

EUROPEAN LEGAL HISTORY

IE University

Professor: **CRISTÓBAL RODRÍGUEZ GIMÉNEZ**

E-mail: crodriguezg@faculty.ie.edu

Degree course: FIRST

Semester: 1º

Category: BASIC

Number of credits: 6.0

Language: English

PREREQUISITES

SUBJECT DESCRIPTION

This course provides an overview of European legal history, without which the current European legal systems cannot be fully understood.

Traditionally, legal history was studied in terms of national history. In the last few decades, however, factors such as the process of European integration and the debate on a common private law in Europe have made the European standpoint a more fruitful and attractive one.

The course is also based on the conviction that sound understanding of the law of past times is facilitated by making reference to its cultural, philosophical, and political context.

OBJECTIVES AND SKILLS

This course aims at helping the students to develop the skills required to understand the formation and historical evolution of the common legal background of Europe, along with its diverse traditions and national expressions. Likewise, the students will acquire the skills necessary to critically analyze, synthesize, present, and reason on contents related to legal history.

This course also introduces first year students to the historical development of some basic notions of law, such as the sources of law (legislation, administration of justice, legal science, customary law); common and civil law systems; the difference between public and private law; contract, delict (tort), property; substantive and procedural law; etc.

METHODOLOGY

European Legal History is a course designed to provide a strong intellectual framework for future lawyers that helps them put their professional activity within a wider political, economical, intellectual, and social context, and assess it critically and independently.

It is important to point out that this course will look to European legal history from a variety of approaches that form this discipline: law, history, politics, economics, etc. In order to show the importance of this multidisciplinary approach, a number of case studies will be introduced where historical legal texts will be discussed within the context in which they were generated, as well as their position within the evolution of legal history.

Learning will be based on three main methods:

1. Lectures, in which the students will be provided with the overall view of a specific aspect of legal history. The students will have to prepare each session with assigned readings, which will be defined in due time, and which can be evaluated.
2. Independent work, which will be written by students and, if considered appropriate, presented in subsequent sessions. Those students most interested in a particular aspect of legal history will be given the opportunity to carry on their research with the help of the professor.
3. Case studies, in which texts or topics will be presented and discussed, individually or in groups.

Teaching methodology	Weighting	Estimated time a student should dedicate to prepare for and participate in
Lectures	36.67 %	55 hours
Discussions	4.67 %	7 hours
Exercises	4.67 %	7 hours
Group work	4.0 %	6 hours
Other individual studying	50.0 %	75 hours
TOTAL	100.0 %	150 hours

PROGRAM

SESSION 1

PRESENTATION AND INTRODUCTION

PART I: ROMAN LAW

SESSION 2

ARCHAIC ROMAN LAW

SESSION 3

CLASSICAL ROMAN LAW

SESSION 4

POST-CLASSICAL ROMAN LAW

SESSION 5

ROMAN LAW: CONTRACTS I

SESSION 6

ROMAN LAW: CONTRACTS II

SESSION 7

ROMAN LAW: PROPERTY

SESSION 8

ROMAN LAW CHALLENGE

PART II: MIDDLE AGES

SESSION 9

EARLY MIDDLE AGES

SESSION 10

EARLY GERMANIC LAW, ROYAL LEGISLATION AND CANON LAW

SESSION 11

LATE MIDDLE AGES

SESSION 12

IUS COMMUNE

SESSION 13

MIDTERM

SESSION 14

IURA PROPRIA

SESSION 15

CASE STUDY: THE INVESTITURE CONTROVERSY

PART III: MODERN AGE

SESSION 16

THE MODERN AGE

SESSION 17

THE MODERN STATE

SESSION 18

HUMANIST JURISPRUDENCE

SESSION 19

MODERN POLITICAL THOUGHT

SESSION 20

INTERNATIONAL LAW: THE LAW OF NATIONS

SESSION 21

CASE STUDY: THE DEBATE OF VALLADOLID

PART IV: THE BOUGEOIS AGE

SESSION 22

A NEW REGIME

SESSION 23

CODIFICATION I: PRINCIPLES

SESSION 24

CODIFICATION II: CONSTITUTIONS

SESSION 25

CASE STUDY: THE FRENCH CONSTITUTION

SESSION 26

CODIFICATION III: CODES

PART V: COMMON LAW

SESSION 27

HISTORY OF THE COMMON LAW I

SESSION 28

HISTORY OF THE COMMON LAW II

SESSION 29

COMMON LAW: CONSTITUTIONS AND LAWS

EXAM

SESSION 30

EXAM

BIBLIOGRAPHY

5.1- COMPULSORY

Bart Wauters and Marco de Benito, *A History of Law in Europe*, Edward Elgar, 2017.

