

## 中国社会科学院大学民商法经典著作导读课程大纲

课程基本信息 (Course Information)					
课程编号 (Course ID)	102042021090	*学时 (Credit Hours)	32	*学分 (Credits)	2
*课程名称 (Course Name)	(中文) 民商法经典著作导读 (英文) Guide to the classic works of private law				
先修课程 (Prerequisite Courses)	民法总论、民法分论				
*课程简介 (Description)	<p>主要围绕民商法英文经典著作，引导学生阅读、思考和学习经典理论、方法或者思维。扩展学生在民商法学习上的视野，增强英文阅读和学习能力，同时激发学生对于基础知识的反思以及理论研究的兴趣。前期主要以比较法上经典的方法论英文著作作为导读、学习的对象。</p> <p>坚持以马克思主义为指导，加快构建中国特色哲学社会科学学科体系、学术体系、话语体系。帮助学生了解相关专业和行业领域的国家战略、法律法规和相关政策，引导学生深入社会实践、关注现实问题，培育学生经世济民、诚信服务、德法兼修的职业素养。</p> <p>该课程通过经典英文文献的阅读和讨论，传授和学习经典的民商法理论和民商法研究方法，讲求理论性和应用性的结合，体现民法学本身的科学性、系统性和逻辑性。并通过研讨式的教学激发问题意识，最终拓展学生的专业视野，提高学生的法学研究能力。</p>				
*课程简介 (Description)	<p>Focusing on classic works in English on civil and commercial law, students will be guided to read, reflect and learn about classic theories, methods or thinking. The course expands students' horizons in the study of civil and commercial law, enhances their reading and learning skills in English, and stimulates their interest in reflecting on basic knowledge and theoretical research. In the first period, the classical methodological works on comparative law in English are mainly used as the object of introduction and study.</p> <p>Adhering to Marxism as the guide, the course accelerates the construction of the disciplinary system, academic system and discourse system of philosophy and social sciences with Chinese characteristics. It helps students understand the national strategies, laws and regulations and relevant policies in the relevant professional and industrial fields, guides them to go deeper into social practice and pay attention to real-life problems, and cultivates their professional qualities of world-wealthy, honest service and moral and legal cultivation.</p> <p>The course guid to classical civil and commercial law theories and methods of civil and commercial law research through reading and discussing classical English literature, and seeks to combine theory and application, reflecting the scientific, systematic and logical nature of civil law itself. The seminar-style teaching also stimulates problem awareness, ultimately expanding students' professional horizons and improving their legal research ability.</p>				
*教材 (Textbooks)	<i>The Oxford Handbook of Comparative Law</i> , Mathias Reimann and Reinhard Zimmermann, Oxford University Press 2006.				
参考资料 (Other References)	[德] K·茨威格特 / [德] H·克茨:《比较法总论》，法律出版社 2004 年版 [德] 弗朗茨·维亚克尔:《近代私法史》，上海三联书店 2006 年版。				

*课程类别 (Course Category)		<input type="checkbox"/> 公共基础课/全校公共必修课 <input type="checkbox"/> 通识教育课 <input type="checkbox"/> 专业基础课 <input type="checkbox"/> 专业核心课/专业必修课 <input checked="" type="checkbox"/> 专业拓展课/专业选修课 <input type="checkbox"/> 其他_____					
*授课对象 (Target Students)		法学专业本科生 +硕士生		*授课模式 (Mode of Instruction)		<input type="checkbox"/> 线上, 教学平台_____ <input checked="" type="checkbox"/> 线下 <input type="checkbox"/> 混合式 <input type="checkbox"/> 其他 <input type="checkbox"/> 实践类 (70%以上学时深入基层) _	
*开课院系 (School)		法学院		*授课语言 (Language of Instruction)		<input type="checkbox"/> 中文 <input type="checkbox"/> 全外语_____ <input checked="" type="checkbox"/> 双语: 中文 + 英文	
*授课教师信息 (Teacher Information)		课程负责人 姓名及简介		萧鑫, 中国社会科学院法学研究所助理研究员。			
		团队成员 姓名及简介					
学习目标 (Learning Outcomes)		1.认识并了解民商法学理论的发展概况与历史脉络 2.掌握民商法研究对象与研究范围的相关知识 3.通过经典民商法学理论、法学方法的传授, 开拓知识视野, 提升思维能力, 提高学生对表象的穿透力和对事物的洞察力, 提高他们分析问题与解释问题的能力。					
*考核方式 (Grading)		平时成绩所占比例为 30%, 期末考试成绩所占比例为 70%, 期末考试方式为论文考核					
<b>*课程教学计划 (Teaching Plan)</b> (填写规范化要求见附件)							
周次	周学时	其中					教学内容摘要 (必含章节名称、讲述的内容提要、实验的名称、教学方法、课堂讨论的题目、阅读文献参考书目及作业等)
		讲授	实验课	习题课	课程讨论	其他环节	
第一周	2	1			1		第一章 Introduction 第一节 The Ancient World 第二节 The Early and High Middle Ages 第三节 The Later Middle Ages 第四节 Sixteenth-Century French Legal Thinkers 第五节 The Seventeenth and Eighteenth Centuries 第六节 The Development of Comparative Law in the World 教学方法: 讲授+专题研讨
第二周	2	1			1		第二章 The Functional Method of Comparative Law 第一节 'The Functional Method' 第二节 Concepts of Functionalism 1. Finalism 2. Adaptionism 3. Classical Functionalism 4. Instrumentalism 5. Refined Functionalism 6. Epistemological Functionalism 7. Equivalence Functionalism

