# Comparative Private Law

# Prof. Francesca Benatti

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The aim of the course is to introduce students, also through concrete examples, to the comparative private law. To this end, the course aims to sensitise students on the debate concerning the meaning and relevance of comparison in the general legal method and, in particular, the knowledge of some significant issues in the areas of family law and contract in Europe. The special part has been designed not only to provide an insight of it in terms of micro-comparison, but also as a test bed and exemplification of the comparative method.

At the end of the course, students will be able to better understand the problems underlying the rules of the micro-comparison carried out also with reference to the Italian law. They will therefore improve their own learning skills, considering that they will be familiar with the system of common law sources and will be more aware of the meaning of the difference between written law systems and the legal systems in which the case law prevails. In short, they will appropriately identify the engagement point of comparison in legal argumentations and will acquire greater competence in the use of legal methods and interpretation canons also in relation to the requirements imposed by the growing internationalization. These skills will lead to greater independent judgment in legal discourse and, thanks to a richer lexicon and the argumentative tools also applied to concrete examples, in a strengthening of their communication skills.

***COURSE CONTENT***

*General part*

The legal comparison with special reference to private law.

* Comparison between knowledge and method.
* Functions and method of legal comparison.
* Legal areas and the methods to determine them.
* The main European legal areas.
* Codification and comparison.
* English and US *Common law*.
* Outline of Chinese, Japanese and Indian law.
* Outline of Latin America law

*Special Part*

1. The contract in European codifications and English and American common law.
   * The reasons for the contractual obligations. Cause and consideration.
   * Contract formation.
   * Good faith.
   * Contingencies
   * The tort in common law systems.

***READING LIST***

K. Zweigert-H. Kötz, *Introduzione al diritto comparato,* Giuffrè, Milan, 1998, vol. 1, It. ed. edited by A. Di Majo and A. Gambaro, repr. supplemented by addenda (§§ 1-17, 19).

K. Zweigert-H. Kötz, *Introduzione al diritto comparato,* Giuffrè, Milan, 2011, vol. 2, Istituti, It. ed. edited by A. Di Majo e A. Gambaro, repr. supplemented by addenda (A. Il contratto, I. La conclusione, §§ 1-3-6-8-9. II. La esecuzione del contratto §§12-13-14 and the part entitled La “Modernisierung” delle obbligazioni nel diritto tedesco).

Study material and cases will be made available on the lecturer's Blackboard page.

***TEACHING METHOD***

Lectures held by the lecturer.

***ASSESSMENT METHOD AND CRITERIA***

The exam is oral and is divided into questions concerning each of the two parts of the course. The exam will be assessed on a 30-point scale, based on the contents of the students’ answers, their presentation and argumentation skills, including of course the appropriateness of the terminology, as well as their critical attitude.

***NOTES AND PREREQUISITES***

Attendance is recommended. Students are expected to have passed the exams of Institutions of Private Law and Civil Law 1. Attendance at the Civil Law 2 course is also recommended. Students must have good basic knowledge of civil law and be able at least to read texts in English.

Further information can be found on the lecturer's webpage at http://docenti.unicatt.it/web/searchByName.do?language=ENG or on the Faculty notice board.