

***Common law v civil law dispute resolution –
differences and convergences***

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Department: International affairs
Semester:

Course level:
Domain: Law
Teaching language: English
Number of in-class hours: 15
Number of course sessions: 10 + Final Exam
ECTS: 6

I. Course description and objectives

A. Overview

Any future practitioner intending to become a lawyer, whether as counsel/*Avocat*/Solicitor in a law firm or as in-house counsel, will be facing, during his/her career, disputes involving proceedings initiated – sometimes simultaneously – across several jurisdictions.

Those proceedings are likely to be governed by very different - and at times inconsistent - sets of rules. To take but a few examples:

- Cross-examination of witnesses is standard before common law courts; it is rather unusual before civil law courts;
- To a large extent, a party is at liberty to disclose only the documents in his/her favour before civil law courts; by contrast, he/she will be usually expected to disclose any relevant document, whether beneficial or detrimental to his/her case, before a common law tribunal;
- As counsel, the relevant ethical rules may be very different: the Solicitors' and Barristers' duty not to mislead the court has no real equivalent in a majority of civil jurisdictions;
- The past few years have seen the rise of somehow "hybrid" courts, offering a blend of common law and civil law features: the Dubai International Financial Centre (DIFC) Courts, the Dubai World Tribunal, the Qatar International Court and Dispute Resolution Center (QICDRC), the Courts of Abu Dhabi Global Market, the International Commercial Chamber of the Paris Court of Appeal, the Netherlands Commercial Court, etc.;
- International arbitration proceedings also see the implementation of rules and procedures combining common law and civil law principles.

As such, it is important for future lawyers intending to practise in an international environment to be able to anticipate, and adapt to, the differences between civil law and common law dispute resolution.

B. Contents

The Module will be built around a Case Study (i.e., a factual scenario described in a booklet containing several appendices, including the contract at the origin of the dispute, the correspondence exchanged between the parties, etc.). The case will be studied at different key stages, to understand how it may develop differently depending on whether it is brought before a common law or a civil law tribunal.

The key stages which the Module will focus on are as follows:

- The pre-litigation phase (detailed obligations contained in Pre-Action Protocols in common law jurisdictions vs vague - and often theoretical - obligation to seek an amicable resolution of the case in certain civil law jurisdictions);
- Initiating the proceedings (Claim Form & Particulars of Claim vs “*Assignment*”);
- Conducting the proceedings: *to disclose or not to disclose?* – the rules on evidence;
- Conducting the hearing: *words fly away?* – cross-examination;
- Appealing/challenging the judgment;
- Ethical rules applicable to solicitors / barristers and *Avocats* (professional secrecy / privilege / obligations towards the court);
- Hybrid courts: Dubai International Financial Centre (DIFC) Courts, Dubai World Tribunal, Qatar International Court & Dispute Resolution Center (QICDRC); Abu Dhabi Global Market Courts; International Commercial Chamber of the Paris Court of Appeal, Netherlands Commercial Court, etc.;
- International arbitration: a dispute resolution mechanism at the juncture of civil law and common law?

C. Aims

In addition to its primary purpose, i.e., strengthening the students' knowledge on comparative dispute resolution, the overall purpose/aim of the Module will be to empower them for their future studies and careers by strengthening:

- Their analytical skills (i.e., ability to conduct a reasoned and structured analysis of a matter, ability to adopt a problem-solving approach, etc.);
- Their presentation/communication skills (i.e., ability to speak in public and engage with an audience; ability to make an effective use of IT/technology to deliver an impactful presentation);
- Their drafting skills (i.e., ability to express their analysis/opinion in a precise, structured and concise way); and
- Their ability to “stand up” and take ownership (i.e., ability to conduct a task in an autonomous way).

II. Prerequisites

Some legal background.

