1. SUBJECT DESCRIPTION

The course of Criminal Law I has been designed for the study of the general part of criminal law from a comparative perspective, which involves an initial analysis of the different criminal law systems adopted worldwide, and in principal to understand the foundations that support the civil law system and the common law system.

The course will provide a general knowledge of the foundations of the systems which follow the civil law tradition, and principally, the Spanish and German criminal systems. In addition, with the objective to become familiar with how the common law system works, the general basis of English and Welsh criminal law will also be examined.

In this context and in order for the student to obtain a global vision of criminal law and the evolution of its regulation, this study will be completed with the analysis of criminal law from the European Union and from the International criminal law perspective.

Thus, the aim of the “Criminal Law I” course is to enable the student to understand the nature and rationale of criminal law, the foundation on which it stands and the specific issues that arise in the context of its application. The student will be able to determine the scope of the concept of crime, its structure, configuration and elements.

Through this discipline, the student will acquire the necessary skills to apply criminal law in connection with the rest of the areas of law, always keeping in mind that criminal law is subsidiary and governed by the principal of minimum intervention.

2. OBJECTIVES AND SKILLS

The aim of the course is to provide the student with an essential understanding of Criminal law, providing the following professional skills:

(i) to understand the singular nature of criminal law;
(ii) to learn the basics of criminal law;
(iii) to analyze and discuss cases;
(iv) to acquire the ability to argue and act on behalf of different procedural positions;
In professional practice, attorneys and legal advisors must have a solid base and knowledge of this discipline, without prejudice to the specialization which they chose to pursue, allowing them to identify the situations of risk in all areas that can lead to the assumption of criminal responsibility.

In this context, and taking into account the evolution of the market and its globalization, in addition to the presence of multinational companies operating in various jurisdictions, the attorney's knowledge in criminal law cannot be limited to a national context. It must encompass a global understanding of the principal and various legal systems adopted in other countries, as well as the initiatives taken within the European Union and on the International level.

3. CONTENT

PART I: FUNDAMENTALS OF CRIMINAL LAW

SESSION 1: DEFINITION OF CRIMINAL LAW

1. Definition of Criminal Law
2. The relations between Morals and Criminal Law
3. Definition of the Criminal Law in relation to other legal systems
4. An economic analysis of the Criminal Law
5. The social approach: The Criminal Law as a means to protect the social, economic and institutional order.

SESSION 2: INTRODUCTION TO A COMPARATIVE STUDY BETWEEN CRIMINAL LAW SYSTEMS

1. Criminal Law systems: Common Law (mainly, England and Wales) versus Civil Law (mainly, Germany and Spain)
2. Comparative analysis of the Common Law and Civil Law systems, taken into account their main features
3. Towards a convergence between Common Law and Civil Law systems

SESSION 3: SOURCES OF CRIMINAL LAW

1. The meaning of "Sources of Criminal Law"
2. Political aspects of the sources of Criminal Law
3. What institutions can create Criminal Law?
4. The form adopted by the Criminal Law
5. The nature of the act creating Criminal Law
6. The wording of the statute creating Criminal Law
7. The twofold meaning of the statute: evaluating and ordering
8. The addresses of the statute
9. Criminal act and Criminal code
10. The criminal statute as a part of the legal system: the Constitution and international treaties and conventions

SESSION 4: PRINCIPLES OF PUNISHMENT

1. The principles of Criminal Law as limits to the power
2. The main principles of the Criminal Law
SESSION 5: INTERPRETATION OF CRIMINAL STATUTES

1. Why does Criminal Law need interpretation?
2. The different role of judges in the Civil and Common Law systems, as regards interpretation
3. The "ordinary meaning" of the statute, as the basic guidance principle of interpretation at the Common Law
4. The importance of the legislative background in the Common law
5. The so called "strict construction" in the Common Law
6. Interpretation in relation to Common Law offences
7. A consequence of the principle of legality at the Civil Law: The prohibition of the analogy in malam partem

SESSION 6: APPLICABILITY OF CRIMINAL STATUTES AS REGARDS TERRITORY AND PERSONS: THE TERRITORIAL AND PERSONAL PRINCIPLES AND EXCEPTIONS

1. Introduction
2. The principle of territoriality
3. The nationality principle
4. The security principle
5. The universality principle
6. Conflicts of jurisdiction as a regrettable consequence of the fragmentation of Criminal Law in the global world
7. Inviolability and immunity as exceptions to the power of the jurisdiction
8. Is the immunity of the parliamentarians justified in our modern democracies?

