



<b>Course title</b>	General Principles of Civil Law
<b>Course Code</b>	LAW105.1
<b>Category (core/elective)</b>	Core
<b>Level</b>	LLB in European Law
<b>Duration (semesters)</b>	1
<b>Semester when taught (autumn/spring)</b>	Autumn
<b>ECTS:</b>	6
<b>Access requirements</b>	None
<b>Responsible</b>	Dr. Irimi Stamatoudi
<b>Course objectives</b>	
The aim of this course is to introduce students to the general principles of the major European legal systems in terms of private law, to the different styles of law-making and interpretation within those systems and explore convergences and divergences between them.	
<b>Course Description</b>	

Private law is considered to be the cornerstone of law in general. Yet, the particulars of private law highly depend on the legal tradition at issue. This course will first try to explain the notion of law and put private law in context against other areas of law such as public law, criminal law, administrative law and so on. It will then explore the historical background and origins of private law and describe its sources. During the next phase the different legal traditions will be explained, i.e. the common law and the civil law tradition. In the civil law tradition special emphasis will be given to the French and Germanic legal families. Particular attention will be paid to contract law and tort but insights may also include family law, succession, property and business and corporate law. During the course we shall try and explore the basics of each system and each area of law coming under private law. We will also explore the impact of the different sources on private law, interpretation rules, convergences and divergences in general and we shall also try and apply basic concepts and interpretation rules to case studies. Whilst doing that it will be interesting to find out

whether one could -on the basis of different legal rules- reach the same legal outcome. At the end of the course we shall discuss preliminary issues concerning the europeanization of private law.

Please note that the issues of european private law, contract law and tort law that will be discussed in this module will only serve as an introduction to the compulsory module of European civil law and to the electives of 'comparative law of contracts' and 'comparative law of torts'.

## **Course Outline**

### **I. Basic Issues**

1. What is law and the issue of enforceability
2. Private law in context against other areas of law
3. Historical background and origins of private Law
4. Sources of Law
5. Basic principles and concepts in private law (e.g. absolute v. relative rights, individual autonomy, manifestation of will, legal transactions, limitations and abuse of rights)

### **II. The distinction between the common law and civil law traditions**

1. Common law
2. Civil law
  - a. French family
  - b. Germanic family
  - c. Other
3. Convergences and divergences in
  - a. Contract law
  - b. Tort law
  - c. Property
  - d. Family law
  - e. Succession
  - f. Business and corporate law

### **III. The europeanization of private law**

## **Educational Outcomes**

When you have completed this module, you should be able to:

- Describe the notions of law and enforceability;
- Describe the notion of private law and explain its differences with other areas of law;
- List and explain some basic principles in private law;
- Understand the variety of legal traditions, which are contained within the category of private law in Europe;
- Understand the distinction between the common law and the civil law legal systems in Europe and describe their origins;
- List the sources of private law and explain how they affect its shaping;