III. Learning outcomes

By the end of this Module, students will be able to:

Knowledge

1. Demonstrate a broad and in-depth understanding of main convergences and differences between common law and civil law dispute resolution;
2. Demonstrate a foundational understanding of the most important features of both “systems”

Skills

3. Analytical skills: compare, synthesise, evaluate and apply concepts and ideas to solve professional problems
4. Communication skills: clearly and coherently evaluate and synthesise ideas in an effective academic and professional style for a range of audiences orally
5. Drafting skills: clearly and coherently evaluate and structure ideas in an effective academic and professional style for a range of audiences in writing

Values

6. Proactive/interactive approach: ability to identify, anticipate and address issues early on and in a collegiate manner (working as a team)
7. Ownership: ability to “stand up” and take ownership of a task, by conducting/”project managing” the task in an autonomous way

IV. Assignments and grading

A. Formative Assessment

Formative assessments are ones that do not count towards the Final Module Grade but will provide students with developmental feedback. Students will be formatively assessed in class through class activities and through homework. Students will receive oral and written feedback on formative assessment activities designed to train key skills for the summative assessment.

Formative feedback will be given throughout the Module in classroom activities. In addition, there will be specific mechanisms in place at strategic moments, including on (i) learning activities and preparing students for their Mid-Term Exam, (ii) oral and written feedback on the students' oral presentations, and (iii) peer assessment activities.

B. Summative Assessment

Summative assessments count towards the Final Module Grade. There will be:

1. *A Continuous Assessment Grade; and*
2. *A Final Exam Grade,*

*accounting each for **50%** of the Final Module Grade, as further detailed below.*

1. Continuous Assessment Grade (50% of the Final Module Grade)

The Continuous Assessment Grade consists of:

- a. An Oral Presentation Grade (**40%** of the Continuous Assessment Grade);
- b. A Mid-Term Exam Grade (**40%** of the Continuous Assessment Grade); and
- c. An In-Class Participation Grade (**20%** of the Continuous Assessment Grade).

However, alternatively, given the potential difficulty to give a formal participation grade, the Lecturer may proceed as follows, i.e., **(i)** take into account the Oral Presentation Grade, **(ii)** take into account the Mid-Term Exam Grade, and then **(iii)** withdraw or add up to **2** points on the Total thus obtained to reach the Grand Total (which is the Continuous Assessment Grade). Should the Lecturer decide to proceed that way, he will advise the students during the early stages of the semester.#

a. Oral Presentation Grade

i. Format of the Oral Presentation

The exercise is a presentation, consisting of a mock trial opposing (teams of) counsel/advocates, using the following breakdown to the extent possible:

- a **10-minute** presentation performed by a team of two counsel/advocates acting for the Claimant, *followed by*
- a **10-minute** presentation performed by another team of two counsel/advocates acting for the Defendant, *followed by*
- a **2-minute** right of reply by the Claimant's counsel/advocates, *followed by*
- a **2-minute** right of reply by the Defendant's counsel/advocates.

ii. Marking guidelines

The marking guidelines for oral presentations are as follows:

