Introduction to comparative law

Syllabus

Approved by the Academic Council of the Basic Higher Education Programme 19.06.2018, prot. № 4.

1. Course Description

a. Title of a Course
Introduction to comparative law

b. Pre-requisites
The course is targeted at first-year undergraduate law students who are expected to have successfully completed the undergraduate courses on foreign legal history and legal theory. Students are expected to learn essential legal English vocabulary through study of European and Russian legal history, listening to lectures, engaging in disputes, and preparing final written essay.

c. Course Type (compulsory, elective, optional)
Elective

d. Abstract
This introductory course on comparative law theory is designed especially for undergraduate first-year students who are genuinely interested in studying foreign jurisdictions and legal systems and possess a solid knowledge of English but have an educational background limited only to the very first two modules of the first-year curriculum at the faculty of law.

2. Learning Objectives
The course aims at introducing the students the major approaches of ‘traditional’ comparative law, its functions, aims, methods and history. It also intends to survey the main features of the major legal families of the world (civil law, Anglo-American common law, non-Western legal traditions in Asia, Sharia, and mixed jurisdictions), so that the students would have the 'map' of the world’s legal systems. Finally, the course introduces comparative legal studies of today's globalized world with extended methods of ‘postmodern’ comparative law (contextualised approach to legal systems and institutes).

3. Learning Outcomes
After completing the course students are expected to be able to:
- define basic concepts of comparative law discipline;
- explain how comparative law can be used to understand different legal systems of the world;
- distinguish and identify key features and institutes of the major legal system (including mixed jurisdictions);
- review and summarize recommended academic papers;
- coherently state and reason one's own theses in English regarding the issues of the course.

4. Course Plan
Lesson 1. What is comparative law.
1. The meaning of the term "comparative law":
   a) the origin of the term "law", the concept of "law";
   b) the meaning of "comparative law" in different legal traditions.
3. Current Situation of Comparative Law
4. Key Concepts of Comparative Law (the legal system, the legal family).
5. Functions of Comparative Law (cognitive, epistemological, descriptive geographical, unification and etc.). The correlation between comparative law and other legal sciences.
6. The concept of the methodology of comparative law. Kinds of comparisons: synchronic and diachronic, internal and external, micro and makro comparison, non-judgmental and evaluative.
7. The correlation between comparative method and other methods of legal analysis: a) historical-legal method; b) formal-logical (textual) method; c) functional method.


Lesson 3 – Key legal institutes of the English common law.

Lesson 4 – The civil law system.
1. The historical roots of the civil law family. Division of the law into private and public. Community of basic legal institutions of the European countries. Place of the Constitution and the constitutional supervision in the European legal systems. Modern trends of European constitutionalism. The main sources of law: the current trend. The correlation between law and case with the similar forms of fixation of law in modern European legal systems.


Lesson 5 – French law.


Lesson 6. – German law.

1. Features of German legal history.


4. German legal education and the legal profession.

Lesson 7. – Mixed Jurisdictions (Hybrid legal systems).

1. The concept of a mixed jurisdiction or hybrid legal system.

2. The law of Quebec. Dualistic legal system: the influence of common law and civil law systems. Codification of civil law in 1866 and 1991, the interplay of the laws of Quebec with the federal law of Canada.

3. The law of South Africa. Influence of the Roman-Dutch law and the English common law.
4. The law of Israel. The influence of Jewish law and the law of the Ottoman Empire. The law of the State of Louisiana in the United States. The influence of law in France and the common law.

Lesson 8. – Muslim law and Sharia.

1. Approaches to Islamic law as a religious phenomenon and legal phenomenon. The concept of sharia, its definition and structure. The concept of ijtihad and fiqh. Fiqh - Islamic legal doctrine and Islamic law in an objective sense. The main sources of fiqh. The ratio between religious (Quran and Sunnah) and rational (analogy, "excluded interests," istihsan et al.) sources of law.
2. Doctrine as the leading source of Islamic law. Basic classification, theoretical constructs and concepts of Islamic law. The basic principles of fiqh and Islamic law. The reflection in it the religious principles and the legal nature of Islamic law.
3. Development of the Islamic concept of the state (caliphate) within the Islamic legal doctrine (fiqh). Violation of Sharia as a religious sin and offense in the legal sense, religious and "secular" sanctions for violations. Criteria for classification of offenses: the nature of the violated rights and strengthening accountability measures in the major sources of fiqh. Three categories of offenses: hudud, qisas and ta'zir.
5. Islamic and Western legal culture: confrontation and interaction.

Lesson 9. – Chinese and Japanese legal tradition and its change.


Lesson 10. – Global comparative law.

1. Legal Transplants: historical development in continental Europe, during and after colonialism, in non-colonial countries.
2. Fading state borders. The end of state? The role of public and private international law. Convergence and transnationalism vs. regionalism.
4. Comparative law as an open subject.

5. Reading List

a. Required


b. Optional
6. Grading System

The overall learning outcome will be assessed on the basis of lecture attendance and the final written test of 20 questions each student is expected to write during the final class of this course. The testing questions will refer to all topics of the course and will draw primarily, but not exclusively, on the essential readings.

The criteria for the final testing are as follows:

<table>
<thead>
<tr>
<th>Criteria:</th>
<th>8-10 points</th>
<th>6-7 points</th>
<th>4-5 points</th>
<th>1-3 points</th>
<th>0 points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of correct questions answered</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of relevant school knowledge demonstrated</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of relevant application of law</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of relevant analysis and critical thinking</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The formula of the evaluation is as follows: final mark = 0,5 (cumulative) + 0,5 (test).

