Les Notions de la Corpo

Chers étudiants, ça y est, le semestre touche à sa fin. Mais pour bien profiter de l'été et éviter les rattrapages, la case des partiels semble inévitable !

Depuis maintenant 85 ans la Corpo Assas accompagne les étudiants dans tous les domaines de la vie universitaire, et pour la première fois cette année vous propose des fiches notions, ces fiches sont écrites par nos membres dans le but de favoriser l'entraide étudiants ainsi que de vous aider dans l'apprentissage de certaines notions clés d'une matière, sans reprendre le cours du professeur.

Effectivement, ces fiches sont là pour vous orienter, elles sont faites par des étudiants et ne sont en aucun cas un substitut à ce qui a été enseigné en TD ou en cours car elles ne se basent que sur les recherches et l'apprentissage personnelles de nos membres.

Si jamais il vous venait des questions, n'hésitez pas à nous envoyer un message sur la page Facebook Corpo Assas ou à contacter Esther Monnier et Valentine Collin.

➢ Comment valider votre année ?

Pour les L1 :

Il faut tout d'abord rappeler que toutes vos notes se compensent. Pour valider de la manière la plus simple votre année, il vous faut valider vos blocs de matières fondamentales mais aussi vos blocs de matières complémentaires. Cependant, le calcul peut s'avérer plus complexe...

Chaque fin de semestre est marquée par des examens qui constituent l'épine dorsale de la validation de votre année. Bon nombre d'autres possibilités vous sont proposées pour engranger un maximum de points et limiter ainsi l'impact de vos partiels. Chacun de vos chargés de TD va vous attribuer une note sur 20 à l'issue du semestre. Vos TD de matières fondamentales comptent donc autant que l'examen écrit, lui aussi noté sur 20. Cet examen s'effectue en 3h et nécessite un exercice de rédaction. Sur un semestre, une matière fondamentale peut donc vous rapporter jusqu'à 40 points. Seuls 20 points sont nécessaires à la validation de la matière. Pour valider votre bloc de fondamentales, il vous faut donc obtenir 40 points en additionnant vos notes de TD et vos notes aux partiels. Si toutefois vous

n’obtenez pas ces 40 points, vous repasserez en septembre, lors de la session de rattrapage, la ou les matières que vous n’auriez pas validée(s).

Attention : le passage par septembre annule votre note de TD obtenue dansla matière.

Pour les L2 :

Le principe est similaire, à la différence qu’il y a plus de matières fondamentales et plus de matières complémentaires.

Conclusion simple : travailler toutes les matières un minimum en mettant l’accent sur les TD et les matières fondamentales (les plus gros coefficients) vous permettra de maximiser vos chances de valider votre année du premier coup et ainsi éviter l’écueil des rattrapages de septembre.

➢ Système de compensation et session de rattrapage

Si, au sein même des unités d’enseignement, les matières se compensent, les blocs peuvent aussi se compenser entre eux à la fin de l’année. Ainsi, si vous obtenez une moyenne générale sur l’année de 10/20, votre passage est assuré.

En cas d’échec lors des sessions de janvier et de juin, une seconde chance vous est offerte plus tard dans l’année.

Attention, contrairement aux idées reçues, les rattrapages ne sont pas plus faciles, ils sont connus pour être notés plus sévèrement. Toutes les matières des blocs non validés où vous n’avez pas eu la moyenne sont à repasser. S’il s’agit d’une matière à TD, la note de TD est annulée (même si vous avez été défaillant), de sorte que la note obtenue aux rattrapages compte double (8/20 revient à 16/40). Les points d'avance acquis lors de l’année (points au-dessus de la moyenne lors de la validation d'un bloc) sont valables après les rattrapages et permettent donc la compensation finale comme décrite précédemment.

A noter que le jury peut vous accorder quelques points pour l’obtention de votre année, notamment dans le cas d’un étudiant sérieux en TD... A bon entendeur !

Pour les L1, le passage en deuxième année peut aussi se faire en conditionnel, pour cela il vous faut valider les deux unités d’enseignement fondamental et une unité d’enseignement complémentaire tout en sachant que l’autre unité complémentaire sera à repasser en L2.

HISTORY OF THE EUROPEAN LEGAL SYSTEM

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a) Heroes
b) Philosophers
B- Several major political and legal concepts

- **II. The Roman legacy**

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Chapter 1 - The antique foundations :

- **I. The greek legacy**:

It was admired for its human contribution - philosophy. They invented many concepts, also some legal concept.

A- Several major characters.

a) Heroes

- Pericles : 5century « the golden age of democracy », he was a general of Athens and also an orator, he lead the army during a famous war between Athens and Sparta.
- Alexander the Great was the son of Phillipe the second of Macedonia he was basically its king but he conquered on of the largest empire in history, as a teenager he was taught by Aristotle about medicine philosophy but also about religion art and moral, he received a whole education from him.

b) Philosophers

- Socrates, he did not right anything, what we know about him is thanks to his students (Plato for example). His death was striking, he was condemn to death by his own city Athens after being accused impiety because he refused to go to the public worship. His condamnation and his death make him in a way the innovator of legalism -
- Plato (428-348) wrote Crito, Crito was a good wealthy friend of Socrates, Plato wrote their dialogue referring to Socrate's opinions and ideas. He wrote about Socrates state of mind about the law and judges which were the very first structure of the city. Plato claimed that refused the section will be an act of rebellion, unjustified rebellion.
- Aristotle (384-322) was a student of Plato and then the teacher of Alexander. He left a deep mark on any philosophers of his time but also on medieval scholars in Europe and in Asia.

