



COMPARATIVE LAW FALL SEMESTER

COMPARATIVE LAW

Regent:

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Teaching Assistant:

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General objective of the course:

Comparative Law examines how different legal systems understand, organise and resolve similar legal problems. The course aims to provide students with a general understanding of the notion, purposes, methods and limits of comparative law, as well as of the principal legal traditions and, in particular, the characteristic features of Civil Law and Common Law.

Legal responsibility will be used as the principal field for applying comparative methodology. Within this broader framework, particular emphasis will be placed on non-contractual liability arising from torts and delicts. Through the examination of selected problems concerning non-contractual liability and its interaction with contractual, criminal and regulatory liability, students will examine how legal systems protect interests, attribute responsibility, allocate risks and provide remedies. The course does not seek to offer an exhaustive account of the law of liability in individual jurisdictions.

The course aims to develop comparative legal reasoning: students should be able to identify functional equivalents, understand conceptual and institutional differences, avoid uncritical assumptions of equivalence and evaluate foreign and European solutions within their legal, historical and institutional contexts.

Syllabus

1. Presentation of the course: objectives, contents, teaching methods, assessment and an introductory comparative exercise.
2. Comparative Law: notion, purposes, methods and limits; the main legal traditions; Civil Law and Common Law, with particular attention to sources of law, legal institutions and legal reasoning.
3. Legal responsibility as a field of comparison: responsibility and liability; wrong, tort, delict, crime and regulatory offence; purposes, functions and boundaries of different regimes of responsibility.
4. The main models and grounds of tortious and delictual liability: *numerus clausus* models, general clause models and intermediate models; protected interests, duty of care, the role of wrongfulness and unlawfulness.
5. Fault and standards of conduct in comparative perspective: intention, negligence, the reasonable person, foreseeability, presumptions and the relationship between wrongfulness and fault.
6. Strict liability, risk and vicarious liability: dangerous activities, enterprise and organisational responsibility, liability for others and the allocation and distribution of risk.
7. Damage and recoverable harm: personal injury, property damage, pure economic loss, non-pecuniary and psychiatric harm, loss of chance, reflective and collective harm.
8. Causation and the scope of liability: factual causation, adequate causation, remoteness, the protective purpose of the rule, multiple and uncertain causation, and evidential difficulties.
9. Omissions and multiple parties: duties to act and to protect, joint and several liability, contribution, alternative causation, participation, assistance and facilitation.
10. Defences and the conduct of the injured party: consent, assumption of risk, contributory negligence, self-defence, necessity and illegality.
11. From liability to effective redress: restitution in kind, compensatory, punitive and restitutionary damages; proof and procedural issues.
12. European harmonisation and contemporary developments: the interaction between tort, contract, crime and regulatory liability; product liability, digital products, software and artificial intelligence, with particular reference to Directive (EU) 2024/2853.

Selected English-language readings, cases and legislative materials will be indicated in advance for each teaching unit.

Teaching methods and assessment

Teaching will be selective, problem-oriented and case-based. Plenary lectures will combine conceptual analysis with discussion of pre-assigned English-language readings. Practical classes will focus on selected foreign decisions, particularly from English and United States courts, and on how analogous legal problems might be addressed in the students' home jurisdictions.

The assessment is based on participation in practical classes and the submission of a paper analysing and commenting on a case decided by a court of England, the United States, or another common-law jurisdiction. The selected case must receive prior approval.

The minimum grade in continuous assessment (participation in seminars and the submission of a paper) required for exemption from the written test is 12 (twelve) points on the Portuguese 20-point grading scale.

Students who opt not to submit the paper will be required to sit a written test.

Students who do not meet the minimum continuous assessment grade will be required to sit a written test.

Students who obtain a grade below 10 (ten) grading points in the written test will be required to sit a final exam.

Following successful completion of the course, an optional oral examination may be taken to improve the final grade.

Selected Bibliography

The bibliography is organised according to thematic areas corresponding to the syllabus. The relevant syllabus topics are indicated for each section. Additional English-language articles, book chapters, cases and legal materials will be assigned in advance for each class.

1. General Comparative Law

Relevant syllabus topic: 2.

Vicente, Dário Moura - *Comparative Law of Obligations*, Cheltenham, Edward Elgar, 2021. General reference for syllabus topics 2-10.