					<p>8. Functionalist Comparative Law: Synthesis or Eclecticism?</p> <p>第三节 Functions of Function</p> <ol style="list-style-type: none"> <li>1. The Epistemological Function: Understanding Law</li> <li>2. The Comparative Function: Tertium Comparation</li> <li>3. The Presumptive Function: <i>Praesumptio Similitudinis</i></li> <li>4. The Systematizing Function: Building a System</li> <li>5. The Evaluative Function: Determining the Better Law</li> <li>6. The Universalizing Function: Unifying Law</li> <li>7. The Critical Function: Critique of Legal Orders</li> </ol> <p>教学方法: 讲授+专题研讨</p>
第三周	2	1		1	<p>第三章 Comparative Law: Study of Similarities or Differences</p> <p>第一节 History and the State of the Debate</p> <ol style="list-style-type: none"> <li>1. Unification, Functionalism, and the Presumption of Similarity</li> <li>2. Critique of Functionalism and the Emphasis on Difference</li> <li>3. Reconciliation?</li> <li>4. Evaluation of the Contemporary Debate</li> </ol> <p>第二节 Reasons to Look for Similarities or Differences</p> <ol style="list-style-type: none"> <li>1. Linking Rules to Effects</li> <li>2. Complex Enquiries</li> <li>3. Purposes of Comparative Legal Enquiries</li> </ol> <p>第三节. Steps of Comparative Enquiries</p> <ol style="list-style-type: none"> <li>1. Selection</li> <li>2. Description</li> <li>3. Analysis</li> </ol> <p>教学方法: 讲授+专题研讨</p>
第四周	2	1		1	<p>第四章 Comparative Law as the Study of Transplants and Receptions</p> <p>第一节 Terminology</p> <p>第二节 Some Classical Cases</p> <ol style="list-style-type: none"> <li>1. The Reception of Roman Law in Europe and in Other Parts of the World</li> <li>2. Some Civil Codes and their Diffusion</li> <li>3. The Diffusion of the Common Law</li> <li>4. Mixed Legal Systems</li> <li>5. Specific Examples</li> </ol> <p>第三节 Factors of Change</p> <ol style="list-style-type: none"> <li>1. Imposition</li> <li>2. Prestige</li> <li>3. Economic Performance and the Transplant of Legal Institutions</li> </ol> <p>第四节. What Change?</p> <p>第五节 Legal Transplants and Receptions as Unsettling Topics</p> <ol style="list-style-type: none"> <li>1. Law and Authority</li> <li>2. Law and Society</li> </ol> <p>第六节 Lessons</p>

					教学方法： 讲授+专题研讨
第五周	2	1		1	第五周 Comparative Law and Legal Culture 第一节 Law Inside Culture 第二节 Cultures as Fields of Similarity 1. European Legal Culture 2. Components of Culture 3. Who Defines Culture? 第三节 Legal Culture and Legal Change 第四节 Identifying and Interpreting Legal Cultures 第五节 Celebrating Difference 教学方法： 讲授+专题研讨
第六周	2	1		1	第六周 Comparative Law and Legal History 第一节 Origins 1. Legal History 2. Comparative Law 第二节 The Common Mistake 1. The Existence of a 'Legal System' 2. The Search for Principles Unifying Legal Systems 第三节 The Need for Mutual Support 1. Legal History in the Service of Comparative Law 2. Comparative Law in the Service of Legal History 教学方法： 讲授+专题研讨
第七周	2	1		1	第七周 Comparative Law and Critical Legal Studies 第一节 For Starters: Defining the Key Question 第二节 Critical Legal Studies Meets Comparative Law: A Tourd' Horizon 第三节 Disruption or Continuity? 1. The Assault on the Traditional 'Canon' 2. Functionalism and Structuralism 3. Critiques of Transplants and Receptions 4. Exploring 'Legal Consciousness' 5. Other Areas of Activity and Contexts of Critique 第四节 A Sympathetic Critique of the Critique 教学方法： 讲授+专题研讨
第八周	2	1		1	第八周 Comparative Law and Economic Analysis of Law 第一节 Economic Analysis of Law: A Short Sketch 1. Positive Economic Analysis 839 2. Normative Economic Analysis 842 第二节 One Discipline as an Ancillary Discipline to the Other 1. Economic Analysis as an Ancillary Discipline to Comparative Law

