

## LL4067; LL 5067 COMPARATIVE CRIMINAL LAW

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### MODULE DESCRIPTION

This module introduces students to the application of the theory and methodology of comparative law to substantive criminal law. It builds on a student's prior knowledge of a basic course in criminal law by comparing selected principles of the law primarily with those found in Australia, Canada, England, India, New Zealand, Malaysia and Singapore. Topics covered include the fault elements of murder and negligent homicide; consent in rape; the fault element for joint criminal enterprise; the defences of private defence, mental impairment and provocation; criminalising physician assisted suicide and euthanasia; and the German and Dutch laws of homicide and attendant defences. The insights gained by students from comparative analyses of these topics will sharpen their appreciation of the strengths and weaknesses of the criminal law of particular jurisdictions, and enhance their ability to view law from wider theoretical, sociological and reform perspectives.

### LEARNING OUTCOMES

After completion of this module, students should be able to:

1. apply the method of comparative legal analysis to substantive criminal law and to recognise the benefits to be derived from such analysis.
2. describe some of the main principles of criminal responsibility in selected jurisdictions through the study of criminal law theory, legal history and certain major crimes and defences.
3. critically appraise and compare the criminal law in a variety of jurisdictions taking into account the social and political contexts in which the criminal law operates.
4. critically evaluate and compare the laws of the jurisdictions studied for the purpose of suggesting legal reform.
5. improve their skills in legal writing and argument.

**Note:** The primary aim of this module is to engage with the comparative legal method, and not to learn about the current or latest laws. Also, students from continental law systems can expect to be working harder for this module due to their unfamiliarity with some of the common law concepts.

## TEACHING METHODOLOGY

1. The central objective of this module is to show how the comparative legal method can be used to critically appraise a particular area of the criminal law, with the aim of improving the law. Students will thereby observe the benefits to be gained by the use of the comparative legal method, and develop skills to tackle the possible pitfalls of the method.
2. The following is a brief description of the methodology used to achieve the central objective:-
  - (a) A large portion of the first seminar is devoted to explaining the concept, function, aims and methodology of the comparative legal method. A mini in-class test (non-gradable) will be given in the second seminar to assess the students' understanding of the method. Students will be constantly reminded to engage with the method throughout the module.
  - (b) A heavy concentration on the law of homicide, where most of the general principles of criminal responsibility have been articulated and developed. (hence the topics: fault for murder; negligent homicide; physician assisted suicide, euthanasia, the defences to murder of provocation and diminished responsibility; German and Dutch laws on homicide, and joint criminal enterprise cases involving homicide). Having such a concentration enables students to fully engage with the comparative legal method within a carefully contained area of criminal law. Relatedly, students are able to draw on their discussions in earlier seminars concerning aspects of homicide law. A gradual progression of problems and their possible solutions derived from the comparative legal method is thereby created as teaching of the module proceeds.
  - (c) The jurisdictions chosen for study have a shared legal history and common law tradition, which makes comparative analysis easier and more readily justifiable. Nonetheless, there are several challenges which a comparatist must engage with when comparing the laws of these chosen jurisdictions. One such challenge is whether it makes any difference that the law is embodied in a code, or developed by the common law. (Virtually all topics for this module will engage with this inquiry.)  
Another challenge is whether the subject matter is formed by social conditions, political factors, moral values and cultural expectations, which render circumspect, comparisons with the law of another jurisdiction on that subject matter. (Medical negligence homicide; fault for rape; the defence of provocation; and physician assisted suicide/euthanasia are particularly well suited for this form of inquiry.)
  - (d) The final two topics bring together many of the lessons students would have gained by then from the module. The first of these is the German and Dutch laws on homicide and attendant defences. While introductory, the subject matter encourages students to rethink what they have learnt about these topics by viewing them through civil law lenses. The second is the controversial and complex topic of the fault element of joint criminal

enterprise. Students are shown how this issue is played out firstly in domestic settings, and then in the international law forum, where civil and common law perspectives might clash, and how efforts have been made to reach a compromise.

