



**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

<b>Topic 1</b>	Introduction to the legal systems. The legal systems of the world: Civil Law, Common Law, Sharia Law (Prof. Papa).
<b>Topic 2</b>	<b>General introduction.</b> 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.
<b>Topic 3</b>	<b>Development of the courts.</b> Norman invasion 1066 and feudalism; <i>Curia regis</i> 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; 19 <sup>th</sup> century reforms; Tribunal system; Modern court structure.
<b>Topic 3</b>	<b>Development of the English procedural tradition.</b> 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; 19 <sup>th</sup> 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: <i>Procès</i> , trial, appeal, <i>renvoi</i> and <i>cassation</i> .
<b>Topic 4</b>	<b>Remedies in English law</b> Personal actions at common law; common law remedies: debt, damages and repossession 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.
<b>Topic 5</b>	<b>Sources and methods of the common law.</b> Introduction: <i>ubi ius ibi remedium</i> or <i>ubi remedium ibi ius</i> ? Precedent: development, current status and future; <i>ratio decidendi</i> ; <i>Obiter dictum</i> ; 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.
<b>Topic 6</b>	<b>Concepts and categories in the common law.</b> 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 ( <i>Institutiones</i> ).
<b>Topic 7</b>	<b>Legal theory and legal education in the common law tradition-</b> 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, 4<sup>th</sup> ed., 2002)

F Cownie, A Bradney & M Burton, *English Legal System in Context* (Oxford University Press, 6<sup>th</sup> ed, 2013)

N Duxbury, *Elements of Legislation* (Cambridge University Press, 2013)

M Lobban, *The Common Law and English Jurisprudence 1760-1850* (Oxford University Press, 1991)

M Partington, *Introduction to the English Legal System 2014-2015* (Oxford University Press) (and see Partington blog: <http://martinpartington.com/>)

G Samuel, Legal Reasoning and Argumentation, in: James D. Wright (editor-in-chief), *International Encyclopedia of the Social & Behavioral Sciences* (2<sup>nd</sup> edition, Vol 13. Oxford: Elsevier) 776

S Waddams, *Dimensions of Private Law: Categories and Concepts in Anglo-American Legal Reasoning* (Cambridge University Press, 2003)

T Weir, The Common Law System, *International Encyclopedia of Comparative Law*, Volume II, Chapter 2, Part III (JCB Mohr) (Completed 1971)

Lord Woolf, *Access to Justice: Final Report* (1996)

M Zander, *The Law-Making process* (Cambridge University Press, 6<sup>th</sup> ed., 2004)

### **Office hours**

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