	<ul style="list-style-type: none"> <li>- Explain convergences and divergences between the various legal systems in the areas of contract and tort law and be capable of bringing examples in the areas of family law, succession, property and business and corporate law;</li> <li>- Apply interpretation rules to case studies.</li> <li>- Appreciate the emergence of European private law and some basic issues pertaining to the European Civil Code.</li> </ul>
<p><b>Basic Textbook(s)</b></p>	<ul style="list-style-type: none"> <li>- J. M. Smits, Advanced introduction to private law, Edward Elgar Publishing, 2016 (TBC)</li> </ul>
<p><b>Basic Bibliography</b></p>	<ul style="list-style-type: none"> <li>- “The Common Law and Civil Law traditions”, University of California at Berkeley, School of Law (Boalt Hall), The Robbins Collection, online available at: <a href="https://www.law.berkeley.edu/library/robbins/pdf/CommonLawCivilLawTraditions.pdf">https://www.law.berkeley.edu/library/robbins/pdf/CommonLawCivilLawTraditions.pdf</a></li> <li>- Hesselink, Martijn W., “The General Principles of Civil Law: Their Nature, Roles and Legitimacy”, Amsterdam Law School Research Paper No. 2011-35, in “The involvement of EU law in Private Law Relationships”, Dorota Leczykiewicz &amp; Stephen Weatheril (Eds.), Hart Publishing, Oxford, 2013, pp. 131-180., 2011, online available at: <a href="https://ssrn.com/abstract=1932146">https://ssrn.com/abstract=1932146</a> or <a href="http://dx.doi.org/10.2139/ssrn.1932146">http://dx.doi.org/10.2139/ssrn.1932146</a></li> </ul>
<p><b>Additional Bibliography</b></p>	<p><b>1. COMPARATIVE PRIVATE LAW</b></p> <p><b>BOOKS</b></p> <ul style="list-style-type: none"> <li>- Bryan, Michael, “Private Law in Theory and Practice”, Routledge-Cavendish, 2007</li> <li>- Burrows, Andrew, “English Private Law: Oxford Principles of English Law”, Oxford University Press, 3<sup>rd</sup> edition, 2013</li> <li>- Gordley, James, “An introduction to the Comparative Study of Private Law: Readings, Cases, Materials”, Cambridge University Press, 2009</li> <li>- Gordley, James, “Foundations of Private Law: Property, Tort, Contract, Unjust Enrichment”, Oxford University Press, 2007</li> <li>- Micklitz, Hans-W and Cafaggi, Fabrizio, “European Private Law After the Common Frame of Reference: What Future for European Private Law”, Edward Elgar Publications, 2010</li> <li>- Mousourakis, George, “Fundamentals of Roman Private Law”, Springer, 2012</li> <li>- Müller-Chen, Markus and Müller Christoph and Widmer Lühinger, Corinne, “Comparative Private Law, Dike</li> </ul>

Publishers, 2015

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- Van Caenegem, R C, “An Historical Introduction to Private Law”, Cambridge University Press, 2010
- Weinrib, Ernest J, “The Idea of Private Law”, Oxford University Press; Revised edition, 2012

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- “The Common Law and Civil Law traditions”, University of California at Berkeley, School of Law (Boalt Hall), The Robbins Collection, online available at: [https://www.law.berkeley.edu/library/robbins/pdf/Commo\\_nLawCivilLawTraditions.pdf](https://www.law.berkeley.edu/library/robbins/pdf/Commo_nLawCivilLawTraditions.pdf)

## **2. COMPARATIVE LAW OF CONTRACTS**

## **BOOKS**

- Fairgrieve, Duncan, “Comparative Law in Practice: Contract Law in a Mid-Channel Jurisdiction”, Hart Publishing, 2016
- Haley O., John, “Comparative Contract Law”: The International Library of Comparative Law Series, Edward Elgar Publishing Ltd, 2017
- Hondius, Ewoud, “Unexpected Circumstances in European Contract Law” (The Common Core of European Private Law), Cambridge University Press, 2014
- Kötz, Heinz and Flessner, Axel, “European Contract Law: Volume One: Formation, Validity and Content of Contract; Contract and Third Parties”, Oxford University Press, 1998
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- Hesselink, Martijn W., "The Concept of Good Faith", in "Towards a European civil code", A.S. Hartkamp, E.H. Hondius, M.W. Hesselink, C.E. du Perron & M. Veldman (Eds.), *Kluwer Law International*, 2004, pp. 471-498, online available at SSRN: <https://ssrn.com/abstract=1098856>
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### **3. COMPARATIVE LAW OF TORTS**

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- Beever, Allan, "A Theory of Tort Liability", Hart Publishing, 2016
- Bell, John and Ibbetson, David J., "European legal development: the case of tort", Cambridge: Cambridge University Press, 2012

- Bryan, Michael, “Private Law in Theory and Practice”, Routledge-Cavendish, 2007
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- Wells, Michael L., “Harmonizing European Tort Law and the Comparative Method”, *Journal of Civil Law Studies*, Vol. 9, Issue 2, 2016, pp. 539-554