Plato and Aristotle = the funding fathers of two different philosophical tradition.

B- Several major political and legal concepts

Those concepts are important because we have kept in our modern languages many words borrowed from ancient Greek notions- politics (from polis which means city), also democracy (from demos which means people and kratos - power) we really rely on their democracy.
The notion have been developed by Aristotle he has drown distinction between two kinds of equality – the geometric equality and the arithmetic equality, to him law is framed in a relation of equality with other but it should be proportional, geometric.

- **II. The Roman legacy** :

Roman law has played a determining role in the formation of many legal systems and it has been a crucial element in the formation of civil law tradition. Civil law = jus civil = law of the citizens as defined by the romans , based on roman law.

A- Overview of the roman political history :

3 periods:
- Monarchy: 8th c BCE – 509 BCE
- Republic: 509 BCE - 31 BCE
- Empire :27 BCE - 476 CE/ 1453 CE

B - The formation of roman law

We are in the period of kingship. During this period, law was perverted with traditions and religion. The main source of law what they call the mos mairum « the way of the elders » it is the ancestral culture, it was mostly about family law. During this period, criminal law was dictated by the gods, it was named fas - it was the devine law. This was opposed to the ius -

the laws create by human beings. This notion of ius appeared at the begging of the republic, it was created by the priest who explained that it was different from the fas . Ius comes from the iuris prudentia which is the careful knowledge of the law.

C- The roman définitions of law and justice

a) Romans definitions of law and justice

Paul thinks that ius = what is fair and good. Celsius wrote that law is are boni et aequi « the art of the good and equitable ». The note of art refers to a know how, a certain expertise. The meaning of art is close to science. Cicero already recommended to make law a science.

b) Roman definition of justice

Romans were aware that law shroud be mechanically enforced but its role was to provide justice and equity, therefore the best solution is the fairest solution and not really the law dictated by the normative rule. So, the judge need to interpret it sometimes. Ulpien says that suum cuique tribuere « to give each one his due ». Justice is about receiving what is due, not more, not less. Law here creates a social balance based on proportional equality. This notion is borrowed from Aristotle and his notion of distributive justice.

Chapter 2 The formation of the civil law tradition

• I. The medieval period

A- the customary laws :

Def: it is a long established usage accepted by a population of a given territory. The authority of the customary law derives from it long existence and also from the unanimous consent of the community. Usually c l is oral it is not written, it is flexible.

B- The Royal law :

Kings started to develop they power by claiming their authority over the landlords. After the 11th century they were in competition with several landlords who often had more power than the king. His power is mostly military. An influential landlord is the one who was many vassals. The power of the king was weaker at this time. Instead of resulting into war, kings resulted to justice and to law.

C- The learned law (Roman law and Canon law) :

This denomination derives from the fact that those law were written in latin. Therefore it required specific skills. Also its content was more technical than other medieval sources of law. It required a high level of education.

II. The early modern period (16th - 18th) :

A- The resurgence of local rights :

The idea of an ius commune applicable beyond the boundaries of the various states was no longer accepted. For instance, the French jurist Charles Dumoulin in the 16th c refused the idea that the roman law would be the common legal system in France. He claimed that French laws lied in the customary rules that reflected national traditions. His intentions were to merge the various regional customary rules into one body representing one French customary law that would replace the roman law.

B- The role of legal humanism :

Second revival of roman law initiated by Andrea Alciato (16th c) taught at the university of Bourges: he trained Cujas and Doneau for instance and they spread his teaching all over continental Europe. The project of these scholars was to apply the recent improvements in

philosophy, literature, theology and history to legal trends. Humanism is and intellectual trend that considered that everything was accessible to the human brain.

C- The rise of legislation :

The 16th c was marked by serious crisis and wars, a major event was the breakdown of the Christian unity with the schism between Catholics and protestants. This split meant the collapse of the medieval idea of the Christian republic, which refers to a community based on a singly political unity.

CHAPTER 3 - The formation of the common law tradition.

• I- The origins of the common law tradition :

A-The beginning of the common law :

England experienced the impregnation of a self-government and self-administration. From small unities (townships) up to large entities (shires / counties). This type of government provide a convenient Fram for the unification of the kingdom in the 10th century and the development of common law. The conquest took place in 1066 at the battle of Hasting when the duke of Normandie William the conqueror became king of England. This battle was a turning point in the history of great Britain. This because, Williams replaced the angle saxon ruling class with Norman aristocracy, it came from Normandie and from France.

B- The other components of the common law tradition :

Civil law and common law share similar basis, they were both influenced by roman law. It is assumed that roman law was ignored in medieval England but in fact it has been received in the legal sens of the word, it has been received twice just like in France. Even if the influence is less visible in the common law system it existed.