- (e) The selection of prescribed readings have questions posed at the end of each reading to encourage students to approach them with a comparative lens.
- (f) Likewise, the assessment tasks of the module are all geared to make students engage with the materials, using the comparative legal method of inquiry and analysis.

## **PRE-REQUISITE/ CO-REQUISITE/ MUTUALLY EXCLUSIVE COURSE(S)**

Criminal Law

## **PRESCRIBED TEXT AND RECOMMENDED READINGS**

The only prescribed text is the set of *Comparative Criminal Law Prescribed Readings* compiled by Professor Stanley Yeo. This will be made available to students prior to the commencement of the module.

Students will also be directed to read certain portions of the *Penal Code Review Committee Report* (Singapore Ministries of Law and Home Affairs, 2018), which is available online.

## **MODULE METHODS**

The module will be conducted in 2 hour 45 min seminar sessions. A detailed outline of each seminar, together with the requisite reading instructions and materials, will be provided prior to the commencement of the module.

There will be a total of nine three hour classes. Except for the first class, each class will commence with a 75 minute lecture which will introduce a topic, followed by a 90 minute student-led seminar which will discuss the topic covered by the previous lecture. Classes will be held on Mondays, Wednesdays and Fridays.

## **ASSESSMENT METHODS**

### For undergraduate students

Class Participation	20% of the final grade
Team Assignment	20% of the final grade
(ie. 10% for written component (combined grade) and 10% for individual oral presentation)	
Take Home Final Examination	60% of the final grade

For postgraduate students

Class participation	20% of the final grade
Research paper	80% of the final grade

**Class Participation**

This will be based on class attendance, and on the overall quality of the student's contributions in the class. Students should feel free to make (relevant) comments and ask (relevant) questions at any time in the class. To contribute effectively, you should complete the relevant prescribed readings prior to attending the seminar.

**Team Assignment**

Students will be grouped in teams of 2 or 3 students each. Students are free to form their own teams. Each team will be assigned a seminar topic to lead a seminar discussion. Working as a team, students will present to the class selected issues covered in the prescribed readings for their assigned topic, and facilitate class discussion of those issues.

Your written or visual material (e.g. paper handouts or powerpoint slides) should serve only as teaching tools and should be succinct and kept to the minimum.

The assignment will be graded in the proportion of 10% for the team's written and visual material (common grade) and 10% for oral presentation (based on the individual's performance).

Further instructions on this form of assignment will be given at the first class.

**Marking criteria**

The team's written and visual material will be marked on the basis of the following:

Criteria	Unsatisfactory					Excellent
	1	2	3	4	5	
Amount of content consistent with time and purpose	1	2	3	4	5	
Clear, concise, fluent, logical and organised material	1	2	3	4	5	
Effectiveness in supporting the oral presentations	1	2	3	4	5	

Your oral presentation will be marked on the basis of the following:

Criteria	Unsatisfactory					Excellent
	1	2	3	4	5	
Amount of content consistent with time and purpose	1	2	3	4	5	

Clear, concise, fluent and logical presentation	1	2	3	4	5
Quality of critical analysis and suggestions for change or retention of the law	1	2	3	4	5
Ability to facilitate class discussion	1	2	3	4	5
Handling of questions and discussion	1	2	3	4	5

### **6-hr Take-home Examination (undergraduate students only)**

The examination will be a take-home paper and will comprise a selection of essay-type questions.

The word limit for the answers to the paper will be 3000 words (excluding footnotes which should solely be for referencing purposes). In their answers, students must not engage with the topic which they led a seminar discussion in.

The paper will be posted in LumiNUS at 1.00 pm on Friday 22<sup>nd</sup> October. Students must return their answers via LumiNUS (in the folder entitled "Take Home Exam Answers") by 7.00 pm on the same day.

Further information and instructions concerning the examination paper will be given after classes have commenced.

