

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet: Primerjalno pravo
Course title: Comparative Law

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Civilno in gospodarsko pravo – 2. stopnja		2	3
Civil and Business Law – 2nd degree		2	3

Vrsta predmeta / Course type

obvezni / mandatory

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Sem. vaje Tutorial	Lab. vaje Laboratory work	Teren. vaje Field work	Samost. delo Individ. work	ECTS
35	0	25	0	0	65	5

Nosilec predmeta / Lecturer:

Prof. Dr. Marko Novak

**Jeziki /
Languages:**

**Predavanja /
Lectures:** Slovenščina/Slovenian/Angleški jezik/English
Vaje / Tutorial:

Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:

Vpis v prvi letnik magistrskega programa z osvojenimi temeljnimi znanji s področja dodiplomskega izobraževanja prava. Vsaj 80 % prisotnost na predavanjih.

Prerequisites:

Enrollment in the first year of the Master's program having acquired a basic knowledge from the undergraduate legal studies. At least 80% attendance at lectures.

Vsebina:

Predmet je sestavljen iz štirih večjih vsebinskih sklopov, ki se nadalje delijo po posameznih poglavjih. Prvi del obravnava primerjalno pravo kot posebno pravno znanstveno disciplino, v drugem delu se posvetimo evropski-kontinentalni ali rimsko-germanski pravni družini. Tretji del je namenjen anglo-ameriški pravni družini *common law*, četrti del pa obravnava posebnosti pravnih redov, ki ne spadajo v prej omenjeni, sicer prevladujoči pravni družini. Razpravljamo tudi o feonomu

Content (Syllabus outline):

The course is composed of four parts that are further divided in specific sections. The first part deals with comparative law as a special field of legal science, while in the second part the legal family of European Continental law is depicted. The third part deals with the Anglo-American system of common law, while in the fourth part the specific features of legal systems that do not belong to the above-mentioned predominant legal families, are discussed. We also discuss the phenomenon of a mixed legal

mešanega Sistema.

Pri prvem, splošnem delu o primerjalnem pravu se študenti seznanijo s pojmom in mestom primerjalnega prava v okviru preučevanja prava, spoznajo pa tudi sorodnosti in razlike glede na druge discipline, ki so primerjalnemu pravu blizu, kot so: pravna zgodovina, pravna sociologija, pravna filozofija, mednarodno javno in zasebno pravo. Obravnavamo tudi zgodovino primerjalnega prava kot vede, metode raziskovanja v okviru primerjalnega prava kot tudi splošni očit temeljnih razdelitev in njihovih značilnosti v okviru tega predmeta.

Drugi del del se ukvarja z rimsko-germansko pravno družino. Najprej si pogledamo zgodovinski razvoj tega prava na evropski celini ter njegovo širitev po svetu. Zatem se posvetimo podskupinam te pravne družine: zahodni, srednje-evropski, nordijski, latinsko-ameriški ter post-socialistični. Obravnavamo tudi splošne strukturne značilnosti tega prava z najpomembnejšimi podobnostmi ter različnostmi glede posameznih pravni institutov.

Tretji del obravnava anglo-ameriško pravno družino *common law*. Tu si najprej ogledamo zgodovinski razvoj v Angliji ter širitev tega prava v bivše angleške kolonije. Zatem obravnavamo pojavnost tega prava v Angliji, kasneje pa tudi v ZDA, ki se od angleških izvirov najbolj razlikuje. Obravnavamo tudi temeljne strukturne elemente te vrste prava, kot tudi njegovo pojavnost v drugih delih sveta, predvsem v večjih država, kot so Avstralija, Nova Zelandija, Kanada, Indija in JAR.

Četrty in zadnji del obravnava posebnosti prava, ki ne spadajo v gornji prevladujoči pravni družini. Najprej se ukvarjamo s posebnostmi Daljnega vzhoda oziroma s pravno-kulturnimi posebnostmi teh prav v razmerju do v teh sistemih večinoma uveljavljenega evropskega kontinentalnega

system.

The first general part on comparative law presents to the students the concept and place of comparative law in the structure of legal science, including the similarities and differences with respect to other disciplines being close to comparative law, such as: legal history, legal sociology, legal philosophy, international public and private law. We also discuss the history of comparative law, the research methods of comparative, and well as deal with general divisions and their basic characteristics within the course.

The second part deals with the Romano-Germanic legal family. We initially discuss the historical development of this law on the European continent, and then its spreading around the world. Then we deal with the sub-groups of this law: Western, Central European, Nordic, Latin-American, and Post-Socialist. We also discuss the general structural elements of this law, including the most important similarities and differences between their major legal institutions.

