

CIVIL LAW. PROPERTY

Bachelor of Laws LLB [2504110] SEP-2023 CLP-NLL.2.S.A

Area Private and Business Law

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Degree course: SECOND

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Semester: 1º

Category: BASIC

Language: English

Professor: **ALFONSO FERNÁNDEZ-PUEBLA MUÑIZ**

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Alfonso is the national practice group head for the Simmons & Simmons's corporate and commercial department in Spain. He also leads the real estate practice of the firm in Spain and deals with all legal aspects related to real estate: investment, financing, development, construction, asset management and divestment.

Alfonso has been rendering legal services in the real estate sector since 1998. This period includes being in-house lawyer to one of Spain's largest property companies.

His practice is focused on real estate transactions for international investors, SOCIMIs (Spanish REITs) and family offices. He is also used to assisting in joint venture agreements between international investors and local players.

In recent years, his activity has been mainly related to sale and leasebacks, investment for the development of logistic and residential assets and some strategic divestments. He has also been involved in the financing of those transactions in order to be able to provide full real estate approach to financial covenants.

Alfonso acted as adjunct professor of Property at the IE's LLB in Segovia in the course 20/21.

Alfonso is ranked in Legal500, Chambers & Partners and Best Lawyers (real estate and construction) and was granted a 40 Under 40 award by Iberian Lawyer in 2015.

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SUBJECT DESCRIPTION

Property rights play an important role in our social and economic relationships. People need property to satisfy their most basic needs (e.g., dwelling) and property rights are also involved in business. Property Law governs these relationships between persons and things.

These relationships have existed for centuries, although their features have evolved in accordance with the changing paradigms of history. Some institutions of Property Law come from Roman Law, only slightly adjusted to fit the present day. Other institutions appeared later in history to resolve specific needs of modern life and improve security and certainty in economic transactions, as is the case of the land registry.

The legal configuration of property rights varies considerably from one country to another. To begin with, common law and civil law have a different understanding of what property rights mean. Also within the civil law tradition, property presents considerable local differences. In spite of these differences, there is indeed a common core of property law, which is particularly relevant in today's integrated Europe and globalized world. Said common core, considered in its permanent dialogue with the local features of property law, constitutes the leitmotif of this course. The course adopts a comparative methodology that includes constant references to national Law as well as the main projects that tend to the harmonization of European Property Law.

LEARNING OBJECTIVES

This course aims at:

- Facilitating a general understanding of property law in common and civil law.
- Deepening in the meaning and function of the main institutions of property law.
- Analyzing the different forms of ownership in theory and practice.
- Exploring the benefits of property for others than owners: holders of easements, creditors.
- Describing the different systems of real estate transactions.
- Developing the main models of land registry, their organization, procedures, and legal effects in connection with property rights.
- Studying the context and status of the European process of unification and harmonization of property law, with particular emphasis on the Draft Common Frame of Reference (DCFR).

By the end of the course, students will be expected to be able to:

- Describe the main elements of property law in common and civil law and differences between both systems.
- Discuss about the legal configuration of property rights, their benefits and problems.
- Describe the key aspects of ownership and other property rights.
- Look into the legal framework of property law in different countries.
- Resolve cases related to property law and real estate transactions in different European countries.
- Resolve cases related to the effects of land registry in property rights in different legal systems.
- Critically analyze different property law systems.

TEACHING METHODOLOGY

Participation of students is a key aspect of the course. The Professor will lead the learning process through presentations and lectures, but students are expected to show an active attitude and demonstrate their achievements in class through their interventions. Students will be involved in collaborative and competitive activities in order to obtain the maximum results. Answering questions (voluntarily or cold-called) and questioning will be also part of the methodology. Other important elements of the learning process are workshops and case study sessions, where students will have to reveal their progress. Finally, it is expected that students become familiar with the use of legal texts and case law.

Legal materials and discussions will help students to learn the essential elements of property rights. Real estate transactions and security in property rights are basic elements in legal traffic, and students will discover the essence by reading, thinking, and discussing all the topics included in this course.

Learning Activity	Weighting	Estimated time a student should dedicate to prepare for and participate in
Lectures	24.0 %	36.0 hours
Discussions	6.67 %	10.0 hours
Exercises in class, Asynchronous sessions, Field Work	6.67 %	10.0 hours
Group work	16.0 %	24.0 hours
Individual studying	46.67 %	70.0 hours
TOTAL	100.0 %	150.0 hours

PROGRAM

SESSIONS 1 - 2 (LIVE IN-PERSON)

Introduction to the subject. Methodology. The subject matter of property rights.
Property Law: Concept and categories. Principles. Content of property rights.

SESSIONS 3 - 4 (LIVE IN-PERSON)

Dynamics of property rights and conveyance systems (I) and (II).

SESSIONS 5 - 6 (LIVE IN-PERSON)

Possession: concept and categories. Fact or right?
Possession: presumptions and protection. Liquidation.

Book Chapters: Possession, in Treatise on the civil law; William S. Hein & Co., Inc. Buffalo, New York, 2005 (CED)

SESSIONS 7 - 8 (LIVE IN-PERSON)

Case study.
Ownership: Approach in Common Law and Civil Law. Protection of ownership.