Vicente, Dário Moura - *Direito Comparado*, vol. I, 6th ed., Coimbra, Almedina, 2025; vol. II, Coimbra, Almedina, 2017.
Reimann, Mathias / Zimmermann, Reinhard (eds.) - *The Oxford Handbook of Comparative Law*, 2nd ed., Oxford, Oxford University Press, 2019.

2. Legal Responsibility and Comparative Tort Law: Foundations and Models

Relevant syllabus topics: 3-4.

Van Dam, Cees - *European Tort Law*, 2nd ed., Oxford, Oxford University Press, 2013. General reference for syllabus topics 3-10.

Bussani, Mauro / Sebok, Anthony J. / Infantino, Marta - *Common Law and Civil Law Perspectives on Tort Law*, Oxford, Oxford University Press, 2022.

Jansen, Nils - *The Structure of Tort Law*, translated by Sandy Steel, Oxford, Oxford University Press, 2021.

Wagner, Gerhard - "Comparative Tort Law", in Mathias Reimann / Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law*, 2nd ed., Oxford, Oxford University Press, 2019, pp. 994-1030.

Goldberg, John C. P. / Zipursky, Benjamin C. - *Recognizing Wrongs*, Cambridge, Massachusetts, The Belknap Press of Harvard University Press, 2020.

3. Fault, Strict Liability and Risk

Relevant syllabus topics: 5-6.

Cane, Peter - *Key Ideas in Tort Law*, Oxford, Hart Publishing, 2017.

Koziol, Helmut (ed.) - *Basic Questions of Tort Law from a Comparative Perspective*, Vienna, Jan Sramek Verlag, 2015.

Cappelletti, Marco - *Justifying Strict Liability: A Comparative Analysis in Legal Reasoning*, Oxford, Oxford University Press, 2022.

4. Recoverable Harm and Causation

Relevant syllabus topics: 7-8.

Infantino, Marta / Zervogianni, Eleni (eds.) - *Causation in European Tort Law*, Cambridge, Cambridge University Press, 2017.

Nolan, Donal - *Questions of Liability: Essays on the Law of Tort*, Oxford, Hart Publishing, 2023.

5. Omissions, Multiple Parties and Defences

Relevant syllabus topics: 9-10.

Goudkamp, James - *Tort Law Defences*, Oxford and Portland, Oregon, Hart Publishing, 2013.

Davies, Paul S. - "Complicity", in Matthew Dyson (ed.), *Unravelling Tort and Crime*, Cambridge, Cambridge University Press, 2014, pp. 275-303.

Simons, Kenneth W. - "Consent and Assumption of Risk in Tort and Criminal Law", in Matthew Dyson (ed.), *Unravelling Tort and Crime*, Cambridge, Cambridge University Press, 2014, pp. 330-355.

6. Remedies, Evidence and the Interaction between Tort and Crime

Relevant syllabus topic: 11.

Dyson, Matthew - *Explaining Tort and Crime: Legal Development across Laws and Legal Systems, 1850-2020*, Cambridge, Cambridge University Press, 2022.

Dyson, Matthew (ed.) - *Comparing Tort and Crime: Learning from across and within Legal Systems*, Cambridge, Cambridge University Press, 2015.

Dyson, Matthew (ed.) - *Unravelling Tort and Crime*, Cambridge, Cambridge University Press, 2014.

7. European Harmonisation, Product Liability, Digital Products and Artificial Intelligence

Relevant syllabus topic: 12.

Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC.

Wagner, Gerhard - “Next Generation EU Product Liability - For Digital and Other Products”, *Journal of European Tort Law*, vol. 15, no. 2, 2024, pp. 172-224.

Mayrhofer, Ann-Kristin - “Product Liability in the Age of AI - Proposal for a “Two-Track” Solution”, *Revista Electrónica de Direito*, no. 1, vol. 33, 2024, pp. 105-127.

Karner, Ernst / Wendehorst, Christiane / Koch, Bernhard A. / Geistfeld, Mark A. (eds.) - *Civil Liability for Artificial Intelligence and Software*, Berlin/Boston, De Gruyter, 2023.

Vicente, Dário Moura / Soares Pereira, Rui / Alves Leal, Ana (eds.) - *Legal Aspects of Autonomous Systems: A Comparative Approach*, Cham, Springer, 2024.