Use of comparative law in constitutional interpretation  
<p>| 10 | Comparative Issues in Asian Public Law: the Rule of Law and Emergency Powers |</p>
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<th>11</th>
<th><strong>Comparative Issues in Asian Public Law: The Position of the Judiciary</strong></th>
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<td>- Ensuring and defending judicial independence, including in socialist</td>
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<td>- Access to the courts</td>
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<td>- Political question doctrine</td>
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<th><strong>Comparative Issues in Asian Public Law: Arranging State-Religion Relations</strong></th>
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<td>- Principle of secularity vs. official state religion</td>
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<td>- Coping with religious pluralism</td>
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<td>- Blasphemy</td>
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<th>13</th>
<th><strong>The Role of Comparative Law Beyond the Nation State</strong></th>
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<td></td>
<td>- Legal pluralism</td>
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<td>- The making and impact of transnational legal norms (e.g. Unidroit,</td>
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<td>UNCITRAL, ASEAN)</td>
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<td>- Comparative law in an age of globalization</td>
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| 14 | **Revision week – no class**                                             |