



Teaching Guide				
Identifying Data				2018/19
Subject (*)	Philosophy of Law	Code	612G01026	
Study programme	Grao en Dereito			
Descriptors				
Cycle	Period	Year	Type	Credits
Graduate	2nd four-month period	Third	Obligatory	6
Language	SpanishGalicianEnglish			
Teaching method	Face-to-face			
Prerequisites				
Department	Dereito PrivadoDereito Público			
Coordinador	Serna Bermudez, Pedro	E-mail	pedro.serna@udc.es	
Lecturers	Ballesteros Soriano, Alfonso Martínez Doallo, Noelia Pereira Saez, Maria Carolina Rivas Pala, Pedro Seoane Rodriguez, Jose Antonio Serna Bermudez, Pedro	E-mail	alfonso.ballesteros@udc.es noelia.doallo@udc.es c.pereira.saez@udc.es pedro.rivas@udc.es jose.antonio.seoane@udc.es pedro.serna@udc.es	
Web				
General description	In this course we will consider legal positivism in a historical perspective from Th. Hobbes to H. Kelsen. Legal positivism dominates legal thought and it is sometimes taken for granted in college. However, Western Legal Systems and legal thought have radically changed since 1945 and legal positivism has shown to be unable of a proper description of law. The simultaneous process of constitutionalization and globalization is taken into account, as well as argumentation and Inclusive Legal Positivism as a way to overcome legal positivism.			

Study programme competences / results	
Code	Study programme competences / results
A2	Coñecer a función do Dereito como sistema regulador das relacións sociais.
A3	Percepción do carácter sistemático do ordenamento xurídico.
A4	Percepción do carácter interdisciplinar dos problemas xurídicos.
A5	Coñecemento dos principios e valores constitucionais.
A6	Comprensión das distintas manifestacións do dereito na súa evolución histórica e na súa realidade actual.
A8	Coñecementos básicos de argumentación xurídica.
A10	Capacidade de interpretar e analizar criticamente o ordenamento xurídico.
A11	Capacidade de comprender e de redactar documentos xurídicos.
A12	Manexo da oratoria xurídica. (Capacidade de expresarse apropiadamente en público).
A14	Capacidade de elaboración de normas.
B1	Que os estudantes demostrasen posuír e comprender coñecementos nunha área de estudo que parte da base da educación secundaria xeral, e adóitase atopar a un nivel que, aínda que se apoia en libros de texto avanzados, inclúe tamén algúns aspectos que implican coñecementos procedentes da vangarda do seu campo de estudo
B2	Que os estudantes saiban aplicar os seus coñecementos ao seu traballo ou vocación dunha forma profesional e posúan as competencias que adoitan demostrarse por medio da elaboración e defensa de argumentos e a resolución de problemas dentro da súa área de estudo
B3	Que os estudantes teñan a capacidade de reunir e interpretar datos relevantes (normalmente dentro da súa área de estudo) para emitir xuízos que inclúan unha reflexión sobre temas relevantes de índole social, científica ou ética
B5	Que os estudantes desenvolvesen aquelas habilidades de aprendizaxe necesarias para emprender estudos posteriores cun alto grao de autonomía
B6	Aprender a aprender.
B8	Aplicar un pensamento crítico, lóxico e creativo, entendendo, tamén, a importancia da cultura emprendedora.
B9	Traballar de forma autónoma con iniciativa tendo en conta a importancia da aprendizaxe ao longo de toda a vida.
B11	Comportarse con ética e responsabilidade social como cidadán e como profesional.



C1	Expresarse correctamente, tanto de forma oral coma escrita, nas linguas oficiais da comunidade autónoma.
C4	Desenvolverse para o exercicio dunha cidadanía aberta, culta, crítica, comprometida, democrática e solidaria, capaz de analizar a realidade, diagnosticar problemas, formular e implantar solucións baseadas no coñecemento e orientadas ao ben común.
C6	Valorar criticamente o coñecemento, a tecnoloxía e a información dispoñible para resolver os problemas cos que deben afrontarse.
C7	Asumir como profesional e cidadán a importancia da aprendizaxe ao longo da vida.
C8	Valorar a importancia que ten a investigación, a innovación e o desenvolvemento tecnolóxico no avance socioeconómico e cultural da sociedade.

