# LLM in Common Law Theory and Practice

**Seminar series:** Private Law Theory in the Common Law: Method or Madness?

**Seminar Leaders:** Jeevan Hariharan and Tony Zhou

**Description of seminar series:**

This series of seminars unpacks the way that common lawyers approach the task of theorising private law. Private law, the part of the law which governs relationships between individuals (spanning areas such as tort, contract and property), is central to all common law systems. But there is strong disagreement over how best to explain and justify not only different aspects of private law but private law as a whole. After a brief overview of the dominant views in contemporary private law theory, this seminar series seeks to engage with deeper questions about the task of theorising private law. We will consider to what extent it is helpful or even possible to provide a grand or unifying theory of private law or the areas of law that comprise it. And we will think more broadly about whether common lawyers have the right tools to answer the fundamental questions about private law which they are asking.

**The Seminars:**

*Note that the below is a rough split only. We envisage that the content for the first seminar may be a little shorter than a full seminar, whereas the content of the second seminar will be longer.*

**Seminar 1**: The Lay of the Private Law Theory Land

An introduction to private law theory in the common law world.

**Seminar 2**: Dissecting Private Law Theory—Madness in the Method?

How do common lawyers approach private law theory? Part 1: Interrogating the justificatory enterprise and the idea of a ‘grand theory’

**Seminar 3**: Dissecting Private Law Theory—Method in the Madness?

How do common lawyers approach private law theory? Part 2: External and critical perspectives on methodology

**Indicative reading list:**

*This is a short sample of readings which will form part of the seminar series:*

* Steve Hedley, ‘Private Law Theory: The State of the Art’ (2021), available at: <https://papers.ssrn.com/abstract=3917777>
* Felipe Jiménez, ‘Justifying Private Law’ forthcoming in Paul Miller and John Oberdiek (eds), *Oxford Studies in Private Law Theory, Vol. II*, available at <https://papers.ssrn.com/abstract=3825306>
* Scott Hershovitz, ‘The Search for a Grand Unified Theory of Tort Law (Review of Private Wrongs by Arthur Ripstein)’ (2017) 130 Harvard Law Review 942.
* James Goudkamp and John Murphy, ‘The Failure of Universal Theories of Tort Law’ (2015) 21 Legal Theory 47.
* Nathan B Oman, ‘The Temptation of Cosmic Private Law Theory’ (2021) 66 The American Journal of Jurisprudence 395
* Sarah E Hamill, ‘Review of S. Degeling, M. Crawford and N. Tiverios (eds), Justifying Private Rights’ (2022) 85 Modern Law Review 833.
* Paul B Miller and Jeffrey A Pojanowski, ‘The Internal Point of View in Private Law’ (2022) The American Journal of Jurisprudence, advance access copy available at: <https://doi.org/10.1093/ajj/auac008>
* ‘Theoretical frames’ in Martha Chamallas and Jennifer B Wriggins, *The Measure of Injury: Race, Gender, and Tort Law* (NYU Press 2010).
* Lucinda M Finley and Martha Chamallas, ‘Introduction’ in Lucinda M Finley and Martha Chamallas (eds), *Feminist Judgments: Rewritten Tort Opinions* (Cambridge University Press 2020).

**Broad learning aims and objectives**

* discuss at a general level how private law operates in common law jurisdictions, by analysing fundamental questions about the nature and purpose of different parts of private law, particularly tort
* discuss the prominent approaches to private law theory in the common law
* discuss the common lawyer’s motivation for private law theorising
* discuss and critically evaluate the impact of private law theorising on the common law
* discuss and critically evaluate the enterprise of private law theorising, by interrogating the prominent methodologies that theorists use and assessing whether those methodologies are fit for purpose
* discuss and critically evaluate alternative methodologies for private law theorising