The third part deals with Anglo-American common law. At the beginning we discuss the historical development in England, and then the spreading of this law to ex-colonies. Then we deal with the present common law in the UK, and the USA, which differentiates the most from the English origins. We also discuss the basic structural elements of this law, as well as its appearances in other parts of the world, in larger countries such as Australia, New Zealand, Canada, India, and the RSA.

The fourth and final part deals with the specificities of law that do not belong to the above-discussed predominant legal families. We first discuss the special features of legal culture in the Far East that have generally accepted the European Continental law. Then we deal with the legal system of India, particularly Hindu law.

prava. Zatem obravnavamo pravni red Indije glede na posebnosti hindujskega prava. Sledi razprava o temeljnih značilnosti islamskega verskega, tj. šeriatskega prava. Zaključujemo pa z obravnavo pravnih posebnosti v Afriki, ki se v glavnem nanašajo na pravne običaje.

What follows is the discussion of the general characteristic of Islamic religious law, i.e. Sharia law. We conclude dealing with the legal systems of Africa, focusing predominantly on legal customs.

Temeljni literatura in viri / Readings:

Temeljna / Basic:

- R. David, G. Grasmann, Uvod v velike sodobne pravne sisteme (prva in druga knjiga), Cankarjeva založba, Ljubljana 1998-1999.
- K. Zweigert, H. Koetz, An Introduction to Comparative Law, Oxford University Press, Oxford 1998;
- M. Reimann, R Zimmerman (eds.), The Oxford Handbook of Comparative Law, Oxford University Press, Oxford 2008;

Dopolnilna / Supplemental:

- A. Uzelac, Survival of the Third Legal Tradition?, 49 Supreme Court Law Review 2010;
- R. Manko, Survival of the Socialist Legal Tradition? A Polish Perspective, 4 Comparative Law Review 2012;
- R. Manko, Weeds in the Gardens of Justice? The Survival of Hyperpositivism in Polish Legal Culture as a Symptom/Sinthome, Polemos – Journal of Law, Literature and Culture, 7.2 2013;
- A. Watson, Legal Transplants: An Approach to Comparative Law, University of Georgia Press, 1993;
- M. Bussani, U. Mattei (eds.), The Cambridge Companion to Comparative Law, Cambridge University Press, Cambridge 2012.

Cilji in kompetence:

Študenti/ke bodo pridobili naslednje predmetno specifične kompetence:

- sposobnost za prepoznavanje razvoja in temeljev na področju primerjalnega prava;
- sposobnost za reševanje konkretnih strokovnih problemov z uporabo znanstvenih metod in postopkov s področja primerjalnega prava;
- sposobnost za razumevanje novosti v okviru primerjalnega prava in v skladu z njenimi temeljnimi paradigmi, sposobnost za uporabo analitičnih metod in na tej podlagi pravnih strategij ob stalni uporabi strokovne in moralno etične kritične presoje rešitev;

Objectives and competences:

The students will acquire the following abilities specific to this course:

- the ability to recognize foundations and developments in the area of comparative law;
- the ability to solve specific problems by means of scientific methods and procedures developed by comparative law;
- the ability to understand new developments from within comparative law and, following its basic paradigms, the ability to use analytical methods and based on them legal strategies including the permanent use of professional and morally-ethical critical

- razumevanje in uporaba kritične analize in razvoja teorij ter njihova uporaba v reševanju konkretnih strokovnih problemov na področju primerjalnega prava;
- sposobnost za uporabo sodobne informacijsko-komunikacije tehnologije in informacijskih sistemov za potrebe preučevanja primerjalnega prava.

Študenti/ke bodo pridobili naslednje splošne kompetence:

- sposobnost analize, sinteze in predvidevanja rešitev ter posledic na področju primerjalnega prava;
- obvladovanje raziskovalnih metod, postopkov in procesov s področja primerjalnega prava ter razvoj kritične in samokritične presoje na tem področju;
- sposobnost uporabe znanj s področja primerjalnega prava,
- avtonomnost pri strokovnem delu in sprejemanju poslovnih odločitev;
- razvoj komunikacijskih sposobnosti in spretnosti s poudarkom na komunikaciji v mednarodnem okolju;
- etična refleksija in zavezanost profesionalni etiki v poslovnem okolju;
- kolegialnost do sodelavcev in lojalnost do delodajalcev ter sodelavcev, delo v skupini ter strpno sprejemanje in upoštevanje tvornih kritik in pripomb.

evaluation of solutions;

- the understanding and use of critical analysis and theories developed, as well as their use in solving specific professional problems in the area of comparative law;
- the ability to use modern ICT for the study of comparative law.