GRADE	CONTENT	STRUCTURE	LANGUAGE	DELIVERY	VISUAL AIDS (IF APPLICABLE)
16+	Thorough understanding of the relevant material and issues demonstrating insight and a good level of evaluation and analytical thought. Good range, quality, and use of sources.	Well-structured (clear sections) and signposted with smooth transitions between presenters. Time is perfectly managed and evidence of teamwork is clear.	Excellent use of written and audio-visual language. Language is used in a sophisticated, fully controlled and completely natural manner. Subject-specific terminology is utilised appropriately. Any inaccuracies are extremely rare and occur only as slips. Pronunciation is effortless to understand.	Speed, volume & fluency are well-adjusted. Body language is positive with excellent eye contact throughout. Notes used appropriately (as occasional support only), audience interaction is positive, and questions anticipated & answered appropriately. Authoritative delivery.	Well-designed, consistent throughout, and proofread for language issues. References provided accurately on final slide. Creative flourishes may be present where relevant.
14-15.5	Good understanding of the relevant material and issues with development of analytical thought.	Clear overall structure and generally well-signposted. Most transitions work well, and timing is generally appropriate.	Sound use of written and audio-visual language. Uses a wide range of simple and complex language with control, flexibility and sophistication for the most part. Subject-specific terminology is used well in general. Errors are very rare. Pronunciation is generally very clear.	Loud & fluent throughout with very few lapses and/or repetition. Eye contact is generally well-maintained. Interaction and questions are handled well for the most part.	Clear, consistent slides with almost no errors. References provided with only very minor issues.
12-13.5	General knowledge demonstrated but the work is mainly descriptive.	Structure is inconsistent at times with coherence sometimes being lost. Transitions are not always evident and timing is occasionally out.	Satisfactory use of written and audio-visual language. Uses a range of simple and complex language usually with control and flexibility. Some subject-specific terminology is used. Occasional errors may be present but do not usually impede communication. Pronunciation issues occur at times.	Generally fluent, but some hesitations are evident. Eye contact is inconsistent. Limited audience interaction and basic answers to questions.	Effective but basic slides with some errors, including with the reference list.
10-11.5	Some knowledge but does not focus on the question or is very limited. Descriptive work with little recognisable analysis.	Minimal structure and signposting apparent. Occasionally hard to follow. Evidence of practice is very limited. Timing is poor.	Disorganised use of written and audio-visual language. Limited range of complex language with variable degrees of control. Errors may sometimes impede communication. Pronunciation issues feature regularly.	Inadequate communication with the audience. Hesitations are frequent, body language is negative, and eye contact is fleeting. Questions are treated as an afterthought.	Too much or too little text on inconsistent slides. Numerous errors.
0-9.5	Very little knowledge. Lacks focus, with no recognisable analysis.	Lacks cohesion throughout. Very hard to follow. Timing does not appear to have been considered.	Very poor use of written and audio-visual language. Mainly simple language. Errors are very noticeable and sometimes impede communication. Pronunciation issues feature very regularly.	Poor communication with the audience, including reading notes throughout and poor timing. Difficult to understand/follow.	Inappropriate in all areas with scant attention paid to any details.

Feedback will be provided orally to each of the students at the end of each oral presentation (and confirmed in writing at the end of the semester when providing each student with their grades).

b. Mid-Term Exam Grade

Students will be asked to complete a **1.5** hour two-part Mid-Term Exam in writing. #

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- The first part of the Mid-Term Exam will consist of one or several case studies. This will be based on a scenario prepared by the Lecturer: e.g., a client attending to a lawyer's offices, explaining his/her situation/issue and asking for the lawyer's advice. The students' task will consist of drafting their legal advice to the client. #

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- The second part of the Mid-Term Exam will consist of "*questions de cours*" (or equivalent), based on what will have been studied in class. #

A marked version of every copy will be provided to the students upon completion of the Mid-Term Exam.

As an alternative to the above, at the Lecturer's choice (depending on logistical constraints), the Mid-Term Exam may take the form of an Oral Exam based on the following guidelines:

- The Oral Exam is organised via Teams (or Zoom).
- It is a one-to-one interview with the Examiner/Lecturer.
- At the beginning of the Oral Exam, the student is assigned a topic, in relation to which he/she is asked to prepare a short oral presentation.
- He/she is granted a few minutes on his/her own to prepare for the presentation.
- At the end of the preparation time, the Oral Exam starts with the presentation.
- The presentation is expected to last for a few minutes (c. **7** minutes).
- At the end of the presentation, a short interactive discussion / Q&A session takes place with the Examiner/Lecturer.

The scope of the Mid-Term Exam covers any item discussed until the date of such Exam.

c. In-Class Participation Grade

There is also a participation grade taking into account the students' ability to participate in class and to meet deadlines.

