

**Professor Laurent Mayali**  
**LS 139 Comparative Perspectives on Norms and Legal Traditions**  
**M-W-F 9:00-10:00 ; lmayali@law.berkeley.edu**

**Week 1**

**Introduction.**

**What is Comparative Law? Definition, Methodology, Tools and Objectives.**

*Readings:*

1. *Steiermark, Description and comparison of the European Nations, in Jack Goody, The domestication of the savage Mind, Cambridge U.P. 1977.*
2. *Pierson v. Post Supreme Court of New York, 1805, 3 Cai r. 75*
3. *David Goldberg and Elspeth Attwooll, Legal orders, systemic relationships and cultural characteristics, 313-333.*
4. *L. Backer, Harmonizing law in an era of globalization : convergence, divergence and resistance: 10-13.*
5. *Thomas Fischer, What's wrong with globalization? 3-18 and 137-168.*
6. *Esin Oriücü, Unde Venit, quo tendit comparative Law, Comparative Law in the 21<sup>st</sup> Century, chap. 1. , pp. 1-6.*

**Week 2**

**Legal Tradition, Legal Culture, Legal Families, and Legal Systems.**

*Readings:*

1. *Rene David-John Brierley, Major Legal systems in the world today, 17-29.*
2. *K. Zweigert and H. Kötz, Legal families of the world, 63- 73.*
3. *Peter de Cruz, A modern approach to comparative law: Convergence of legal systems, pp. 332-343.*
4. *Patrick Glenn, reconciling legal traditions:sustainable diversity in law, pp. 343-365.*
5. *Peter de Cruz, A modern approach to comparative law: Convergence of legal systems, pp. 332-343.*

**Week 3**

**Customary Law: Definition, authority, and interpretation: Traditional Norms and Legal Systems.**

*Readings:*

1. *A. Dundes Renteln-A, Dundes, Folk Law, What is Folk Law? 1-4*
2. *Alan Watson, An Approach to Customary Law, 141-157.*
3. *Martin Chanok, The place of customary law in democratic societies, The role of customary law in sustainable development, pp. 338-380.*
4. *K. Brown, Reconciling customary law and received law in Melanesia, pp. 49-70.*

**Week 4**

**Natural Law, International Legal Order and States' Laws.**

*Readings:*

1. *Sophocles, Antigone, 364-507.*
2. *Aristotle, Nichomachean Ethics, I.*
3. *Gratian, Decretum, Distinctio I and 5*
4. *Thomas Aquinas, Summa Theologica I-II, Quaestio 90,*
5. *Hugo Grotius, (1583-1645) On the Law of War and Peace, Book I chap. 9-14.*
6. *Samuel von Pufendorf (1632-1694) Of the Law of nature and Nations, Book II Chap. 1-*
7. *Jan Schöder, The concept of Natural Law in the doctrine of Law and natural law of the Early Modern Era, 57-71.*

## **Week 5**

### **Constitutional Culture, Individual Rights and Public Order.**

#### *Readings:*

1. Walter F. Murphy, Constitutions, Constitutionalism, and Democracy, in *Constitutionalism and Democracy*, ed. D. Greenberg et alii, pp. 3-20.
2. *Preambles of the Constitutions from : USA-Spain-Germany-France-Ireland-Italy-Greece-Portugal- Switzerland-Argentina- Brazil- Bolivia- Columbia- Paraguay-South Africa- Zambia- Namibia- Rwanda- Congo-Madagascar- Morocco-Mauritania- Koweit- Tunisia -Iran-Oman-Llibya- Syria- Irak- India- South Korea-China-Taiwan-Tibet-Japan-Thailand-Belarus-Bosnia-Bulgaria-Estonia-Lithuania-Russia-Croatia-*

## **Week 6**

### **The Civil Law Tradition:**

#### **-The Legacy of Roman Law. From Byzantium to the Medieval “ Ius Commune” and the Rise of the Early Modern State.**

#### *Readings:*

1. *John H. Merryman, The Civil Law Tradition, pp. 20-25 and 34-47.*
2. *David Johnston Roman Law in Context: The Sources of Roman Law. 12-27.*
3. *Roman Law, The Digest and the Institutes of Justinian (5250535) , Book I Title I Justice and Law.*
4. *Medieval Jurists: Azo, Accursius, Bartolus and Baldus (12<sup>th</sup>-14<sup>th</sup> century) Commentary on the legislative powers of the emperor. 1-4.*
5. *Franz Wieacker, The Beginnings of European Legal Science, pp. 28-46.*
6. *Alan Watson, The Making of the Civil Law, pp. 179-189.*

## **Week 7**

### **The Formation and the Nature of the Common Law: Expansion and Diffusion.**

#### *Readings*

1. *S.F.C. Milsom, Historical foundations of the common law, 11-36*
2. *Allan Hutchinson, Evolution and the Common Law, pp. 1-15.*
3. *Hoffer, Law and people in colonial America, 1-26.,*
4. *M6Paul McHugh, Aboriginal societies and the common law, pp. 1-23*
5. *Dan Paterson, The application of common law and equity in countries of the South Pacific, Journal of Pacific studies (1997) 1-27-11 and 22-31. 31.*

## **Week 8**

### **Legal Codes and the development of the Nation-State.**

#### *Readings*

1. Reinhard Zimmermann, *The civil law in European codes, Regional Private laws and codification in Europe*, pp. 18-29 and 50-59.
2. Franz Wieacker, *The Natural law Codes*, 257-275.
3. John H. Merryman, *The civil Law tradition: Chap. 5: Codes and Codification*.
4. Peter van den Berg, *The politics of European codification: codification and the formation of national states*, pp. 264-275.