The students will acquire the following general abilities:

- the ability to analyze, synthesize, and envisage solutions and consequences in the area of comparative law;
- the mastering of research methods, procedures, and processes from within comparative law, and development of critical and self-critical evaluation in this area of law;
- the ability to use knowledge from the area of comparative law;
- autonomy in professional work and taking decisions;
- the development of communication skills with the emphasis of communication in international environment;
- collegiality with respect to co-workers and loyalty to employers and co-workers; group work as well as tolerance and consideration of constructive criticism.

Predvideni študijski rezultati:

Znanje in razumevanje:

Študent/študentka:

- Seznanitev študentov s temeljnimi pojmi in razdelitvami v okviru primerjalnega prava;
- osvojitve temeljnega poznavanja problemov in rešitev v okviru primerjalnega prava;
- razvije zanimanje in znanje o primerjalnem pravu;
- razvije kritično razumevanje primerjalnega prava;
- zmožen/na je kritične presoje ter analize in

Intended learning outcomes:

Knowledge and understanding:

Student / student:

- To introduce students to the fundamental concepts and classifications within comparative law;
- acquiring the fundamental knowledge of problems and solutions within comparative law;
- aims to develop the students' interest in, and knowledge of, comparative law;
- develops a critical understanding of comparative law;

interpretacije dogodkov in usmeritev iz primerjalnega prava;

- je sposoben posamezno državo uvrstiti v ustrezno pravno družino, podskupino ter pozna temeljne značilnosti njenega pravnega sistema;
- je sposoben primerjave istovrstnih pravnih institutov v različnih pravnih sistemih kot tudi ustrezne različne pravne rešitve za istovrstni dejanski problem;
- sposoben kritičnega presojati, analizirati in razlagati dogodke in politike, povezane s primerjalnim pravom;
- pozna in uporablja osnovne metodološke pristope pri raziskovanju vprašanj primerjalnega prava.

- is able to critically evaluate and analyse events and guidelines relevant to comparative law;
- is able to place a specific country within a relevant legal family and subgroup, and knows the basic characteristics of its legal system;
- is able to compare same legal institutions in different legal systems, as well as finding corresponding different legal institutions for a same factual problem;
- is able to critical judge, analyse and interpret events and policies related to comparative law;
- to know and use basic methodological approaches to comparative law.

Metode poučevanja in učenja:

Oblike dela:

- Frontalna oblika poučevanja
- Delo v manjših skupinah oz. v dvojicah
- Samostojno delo študentov
- e-učenje
- drugo (vpišite) _____

Metode (načini) dela:

- Razlaga
- Razgovor/ diskusija/debata
- Delo z besedilom
- Proučevanje primera
- Igra vlog
- Druge vrste nastopov študentov
- Reševanje nalog
- Študijski obiski podjetij ipd.)
- Vključevanje gostov iz prakse
- Udeležba na okrogli mizi, na konferenci

Learning and teaching methods:

Types of learning/teaching:

- Frontal teaching
- Work in smaller groups or pair work
- Independent students work
- e-learning
- other _____

Teaching methods:

- Explanation
- Conversation/discussion/debate
- Work with texts
- Case studies
- Role-play
- Different presentation
- Solving exercises
- Field work (e.g. company visits)
- Inviting guests from companies
- Attending round table and conference

Načini ocenjevanja:	Delež (v %) / Weight (in %)	Assessment:
Način (pisni izpit, ustno izpraševanje, naloge, projekt)		Type (examination, oral, coursework, project):
Pisni izpit.	100%	Written examination.

Reference nosilca / Lecturer's references:

Marko Novak je redni profesor za filozofijo in teorijo prava ter ustavno pravo na Evropski pravni

fakulteti in Fakulteti za državne in evropske študije, obe Nova Univerza. Na Pravni fakulteti Univerze v Ljubljani je diplomiral leta 1992. Magistriral je leta 1994 na *Georgetown University Law Center* v Washingtonu, D. C., ZDA, doktoriral pa na Pravni fakulteti Univerze v Ljubljani leta 2001. Bil je predsednik Sodnega sveta Republike Slovenije in član izvršnega odbora Evropske mreže sodnih svetov (*ENCJ*).

Marko Novak is Full Professor of Legal Philosophy, Legal Theory, and Constitutional Law at the European Faculty of Law and Faculty of Government and European Studies, both New University. He graduated from the University of Ljubljana in 1992, completed his LL.M. at the Georgetown University Law School in the USA in 1994, and his doctorate in law at the University of Ljubljana in 2001. He has served as President of the Judicial Council of the Republic of Slovenia and member of the Executive Board of the European Network of Councils for the Judiciary (*ENCJ*).