The cumulative evaluation is based on attendance, active participation and in-class discussion during seminars. The students will be evaluated on their performance during the seminars. Each student is expected to attend all the seminars and lessons and being prepared on the topic of the lesson in advance. The students must have previously studied in depth the assigned material. The knowledge of the students will be also assessed in class through written tests (close and/or open questions), as well as on the ground of his/her active/inactive participation in class discussions. A proactive participation will be positively evaluated as well as asking inherent questions and make analytical comments about the assignments.

The overall learning outcome will be assessed on the basis of lecture attendance and the final written test of 20 questions each student is expected to write during the final class of this course. The testing questions will refer to all topics of the course and will draw primarily, but not exclusively, on the essential readings.

The formula of the evaluation is as follows: final mark = 0,5 (cumulative) + 0,5 (test).

The cumulative evaluation is based on attendance, active participation and in-class discussion during seminars. The students will be evaluated on their performance during the seminars. Each student is expected to attend all the seminars and lessons and being prepared on the topic of the lesson in advance. The students must have previously studied in depth the assigned material. The knowledge of the students will be also assessed in class through written tests (close and/or open questions), as well as on the ground of his/her active/inactive participation in class discussions. A proactive participation will be positively evaluated as well as asking inherent questions and make analytical comments about the assignments.

The criteria for the final testing are as follows:

<table>
<thead>
<tr>
<th>Criteria:</th>
<th>8-10 points</th>
<th>6-7 points</th>
<th>4-5 points</th>
<th>1-3 points</th>
<th>0 points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of correct questions answered</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of relevant school knowledge demonstrated</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of relevant application of law</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of relevant analysis and critical thinking</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The overall learning outcome will be assessed on the basis of lecture attendance and the final written test of 20 questions each student is expected to write during the final class of this course. The testing questions will refer to all topics of the course and will draw primarily, but not exclusively, on the essential readings.

The formula of the evaluation is as follows: final mark = 0,5 (cumulative) + 0,5 (test).

The cumulative evaluation is based on attendance, active participation and in-class discussion during seminars. The students will be evaluated on their performance during the seminars. Each student is expected to attend all the seminars and lessons and being prepared on the topic of the lesson in advance. The students must have previously studied in depth the assigned material. The knowledge of the students will be also assessed in class through written tests (close and/or open questions), as well as on the ground of his/her active/inactive participation in class discussions. A proactive participation will be positively evaluated as well as asking inherent questions and make analytical comments about the assignments.
Questions of the final test are to be compiled on the basis of the following example:

1. Which legal system does not exist in the contemporary world?
   A) Common law;
   B) Civil law;
   C) Hybrid legal system;
   D) Roman law.

7. **Guidelines for Knowledge Assessment**
   All assignments (including the final exam) are graded on the scale of 0-10. Midterms and current controls consist of:

   7.1 **Attendance policy**
   It is imperative that students attend classes. Participation in lessons and seminars is mandatory, except in case of a medical emergency (e.g. sickness). Students will need to provide evidence for missing class (doctor’s note). If evidence is provided, the missed class is considered as an excused class. If no evidence is provided immediately before or after the class, the missed class is counted as an absence. Late arrivals will be considered as absences if the delay is more than 30 minutes. Participation implies that students are on time, have studied the assigned material in advance and work actively.

   If students are absent for many classes, they receive a penalty on their final grade. If students are absent:
   - for the 10% of the classes, they receive a penalty of 1 point on their overall grade (out of ) for that course.
   - for the 20% of the classes, they receive a penalty of 3 points on their overall grade (out of ) for that course.
   - for the 30% of the classes, they receive a penalty of 5 points on their overall grade (out of ) for that course.
   - for the 40% of the classes, they receive a penalty of 7 points on their overall grade (out of ) for that course.

   7.2 **Additional course policies**
   Late papers will not be accepted unless there are serious legitimate reasons. Provision of a signed medical note is required, and notice must be given prior to the deadline.

   7.3 **Plagiarism**
   Dishonesty and plagiarism are NOT admitted in this course. Cheating and plagiarism cases will be sanctioned. Works affected by plagiarism will be considered null and void. If you report a sentence or a passage taken by someone else’s work or by your own past works, you must cite the source/s. References and citations must be comprehensive and in a standard citation style (APA, MLA, Harvard, etc.). Please, pay attention to grammar, spelling, and punctuation.

8. **Methods of Instruction**
The instructor proposes an interactive mode of giving lectures similar to readings in American law schools. Students are expected to read essential literature before attending lectures, they will be asked questions in order to check their comprehension. The syllabus will be accompanied with essential glossary. From the very beginning of their legal education students are encouraged to make use of the electronic resources of HSE, as many recommended papers are available at the data bases HSE is subscribed to.

Classes will be structured as participative lectures in order to stimulate class discussion. This course uses interactive educational technologies (problematic lectures, Socrates method, work in small groups, interactive seminars; brainstorming sessions). Students are expected to be well prepared, they must carefully study the materials indicated before the seminar. Students are expected to spend 12-14 academic hours of house reading, researching, and preparation per week.

Every lesson will be followed by the correspondent seminars as specified in this program. In order to be prepared for lessons, it is necessary to use the sources and legal acts enlisted in this syllabus. To prepare for the seminar, it is necessary to study carefully the material assigned during the lesson.

9. Special Equipment and Software Support (if required)

The following equipment is essential to make teaching and learning comfortable and efficient:

- Personal computer (equipped with Microsoft Windows 10) with Internet access;
- Multimedia projector with remote control.