Learning outcomes			
Learning outcomes	Study programme competences / results		
Achieving a global vision on modern law and on the radical changes of contemporary legal systems.	A2 A3 A4 A6 A10 A12	B9 B1 B2 B3 B5	C4 C6 C7
Developing conceptual and hermeneutical tools for an independent approach to the common understanding of law.	A2 A5 A6 A8 A11 A14	B6 B8 B11 B1 B2 B3	C4 C6 C8
Developing legal argumentation in a critical and creative manner.	A4 A8 A10 A11 A12	B8	C1 C4 C6
Knowing current debates on justice and developing a deep personal perspective on them.	A2 A4 A6 A8 A10 A12	B6 B8 B11 B2	C1 C4 C6 C7 C8

Contents	
Topic	Sub-topic
1. Philosophy of Law as Understanding and Critique of Contemporary Law	1. Thinking of law. Methodological approach. 2. The dominant legal thought. Legal positivism.
2. Legal Positivism and Legal Modernity	1. Th. Hobbes: the origins of Legal Positivism. 2. Codification. Code Napoleon. 3. J. Bentham. 4. Thibaut and Savigny: Romanticism or Historicism? 5. J. Austin?s Analytical Jurisprudence. 6. Legal Positivism and Exegesis School. 7. XIXth Century?s Jurisprudence of Concepts and Jurisprudence of Interests. 8. H. Kelsen?s Pure Theory of Law.
3. Interpretation and Adjudication. Critical Assessment	1. Legal positivism in action. Interpretation and adjudication. 2. Scientifism as an ideology and the valorative character of legal science.



4. Western Legal System?s since 1945. Constitutionalization and Globalization	<ol style="list-style-type: none"> 1. Constitutionalization and Neo-constitutionalism: beyond formalism. 2. Globalization: beyond the State.
5. Overcoming Legal Positivism	<ol style="list-style-type: none"> 1. Theories of argumentation. 2. Critical theories. 3. Inclusive legal positivism.
6. Reframing Philosophy of Law for the XXIst Century	<ol style="list-style-type: none"> 1. Hermeneutics. 2. Ontology. 3. Justice.
7. Justice and Rights	<ol style="list-style-type: none"> 1. Doing the right thing. 2. The great happiness principle. Utilitarianism. 3. Do we own ourselves? Libertarianism. 4. Hired help. Markets and morals. 5. What matters is the motive. Immanuel Kant. 6. The case for equality. John Rawls. 7. Arguing affirmative action. 8. Who deserves what? Aristotle. 9. What do we owe one another? Dilemmas of loyalty. 10. Justice and the common good.

Planning				
Methodologies / tests	Competencies / Results	Teaching hours (in-person & virtual)	Student?s personal work hours	Total hours
Guest lecture / keynote speech	A2 A3 A4 A5 A6 B6 B3 C4 C6	21	42	63
Workbook	A2 A4 A5 A6 A10 B8 B1 B2 B5 C7	14	14	28
Seminar	A3 A4 A5 A8 A10 A11 A12 A14 B8 B11 B2 B3 B5 C1 C4 C8	14	28	42
Long answer / essay questions	A2 A3 A5 A6 A8 A10 B8 B9 B2 B3 C1 C6	3	6	9
Personalized attention		8	0	8

(*)The information in the planning table is for guidance only and does not take into account the heterogeneity of the students.

Methodologies	
Methodologies	Description
Guest lecture / keynote speech	The contents will be explained through lectures. (Methodology related with this capacities: A4, A6, A8 y A14).
Workbook	Readings are essential in order to develop a critical thought through classic and contemporary works. (Activity related with capacities: A4, A6, A10, B1, B3, B4 y C6).
Seminar	Philosophy is best learned through active conversation with others. It is therefore important that you be a regular participant in classroom discussions. (Methodology related with this capacities: A4, A5, A8, A10, B3, B6, C1, C4 y C6).
Long answer / essay questions	The exam will consist of questions about the lecture-style classes, including reading related with the different topics. (Activity related with capacities: B1, B3, C1 y C6).