#### **Marking criteria**

Your examination paper will be marked on the basis of the following:

<b>Criteria</b>	<b>Inadequate</b>					<b>Excellent</b>
Ability to extract and summarise relevant information from the readings	1	2	3	4	5	
Ability to integrate and evaluate information from the readings and class discussion	1	2	3	4	5	
Ability to develop convincing legal arguments	1	2	3	4	5	
Conciseness and fluency of expression	1	2	3	4	5	

### **Research paper (postgraduate students only)**

Students may propose their own research topic in consultation with me. Your paper must comprise a comparative study of the laws of at least two jurisdictions. Students must finalise their topic with me by Wednesday 8<sup>th</sup> September.

The word limit for the paper will be 5000 words (excluding footnotes which are for referencing purposes only). Word limits are strictly enforceable and excess words will not be read.

Students must return their papers via LumiNUS (in the folder entitled “Take Home Exam Answers”) by Friday 22<sup>nd</sup> October.

Your research paper will be marked on the following basis:

Criteria	Inadequate					Excellent				
	1	2	3	4	5	1	2	3	4	5
Ability to identify and clearly state the relevant issues	1	2	3	4	5	1	2	3	4	5
Ability to apply the relevant legal principles to the resolution of those issues	1	2	3	4	5	1	2	3	4	5
Ability to critically analyse deficiencies in the law and to recommend appropriate changes to the law	1	2	3	4	5	1	2	3	4	5
Integration and evaluation of relevant knowledge from both the materials covered in this course and your own independent research	1	2	3	4	5	1	2	3	4	5

### ACADEMIC INTEGRITY

All acts of academic dishonesty (including, but not limited to, plagiarism, cheating, fabrication, facilitation of acts of academic dishonesty by others, unauthorised possession of exam questions, or tampering with the academic work of other students) are serious offences.

All work (whether oral or written) submitted for purposes of assessment must be the student’s own work. Penalties for violation of the policy range from zero marks for the component assessment to expulsion, depending on the nature of the offence.

### CLASS SCHEDULE

#### **Class One: Monday 30 August 6.30–9.15 pm**

Lecture: (1) “Getting to know you” and aims, content and structure of the module  
 (2) The concept, function, aims and method of comparative law  
 (3) The Symbiosis between a Criminal Code and the Common Law  
 (4) The Fault Elements of Murder

#### **Class Two: Wednesday 1<sup>st</sup> September, 6.30–9.15 pm**

Lecture: The Fault Elements of Criminal Medical Negligence

Seminar: Lecturer led discussion of prescribed readings pp.1–44  
 (introductory readings)

Student led discussion of prescribed readings pp.45–83 (murder)

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**Class Three: Friday 3<sup>rd</sup> September, 2.30–5.15 pm**

Lecture: The Fault Elements of Rape

Seminar: Student led discussion of prescribed readings pp.84–117  
(medical negligence)**Class Four: Monday 6<sup>th</sup> September, 6.30–9.15 pm**

Lecture: Objective Requirements of Provocation

Seminar: Student led discussion of prescribed readings pp.118–147 (rape)

**Class Five: Wednesday 8<sup>th</sup> September, 6.30–9.15 pm**

Lecture: Private Defence

Seminar: Student led discussion of prescribed readings pp.148–193 (provocation)

**Class Six: Friday 10<sup>th</sup> September, 2.30–5.15 pm**

Lecture: Mental Disorder Defences

Seminar: Student led discussion of prescribed readings pp.194–225  
(private defence)**Class Seven: Monday 13<sup>th</sup> September, 6.30–9.15 pm**

Lecture: Physician-assisted Suicide and Euthanasia

Seminar: Student led discussion of prescribed readings pp.226–275 (mental disorder)

**Class Eight: Wednesday 15<sup>th</sup> September, 6.30–9.15 pm**Lecture: 1. German and Dutch laws on homicide and attendant defences  
2. Joint Criminal EnterpriseSeminar: Student led discussion of prescribed readings pp.276–317  
(PAS & Euthanasia)**Class Nine: Friday 17<sup>th</sup> September, 2.30–5.15 pm**Lecture: A national engagement with comparative law: The Bhutan experience  
(prescribed readings pp.399–420)

Student led discussion of prescribed readings pp.318–346 (German &amp; Dutch laws)

Student led discussion of prescribed readings pp.347–398 (joint criminal enterprise)

Concluding Remarks