EUROPEAN LEGAL HISTORY

BACHELOR IN POLITICS, LAW AND ECONOMICS
Professor: MARCO DE BENITO LLOPIS-LLOMBART
E-mail: mdl2@faculty.ie.edu

Academic year: 18-19
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 help 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. This subject requires the use of a laptop or other internet devices in class.

<table>
<thead>
<tr>
<th>Teaching methodology</th>
<th>Weighting</th>
<th>Estimated time a student should dedicate to prepare for and participate in</th>
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</thead>
<tbody>
<tr>
<td>Lectures</td>
<td>36.67 %</td>
<td>55 hours</td>
</tr>
<tr>
<td>Discussions</td>
<td>0.0 %</td>
<td>0 hours</td>
</tr>
<tr>
<td>Exercises</td>
<td>13.33 %</td>
<td>20 hours</td>
</tr>
<tr>
<td>Group work</td>
<td>0.0 %</td>
<td>0 hours</td>
</tr>
<tr>
<td>Other individual studying</td>
<td>50.0 %</td>
<td>75 hours</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100.0 %</td>
<td>150 hours</td>
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</tbody>
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PROGRAM

SESSION 1
INTRODUCTION

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 I

SESSION 8
ROMAN LAW: PROPERTY II

SESSION 9
EARLY GERMANIC LAW

SESSION 10
CASE STUDY: 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 (7 classes for the course 2017-18 over the Madrid and Segovia campus). 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.

SESSION 11
EARLY MIDDLE AGES I

SESSION 12
EARLY MIDDLE AGES II

SESSION 13
MIDTERM

SESSION 14
LATE MIDDLE AGES I

SESSION 15
LATE MIDDLE AGES II

SESSION 16
IUS COMMUNE AND IURA PROPRIA I

SESSION 17
IUS COMMUNE AND IURA PROPRIA II

SESSION 18
CASE STUDY

SESSION 19
THE AFFIRMATION OF THE MODERN STATE
SESSION 20
HUMANIST JURISPRUDENCE

SESSION 21
MODERN POLITICAL THOUGHT

SESSION 22
CODIFICATION I

SESSION 23
CODIFICATION II

SESSION 24
CODIFICATION III

SESSION 25
CODIFICATION IV

SESSION 26
HISTORY OF THE COMMON LAW I

SESSION 27
HISTORY OF THE COMMON LAW II

SESSION 28
HISTORY OF THE INSTITUTIONS OF PRIVATE LAW I

SESSION 29
HISTORY OF THE INSTITUTIONS OF PRIVATE LAW II

SESSION 30 (FACE TO FACE)
EXAM
BIBLIOGRAPHY

7.1. COMPULSORY

Wauters, B., de Benito, M., A History of Law in Europe, Edward Elgar (hardback 2017, paperback 2018). For a 35% discount, please go to https://www.e-elgar.com/shop/the-history-of-law-in-europe, select ‘paperback’ from the drop-down menu, add the book to their basket, click on ‘your basket,’ then enter code WAUT35 in the discount code box before checkout.

7.2. AVAILABLE

General

Haakonssen, K., Natural Law and Moral Philosophy, Cambridge, 1996.

Roman Law

Canon Law

Helmholz, R. H., The Spirit of Classical Canon Law, Athens (Georgia), 2010.

Common Law


USA


Spain and Latin America


Obligations


Property

Public Law

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

Legal Theory


Political Thought

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.

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.

B. EVALUATION AND WEIGHTING CRITERIA

The grade will be generally determined based on the following criteria:

1. Continuous evaluation (participation, case studies, papers, group work, discussion, quizzes): 45%
2. Mid-term: 15%
3. Final exam: 40%
4. Roman Law Challenge: additional points for finalists and winners (see Session 10).

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.
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 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.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Percentage</th>
<th>Comments</th>
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<tbody>
<tr>
<td>Class Participation</td>
<td>45 %</td>
<td>Includes participation, case studies, papers, group work, discussion, quizzes</td>
</tr>
<tr>
<td>Midterm Test</td>
<td>15 %</td>
<td></td>
</tr>
<tr>
<td>Final Exam</td>
<td>40 %</td>
<td></td>
</tr>
<tr>
<td>Roman Law Challenge</td>
<td>0 %</td>
<td>Additional points for finalists and winners (see Session 10)</td>
</tr>
</tbody>
</table>
Marco de Benito is a full-time Professor of Law at IE University. His areas of interest include international arbitration, international and comparative civil procedure, and comparative legal history. Prof. de Benito earned his doctorate from Comillas Pontifical University. During his doctoral studies he spent a year at Yale Law School and was also a guest scholar at the Max Planck Institute for Comparative and International Private Law in Hamburg. Since then, he has spoken at universities such as Harvard, Bologna, Maastricht, and others in Europe, Asia, and the Americas.

He has authored monographs on arbitration agreements and European justice systems, co-authored a handbook on European legal history and coordinated two collective works on international arbitration. Some of his publications are available at https://marcodebenito.academia.edu.

For over fifteen years, Prof. de Benito has acted in international arbitration proceedings in seats such as Paris, London, Geneva, Madrid, and Miami, under the ICC, UNCITRAL, and Swiss Rules, applying Spanish, Austrian, or Italian law, as well as the lex mercatoria. He has been selected by Global Arbitration Review as one of the foremost international arbitration practitioners under 45.

Prof. de Benito is an appointed member of the Procedural Law Board of the Spanish Royal Academy of Jurisprudence and Legislation. He has consulted for the Spanish Congress and the Argentinian Government on the reform of the two countries' arbitration laws. At IE he headed the Jean Monnet Module "Towards a Common Private Law of Europe."

Prof. de Benito is fluent in English, Spanish, and Italian, and can read German, French, and Portuguese.
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.