

# CONSTITUTIONAL LAW

**Bachelor in Philosophy, Politics, Law and Economics PPLE  
SEP-2023 CL-PP.1.S.A**

Area Public Law and Global Governance

Number of sessions: 30

Academic year: 23-24

Degree course: FIRST

Number of credits: 6.0

Semester: 2<sup>o</sup>

Category: BASIC

Language: English

Professor: **TAMARA EL KHOURY**

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Tamara El Khoury is Lead Consultant for the Max Planck Foundation for International Peace and the Rule of Law (Heidelberg, Germany), where she provides legal-technical assistance and capacity-building to state institutions in Iraq, South Sudan, Mali, Jordan and Somalia, and is Adjunct Professor of Constitutional Law at IE University. She previously worked as Consultant (Constitutional Expert) for the United Nations on Somalia's constitutional reform process. Prior to that she worked as Programme Officer at the World Leadership Alliance-Club de Madrid. Before joining IE University, she worked as Senior Research Fellow at the Max Planck Foundation and as International Consultant on constitutional matters for UNDP Libya. She holds a degree in Law with an emphasis in Public Law by Université Saint Joseph de Beyrouth (Beirut, Lebanon), a Master's Degree in Comparative European Public Law by Université Paris I - Panthéon-Sorbonne (Paris, France), and a Ph.D. in Constitutional Law by Universidad Carlos III de Madrid (Madrid, Spain). Her research interests include comparative constitutional law and constitutional history.

## Office Hours

Office hours will be on request. Please contact at:

[tel@faculty.ie.edu](mailto:tel@faculty.ie.edu)

## SUBJECT DESCRIPTION

The purpose of this course is to introduce students to constitutional law from a comparative perspective. The aim is two-fold: to help students acquire an understanding of the different rules and institutions that define our constitutional systems; and to provide them with a critical assessment of recent trends in constitutional law that can help them grasp and confront the complexity of an increasingly globalized and transnational legal order. The steady internationalization of constitutional law calls for a reinforced comparative approach.

This course is essential in the training of any jurist, since the knowledge and skills it offers are necessary for later courses. Besides, the unique comparative approach given to this specific subject as part of the IE LLB programme is intended to encourage future lawyers to pursue their careers in international, multidisciplinary and multicultural environments, and be capable of learning from experience and incorporating further knowledge in a progressive self-directed and autonomous way.

The course will begin with an introduction to Western constitutional history and the development of the theories of the state and modern constitutionalism. It will then focus on the role of the constitution as fundamental norm, explore the sources of law it contains, and develop its essential content with regards to forms and systems of government on the one hand, and the guarantee of fundamental rights and liberties on the other. It will follow with a comparative overview of the role and activity of constitutional courts and conclude with a reflection on the impact of internationalization on the nature of the constitutional state.

## LEARNING OBJECTIVES

The objectives of this course are:

1. To introduce students to the ideas of constitution, constitutionalism and other main public law concepts
2. To develop in students an understanding of:
  - 2.1 the relevant history and essential features of European constitutions
  - 2.2 the nature of the constitutional state;
  - 2.3 the institutions of government and the relationship between them;
  - 2.4 the constitutional guarantees of fundamental rights and liberties
  - 2.5 the basic principles of judicial review
3. To encourage a critical assessment of European and international constitutionalism by reference to scholarship and proposals for its reform

## TEACHING METHODOLOGY

IE University teaching method is defined by its collaborative, active, and applied nature. Students actively participate in the whole process to build their knowledge and sharpen their skills. Professor's main role is to lead and guide students to achieve the learning objectives of the course. This is done by engaging in a diverse range of teaching techniques and different types of learning activities such as the following:

Learning Activity	Weighting	Estimated time a student should dedicate to prepare for and participate in

Lectures	30.0 %	45.0 hours
Discussions	16.67 %	25.0 hours
Exercises in class, Asynchronous sessions, Field Work	6.67 %	10.0 hours
Group work	23.33 %	35.0 hours
Individual studying	23.33 %	35.0 hours
TOTAL	100.0 %	150.0 hours

## PROGRAM

### BLOCK I: CONSTITUTIONAL THEORY

#### SESSIONS 1 - 2 (LIVE IN-PERSON)

##### Introduction

The meaning of a constitution I (**The constitution and the legal order**)

*Own Material: Introduction to the course*

*Own Material: The constitution and the legal order*

#### SESSIONS 3 - 4 (LIVE IN-PERSON)

The meaning of a constitution II (**Constitution-making**)

The meaning of a constitution III (**The role and content of constitutions**)

*Own Material: Constitution-making*

*Own Material: The role and content of constitutions*

#### SESSIONS 5 - 6 (LIVE IN-PERSON)

The meaning of a constitution V (**Constitutional amendment**)

The meaning of a constitution VI (**The principle of constitutional supremacy**)

