COMPARATIVE LAW
COURSE INFORMATION
Spring Semester, 2000

MEETING TIMES: 11:00 A.M. - 12:15 P.M., Monday and Wednesday
ROOM: 203

OFFICE: Prof. Larry Catá Backer, Room 223
OFFICE HOURS: Monday and Wednesday 4:00 P.M. - 5:30 P.M.,
AND BY APPOINTMENT
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E-MAIL: larry-backer@utulsa.edu

FINAL EXAM: Tuesday, May 2, 2000, at 9:00 A.M. (Room to be announced)

COURSE DESCRIPTION:

American lawyers are all, in a sense, comparative law experts. Most of us must comprehend at least two separate and distinct systems of law – state and federal. Some of us also have had to master the laws of neighboring states. Even when we are not expert in the law of other jurisdictions, lawyers in the United States have been trained to examine the laws of sister states for purposes of understanding our own domestic law, or because we use “foreign” law to persuade a judge that our interpretation of a similar provision or rule of law ought to be adopted. This course is meant to apply this basic comparativist perspective of American law in a related context, that is where the foreign law is from a non-U.S. jurisdiction. The course will examine comparative law as a method of understanding distinct legal systems, and as a series of substantive rules in United States courts confronted with issues of law from jurisdictions outside the United States. I also hope to provide a foundation for further research, analysis and legal writing in this area of law. The course will be taught as a traditional U.S. law school course. Some attention will be given to teaching continental approaches to law and its process.

REQUIRED COURSE MATERIALS; READING ASSIGNMENTS:

REQUIRED BOOKS:

1. SCHLESINGER, BAADE, HERZOG & WISE, CASES, TEXT AND MATERIALS ON COMPARATIVE LAW (1998) ("Text")

2. Additional materials may be distributed from time to time.
RECOMMENDED/OPTIONAL MATERIALS:

While these books need not be purchased, they may provide helpful reference or sources of review. Note also that the articles and books cited at the end of each of the chapters of the Text might be quite useful.

1. PETER DE CRUZ, COMPARATIVE LAW IN A CHANGING WORLD (1999) (Cavendish Publishing Co.).

2. MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS (2d ed. 1994).


I may recommend additional readings form time to time.

INFORMATION SOURCES:

Legal materials from other countries is difficult to obtain in the United States. Even European and Canadian materials are more difficult to get than law from other U.S. jurisdictions. The difficulties increase when the language of the foreign jurisdiction is something other than English. However, there are a number of sources available for English speakers. I will mention two here:

1. World Wide Web. The Web is home to a number of important sites for legal information. An important source for Europe generally is the site maintained by the European Union. To access, type the following address:

   http://europa.eu.int

This site contains easy to follow background information on the E.U., as well as links to national and other interesting sites. The site is maintained by the E.U. Commission. The site has been getting substantially better as the years go by. Take a moment and explore the site.

In addition, many of the governments of the Member States of the European Union now maintain web sites on which you will be able to find relevant information about the EU. In England, for instance, the government maintains a web site for the dissemination of important state papers (http://www.open.gov.uk/). As I find new sites, I will pass them on to you.
Other governmental agencies, for instance, regional trade organizations, maintain web pages. These, however, are not nearly as complete as those of the Europeans, and most of them are not maintained in English. For example, there are four major regional supra-national entities operating in Latin America. All of them can be characterized as attempts to construct customs unions or common market unions of some kind. The relevant documents can be accessed on the web at the site of the FOREIGN TRADE INFORMATION SERVICE: HTTP://WWW.SICE.OAS.ORG/.

I. MERCOSUR, Common Market of the Southern Cone (Argentina, Brazil, Paraguay and Uruguay),

II. ANCOM Andean Common Market (Columbia, Venezuela, Bolivia, Ecuador and Peru)

III. CACOM Central American Common Market (El Salvador, Honduras, Nicaragua, Costa Rica and Guatemala),

IV. CARICOM, Caribbean Common Market (English speaking countries of the Caribbean)

2. Lexis: For researching the text of decisions of many nations, including British Commonwealth nations, the Lexis INTLAW library is invaluable. The Westlaw libraries have not been as comprehensive in the past; however, now that West, like Lexis, is owned by a European conglomerate, we can expect the non-U.S. legal sources to improve.