					<p>2. Comparative Law as an Ancillary Discipline to Economic Analysis</p> <p>3. An Example</p> <p>第三节 One Discipline as Subject-Matter of the Other</p> <p>1. Comparative Economic Analysis of Law</p> <p>2. Economic Analysis of Comparative Law</p> <p>第四节 Comparative Law and Economics—A New Discipline?</p> <p>教学方法： 讲授+专题研讨</p>
第九周	2	1		1	<p>第九章 Sources of Law and Legal Method in Comparative Law</p> <p>第一节 The Significance of Sources of Law and Legal Method for the Discipline of Comparative Law</p> <p>1. Importance for the Practice of Comparative Law</p> <p>2. Importance for the Theory of Comparative Law</p> <p>3. Comparative Law as a Source of Law and as a Tool of Legal Method</p> <p>第二节 Establishing the Sources of Law and the Legal Method of another System</p> <p>1. Sources of Law</p> <p>2. Legal Method</p> <p>第三节 Comparative Studies of Sources of Law and Legal Method</p> <p>1. General Studies</p> <p>2. Studies of Specific Legal Sources and the Methodological Approaches Pertaining to them.</p> <p>第四节 Where to Go Next?</p> <p>教学方法： 讲授+专题研讨</p>
第十周	2	1		1	<p>第十章 Comparative Contract Law</p> <p>第一节 The Prominence of Contracts in Comparative Law</p> <p>第二节 Approaches to Comparative Contract Law</p> <p>第三节 International Commercial Contracts</p> <p>第四节 Basis for Enforcement</p> <p>1. Historical Background in Roman Law</p> <p>2. Common-Law and Civilian Solutions</p> <p>3. Bases for Refusing Enforcement</p> <p>4. Formalities Required for Enforceability</p> <p>第五节 Requirement of Agreement</p> <p>1. Offer and Acceptance; Definitiveness of the Contract</p> <p>2. Precontractual Liability</p> <p>第六节 The Content of the Contract</p> <p>1. Introduction</p> <p>2. Integrity of the Writing</p> <p>第七节 Performance and Breach</p> <p>1. Determining Whether There Has Been a Breach</p> <p>2. Determining Whether Breach Justifies Ending Relationship</p> <p>第八节 Changed Circumstances—Supervening Events</p>

					<p>第九节 Remedies</p> <ol style="list-style-type: none"> <li>1. Damages</li> <li>2. Stipulated Damages</li> <li>3. Specific Relief</li> </ol> <p>第十节 Rights of Third Parties</p> <p>教学方法： 讲授+专题研讨</p>
第十一周	2	1		1	<p>第十一章 Comparative Sales Law</p> <p>第一节 Comparative Law and the Development of Uniform Sales Law</p> <ol style="list-style-type: none"> <li>1. The UN Convention on Contracts for the International Sale of Goods and the Idea of a World-Wide Unification of the Law of International Sales</li> <li>2. Harmonization of the Law of Sales within the European Union</li> <li>3. Harmonization of the Law of Sales in Africa</li> <li>4. The Special Case of Scandinavia</li> <li>5. The Wider Context: The UNIDROIT Principles of International Commercial Contracts</li> <li>6. The Overall Picture: Uniform Law and National Law</li> </ol> <p>第二节 Characteristic Comparative Features of Sales Law—As Evidenced by the Buyer's Remedies for Non-conformity of the Goods</p> <ol style="list-style-type: none"> <li>1. The Way from Caveat Emptor to an Objective System of Seller's Liability</li> <li>2. The Role of Termination as a Remedy</li> </ol> <p>教学方法： 讲授+专题研讨</p>
第十二周	2	1		1	<p>第十二章 Comparative Tort Law</p> <p>第一节 General Clause versus Variety of Individual Torts</p> <ol style="list-style-type: none"> <li>1. A Fundamental Difference in Style</li> <li>2. Common Developments</li> <li>3. The Relationship between Criminal Law and Tort</li> </ol> <p>第二节 Scope of Protection</p> <ol style="list-style-type: none"> <li>1. The Problem Defined</li> <li>2. Protected Interests versus General Clause</li> <li>3. Pure Economic Loss</li> <li>4. Dignitary Injuries</li> </ol> <p>第三节 Liability for Fault</p> <ol style="list-style-type: none"> <li>1. Liability for Moral Wrongdoing or Attribution of Risks?</li> <li>2. Theory: The Dominance of the Objective Standard of Care</li> <li>3. Reality: An Array of Mixed Systems</li> <li>4. The Substantive Issues</li> </ol> <p>第四节 Strict Liability</p> <ol style="list-style-type: none"> <li>1. Historical Origins</li> <li>2. The Diversity of Modern Law</li> <li>3. Conclusions and Perspectives</li> </ol> <p>第五节 Tort Law and Insurance</p> <ol style="list-style-type: none"> <li>1. A Patchwork of Systems</li> </ol>