SESSION 7: THE CRIMINAL PROCEDURE

1. Fundamental procedural rights
2. Legality principle versus opportunity (expediency) principle
3. The right to a fair trial
4. The accusatorial principle
5. The right of the defence
6. The presumption of innocence
7. The right to be tried by an independent court
8. The right to a public trial
9. Prohibition of double trial (ne bis in idem, double jeopardy defence)
10. The European Convention on Human Rights

PART II: LEGAL THEORY OF THE CRIMINAL OFFENCE

SESSION 8: THE CONCEPT OF OFFENCE (I)

1. Introduction
2. The evolution of the theory of the criminal offence in the Civil Law.
3. The concept of a criminal offence in the Spanish Criminal Law
4. The concept of offence at the Common Law: Actus reus and mens rea as the two components of an offence

SESSION 9: THE CONCEPT OF OFFENCE (II)

1. Criminal offences committed with intent
2. Unlawfulness as the first component of criminal offences committed with intent
3. Elements of unlawfulness
4. Result as an element of unlawfulness and its exceptions.
5. The causality relation as a common requirement both in the Common Law and in the Civil law systems. The diverse theories followed as regards causality.
6. Harm of endangerment of a social or human value

SESSION 10: THE CONCEPT OF OFFENCE (III)

1. The subjective element of unlawfulness: intent
2. Intent at the Common Law
3. Intent at the Civil Law.
4. The lack of intent (mistake)

SESSION 11: THE CONCEPT OF OFFENCE (IV)

1. The lack of defences
2. Self-defence
3. Self-defence in the Civil Law
4. Self-defence at the Common Law
5. Defence of necessity
6. Necessity in the Common Law

SESSION 12: THE CONCEPT OF OFFENCE (V)

1. Legal duty and use of a right in the Civil Law
2. Lawful Capacity of Office at the Common Law
3. Consent at the Civil Law
4. Consent at the Common Law

SESSION 13: THE CONCEPT OF OFFENCE (VI)

1. Recklessness
2. Negligence at the Civil Law
3. The human behaviour in negligence
4. The attribution of the result to the action
5. The concept of the violation of the duty of care
6. Negligence at the Common Law
7. Where to place of the violation of the duty of care in a criminal offence?
8. Offences of commission by omission in the Civil Law
9. The subjective element of the unlawfulness (mens rea) in omissions.
10. Commission by omission at the Common Law
11. Simple omissions

SESSION 14: THE CONCEPT OF OFFENCE (VII)

1. Fundamentals of mens rea at the Common Law
2. Fundamentals of the mens rea in the Civil Law
3. Elements of the mens rea in the Civil Law
4. Legal capacity
5. Knowledge (or possibility of knowledge) on the prohibition. The prohibition mistake (error iuris).
6. Lack of defences on mens rea
7. Lack of defences on mens rea in the Civil Law
8. Defence of infancy.
9. Mental condition defences in Spain
10. Insurmountable fear
11. Other defences based on a lack of culpability
12. Lack of *mens rea* in England and Wales
13. Defence of insanity in England and Wales
14. Infancy in England and Wales Criminal Law
15. Duress

SESSION 15: EXAM

(Matters addressed in sessions 1 to 14)

SESSION 16: THE CONCEPT OF OFFENCE (VIII)

1. Strict liability as a special feature of the Common Law
2. The scope of offences with strict liability
3. Particularities of offences with strict liability: offences of a regulatory nature.
5. The concept of vicarious liability.
6. Why vicarious liability does not exist at the Civil Law?
7. Towards limiting vicarious liability at the Common Law?

SESSION 17: THE CONCEPT OF OFFENCE (IX)

1. Corporate liability versus *societas delinquere non potest*
2. What does corporate liability mean?
3. The links between vicarious and corporate liability: a critical approach.
4. How to justify corporate liability?
5. Corporate liability on the Civil Law, with particular reference to Spain.

SESSION 18: THE CONCEPT OF OFFENCE (X)

1. The perpetrator of a criminal offence and secondary participation in the Civil Law: Principals and co-principals
2. Participants assimilated to the principal
3. Accomplices
4. Secondary participation in criminal offences committed with negligence.
5. Secondary participation at the Common Law.
6. Aiding and Abetting
7. Counselling and Procuring
8. Joint unlawful enterprise.
9. Inchoate offences and attempt at the Spanish Criminal Law
10. Inchoate Offences, including attempt, in the English and Wales Criminal Law

SESSION 19: ORAL PRESENTATION OF PAPERS

(Papers should be focused on one topic related to this program)

PART III: THEORY OF PUNISHMENT

SESSION 20: THEORIES OF PUNISHMENT

1. Theories of Punishment: Why to punish?
2. Retributive theories versus consequential the theories
3. The eclecticism: Consequential finality limited by retributive function.
5. Why to punish in modern and social states. A reference to the social rehabilitation
6. The theory of punishment as a part of the theory of the state
7. The theory of punishment in practice: Is there any significant difference between Civil and
   Common Law jurisdictions?