READING ASSIGNMENTS:

Reading assignments will be announced from time to time in class. On occasion, I may also distribute written notices of upcoming assignments. Most of the readings will be taken from the assigned texts. I will, on occasion, distribute additional materials. Additional readings and problems may be added or substituted throughout the semester. Please bring Text, and any other assigned materials with you to class.

Understand that there is no guarantee that we will be able to cover in class all material assigned for that class session throughout the semester. Anticipate, therefore, that there may be occasions when you will have read ahead. Do not panic; do not become irritated; do not conclude that there is something amiss; humor me and assume that there is a reason for the pacing of the course. If in doubt, please be sure to see me.

Please keep in mind that you will be responsible for all assigned readings whether or not discussed in class, as well as for all materials covered in class, whether or not included in your reading materials.
GRADING

The course grade will be based on a written exam. This year I reserve the right to increase a student’s grade by one half letter (i.e., for example, from B to B+) to reward exceptional class participation.

ATTENDANCE AND CLASS PARTICIPATION

Class attendance is required. Tulsa policy imposes on students the obligation to attend class regularly and punctually. I will take attendance. You will be required to sign in at each class session. While failure to attend class will not result in a lower grade, it might help both you and me explain poor performance on the exam. Also, I remind you that material not in your readings and for which you will be responsible will likely be covered in class from time to time during the course of class discussion (and may find its way into the final exam).

Class Meeting Times. Class meets three times a week, Mondays and Wednesdays from 11:00 A.M. through 12:15 P.M. in room 203.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). It is my policy to call on students at random. However, at the end of each class session, I may designate two or more students to act as discussion leaders for the next class session. Any student who is called on and is unprepared (whether or not a discussion leader) will be expected to act as discussion leader for the next two class sessions. Discussion leaders who fail to show up for class will serve as discussion leaders for the following two class sessions. Students unprepared for any three class sessions in a semester may have their grade lowered by one half letter (i.e., from A to B+, or C+ to C, etc.).

Seating is assigned. To make seat selection somewhat less arbitrary, the seat you choose on Wednesday, January 12, 2000 will be your assigned seat. I will circulate a seating chart on Wednesday for you to fill in.

A word on my approach to class. This is not a lecture course. I hope to begin to teach you not only the substantive rules process which are helpful when a lawyer is confronted with issues of comparative law, but also how to approach problems involving a legal system similar to, but in some respects very different from our own. To that extent I hope to provide you with the ability to begin to think like your European or Asian counterparts, at least enough so that you will be able to understand (and anticipate) their view of matters touching on this area of the law. To that end, the bulk of each class session will consist of discussion. You should expect to be challenged; consider this semester as a long meeting with your counterpart in a negotiation, say, somewhere in
the European Union or Latin America. **AGGRESSIVE** questioning will sometimes be the norm. **Don't take it personally.** Aggressively testing your ideas and answers to questions (as well as the level of your preparation) doesn't mean that I don't like or respect you.

**Class Notes and Tape Recording.** Please feel free to get together with your classmates for studying and sharing notes. It is sometimes efficient. Take as many notes as you like. . .  
**HOWEVER, NO TAPE RECORDING OF CLASS.** Sorry.

