

LITIGATION II

GRADO EN DERECHO / BACHELOR OF LAWS

Professor: **JAVIER GILSANZ USUNAGA**

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Degree course: THIRD

Semester: 1º

Category: COMPULSORY

Number of credits: 6.0

Language: English

PREREQUISITES

SUBJECT DESCRIPTION

Litigation II completes the overview of civil procedure offered in Litigation I and then moves to analyze criminal procedure.

As regards civil procedure, Litigation II deals with the most significant procedural aspects of insolvency proceedings, special civil proceedings (regarding individuals, property, possession, etc.), small claim procedures, as well as the European order of payment. Recognition and enforcement of foreign judgments are also studied, along with the institution of provisional remedies in aid of foreign civil proceedings.

As regards criminal procedure, the course explains and analyzes criminal proceedings in all their stages, from investigation through sentence. The course analyzes the roles played by the different actors of criminal justice (police, prosecutors, attorneys, judges, etc.) and how they affect the ways in which criminal matters are resolved.

The course takes a strongly comparative approach: different procedural traditions and rules are considered, with particular emphasis on the Spanish, German, EU, and USA systems.

OBJECTIVES AND SKILLS

This course aims at helping the students to develop the skills required to understand and effectively use the main notions and categories which make up the "special part" of civil procedure: special civil proceedings, summary proceedings, insolvency procedures, international aspects of enforcement of judgments and interim relief.

Likewise, the students will acquire the skills necessary to understand the most significant and practical elements of criminal procedure.

METHODOLOGY

Learning will be based on three main methods:

Lectures, in which the students will be provided with the overall view of a specific aspect of civil procedure. The students will have to prepare each session with assigned readings, which will be defined in due time.

Independent work, which will be written by students, mainly with a comparative approach. Those students most interested in a particular aspect will be given the opportunity to carry on their research with the help of the professor.

Case studies, in which cases, 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	0.0 %	0 hours
Discussions	0.0 %	0 hours
Exercises	0.0 %	0 hours
Group work	0.0 %	0 hours
Other individual studying	0.0 %	0 hours
TOTAL	0.0 %	150 hours

PROGRAM

SESSION 1 (FACE TO FACE)

INSOLVENCY LAW

SESSION 2 (FACE TO FACE)

INSOLVENCY LAW

SESSION 3 (FACE TO FACE)

INSOLVENCY LAW

SESSION 4 (FACE TO FACE)

INSOLVENCY LAW

SESSION 5

Special and summary proceedings.

SESSION 6

European Order of Payment.

SESSION 7 (FACE TO FACE)

Enforcement of judgments. Main players and courts.

SESSION 8 (FACE TO FACE)

Enforcement of judgments. Procedure.

SESSION 9 (FACE TO FACE)

Recognition and enforcement of foreign judgments. European law.

SESSION 10 (FACE TO FACE)

Provisional remedies in aid of foreign civil proceedings.

SESSION 11 (FACE TO FACE)

Provisional remedies in aid of foreign civil proceedings. European law.

SESSION 12 (FACE TO FACE)

International and domestic arbitration

SESSION 13 (FACE TO FACE)

Criminal liability of corporations.

SESSION 14 (FACE TO FACE)

Criminal liability of corporations.

SESSION 15 (FACE TO FACE)

Players of criminal procedure

SESSION 16 (FACE TO FACE)

Fundamental principles of criminal procedure

SESSION 17 (FACE TO FACE)

Phases of criminal procedure

SESSION 18 (FACE TO FACE)

The criminal investigation. Suspects' rights from a European law perspective

SESSION 19 (FACE TO FACE)

The criminal investigation. Search and seizure.

SESSION 20 (FACE TO FACE)

Provisional remedies: provisional detention and other measures.

SESSION 21 (FACE TO FACE)

Evidence

SESSION 22

Evidence

SESSION 23

Jury I

SESSION 24

Jury II

SESSION 25 (FACE TO FACE)

Avoiding the trial (conformity, plea bargaining...).

SESSION 26 (FACE TO FACE)

The trial.

SESSION 27 (FACE TO FACE)

The trial

SESSION 28

Res judicata in criminal law.

SESSION 29 (FACE TO FACE)

European arrest.

SESSION 30 (FACE TO FACE)

Final Exam

BIBLIOGRAPHY

a) Compulsory

Thaman, S., Comparative Criminal Procedure: A Casebook Approach, Carolina Academic Press, 2008.

b) Recommended

De la Oliva Santos, A. (dir.), European Civil Procedure, Aranzadi, 2011.

Lawson Mack, r., Comparative Criminal Procedure: History, Processes and Case Studies, Hein, 2008.

Murray, P. L., Stürner, R. H., German Civil Justice, Carolina Academic Press, 2004 (hardback) or 2015 (paperback).

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:

Contribution to the class (purposeful attendance, active participation, presentations): 20%

Individual work (assignments, quizzes, hearings): 35%

Exam: 45%

A grade of less than 4.0 in the exam suffices to fail the whole course.

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.

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
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Final Exam	45 %	
Individual Work	35 %	
Class Participation	20 %	

PROFESSOR BIO

Professor: **JAVIER GILSANZ USUNAGA**

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Dr. Javier Gilsanz Usunaga is a part-time professor at IE Law School. His areas of interest are civil procedure, insolvency procedure and criminal procedure. He is a litigation lawyer currently in the Madrid office of Pricewaterhousecoopers. Prior to joining Pricewaterhousecoopers, he spent almost two years working, as a paralegal, in a Law Office located in San Diego, California.

Prof. Gilsanz holds a Ph.D. in civil procedure from Complutense University in Madrid. He has his international studies with a research stays at the Legal Research Center of the University of San Diego School of Law. He has lectured at Comillas Pontifical University and in the Garrigues European Center of Studies.

He publishes and speaks regularly on topics related to his fields of expertise.

Prof. Gilsanz is available for consulting by appointment, to be organized by e-mail.

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.