

KOPE

2021

Title of the Course: Legal Reasoning in the Common-Law World.

Instructor: Professor Dr Pierre Legrand (<pierre_legrand@mac.com>).

Summary of the Course: This course offers an introduction to legal reasoning in the common-law world. In effect, the course addresses two basic questions: how do common-law lawyers argue, and how do common-law judges think?

Mode of Instruction: This course will take place “live” over twelve (12) hours of instruction. There will be six (6) meetings of two (2) hours each. The meetings will be in English and feature simultaneous translation in Portuguese (Brazil). Mostly, the meetings will discuss various judicial decisions (in English) from the common-law world. All reading materials can be downloaded from <www.pierre-legrand.com> at the page “KOPE (Brazil)”. You are strongly encouraged to familiarize yourselves with the readings before the meetings. However, you must not worry if you feel that you do not understand everything even after making a serious effort: the meetings are meant to assist you!

Course Outline

Session 1 (2 hours)

Title: What Is the Common Law? Where Is the Common Law?

Summary: This meeting presents the common-law world from a historical and geographical perspective.

Reading

PL, “European Legal Systems Are Not Converging”, (1996) 45 *International and Comparative Law Quarterly* 52, **pp. 64-78 only**.

Session 2 (2 hours)

Title: Is a Cruise Ship Like a Hotel or Like a Train?

Summary: This meeting illustrates the doctrine of precedent, which lies at the very heart of legal reasoning in the common-law world, by way of a famous judicial decision from the United States.

Reading

Adams v. New Jersey Steamboat Co., N.Y. Court of Appeals, 1896.

Session 3 (2 hours)

Title: Why Is a Pair of Long Underwear Like a Decomposed Snail?

Summary: This meeting offers another example illustrating the doctrine of precedent, this time from English law.

Reading

Grant v. Australian Knitting Mills, Privy Council, 1935.

Session 4 (2 hours)

Title: Did the Man Steal the Airplane?

Summary: This meeting demonstrates a famous institution characterizing the common-law world: the dissenting opinion.

Reading

McBoyle v. United States, Court of Appeals for the 10th Circuit, 1930, and Supreme Court of the United States, 1931.

Session 5 (2 hours)

Title: The Politics of the Doctrine of Precedent

Summary: This meeting further explores the doctrine of precedent, again by reference to English law, by insisting that, far from being a neutral technical tool, precedent operates as a highly political instrument. The meeting also offers another example of the dissenting opinion at work.

Reading

Fitzpatrick v. Sterling Housing Association, House of Lords, 1999.

Session 6 (2 hours)

Title: Time to Recapitulate and Ask Questions

Summary: This meeting presents the main “take-home” conclusions from the course and offers an opportunity for questions.

Reading

PL, “Alterity: About Rules, For Example”, in Peter Birks and Arianna Pretto (eds), *Themes in Comparative Law: In Honour of Bernard Rudden* (Oxford: Oxford University Press, 2002), pp. 21-33.

Note on the Reading: This text is probably more challenging than other documents on the reading list. It returns us to Session 1 as it discusses once more the common-law’s characteristic ways of reasoning. On this occasion, though, the argument focuses on one aspect only — the interaction between judicial decisions and rules — and explores this matter at greater length. This text serves as a very important warning to civil-law jurists who are invited to avoid projecting the rule-making that is familiar to them, not least through codification, onto the common-law world. For your information, Bernard Rudden was Professor of Comparative Law in the University of Oxford for twenty years from the

late 1970s to the late 1990s. Some of his colleagues and former students offered him this collection of essays shortly after his retirement.