As mentioned above, as an alternative, given the potential difficulty to give a formal participation grade, the Lecturer may proceed as follows, i.e. **(i)** take into account the Oral Presentation Grade, **(ii)** take into account the Mid-Term Exam Grade, and then **(iii)** withdraw or add up to **2** points on the Total thus obtained to reach the Grand Total (which is the Continuous Assessment Grade). Should the Lecturer decide to proceed that way, he will advise the students during the early stages of the semester. #

2. Final Exam Grade (50% of the Final Module Grade)

The Final Exam accounts for **50%** of the Final Module Grade. Students are required to sit a two-hour exam in writing.

Similarly to the Mid-Term Exam: #

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- The first part will consist of several case studies. This will be based on a scenario prepared by a Lecturer: e.g., a client attending to a lawyer's offices, explaining his/her situation/issue and asking for the lawyer's advice. The students' task will consist of drafting their legal advice to the client. #
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- The second part will consist of "*questions de cours*" (or equivalent), based on what will have been studied in class. #

Should it not be possible to organise the Final Exam in person due to Covid-19 related restrictions (or otherwise), an Oral Exam will be organised, based on the following guidelines:

- The Oral Exam will be organised via Teams (or Zoom).
- It will be a one-to-one interview with the Examiner.
- At the beginning of the Oral Exam, the student will be assigned a topic, in relation to which he/she will be asked to prepare a short oral presentation.
- He/she will be granted **10** minutes on his/her own to prepare for the presentation.
- At the end of the preparation time, the Oral Exam will start. It will last for approximately **10** minutes.
- At the end of the presentation, a short interactive discussion will take place with the Examiner.

3. Further information

The passing grade for a course is 10/20.

Class participation: Active class participation – this is what makes classes lively and instructive. Come on time and prepared. Class participation is based on quality of comments, not quantity.

Exam policy: In the Exams, students will not be allowed to bring any document (except if allowed by the Lecturer). Unexcused absences from Exams or failure to submit cases will result in zero grades in the calculation of numerical averages. Exams are collected at the end of examination periods.

V. Course structure

Session	Topic
1	Introduction (brief comparison between the legal systems)
2	Pre-action requirements
3	Initiating & conducting the proceedings
4	Ethics
5	Legal privilege / professional secrecy
6	Mid-Term Exam
7	Recourses
8	Hybrid Courts
9	Arbitration
10	Competition between legal markets
11	Final Exam

VI. Bibliography

The Bibliography will be detailed in the Course Outlines/Materials circulated to the class for each session.

VII. Lecturer's biography

Jean-François Le Gal is qualified both as a Barrister (England & Wales) and an *Avocat au Barreau de Paris*. He specialises in international arbitration and multi-jurisdictional proceedings.

He acts as counsel/advocate in English and/or French in international arbitration proceedings, and also sits as an arbitrator: he has acted as Chairman of an Arbitral Tribunal, Sole Arbitrator and Co-Arbitrator.

He has acted both before common law and civil law courts and tribunals. He has experience in handling cases before the High Court (England & Wales) and the Dubai International Financial Centre Courts (DIFC Courts), and has appeared before the Dubai World Tribunal. He has also appeared on numerous occasions as advocate in France in the scope of cross-border civil and commercial disputes (Paris Commercial Court, Paris Civil Court, Paris Court of Appeal, Versailles Court of Appeal, etc.).

He lectures in Arbitration at the Paris Bar School, and English & Comparative Contract Law at Paris-Dauphine International University (London campus). He has also lectured in Comparative & International Dispute Resolution at Paris II Panthéon-Assas University, and in French Contract Law at Paris I-Sorbonne University.

VIII. Moodle

This course will be made available on Moodle.

IX. Academic integrity

Be aware of the rules in Université Paris Dauphine about plagiarism and cheating during exams. All work turned in for this course must be your own work, or that of your own group. Working as part of a group implies that you are an active participant and fully contributed to the output produced by that group.