Comparative law as an academic discipline

Comparative law is an empty term; this branch of law doesn't not exist in the sense that there are no rule belonging to the field of comparative law which can make this subject a whole distinct branch of law-> Rechtsvergleichung.
There is a discussion whether comparative law can be defined as a method or a technique and whether it is worth to be studied or not. Others think that CL can be defined as a science, however this theory is not fully supported.
E. Lamberts holds that CL contains 3 more disciplines and makes this division:
-descriptive CL-> considers past and present systems as a whole + the rules that these systems apply for the legal relations
-comparative history of law-> linked to the cultural, social and philosophical aspect of legal system and the evolution of the legal institutions
-comparative legislation-> the common final destination of the present national doctrines as the result of the development of the law as a social science.
Another division of CL is the one of J.H. Wigmore:
-comparative nomoscopy-> description of system of law
-comparative nomothetics-> analysis of the merits of a system
-comparative nomogenetics -> development of world's legal ideas and systems.
CL is not the study of one single system, nor the elementary account of various families of systems, neither is not a matter of drawing comparisons-> when the starting point is a problem of one system, before making a comparison of law, must be made a comparison of that problem in another system (the nature of a legal problem varies from one jurisdiction to another-> in this case sociology prevails to law); when the starting point is a branch of law, it will result that in case of systems strictly related ,the difference will be meaningless, but in all the other cases the differences may be huge.
So CL is the study of the relationship on one legal systems and its rule with another legal system, however this study can be made only by studying the history of such systems and rules (in order to understand the factors which shape the changes and the differences)-> CL is about the legal development.
NB it is important the existence of a real relationship between systems (ex. Influence, borrowing rules from one system with modification-> western legal development); a second type of relationship is the inner relationship (ex. Spiritual and physical relationship-> similarity between people and developments); third type relationship is based on the belief of some scholars that all the systems have passed through the same stage of development.

The perils of comparative law
Perils of CL are attributable either to its method and to comparative law itself.
First of all, according to F.H. Lawson, comparative law is superficial-> it is impossible to know deeply and fully a branch of one system, as well as is impossible to know its history and its relationship with that of another system.
A second peril is the error of law, meant as getting the foreign language wrong-> knowledge of the law is based on very few sources and linguistic deficiencies are very frequent.
Ex. The French Words contract, domicile, juge de paix, are not the English equivalent contract, domicile and justice of peace.
A third peril is that CL lacks in being systematic (no objectivity) -> there can be a selection of the subject of study, often this selection is the result of an arbitrariness and subjective selection of the most appropriate aspects to be considered (no test will effectively demonstrate if such aspects are effectively the only appropriate ones-> does not hold on the converse since it is always possible to demonstrate that an investigation is inappropriate).
Another weakness is that sometimes two systems may have no proper relationship; in this case the conclusions will be lacking in significance-> supposing that there is a natural relationship between all the primitive legal systems (F. Pringhseim) was considered valid since the writings of H. Maine, however this consideration is plausible only if fundamental legal facts are misunderstood or misrepresented.

Ex. Saying that a lion and an ant are similar and comparable because both have six leg, are winged and warm-blooded (it's not true).
However, even though two systems that never had a relationship but still have some similarities, it cannot possible to set up a theory of general development applicable to all the unrelated society-> remember that the legal position of a proponent of a theory is simply his theory and not a proof of evidence or based on firm principles (in this case it is difficult to disprove such theory basing on abstract arguments).
A last peril is that, even when a legal fact has been proven for a certain legal system, one can easily (an erroneously) apply it to another system which had a relationship with the former.

The virtues of comparative law
The prime virtue of Cl is the understanding of the law and of the legal development that it provides-> it helps to identify the factors which favour or hamper the legal innovation and illustrate whether a rule or any other foreign solution, when transplanted from another legal system, can exist in its previous form or needs to be modified.
By the way, CL exists beside the knowledge and study of foreign systems- knowledge can be systematic or unsystematic-.
Ex. Once an evidence points out a development concerning a specific legal system, the conclusion can be supported if such development can be similarly addressed to another legal system- however it is doesn't needed a specific knowledge of the latter nor there must be a relationship between the two systems.
However, a gap in the knowledge of the primary system cannot be fulfilled by the systematic or unsystematic knowledge of the related system.

Introduction to legal transplant
Karl Renner said that private law rules can have different effect within different times in the same system-> consequently it can be true that a rule transplanted from one system to another, can operate in different ways and produce different effects in the two societies, even though it is applied in the same way in both systems.
Law has many paradoxes: on one hand law can be regarded as a sign of people's identity, so that it is possible to find differences in important details between two strictly related systems-> law is the result of the spirit of the people which create the positive law.
Ex. Scotland since her union with England has survived as a nation through her own laws and legal system.
On the other hand, there is the legal transplant- which is the moving of a rule of a system of laws from one country to another or from one people to another.
Legal transplant has been common since the earliest history-> ex. Similar provision concerning a goring ox found in the Laws of Eshnunna (near Eastern), Babylonian code of Hammurabi and in the Exodus; in these case the nature of the similarities excludes the possibility of a parallel legal development but opt for a common source.
Transplant can happen in many ways;
- a direct borrowing from one system to another
-by an intermediate system-> ex. Word "poena" (punishment) in roman law, was not a direct borrowing by the Greek but maybe borrowed by second hand from the Osco-Umbrian
-voluntary major transplant-> when an entire legal system or a large portion of it is oved to a new sphere, fall in three categories:
1. people move into a new territory where there is no comparable civilisation and takes its law with it
2. people move to a different territory where there is comparable civilisation and take its law with it
3. people accept a large part of the system of another people
-imposed reception, solicited imposition, penetration, infiltration, , crypto-reception, inoculation.