

## 关于《中美侵权法比较研究》课程介绍

### 授课教授简介：

George W.Conk，教授，1974 年在美国罗格斯大学法学院获得法博士学院（JD），2002 年起在美国福特汉姆大学法学院工作至今，曾在华东政法大学、华中科技大学、北京交通大学做访问学者，主要从事侵权法、知识产权法、商法等等的教学和科研工作，曾在北京交通大学法学院进行过为期两周的美国侵权法全英文教学，发表侵权法、知识产权法等领域的论文近 40 篇，曾在权威期刊《耶鲁法学期刊》发表论文，出版专著和合著多部，是美国法律学会会员及新泽西州最高法院顾问，仲裁员。

### 课程简介：

中美侵权法比较研究以比较法为基本工具，对中国和美国侵权法的历史、基本原理、原则和规则进行研读，对中美侵权法中的经典案例进行比较和探讨，对两国侵权法的发展趋向做进一步预测和评判。本课程采用的教学方法是理论分析与案例研讨相结合的方法，学生在课前须按照教学大纲列出的问题进行相关预习。

**Name of the Subject:** A Comparative Study on Tort Law between China and America

**Nature of the Subject:** Optional Course for the Whole School

**Class Hours:** 36

**Credit:** 2 scores

**Premise Course:** Civil Law

**Realm of Students:** All Students

**Contents are as follows:**

**1. The Development of Tort in China and the US**

I. The General Introduction of the Tort

II. The Development of Tort Law in the US

III. The Development of Tort Law in China

IV. The Main Differences of Tort Law between China and US

Discuss Question:

Why did the tort of US take the category form instead of the general provision form?

**2. Strict Liability of Tort in China and the US**

I. The Source of Strict Liability

II. The Justifications of Strict Liability

III. The different Types of Strict Liability

Discuss Question:

Think about the difference between the hazardous liability and strict liability.

**3. The Elements of Tort Liability in China and the US**

I. The Elements to Constitute Tort Liability in China

## II. The Elements to Constitute Negligent Liability in the US

Discussion Question:

Without the classification of intentional tort and negligence, the liability of tort is severer or not?

### **4. Intentional Torts in the US**

I. The Source of Intentional Torts

II. The Fate of Intentional Torts and The third Restatement of Tort in the US

Discussion Question:

Whether there is a general provision in intentional tort in the US?

### **5. Personal Rights in China and the US**

I. The Debate on Personal Right Volume of China's Civil Code

II. Identify the Counterpart of Personal Rights in China and the US

III. Defamation and Privacy in the US

Discussion Question:

How to handle the dispute arising from the infringement of personal rights in the US?

### **6. Sexual Harassment and Employment Discrimination in China and the US**

I. The Sexual Harassment Legislation in China

II. The Sexual Harassment Judicial Practice in the US

Discussion Question:

How to confirm the conduct as sexual harassment?

## **7. Products Liability in China and the US**

I. Negligence or Strict Liability in Products Liability

II. Typical cases of Products Liability in China and the US

Discussion Question:

Why do most of the countries around the world choose strict liability as the theory basis for compensation?

## **8. Network Torts in China and the US**

I. New Development of Network Torts in China

II. Judicial Practice of Network Torts in the US

Discussion Question:

Could you tell the difference between the general tort and network tort?

## **9. Emotional Distress in China and the US**

I. The Difference of Emotional Distress in China and the US

II. Judicial Practice of Emotional Distress in the US

Discussion Question:

Why is it not easy to get high amount of emotional distress compensation?

## **The Goal of this Subject**

1. Learn to analyze the contents in tort law by using comparative

method

2. Learn the differences of tort law between China and the US

3. Learn how to handle a dispute in tort by using the knowledge from the class

### **Process of the Subject**

No.	Topics	Class Hours
1	<b>The Development of Tort in China and the US</b>	4
2	<b>Strict Liability of Tort in China and the US</b>	3
3	<b>The Elements of Tort Liability in China and the US</b>	6
4	<b>Intentional Torts in the US</b>	3
5	<b>Personal Rights in China and the US</b>	3
6	<b>Sexual Harassment and Employment Discrimination in China and the US</b>	3
7	<b>Products Liability in China and the US</b>	4
8	<b>Network Torts in China and the US</b>	3
9	<b>Emotional Distress in China and the US</b>	3

## **The Way to Teach in Class**

Teaching, Discussion and Case Analysis

## **Form of the Test**

Case Analysis

## **Textbooks**

1. 王军, 高建学:《美国侵权法》(英美法案例精选系列英文版), 对外经济贸易大学出版社 2007 年版;

2. 【美】文森特·R.约翰逊:《美国侵权法》, 赵秀文译, 中国人民大学出版社 2017 年版。

3. Lixin Yang, Tort Liability Law of China, Jan Sramek Verlag, 2018.