

*Legal Studies 171*  
*Prof. McClain*  
*Fall Semester, 2011*

## **EUROPEAN LEGAL HISTORY**

Most contemporary legal systems derive from one or the other of the two legal orders that developed in continental Europe and in England over the course of the centuries. This course is designed to introduce students to some of the main features of the continental European or civil law tradition, a tradition that has its origins in Roman law. We spend some time as well on the English common law tradition, which began to diverge from the law of continental Europe in the middle ages, and acquired its own distinctive character. Required texts are Peter Stein's *Roman Law in European History*, Manlio Bellomo's *The Common Legal Past of Europe, 1100-1800* and a photocopy reader available at Copy Central, 2560 Bancroft Way. **Grade in the course will be based roughly 50% on the final exam, 20% on each of the midterms, and 10% on section performance.**

The GSI for this course is Sara Ludin, a Ph.D. student in Berkeley Law's Jurisprudence and Social Policy Program..

### SYLLABUS OF TOPICS COVERED

#### I. Introduction and Overview: The European Legal Tradition

#### II. Classical Roman Law

Peter Stein, *Roman Law in European History*, Chaps.1 & 2

From Reader:

*The Law of the Twelve Tables*

Justinian, *Introduction to the Institutes*

Justinian, *The Institutes, Book I "Of Persons"*

Justinian, *The Digest, "Those Who Pour or Throw Things Out of Buildings"*

Justinian, *Code*, 1.14.4; 1.14.7

*The Permanent Edict of the Urban Praetor, Excerpts*

*Three Imperial Rescripts*

III. Law in the West, 500 - 1100: Germanic Customary Law, Roman Law Survivals

From Reader:

Excerpts from *the Visigothic Code (Forum judicum)*, 7<sup>th</sup> century

IV. The Medieval Revival of Roman Law

Peter Stein, *Roman Law in European History*, Chap. 3

Manlio Bellomo, *The Common Legal Past of Europe*, Chap. 2, Chap. 3, pp 55-64

From Reader:

*Odofredus Announces His Law Lectures at Bologna*

V. Medieval Canon Law

Peter Stein, *Roman Law in European History*, Chap.3

Manlio Bellomo, *The Common Legal Past of Europe*, Chap. 3, pp. 65-77

From Reader:

Excerpts from *Canons of the Council of Chalcedon*

Gratian, *Decretum*, *Distinction 1*

Gratian, *Decretum*, *Causa 29*

*Decretals of Gregory IX: On the Validity of Wills, on Usury*

James A. Brundage, *Canon Law and Private Life*

R.H. Helmholz, *Origins of the Privilege Against Self-Incrimination*

#### VI. Era of the Jus Commune: Glossators and Commentators

Peter Stein, *Roman Law in European History*, Chap. 3, Chap. 4, Part 1

Manlio Bellomo, *The Common Legal Past of Europe*, Chap. 7

From Reader:

Accursius, *Ordinary Gloss: On the Contract of Sale*

Accursius, *Ordinary Gloss: On the Rescission of a Sale, Just Price*

Bartolus, Baldus on Justinian, Code 1.14.4 [C.1. 17.4]

H. Coing, *The Roman Law as Jus Commune on the Continent*

#### VII. Medieval Spanish Codification

From Reader:

Excerpts from *Las Siete Partidas*, 13<sup>th</sup> century

#### VIII. Persistence of Customary Law

From Reader:

Excerpts from the *Coutumes de Beauvaisis* (France), 13<sup>th</sup> century

#### IX. Early Modern Developments: *Legal Humanism, German Reception of Roman Law*

Peter Stein, *Roman Law in European History*, Chap. 4, Parts 2 - end

Manlio Bellomo, *The Common Legal Past of Europe*, Chap. 8, pp. 203-223

From Reader:

*The Criminal Courts Ordinance of Charles V*

G. Strauss, *Reception: The New Law in Germany*

P. Stein, *Legal Humanism and Legal Science*

#### X . Early Modern Developments: the Spanish Late Scholastics, the Northern Natural Law School

Manlio Bellomo, *The Common Legal Past of Europe*, Chap. 8, pp. 224-235

From Reader:

J. Gordley, *Why Look Backward*

Selections from Suarez, Pufendorf, Grotius, Domat, Pothier

#### XI.. The Modern Codification Movement

Peter Stein, *Roman Law in European History*, Chapter 5

From Reader:

General Prussian Code (1794)

Portalis, *Preliminary Discourse*

Excerpts from the French Civil Code (1804)

Report of the Drafting Committee of the German Civil Code

K. Zweigert, H. Koetz, *The Romanistic Legal Family: The History of French Law*

J. Gordley, *Myths of the French Civil Code*

## XII.. The English Common Law System

From Reader:

M. Shapiro, *English Courts and Judicial Independence*

John H. Langbein, *The Origins of Public Prosecution at Common Law*

Yearbook Report of a 1319 Case

## XIII.. The Modern European Legal Order: Legacy of the Past, Shape of the Present, Prospects for the Future