

## **LITIGATION I**

### **DOBLE GRADO ADMINISTRACIÓN DE EMPRESAS Y DERECHO/ DUAL DEGREE BBA + LAW**

Professor: **JESUS LOMA BARRIE**

E-mail: [jloma@faculty.ie.edu](mailto:jloma@faculty.ie.edu)

Academic year: 19-20

Degree course: FIFTH

Semester: 1º

Category: **COMPULSORY**

Number of credits: 6.0

Language: English

### **PREREQUISITES**

## **SUBJECT DESCRIPTION**

Litigation I deals with the general aspects of civil procedure, one of the core subjects of any law degree.

The course addresses the main notions and categories of civil procedure through a decidedly transnational approach, using the ALI/UNIDROIT Principles of Transnational Civil Procedure, among other texts, as guidance. This transnational perspective is enriched by constant references to the positive expressions of those common notions and categories in the actual procedural rules of different jurisdictions, in particular Spain, France, Germany, England and the EU. The course ends with a brief look into the most salient aspects of the civil procedure in the USA.

## **OBJECTIVES AND SKILLS**

This course aims at helping the students develop the skills required to understand and effectively use the main principles, notions, rules, and terminology that make up the “general part” of civil procedure: the organization of courts; the formative principles of civil procedure; the types of relief that can be sought; the structure of an ordinary civil proceeding.

Likewise, the students will acquire the skills necessary to critically analyze, synthesize, present, and reason on contents related to civil procedure.

## **METHODOLOGY**

Litigation I aims at providing a strong intellectual framework to understand the basics of continental civil procedure, with constant comparative references.

Learning is based on different, mutually complementary methods:

1. Lectures, in which the students are provided with the overall view of a specific aspect of civil procedure. The students need to prepare each session with assigned readings, to be defined in due time.
2. Independent work, mainly with a comparative approach. Students interested in a particular aspect have the opportunity to carry on their research with the professor's guidance.
3. Case studies, which students work on individually.

Simulated hearings, in which the students play the role of lawyers, witnesses, and judges.

<b>Teaching methodology</b>	<b>Weighting</b>	<b>Estimated time a student should dedicate to prepare for and participate in</b>
Lectures	23.33 %	35 hours
Discussions	10.0 %	15 hours
Exercises	23.33 %	35 hours
Group work	23.33 %	35 hours
Other individual studying	20.0 %	30 hours
<b>TOTAL</b>	<b>100.0 %</b>	<b>150 hours</b>

## **PROGRAM**

### **SESSION 1**

1. Overview

### **SESSION 2**

The actors of civil justice

### **SESSIONS 3 - 4**

Judicial organization and court system structure

### **SESSIONS 5 - 6**

Jurisdiction and competence

### **SESSIONS 7 - 8**

Case studies

### **SESSION 9**

Formative or Fundamental principles of civil procedure

### **SESSION 10**

The right to legal protection

### **SESSION 11**

1. Types of relief

### **SESSION 12**

1. Provisional and protective measures

### **SESSION 13**

1. Multiple claims and parties

### **SESSION 14**

Obligations of parties and sanctions

### **SESSIONS 15 - 16**

Structure of a civil proceeding (I-The interim phase)

## **SESSION 17**

Structure of a civil proceeding (II- Evidence)

## **SESSIONS 18 - 19**

Structure of a civil proceeding (III-Evidence)

## **SESSION 20**

Judgment and other case dispositions

## **SESSION 21**

Enforcement of judgment

## **SESSION 22**

Appellate review and rescission of judgment

## **SESSION 23**

Appellate review and rescission of judgment

## **SESSION 24**

Lis pendens and res iudicata

## **SESSION 25**

Exam

## **SESSION 26**

Online forum

## **SESSION 27**

Online forum

## **SESSION 28**

US civil litigation

## **SESSIONS 29 - 30**

1. Advocacy skills

## BIBLIOGRAPHY

### Provided by the professor

1. Regulation (EU) ? 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF>.
2. ALI/UNIDROIT Principles of Transnational Civil Procedure, 2006, available at <https://www.unidroit.org/english/principles/civilprocedure/ali-unidroitprinciples-e.pdf>.
3. Cappelletti, M., Garth, B.G., Introduction. Policies, Trends and Ideas in Civil Procedure, 1988, in Cappelletti, M. (ed.), Vol. XVI: Civil Procedure, in Zweigert, K., Drobni?g, K. (eds.), International Encyclopedia of Comparative Law, Mohr Siebeck / Martinus Nijhoff (selected pages).
4. Millar, R. W., "Formative Principles of Civil Procedure" (I-II-III), Illinois Law Review, Vol. XVIII (1923-1924), pp. 1-36 (I), 94-117 (II), 150-168 (III).
5. Chase, O. G., Hershkoff, H., Silberman, L. J., Sorabji, J., St?rner, R., Taniguchi, Y., Varano, V., "An Introduction and Overview to the 2nd Ed. of Civil Litigation in Comparative Context," available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3041554##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3041554##).
6. Chapter 1. Murray, P., St?rner, R., German Civil Justice, Carolina Academic Press, 2004 (paperback 2015).