Personalized attention	
Methodologies	Description



Guest lecture / keynote speech Workbook Seminar	Students can attend office hours in order to solve any doubts or difficulties related with the subject.
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Assessment			
Methodologies	Competencies / Results	Description	Qualification
Long answer / essay questions	A2 A3 A5 A6 A8 A10 B8 B9 B2 B3 C1 C6	The exam will consist of questions about the lecture-style classes and the readings related with the different topics.	70
Seminar	A3 A4 A5 A8 A10 A11 A12 A14 B8 B11 B2 B3 B5 C1 C4 C8	Your participation grade will be based on the quality and regularity of your contributions to our classroom discussions.	30

Assessment comments
<p>1,5 out of 3 is required in Seminar (30%). That mark will be added to the Long answer mark if it the latter is at least 3,5 out of 7 (70%).</p> <p>For those officially recognized with partial attendance to the course, assessment of Seminar (30%) will consist of an essay and the answer of oral questions of the professor the day of the final examination.</p> <p>For those that do not pass Seminar and Long answer assessment, the alternative assessment in paragraph two is also possible in July.</p>

Sources of information	
Basic	<ul style="list-style-type: none"> - Pedro Serna (2006). Filosofía del Derecho y paradigmas epistemológicos. México, D.F.: Porrúa - Michael J. Sandel (2011). Justicia. ¿Hacemos lo que debemos?. Barcelona: Debate <p>PARTE TEÓRICA (Sesións maxistrals) Pedro Serna, Filosofía del Derecho y paradigmas epistemológicos, México, D.F.: Porrúa, 2006. PARTE PRÁCTICA (Seminarios e sesións de grupo reducido) Michael J. Sandel, Justicia ¿Hacemos lo que debemos? (2009), traducción de Juan Pedro Campos Gómez, Barcelona, Debate, 2011.</p>
Complementary	<p>N. Bobbio, El positivismo jurídico, trad. de R. de Asís, Madrid, Debate, 1993. K. Larenz, Metodología de la ciencia del derecho, trad. de M. Rodríguez Molinero, Barcelona, Ariel, 1994. L. Lombardi Vallauri, Corso de Filosofía del Diritto, Padova, Cedam, 1982. A. Ollero, ¿Tiene razón el Derecho?, Madrid, Congreso de los Diputados, 1996. P. Serna (dir.), De la argumentación jurídica a la hermenéutica Revisión crítica de algunas teorías contemporáneas, segunda edición, Granada, Comares, 2005 (reimpr. 2009). Ch. Perelman, La lógica jurídica y la nueva retórica, Madrid, Civitas, 1979. A. Aarnio, Lo racional como razonable, Madrid, CEC, 1991. R. Alexy, Teoría de la argumentación jurídica, Madrid, CEC, 1989. R. Alexy, La institucionalización de la justicia, edición y presentación a cargo de J. A. Seoane, traducción de J. A. Seoane, E. R. Soderó y P. Rodríguez, Granada, Comares, 2ª ed., 2010. Obras clásicas de referencia Karl Olivecrona, El Derecho como hecho, 2ª ed., Barcelona, Labor. Gustav Radbruch, Introducción a la Filosofía del Derecho, México, FCE. Hans Kelsen, Teoría pura del Derecho, 2ª ed., México, UNAM. H. L. A. Hart, El concepto de Derecho, Buenos Aires, Abeledo-Perrot. John Finnis, Ley natural y derechos naturales, Buenos Aires, Abeledo-Perrot. John Rawls, Teoría de la justicia, México, FCE. Robert Nozick, Anarquía, Estado y utopía, México, FCE.</p>

Recommendations
Subjects that it is recommended to have taken before



Spain in the Historical and Legal Context of Europe/612G01002

Constitutional Law: Sources of Law and Fundamental Rights/612G01003

Jurisprudence/612G01006

Natural and Civil Legal Person Law/612G01007

Criminal Law: General /612G01010

Obligations and Tort Law/612G01016

Public International Law/612G01019

Subjects that are recommended to be taken simultaneously

Subjects that continue the syllabus

Law and Biomedicine/612G01040

Legal Reasoning Theory and Practice/612G01041

Other comments

(*)The teaching guide is the document in which the URV publishes the information about all its courses. It is a public document and cannot be modified. Only in exceptional cases can it be revised by the competent agent or duly revised so that it is in line with current legislation.