Christianity -arrived during the roman empire in great Britain and spread across the British isles but with the Saxon people, paganism resurfaced until the end if the 6th century.

The pope Gregory the great organized the conversion of England and Christian faith spread throughout the anglo saxon elite. Christianity was brought back in a way to England by the Pope. In the MA the influence of canon law with books was available to the jurists: major works on the continent:

• II- Evolution of the common law :

A - Common law scolded from royal authority :

The provisions of oxford asserted the rights of the barons to representation in the king's gov. this reform had a significant effect on common law : limited the expansion of royal jurisdiction by way of the number of available writs. After mid-13th c, writs were delivered only for similar cases as those that were already collected.

B- The rule of the precedent :

The other name of this rule is the stare decisis "to stand by decisions": stare decisis et non quieta movere = "to stand by decisions and not to disturb what is settled". It asserts the bonding effects of a decision on other cases. A precedent is a judicial decision in a court case that may serve as an authoritative example in the future similar cases.

C- Equity :

Another pillar. At the end of the 14th c, the system of the common law appeared too technical, too slow and too rigid. Several important criticisms were addressed to it: first a mistake in the choice of a relevant writ could cancel the whole proceedings.

CHAPTER 4: CIVIL LAW AND COMMON LAW TRADITIONS IN MODERN TIMES (18th - 19th)

• I. Codification in the Civil law tradition :

A- The notion of codification :

The word codification was invented and promoted by Jeremy Bentham (1748-1832), he developed it a series of letters sent to many political authorities (including Maddison and Alexander I) in these letters he instead on the benefits of a body of written law, containing all the available rules of each country. He was strongly in favor of codification, he refers to various examples of tentative for example the Danish code (1683), the Swedish code (1734), Prussian project (1749-1751).

B- The political issued of codification :

History of codification is deeply connected to political history, because it testifies to a strong process of saturation of the state, indeed the project of codification started in countries concerned with Enlighted despotism (Prussia, Austria and Russia). In these countries codification codification, submit everything to the prince, everything governed by a single law created by the prince. Codification here actually was a tool intended to bring more authority to the prince/king.

C- The French civil code and its influence :

Codification appears as a program of a massive intervention of the state. In the 18th century coficiation was analysed as seen as a tool to create a monopole of the law giver, its actually true with Napoléon, there had been several projects of codes during the revolution, but all these projects failed mainly for lack of political support. Napoléon managed to launch again the process of civil codification by associating jurist whose skills were complimentary, indeed he associated experts in old tradition and specialist of the revolution, the old laws and the new laws.

D- Codification and modernization of the law :

Breaking with the past means breaking with the social division which implied legal discrimination. One purpose of the codes was to break with those discriminations, also the aim was to break with the technicality of roman law. The idea of codification — looking forward, establish new social and political values such as freedom and equality. Codification was the frame in which major legal changes occurred with this idea of reforming the society and the law in the sense of more freedom and equality.

II. The question of codification of the Common law system :

A. The refusal of codification :

England developed its own national system of law from the 12th century onwards: the common law system.

It has restricted influence of roman and canon laws and it was based on custom and case law rather than on statue laws and legislation. In this context however the possibility of a codification of the common law was raised in the 16th c by cardinal Reginald pole (last catho archbishop of canterbury) he alleged that “a wise prince would banish this barbaric stuff and receive in its stead the civil law of the romans”: wanted a systematization inspired from roman law: he considered it was better than the archaic common law.

B. Bentham and the reforms of the common law :

a) Jeremy Bentham :

He’s the father of modern utilitarianism and he was a leading jurist. Utilitarianism is the view that the moral action is the action that produces the most “good”. This theory is a form of consequentialism: actions are assessed according to the consequences they produce. It also aims to maximize the overall good: the good of others as well as one’s own good. “Human actions should bring the greatest amount of good for the greatest number”.

b) The reforms of the common law :

Took place under the influence of Bentham ideas: a simplification of the law on utilitarian grounds. Indeed, during the 1830s, many old laws and customs that were no longer used were abolished and the. Statute laws that were retained were compiled in order. To provide legal certainty. The most important reform concerns the system of writs: instead of a limited number of legal remedies for well-defined issues, a single general writ was introduced in 1832-33.

C- The development of statute laws (19th-20th c) :

It took place in the 2nd half of the 19th c with famous jurists who supported it:
- Frederick pollock (1845-1937)
- Frederic William Maitland (1850-1906)
- Henry Maine (1822-1888)

Between 1830 and 1860, the British colonies experienced the codification of the common law that was intended to provide a reference tool in case of litigation, in 1833, a law commission was established for India. This shaping of the common law in a simplified way had a consequence on the law of the British islands in 1866, a law commission was assessed to study the opportunity of a digest of the common law: ideas of bacon. Its purpose was to review all the laws in an effort to simplify and modernize the law.

However, only several digests were drafted by the commission, dealing with the law of evidence, criminal law, partnership law, bill of exchange and law of sale: basis of statute laws in the late 19th c.