					<p>2. The Rise and Decline of No-Fault Schemes</p> <p>3. Coordination of Tort Law with Social Security Systems</p> <p>4. Future Perspectives</p> <p>教学方法： 讲授+专题研讨</p>
第十三周	2	1		1	<p>第十三章 Comparative Property Law</p> <p>第一节 A View on the Future of Comparative Property Law</p> <p>第二节 Property Law in Civilian Systems and in the Common Law: A Traditional Static Comparative Analysis</p> <p>1. Civil Law</p> <p>2. Common Law</p> <p>3. Common Elements: Transparency Requirements, Transfer Systems</p> <p>4. An Example of a Static Comparison: The <i>Numerus Clausus</i> Debate in American Legal Literature</p> <p>第三节 Civil and Common Property Law: A Dynamic Analysis</p> <p>第四节 The Osmosis of National, Regional, and Global Property Law</p> <p>第五节 Final Remarks</p> <p>教学方法： 讲授+专题研讨</p>
第十四周	2	1		1	<p>第十四章 Unjustified Enrichment in Comparative Perspective</p> <p>第一节 The Anatomy of Difference</p> <p>第二节 Finding the Core: What is Enrichment Liability About?</p> <p>1. What Work Does Enrichment Liability Do?</p> <p>2. How Enrichment Liability is Given Effect: The Remedies and the Measurement of Enrichment</p> <p>第三节 Can Taxonomies Survive the Uncertainties of Multi-Party Enrichment?</p> <p>第四节 Drawing It All Together: Which Taxonomy?</p> <p>教学方法： 讲授+专题研讨</p>
第十五周	2	1		1	<p>第十五章 Comparative Company Law</p> <p>第一节 Company Law and Comparative Law: Traditional and Modern Contacts</p> <p>1. Some Remarks on the Development of Modern Company Law in Various Countries</p> <p>2. Looking across the Border in Company Law: Legislators, Lawyers, Academics, Judges</p> <p>3. Harmonization of Company Law in the European Union</p> <p>第二节 Company Law, Comparative Law, and Beyond</p> <p>1. Company Law, Capital Market Law, and Comparative Law</p> <p>2. Company Law and Company Self-Regulation: The International Code Movement</p> <p>3. Comparative Company Law and Economics</p> <p>第三节 Perspectives for Future Research</p> <p>1. Core Comparative Company Law</p> <p>2. Comparative Company Law and Beyond</p>

					教学方法： 讲授+专题研讨
第十六周	2	1		1	<p>第十六章 Comparative Law and the Europeanization of Private Law</p> <p>第一节 Prologue: Unification of Private Law as a Task for Comparative Legal Studies</p> <p>第二节 The Europeanization of Private Law</p> <ol style="list-style-type: none"> <li>1. From Rome to Laeken: The Creation of the European Union</li> <li>2. A Patchwork of Directives</li> <li>3. The Role of the European Court of Justice</li> <li>4. Improving the Present and Future Acquis?</li> </ol> <p>第三节 European Legal Scholarship</p> <p>第四节 The Contribution of Comparative Law</p> <ol style="list-style-type: none"> <li>1. Legal Training</li> <li>2. Making the Legal Materials Readily Accessible</li> <li>3. Disregarding the National Boundaries: The Case of Contract Law</li> <li>4. Common Conceptual Structures? The Cases of Delict and Unjustified Enrichment</li> <li>5. Establishing Networks: The New Law Journals</li> <li>6. Finding the Common Core</li> <li>7. Bridging the Channel</li> <li>8. Principles of European Contract Law</li> <li>9. Principles of European Tort Law</li> <li>10. More Principles</li> <li>11. Moving towards a Code? Study Group and Avant-Projet</li> </ol> <p>第五节 Where We Stand Today</p> <ol style="list-style-type: none"> <li>1. Obligations—and beyond?</li> <li>2. An Educational Process</li> </ol> <p>第六节 Looking into the Future</p> <ol style="list-style-type: none"> <li>1. The Right Time for a Code?</li> <li>2. Comparative Law and Legal History</li> <li>3. The Communitarization of Comparative Private Law 575</li> <li>4. Beyond Comparative Law?</li> </ol> <p>教学方法： 讲授+专题研讨</p>
总计	3 2	1 6		16	
备注 (Notes)					