*Own Material: Constitutional amendment*

*Own Material: The principle of constitutional supremacy: the US, German and Spanish Constitutions*

#### SESSIONS 7 - 8 (LIVE IN-PERSON)

The meaning of a constitution VII (**The principles of legislative supremacy and parliamentary sovereignty**)

#### BLOCK II: INSTITUTIONS

Introduction: **The principle of the separation of powers**

*Own Material: The principles of parliamentary sovereignty and legislative supremacy (CED)*

*Own Material: The principle of the separation of powers (CED)*

#### SESSIONS 9 - 10 (LIVE IN-PERSON)

Institutions I: **The Parliamentary, Presidential, and Semi-presidential models**

Institutions II: **The executive power**

*Own Material: The Parliamentary, Presidential and Semi-Presidential models (CED)*

*Own Material: The executive power (CED)*

## **SESSIONS 11 - 12 (LIVE IN-PERSON)**

Institutions III: **The legislative power**

*Own Material: The legislative power (CED)*

## **SESSIONS 13 - 14 (LIVE IN-PERSON)**

Institutions IV: **The vertical separation of powers - unitary and federal states**

*Own Material: Vertical separation of powers: unitary and federal states (CED)*

## **SESSION 15 (LIVE IN-PERSON)**

**MIDTERM EXAM**

## **SESSIONS 16 - 17 (LIVE IN-PERSON)**

**Sources of law**

*Own Material: Sources of law (CED)*

## **BLOCK III- FUNDAMENTAL RIGHTS AND LIBERTIES**

## **SESSIONS 18 - 19 (LIVE IN-PERSON)**

Fundamental rights and liberties I: **civil and political rights**

*Own Material: Civil and Political Rights: Typology, Scope and Limits*

## **SESSIONS 20 - 21 (LIVE IN-PERSON)**

Fundamental rights and liberties II: **social and economic rights**

*Own Material: Social and economic rights: typology, scope and limits (CED)*

## **SESSIONS 22 - 23 (LIVE IN-PERSON)**

Fundamental rights and liberties III: **constitutional guarantees of fundamental rights (generic guarantees)**

*Own Material: Constitutional guarantees of fundamental rights (I)*

## **SESSIONS 24 - 25 (LIVE IN-PERSON)**

Fundamental rights and liberties IV: **constitutional guarantees of fundamental rights (jurisdictional guarantees)**

*Own Material: Constitutional guarantees of fundamental rights (II)*

## IV. CONSTITUTIONAL ADJUDICATION

### SESSIONS 26 - 27 (LIVE IN-PERSON)

Constitutional adjudication I: **diffuse model of constitutional review**

*Own Material: Constitutional review of legislation (1)*

### SESSIONS 28 - 29 (LIVE IN-PERSON)

Constitutional adjudication II: **centralized model of constitutional review**

*Own Material: Constitutional review of legislation (2) (CED)*

### SESSION 30 (LIVE IN-PERSON)

#### FINAL EXAM

## EVALUATION CRITERIA

### GENERAL OBSERVATIONS

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 80% of the sessions. Students who do not comply with the 80% 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.

### EVALUATION AND WEIGHTING CRITERIA

- A. Class participation 20%
- B. Exercises and Essays 20%
- C. Mid-term exam 20%
- D. Final Exam 40%

TOTAL 100%

criteria	percentage	Learning Objectives	Comments
Class Participation	20 %		
Exercises and Essays	20 %		
Mid-term exam	20 %		
Final Exam	40 %		

### RE-SIT / RE-TAKE POLICY

Any student whose weighted 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 on 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 written assignment; a midterm; 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**

### **Recommended**

- DORSEN, N., ROSENFELD, M., SAJO, A., BAER. (2010). *Comparative Constitutionalism: Cases and Materials*. Second. Thompson-West. ISBN 0314179461 (Printed)

This law school casebook examines how the vast increase in international movements of people, capital, goods, ideas and information affect politics in and beyond nation-states, the rule of law and separation of powers, and fundamental rights.

- HERINGA, A. W. & KIIVER, P.. (2012). *Constitutions Compared. An Introduction to Comparative Constitutional Law*. Third. Intersentia – Metro. ISBN 1780680783 (Printed)

This handbook provides a user-friendly introduction to comparative constitutional law. For each area of constitutional law, a general introduction and a comparative overview is provided, which is then followed by more detailed country chapters on that specific area.

- TUSHNET, M. (2014). *Advanced Introduction to Comparative Constitutional Law*. Edward Elgar Publishing Ltd. ISBN 1781007314 (Printed)

This authoritative study investigates constitution making, including the problem of unconstitutional constitutional amendments; recent developments in forms of constitutional review, including ‘the battle of the courts’; proportionality analysis and its alternatives; and the emergence of a new ‘transparency’ branch in constitutions around the world

## **BEHAVIOR RULES**

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

## **ATTENDANCE POLICY**

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

## **ETHICAL POLICY**

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