[Buy your books here](#)

5.2- AVAILABLE

A) General

- Bellomo, M., *The Common Legal Past of Europe, 1000-1800*, Washington D.C., 1995.
- Berman, H. J., *Law and Revolution. The Formation of the Western Legal Tradition*, Cambridge (Mass.) / London, 1983.
- Coing, H. *Derecho privado europeo*, Madrid, 1996, 2 vol.
- Gordley, J., *Foundations of Private Law. Property, Tort, Contract, Unjust Enrichment*, Oxford, 2006.
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B) Roman Law

- Buckland, W. W., *A Textbook of Roman Law from Augustus to Justinian*, Cambridge, 2007.
- Domingo, R., *Elementos de Derecho Romano*, Cizur Menor, 2010.
- d'Ors, Á., *Derecho Privado Romano*, Pamplona, 2004.
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- Tellegen-Couperus, O., *A Short History of Roman Law*, London / New York, 1993.
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C) Canon Law

- Brundage, J. A., *Medieval Canon Law*, London / New York, 1995.
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D) Common Law

- Baker, J. H., *An Introduction to English Legal History*, London, 2002.
- Brooks, C. W., *Law, Politics and Society in Early Modern England*, Cambridge, 2008.
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Vol. I: Helmholz, R. H., *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s*, Oxford, 2004.

Vol. VI: Baker, J. H., *1483-1558*, Oxford, 2003.

Vol. XI-XIII: Cornish, W., Anderson, S., Cocks, R., Lobban, M., Polden, P., Smith, K., *1820-1914*, Oxford, 2010.

Langbein, J. H., Lerner, R. L., Smith, B. P., *History of the Common Law. The Development of Anglo-American Legal Institutions*, Austin, 2009.

E) USA

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Urofsky, M. I., Finkelman, P., *A March of Liberty. A Constitutional History of the United States*, Oxford, 2002.

F) Spain and Latin America

Escudero, J.A., *Curso de Historia del derecho. Fuentes e Instituciones Político-administrativas*, Madrid, 2003.

Mirow, M. C., *Latin American Law: A History of Private Law and Institutions in Spanish America*, Austin, 2004.

Tomás y Valiente, F., *Manual de historia del derecho español*, Madrid, 2011.

G) Obligations

Decock, W., *Theologians and Contract Law. The Moral Transformation of the *Ius Commune* (ca. 1500-1650)*, Leiden-Boston, 2013.

Gordley, J., *The Philosophical Origins of Modern Contract Doctrine*, Oxford, 1991.

Ibbetson, D., *A Historical Introduction to the Law of Obligations*, Oxford, 1999. (Common Law)

Zimmermann, R., *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford, 1996.

H) Property

Buckle, S., *Natural Law and the Theory of Property: from Grotius to Hume*, Oxford, 1993.

Garnsey, P., *Thinking about Property. From Antiquity to the Age of Revolution*, Cambridge, 2007.

I) Public Law

Harding, A., *Medieval Law and the Foundations of the State*, Oxford, 2002.

Kantorowicz, E. H., *The King's Two Bodies. A Study in Mediaeval Political Theology*, Princeton, 1957.

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J) Legal Theory

Kelly, J. M., *A Short History of Western Legal Theory*, Oxford, 1992.

K) Political Thought

Ball, T., Bellamy, R. P., *The Cambridge History of Twentieth-Century Political Thought*, Cambridge, 2006.

Burns, J. H. (ed.), *The Cambridge History of Medieval Political Thought, c. 350-c.1450*, Cambridge, 1991.

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EVALUATION CRITERIA

6.1- 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.

Assistance is mandatory and 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	Comments
Class Participation	45 %	Participation, case studies, workgroups, discussion, quizzes group
Intermediate Tests	15 %	Midterm
Final Exam	40 %	Final Exam

6.2- EVALUATION AND WEIGHING CRITERIA

The maximum grade is 10/10.

Class participation will include the comments, discussions, and questions and answers exchanged during the lectures and case studies. Effective comprehension of the assigned readings is an essential factor for the evaluation of class participation, and readings might be tested. Ad hoc written assignments covering subjects treated during the lectures might be counted for as class participation.

Case studies will include, as instructed by the professor, the preparation and handing in of summaries, papers, commentaries on historical legal texts, commentaries on historical sources other than legal texts, or essays, as well as the oral presentation and discussion of case materials, either individually or in group. Evaluation will depend on the depth, quality, clarity, and frequency of the contributions.

