Syllabus
Introduction to the Common Law
CFU 6
Professor Massimo Papa, Professor Geoffrey Samuel

Course Description
The course aims at providing a comparative analysis of the Civil Law and the Common Law legal systems. After a general overview of the legal systems of the world, the focus will be on the development and the current framework of the English legal system.

Schedule of Topics

| Topic 1 | Introduction to the legal systems. The legal systems of the world: Civil Law, Common Law, Sharia Law (Prof. Papa). |
| Topic 2 | General introduction. Meaning of common law; Common law as legal tradition; Structural view of the common law (outline); Some comparisons with the civil law (outline); General mentality; Absence of codification; Supremacy of parliament. |
| Topic 3 | Development of the courts. Norman invasion 1066 and feudalism; Curia regis and the formation of the three courts of common law: King’s Bench, Exchequer and Common Pleas; Jury; Writ system; Development of the Court of Chancery; 19th century reforms; Tribunal system; Modern court structure. |
| Topic 4 | Development of the English procedural tradition. Introduction: Romano-Canonical procedure and England; Forms of action: trespass and trespass on the case; judge and jury; Bill procedure in Chancery; Problem of appeal; 19th century developments; adversarial mentality; Woolf Report and the new procedural philosophy; role of the Court of Appeal; Courts of First Instance (civil); Criminal courts and procedure (outline only); Role of the Supreme Court; Role of Tribunals; Alternative Dispute Resolution; Comparative excursus: Procès, trial, appeal, renvoi and cassation. |
| Topic 5 | Remedies in English law Personal actions at common law; common law remedies: debt, damages and repossessing of land; equitable remedies: injunction, specific performance, rescission, rectification, account (and several others in outline only); prerogative writs and the development of administrative law remedies; Judicial review; Comparative excursus: remedies in Roman law. |
| Topic 6 | Sources and methods of the common law. Introduction: ubi ius ibi remedium or ubi remedium ibi ius? Precedent: development, current status and future; ratio decidendi; Obiter dictum; Interpretation of statutes; Human Rights Act 1998; University law faculties and the role of doctrine; legal reasoning and methods: rule model, rights model, interpretation model, policy model, interest model and remedies model; case analysis. |
| Topic 7 | Concepts and categories in the common law. Forms of action and classification; Maitland’s question; effect of abolition of the forms of action; General divisions: civil and criminal, law and equity and public and private. Specific divisions: Real property, Personal property, Intellectual property, Contract, Tort, Restitution, Equity and trusts, EU Law, Family Law, Public law, Criminal Law, and other categories; Concepts: Personality and status (Law of persons); Ownership, Possession and Real rights (Law of Things); Contract and consideration, Breach of contract, non-contractual wrongs, Invasion of rights and Unjust Enrichment (Law of obligations); Comparative excursus: the common law and the Roman classification scheme (Institutiones). |
| Topic 7 | Legal theory and legal education in the common law tradition- Absence of university faculties; growth of textbook tradition; legal education and the influence of positivism; American Realism and its long-term effects; Ronald Dworkin and the retreat from positivism; Peter Birks and legal science; Impact of epistemological scholarship. |
Textbook and Materials

Course texts:
- G Samuel, A Short Introduction to the Common Law (Edward Elgar, 2013)
- G Samuel, A Short Introduction to Judging and to Legal Reasoning (Edward Elgar, 2016)
- P Legrand & G Samuel, Introduction au common law (La Découverte, Paris, 2008) (Repères n° 514) (for students who can read French)

Further reading:
J Baker, An Introduction to English Legal History (Butterworths, 4th ed., 2002)
F Cownie, A Bradney & M Burton, English Legal System in Context (Oxford University Press, 6th ed, 2013)
N Duxbury, Elements of Legislation (Cambridge University Press, 2013)

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