SESSIONS 9 - 10 (LIVE IN-PERSON)

Protection of third parties who acquire *non domino*.

Case study.

SESSIONS 11 - 12 (LIVE IN-PERSON)

Co-ownership. Apartment rights.

Creation of property rights (other means, I). Acquisitive prescription (usucapio).

Book Chapters: Acquisitive prescription, in Treatise on the civil law; William S. Hein & Co., Inc. Buffalo, New York, 2005 (CED)

SESSIONS 13 - 14 (LIVE IN-PERSON)

Creation of property rights (other means, II). Accession, commingling, specificatio.

Case study.

Book Chapters: Other modes of acquiring, in Treatise on the civil law; William S. Hein & Co., Inc. Buffalo, New York, 2005 (CED)

SESSION 15 (LIVE IN-PERSON)

Mid-term exam.

SESSIONS 16 - 17 (LIVE IN-PERSON)

Usufruct, use and habitation.

Servitudes.

SESSIONS 18 - 19 (LIVE IN-PERSON)

Case study.

Security rights: concept, elements and categories.

SESSIONS 20 - 21 (LIVE IN-PERSON)

Pledge. Floating charge.

Right of retention/lien.

SESSIONS 22 - 23 (LIVE IN-PERSON)

Retention of title. Transfer of ownership for security purposes.

Mortgage/hypothec.

SESSIONS 24 - 25 (LIVE IN-PERSON)

Mortgage/hypothec for consumers. Unfair terms. Directive 2014/17/EU.

Case study.

SESSIONS 26 - 27 (LIVE IN-PERSON)

Land Registration and Conveyancing (I) and (II).

SESSIONS 28 - 29 (LIVE IN-PERSON)

Case study.

Review session.

SESSION 30 (LIVE IN-PERSON)

Exam.

EVALUATION CRITERIA

GENERAL OBSERVATIONS

Students are expected to prepare the materials beforehand and to participate in class. Their interventions will be part of the final grade. Not only the frequency of interventions, but also the quality of the arguments will be taken into account. Therefore, an adequate preparation of the materials before every session will be required. Class preparation and class participation are essential in order to pass the course. The use of electronic devices for other purposes than taking notes is forbidden and will be penalized. During the exams, the use of Internet, mobile phones, books or other materials is not allowed.

Students obtaining a grade of at least 7.0 in the mid-term exam may sit for the final exam just for the sessions lectured after the mid-term, as long as the attendance requirement is met. The topics lectured before the mid-term exam are expected to be known and will be needed to successfully pass the final exam. Students obtaining a grade of less than 7.0 in the midterm should sit for the whole subject in the final exam.

In any case, a failure in the final exam (i.e. grade below 5.0) will require sitting for a retake exam of the whole course in order to pass it.

Each student has four attempts over two consecutive academic years to pass this course. Dates and location of the final exam will be posted in advance and will not be changed.

Students must attend at least 70% of the sessions. Students who do not comply with the 70% attendance rule will receive a 0.0 on their first and second attempts and go directly to the third one (they will need to enroll in this course again the following academic year).

Students who are in the third or fourth attempt should contact the professor during the first two weeks of the course.

criteria	percentage	Learning Objectives	Comments
Final Exam	30 %		
Intermediate Tests	30 %		
Workgroups	20 %		
Class Participation	20 %		

RE-SIT / RE-TAKE POLICY

Any student whose final grade is below 5 will be required to sit for the retake exam to pass the course (except those not complying with the attendance rules, whom are banned from this possibility).

Grading for retakes will be subject to the following rules:

- The retakes will consist of a comprehensive exam. The grade will depend only on the performance on this exam; continuous evaluation over the semester will not be taken into

account.

- The exam will be designed bearing in mind that the passing grade is 5 and the maximum grade that can be attained is 8 out of 10.

The third attempt will require the student to complete:

- a midterm exam,
- a final exam.

This is also applicable to students who do not have required attendance, e.g. sickness.

- Dates and location of the retakes will be posted in advance and will not be changed.

BIBLIOGRAPHY

Compulsory

- S. van Erp & B. Akkermans (Eds.). (2012). *Cases, Materials and Text on Property Law*. 1st. Hart Publishing. ISBN 9781841137506 (Printed)

Recommended

- Cooke. E.. *Land Law*. 2011. Oxford University Press. ISBN 0199653232 (Printed)

- Sánchez, R.; Moralejo Imbernón, N.. *Property and Trust Law in Spain*. 2011.

Wolters Kluwer. ISBN 9789041151810 (Printed)

- Dixon, M.. (2010). *Modern Land Law*. Routledge. ISBN 9780415732345 (Printed)

- Yiannopoulos, A.N.; Tooley-Knoblett, D.; Carriere, J. L.; Randall Trahan, J..

(2009). *Yiannopoulos Civil Law Property Coursebook*. Claitor's Publishing Division, Baton Rouge. ISBN 9781509939275 (Printed)

- Merril, T. W. and Smith, H.E.. *Property*. 2010. Oxford University Press. ISBN 0195314760 (Printed)

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Please, check the University's Code of Conduct [here](#). The Program Director may provide further indications.

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ETHICAL POLICY

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