The mid-term will consist of a written explanation or consideration of one or more particular aspects of Roman and early-medieval legal history. The exam will consist in a combination of multiple-choice questions, essays, commentaries on legal texts or other sources, and a series of short question-answers. The exam will cover everything that students have learned in class, including lectures, case discussions and group exercises during the first 10 sessions of the course.

The exam will consist in a written explanation or consideration of one or more particular aspects of European legal history. The exam will consist in a combination of multiple-choice questions, essays, commentaries on legal texts or other sources, and a series of short question-answers. The exam will cover everything that students have learned during the course, including lectures, readings, case discussions and group exercises during the entire course.

Detailed announcements regarding readings ahead of each session, assignments, case studies and other materials/requirements to pass the course will be made in due time via Campus online, and students must consult Campus and their IE e-mail address on a daily basis.

Roman Law Challenge will provide additional points for finalists and winners (see annex).

6.3- RETAKE 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 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 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.

PROFESSOR BIO

Professor: **CRISTÓBAL RODRÍGUEZ GIMÉNEZ**

E-mail: crodriguezg@faculty.ie.edu

Cristóbal is Letrado del Consejo de Estado (Legal Adviser of Council of State). He advises to the Ministry of Justice and the Ministry of Labour, Migrations and Social Security. He has also advised for several years to the Ministry of the Finance and Civil Service, the Ministry of Economy and Corporations, the Bank of Spain and several Independent Agencies

He has spent several months on secondment to the Councils of State of France, Italy and Belgium.

He is Adjunct Professor at IE University and at Centro de Estudios Garrigues.

E-mail: crodriguezg@faculty.ie.edu.

Office hours: contact by e-mail to schedule tutorials or 1-2-1 meetings.

OTHER INFORMATION

ANNEX. ROMAN LAW CHALLENGE

The case study for Roman Law will be a group work (3 students per group). The case will be the same for all students who take the course European Legal History at IE University. The professor will enroll you in your group. The grade for the group work will count to calculate your grade on case studies.

The best group of each class will compete in the final round (7 finalists). The final round will take place on a still to be determined moment, in a session outside the normal 30 sessions.

The following recognitions may be given at the end of the final round:

- The award for the winning team.
- The award for the best memorandum.
- The award for the best oral presentation.

Students of teams that are selected to participate in the final round but do not win awards will obtain 0.2 additional points out of 10 (or the equivalent) for the course European Legal History.

Students of the teams that won the award for either the best memorandum or the best oral presentation will obtain 0.4 additional points out of 10 (or the equivalent) for the course European Legal History.

Students of the winning team will obtain 0.6 additional points out of 10 (or the equivalent) for the course European Legal History.

Detailed rules of the competition and timeline will be communicated at the start of the course.

CODE OF CONDUCT IN CLASS

1. **Be on time:** : Students arriving more than 5 minutes late will be marked as “Absent”.

Only students that notify in advance in writing that they will be late for a specific session may be granted an exception (at the discretion of the professor).

2. **If applicable, bring your name card and strictly follow the seating chart.** It helps faculty members and fellow students learn your names.

3. **Do not leave the room during the lecture:** Students are not allowed to leave the room during lectures. If a student leaves the room during lectures, he/she will not be allowed to re-enter and, therefore, will be marked as “Absent”.

Only students that notify that they have a special reason to leave the session early will be granted an exception (at the discretion of the professor).

4. **Do not engage in side conversation.** As a sign of respect toward the person presenting the lecture (the teacher as well as fellow students), side conversations are not allowed. If you have a question, raise your hand and ask it. If you do not want to ask it during the lecture, feel free to approach your teacher after class.

If a student is disrupting the flow of the lecture, he/she will be asked to leave the classroom and, consequently, will be marked as “Absent”.

5. **Use your laptop for course-related purposes only.** The use of laptops during lectures must be authorized by the professor. The use of Social Media or accessing any type of content not related to the lecture is penalized. The student will be asked to leave the room and, consequently, will be marked as “Absent”.

6. **No cellular phones:** IE University implements a “Phone-free Classroom” policy and, therefore, the use of phones, tablets, etc. is forbidden inside the classroom. Failing to abide by this rule entails expulsion from the room and will be counted as one absence.

7. **Escalation policy: 1/3/5.** Items 4, 5, and 6 above entail expulsion from the classroom and the consequent marking of the student as “Absent.” IE University implements an “escalation policy”: The first time a student is asked to leave the room for disciplinary reasons (as per items 4, 5, and 6 above), the student will incur one absence, the second time it will count as three absences, and from the third time onward, any expulsion from the classroom due to disciplinary issues will entail 5 absences.