SESSION 21: CONSEQUENCES OF A CRIMINAL OFFENCE

1. The imprisonment.
2. Penitentiary systems.
3. On the crisis of imprisonment as the most common means of punishment: Alternatives
   measures to imprisonment.
4. It is the re-socialisation and re-education in practice the real aim of imprisonment?
5. Capital punishment
7. Other punishments

SESSION 22: SENTENCES

1. How to measure the sentence? Regulatory model (Civil Law) versus discretionary model
   (Common Law)
2. Rules to be applied by criminal courts in Spain.

SESSION 23: EXTINCTION OF THE CRIMINAL RESPONSIBILITY

1. Extinction of the criminal responsibility at the Civil Law
2. Pardon
3. Pardon of the victim
4. Time period limitations
5. Extinction of the criminal responsibility at the Common Law.
6. Pardon
7. Time period limitations (prescription)

SESSION 24 & 25: SIMULATED TRIAL

PART IV: EUROPEAN UNION CRIMINAL LAW. INTERNATIONAL CRIMINAL LAW

SESSION 26: THE EUROPEAN UNION AND THE CRIMINAL LAW (I)

1. The non-existence of a European Criminal Law
2. Criminal Law as an exclusive competence of the States.
3. Towards the creation of a criminal system within the European Union.
4. Can the European Union legislature create European Criminal Law?
5. The European single criminal area and the crisis of the sovereignty

SESSION 27: THE EUROPEAN UNION AND THE CRIMINAL LAW (II)

1. New perspectives to analyse the creation of European Union Criminal Law: legitimacy and
   rationality
2. Towards the creation of a European Public Prosecutor's Office: the new Article 86 of the
   Treaty of Functioning of the European Union.
3. The European Public Prosecutor's Office, as proposed by Article 86 of the Treaty of
   Functioning of the European Union.
4. Possible ways of implementing the European Prosecutor.

SESSION 28: INTERNATIONAL CRIMINAL LAW (I)

1. Historical background of International Criminal Law
2. Main steps of the modern International Criminal Law
3. Principles of International Criminal Law
4. Criminal offences of the International Criminal Law
5. Crimes against the international community
6. Other international crimes lato sensu

SESSION 29: INTERNATIONAL CRIMINAL LAW (II)

2. Criminal Tribunals
3. International Criminal Law applied through National Courts
4. Procedures applied in the International Criminal Law
5. Punishments applied in the International Criminal Law
6. Sentencing
7. Pardon, early release and review of sentence
8. Repairing damages

SESSION 30: FINAL EXAM

4. METHODOLOGY AND ECTS WEIGHTING

4.1. GENERAL OBSERVATIONS

The course is based on a mixture between theory and cases. Students are expected to participate in the debates and to prepare cases and simulated trials. Students are also expected to play an active role in the class and strongly encouraged to demonstrate a deeper knowledge of the course topics through their own independent research activity.

Written exams covering theoretical and practical issues.

The paper can be based on any of the contents analyzed during the first part of the course, at the student choice. The paper should be a 20 pages original research, to be briefly presented during class.

Additional Information:
We highly recommend the use of a laptop in class, Wi-Fi connection needed. In any case, the use of Wi-Fi for activities not related to this class will hinder your grade on participation.

4.2. EVALUATION AND WEIGHTING CRITERIA

6 ECTS × 25 student work hours = 150 hours, divided as follows:

- 45 hours: lectures and class sessions, 15 of which will be devoted to practical exercises, cases, simulated trials and debates.
- 70 hours: student personal learning and reflecting, including class preparation, class readings, individual and group assignments, etc.
- 32 hours: Final Paper preparation
- 3 hours: written exams
5. EVALUATION SYSTEM

5.1. GENERAL OBSERVATIONS

Each student has four attempts over two consecutive academic years to pass this course. Attendance at 70% of the classes is compulsory and an absence of more than 30% will result in a grade of 0.0 for the subject. In addition, students not fulfilling the attendance requirement will automatically lose two attempts to pass the course and will thus only have two last attempts to do so during the following academic year.

RETAKE EXAM

If a student’s course grade is below 5.0, the student is required to take the retake exam to pass the course.

The maximum grade that students can obtain in the retake exam period is 8.0.

A student who has missed over 30% of the class meetings will not be allowed to take the retake exam, but will only have two attempts left to pass the course during the following academic year.

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

5.2. EVALUATION AND WEIGHTING CRITERIA

The course grade will depend on three components:

- Class participation: 10%
- Cases: 10%
- Partial written exam: 15%
- Paper: 15%
- Final exam: 50%