## **Week 9**

### **Law, Political Culture and Codification in Central and Latin America.**

#### *Readings:*

1. *Treaty between Spain and Portugal concluded at Tordesillas; June 7, 1494 Ratification by Spain, July 2, 1494., Ratification by Portugal, September 5, 1494.*
2. Garcilaso de la Vega, *The Royal Commentaries of Peru*, Trans. Paul Ricavi, London, 1688, Book I, chap. 13-15, Book II, chap. -7,.
3. Simón Bolívar, *An Address of Bolivar at the Congress of Angostura (February 15, 1819);*
4. *Mexico Federal Civil Code, Preliminary provisions;*
5. Jorge A. Vargas , *The Legal Significance of Codes in Mexico; Honduras, Civil Code, preliminary title;*
6. Jaime Gil Sanchez, *The Legal System of Colombia, 1-12.*

## **Week 10**

### **The concept of Religious Law: Canon Law, Islamic Law and Jewish Law. Sources and Institutions**

#### *Readings:*

1. John Paul II, *Apostolic Constitution, Sacrae Disciplinae Leges;*
2. Gratian, *Decretum, Distinctions 3 and 4.*
3. Majid Khadduri, *Nature and Source of Islamic Law, 5-21;*
4. N.S. Hecht, *An introduction to the history and sources of Jewish law*, pp.
5. Faiz Ahmed, *Shari'a, Custom and Statutory Law: Comparing State Approaches to Islamic Jurisprudence, Tribal Autonomy and Legal Development in Afghanistan, Global Jurist, 3-13.*

## **Week 11**

### **Law and religion: Secular State, Religious Norms and Legal Systems .**

#### *Readings:*

1. *Supreme Court of the United States: Employment Division, Department of Human Resources of Oregon v. Smith 496 U.S. 913, 110 S. Ct. 2605. June 1990,*
2. Harold Berman, *The Canon Law of Crimes, Law and revolution, 185-198.*
3. Paul H. Robinson et al., *Codifying Shari'a: International Norms, Legality and the Freedom to Invent New Forms, 2 J. OF COMP. L. (2007) and Khalil AbuGharbieh,, An experiment in Legal Reform: The Codification of Shari'a and International Norms in the Maldivian Penal Code (2010)*

4. David Wermuth, *Human Rights in Jewish Law: Contemporary Juristic and Rabbinic Conceptions*, 1125-1132.
5. Matthew Kozinets, *Copyrights and Jewish Law: The Dilemma of Change*, 84-91

## **Week 12**

### **Socialist law: Public Order, State's Ideology and Legal Rules. Public Interest and Private Rights.**

#### *Readings:*

1. Konrad Zweigert, Hein Kotz, *Introduction to Comparative Law, The Socialist Legal Family*, 293-305.
2. *The Cuban Constitution. Chap. I. Political, social and economic foundations of the State.*
3. *Cuban Civil Code. Preliminary provisions.*
4. *Viet Nam Constitution , chapter I, Art. 1- 12.*
5. *People Republic of China, Constitution: art. 1- art. 12.*
6. He Hua-Hui, *The special characteristics of the Constitution of the People's Republic of China, Law in East and West*, 443- 462.
7. Jianfu Chen, *China and the Rule of Law, Law, Legal culture and politics in the 21<sup>st</sup> century*, 250-272
8. Randall Peerenboom, *Legal thought and legal development in the People's republic of China 1949-2008.*,

## **Week 13**

### **African Legal Pluralism and the Law Making process: Customary Law, Statutory Law and Administration of Justice.**

#### *Readings:*

1. Yash Ghai, *Constitutions and Governance in Africa, Law and Crisis in the 3<sup>rd</sup> world*, 51-75.
2. N. Rouland, *Legal Anthropology, traditional legal systems*, 151-63.
3. E.G. Unsworth, *The conflict of laws in Africa*, 795-804.
4. T.W. Bennett, *Customary law in South Africa*, pp. 34-56.
5. Richard Fahey, *The poro as a system of judicial administration in Liberia, African Law studies* 1-25.
6. *Nigeria, Supreme Court, Idundun v. Okumagba*, 8 October 1976.(excerpts)
7. *Kenya, Court of Appeal, Nairobi, S.o. v. L.A.M.*, 12 May 2006. (excerpts)
8. *Ouganda, Court of Appeal, Kampala, Rwabinumi v. Bahimbisomwe*, 25 August 2006.(excerpts)

## **Week 14**

### **The Function of Judicial Process and Legal Traditions in the Settlement of Disputes.**

#### *Readings:*

1. Peter Stein, *Dispute settlement in stateless societies*, 3-12
2. Melissa Tatum, *Tribal Courts: the battle to earn respect without sacrificing culture and tradition, Harmonizing Law*,, 81-97.
3. Justin Richland-Sarah Deer, *Introduction to tribal legal studies*, pp. 3-33.

4. *Robert Cooter-Wolfgang Fickentscher, Indian common law:the role of custom in American Indian tribal courts, pp. 509-524 and 536-546.*
5. *Justin Richland, Arguing with tradition. The language of law in Hopi Tribal Court, 1-17; 79-87.*