### b) Highly recommended and available

- ALI/UNIDROIT Principles of Transnational Civil Procedure, Cambridge University Press, 2006.
- Murray, P., St?rner, R., German Civil Justice, Carolina Academic Press, 2004 (paperback 2015).
- Banacloche Palao, J., Cubillo L?pez, I. J., Aspectos fundamentales de Derecho Procesal Civil, La Ley, 2018.
- Blomeyer, A., Types of Relief Available (Judicial Remedies), 1983, in Cappelletti, M. (ed.), Vol. XVI: Civil Procedure, in Zweigert, K., Drobni?g, K. (eds.), International Encyclopedia of Comparative Law, Mohr Siebeck / Martinus Nijhoff.
- Chase, O. G., Hershkoff, H. (eds.), Civil Litigation in Comparative Context, West Academic, 2017.
- De la Oliva, A. (dir.), European Civil Procedure, Aranzadi / Sweet & Maxwell, 2011.
- Jolowicz, J. A., On Civil Procedure, Cambridge University Press, 2000.
- Langbein, J. H., "The German Advantage in Civil Procedure," University of Chicago Law Review, Vol. 52 (1985), Issue 4, Article 1, pp. 823 et seq., available at [http://digitalcommons.law.yale.edu/fss\\_papers/536](http://digitalcommons.law.yale.edu/fss_papers/536).
- Maxeiner, J. R., et al., Failures of American Civil Justice in International Perspective, Cambridge University Press, 2011 (paperback 2013).
- van Rhee, C. H. (ed.), European Traditions in Civil Procedure, Intersentia, 2005.

### c) To learn more

- Clark, D.S., The Organization of Lawyers and Judges, 2002, in Cappelletti, M. (ed.), Vol. XVI: Civil Procedure, in Zweigert, K., Drobni?g, K. (eds.), International Encyclopedia of Comparative Law, Mohr Siebeck / Martinus Nijhoff.
- Damaška, M. R., The Faces of Justice and State Authority. A Comparative Approach to the Legal Process, Yale University Press, 1986.
- Hazard, G. C. Jr., Taruffo, M., American Civil Procedure: An Introduction, Yale University Press, 1995.
- Hazard, G. C. Jr., Taruffo, M., St?rner, R., Gidi, A., "Rules of Transnational Civil Procedure," NYU Journal of International Law and Politics, Vol. 33 (2001), pp. 793-859, available at <http://scholarship.law.upenn.edu/facultyscholarship/1085>.



- Kaplan, B., et al., Ordinary Proceedings in First Instance, 1984, in Cappelletti, M. (ed.), Vol. XVI: Civil Procedure, in Zweigert, K., Drobnič, K. (eds.), International Encyclopedia of Comparative Law, Mohr Siebeck / Martinus Nijhoff.
- Uzelac, A., Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems, Springer, 2014.
- van Rhee, C. H., Kramer, X. E., Civil Litigation in a Globalising World, T. M. C. Asser Press, 2012.

## EVALUATION CRITERIA

### a) 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 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.

### b) Evaluation and weighting criteria

The grade is generally determined based on the following criteria:

1. Contribution to the class (purposeful attendance, active participation, presentations, online forums): 20%
2. Individual work (assignments, quizzes, hearings): 35%
3. Exam: 45%

A grade of less than 4.0 in the exam suffices to fail the whole course. Besides, there is a first section with 10 theoretical questions, in order to pass the exam, it is needed that this first section is passed. In order to do it, at least half of the points must be obtained.

### c) 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 retake 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.

o The third attempt will require the student to complete:

- a written assignment (40%)
- a final exam (60%)

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

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

Criteria	Percentage	Comments
Final Exam	45 %	1. Contribution to the class (purposeful attendance, active participation, presentations, online forums):
Class Participation	20 %	assignments, quizzes, hearings
Other	35 %	

## PROFESSOR BIO

Professor: **JESUS LOMA BARRIE**

E-mail: [jloma@faculty.ie.edu](mailto:jloma@faculty.ie.edu)

Professor: JESUS LOMA BARRIE

E-mail: [jloma@faculty.ie.edu](mailto:jloma@faculty.ie.edu)

Jesús pursued studies of Law and Business Administration at Universidad Complutense de Madrid, where he got his Bachelor in Laws in 2008. He also spend one year pursuing a a Diploma in English Law at the University of Kent at Canterbury, which he got in 2006, and pursued a two-year Master in the Executive Program in Business Law for Garrigues lawyers by the Harvard School of Law and Centro de Estudios Garrigues, which he obtained in 2010. In 2018, he has been admitted at the Universidad Complutense de Madrid as a PhD student in the Civil and Criminal Litigation Department.

Since 2008, Jesús worked in the litigation and arbitration departments of renowned Spanish and international law firms such as Garrigues, where he worked as a junior lawyer until 2011, Herbert Smith Freehills LLP, where he worked as an associate lawyer until 2014, Elizalde&Barrie SLP and Rodríguez Arribas Abogados SLP, where he worked simultaneously as managing partner and external of counsel for civil and comercial litigation until joining Díez-Picazo, SLP where he worked as partner until 2018.

Nowadays, Jesús combines his own litigation practice with lecturing as Adjunct Professor of the Litigation Departments at IE University (since 2015) and Universidad Complutense de Madrid (since 2017).

Jesus counts with a nourished precontentious and litigation practice before the Spanish Courts in comercial litigation for national and international clients within the infrastructure, financial, intelectual property and retail sectors. He has also acted before national arbitration institutions. He is a member of the Spanish Arbitration Club (CEA).

Lastly, he has co-authored the books "International Arbitration Rules: A comparative guide (Lloyd's Arbitration Law Library), [exp. publication date: 20/12/2019] and "Late payment of the Spanish Public Administration", Ed. Aranzadi, 2012; as well as some set of publications edited by Herbert Smith LLP on 2012 and 2014 called "The long arm of regulation: Responding to cross-border financial services investigations".

Prof. Loma Barrie can be reached at [jloma@faculty.ie.edu](mailto:jloma@faculty.ie.edu)

## **OTHER INFORMATION**

## 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.