#### **4. EUROPEAN PRIVATE LAW**

##### **BOOKS**

- Anderson, M. and Arroyo I Amayuelas, Esther, “The Law of Succession; Testamentary Freedom: European Perspectives”, Europa Law Publishing, 2011
- Basedow, Jurgen and Hopt, Klaus J. and Reinhard Zimmermann, “Max Planck Encyclopedia of European Private Law”, Oxford University Press, 2012
- Brownsword, Roger, Micklitz, Hans W., Niglia, Leone, “The Foundations of European Private Law”, Bloomsbury Publishing plc, 2011
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- Cafaggi, Fabrizio and Muir-Watt, Horatia, “The Regulatory Function of European Private Law”, Edward Elgar Publishing Ltd, 2009
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- Devenney, James, Kenny, Mel, “The Transformation of European Private Law: Harmonisation, Consolidation, Codification or Chaos?”, Cambridge University Press, 2013
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Law: Draft Common Frame of Reference (DCFR)", Oxford University Press, 2010

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- Niglia, Leone, "Taking Comparative Law Seriously - Europe's Private Law and the Poverty of the Orthodoxy", American Journal of Comparative Law, Vol. 54, Issue 2, 2006, pp. 401-428
- Siklosi, Ivan, "A Guide to European Private Law", Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica, Vol. 47, pp. 441-450
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- Smits, Jan M., "Convergence of Private Law in Europe: Towards a New *Ius Commune*?", in Comparative Law: A handbook, Örucü, Esin and Nelken, David, Eds., Oxford: Hart Publishing, 2007, pp. 219-240
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- Smits, Jan M., "Rethinking Methods in European Private Law", in (July 26, 2012). Practice and Theory In

	<p>“Comparative Law”, Adams, Maurice and Bomhoff, Jacco (Eds.), pp. 170-185, Cambridge: Maastricht European Private Law Institute Working Paper, 2012, online available at SSRN: <a href="https://ssrn.com/abstract=2117809">https://ssrn.com/abstract=2117809</a> or <a href="http://dx.doi.org/10.2139/ssrn.2117809">http://dx.doi.org/10.2139/ssrn.2117809</a></p> <p>– Ziegler, Tamas Dezso, “Handbook on European Private Law”, Hungarian Yearbook of International Law and European Law, Vol. 2014, pp. 645-648</p>						
<b>Teaching Methodology</b>	<table border="1"> <tr> <td>Lectures</td> <td>12x 2 = 24 h</td> </tr> <tr> <td>Tutorials</td> <td>6 x 2 = 12 h</td> </tr> <tr> <td></td> <td>Total = 36 h</td> </tr> </table> <p><b>Dates of classes:</b></p> <ul style="list-style-type: none"> <li>• 15/12/2017</li> <li>• 18/12/2017</li> <li>• 22/12/2017</li> <li>• 15/1/2018</li> <li>• 16/1/2018</li> <li>• 22/1/2018</li> </ul> <p>Please note that teaching will take place on the aforementioned dates at Legraina from 10:00 – 17:00. Tutorials will be integrated within the lectures in the form of case studies and you may be asked to prepare some of these case studies as homework for the next meeting.</p>	Lectures	12x 2 = 24 h	Tutorials	6 x 2 = 12 h		Total = 36 h
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<b>Evaluation</b>	<table border="1"> <tr> <td>Final Exam</td> <td>80 %</td> </tr> <tr> <td>Course Participation</td> <td>20 %</td> </tr> <tr> <td>Total</td> <td>100%</td> </tr> </table>	Final Exam	80 %	Course Participation	20 %	Total	100%
Final Exam	80 %						
Course Participation	20 %						
Total	100%						
<b>Language</b>	English						
<b>Traineeship</b>	No						
<b>Location</b>	Legraina						

**General note**

While the 'Course Objectives' and 'Educational Outcomes' above remain immutable, the 'Course Content' and 'Course Outline' may be altered in order to accommodate student's needs and individual professor's approaches. Bibliography and reading materials may vary accordingly.