**CONFERENCES**

I maintain an open door policy. I encourage you to see if me should you have any questions or concerns. While I prefer you try to see me during office hours, we can make arrangements to meet at other times. If all else fails, please contact Sandra Plaster to make an appointment to see me. Please feel free to e-mail me. My e-mail address is larry-backer@utulsa.edu.
SYLLABUS:

For those who want to read ahead, I provide the following short syllabus:

I. Introduction: the comparative method, its purposes and promise.
   1. The comparative method applied to domestic problems
      A. The foreign solution as a model: foreign elements in domestic law.
      B. The foreign solution as a contrast or means of gaining perspective.
   2. The comparative method applied to transactions across international boundaries.
      A. Problems arising from differences among legal systems.
         (1) Comparative Law, Conflict of Laws, and International Law.
         (2) Foreign Law Problems in Domestic Legal Practice.
         (3) Foreign Operations and Foreign Litigation.
      B. Bridging the differences among legal systems.
         (1) Unification and harmonization.
         (2) The common core of legal systems.
   3. The comparative method as a scientific approach.

II. Foreign law in our courts: pleading and proof of foreign law.
   1. The basic doctrines:
      A. Common law doctrine: foreign law as “fact.”
      B. Statutory modifications.
      C. Ramifications of the “fact” doctrine.
   2. The overall tactics of foreign law litigation: consequences of failure to invoke or prove the applicable foreign law.
   3. The trial phase: techniques of proving foreign law.
      A. Documentary evidence.
      B. Proof by experts.
         (1) Necessary qualifications of a foreign law expert.
         (2) Some practical points.
         (3) Proof of foreign-country law.
         (4) Court-appointed experts.
   4. The procedural treatment of foreign law on other legal systems.

III. Common law and civil law – comparison of methods and sources.
   1. The nature and significance of the common law civil law distinction.
   2. The distinguishing features of civil law.
      A. The pre-codification period.
      B. The national codifications – traditional and modern elements in the civil law.
   3. Geographic expansion of common law and civil law.
   4. Legal education in civil law countries.
A. From orators and jurists to advocates, procurators and notaries: The education and qualification of civil lawyers in historical perspective.
B. Education and training of lawyers in France.
C. Education and training of lawyers in Germany.

IV. Procedure in civil law countries.
1. The course of a civil law lawsuit.
   A. Selection of counsel.
   B. Lawyers’ fees.
   C. Recovery of attorney’s fees.
   D. Organization of courts.
   E. Jurisdiction.
   F. Service of process.
   G. Abatement because of pendency of another action.
   H. Pleadings and formation of issues.
   I. Evidence.
   J. Discovery and gathering evidence abroad.
   K. The court’s decision.
   L. Appeals.
2. The place of civil litigation in civil law systems.
   A. Commercial courts.
   B. Arbitration.
   C. Criminal procedure.
   D. Procedural treatment of concurrent civil and criminal liability.
   E. Public law disputes.
      (1) The civilians’ dichotomy between private-law and public-law litigation.
      (2) The “Europeanization” of administrative law.

V. Substantive law.
1. System and organization of civil law codes.
2. Judicial interpretation of codes: the force of precedents in a code system.
3. Political, social and moral elements in the principal codes.
   A. The codes and economic freedom.
      (1) The parties’ freedom to shape their contracts and other transactions.
      (2) Enforcement of contracts.
   B. The codes and security of transactions.
      (1) The principle of publicity in the transfer of land.
      (2) The principle of publicity in transactions not relating to the land.
   C. The codes and the idea of justice (no separation of law and equity).

VI. A topical approach to the civil law: agency law.
1. The agent’s power.
2. Interaction of civil and commercial codes in the law of agency: the principle of publicity.
3. Powers of attorney – form requirements.

VII. A topical approach to the civil law: corporations law.
1. Civil law and common law methods in the law of corporations.
2. Bearer shares.
3. Limited liability companies.
4. Protection of creditors and minority shareholders.
   A. Preservation of the registered amount of capital.
   B. Minority stockholders’ “equitable” remedies.

VIII. Conflicts of law
1. Statutory and treaty based choice of law rules.
   A. Conventions on choice of law for contracts.
      (2) The Inter-American Convention on the Law Application to International Contracts.
   B. An example of a recent general conflict of laws statute.
2. “Public Policy” and other grounds for refusing to apply foreign law or recognize foreign judgments.

IX. Special hazards of comparative law.
1. Language difficulties.
2. Differences in classification.
3. The contrast between the printed word and actual practice.