



## Teaching Guide

Identifying Data				2019/20
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	SpanishEnglish			
Teaching method	Face-to-face			
Prerequisites				
Department	Dereito PrivadoDereito Público			
Coordinador	Serna Bermudez, Pedro	E-mail	pedro.serna@udc.es	
Lecturers	Ballesteros Soriano, Alfonso Rivas Pala, Pedro Seoane Rodriguez, Jose Antonio Serna Bermudez, Pedro	E-mail	alfonso.ballesteros@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	Knowledge of the role of law as a regulatory system of social relations
A3	Grasping the systematic nature of the legal system
A4	Appreciating the interdisciplinary nature of legal problems
A5	Knowing the constitutional principles and values.
A6	Understanding the different manifestations of law in its historical evolution and in its current reality.
A8	Basic knowledge of legal argumentation.
A10	Ability to interpret and critically assess the legal system.
A11	Ability to understand and write legal documents.
A12	Management of legal oratory (ability to express themselves properly in public).
A14	Ability to draft legal norms.
B1	Knowledge in an area of study that is based on general secondary education, and is usually found at a level that, although supported by advanced textbooks, includes also some aspects that involve knowledge from the forefront of his field of study.
B2	Ability to know how to apply their knowledge to their work or vocation in a professional way and possess the skills that are usually demonstrated through the elaboration and defense of arguments and the resolution of problems within their area of study.
B3	Ability to gather and interpret relevant data (usually within their area of study) to make judgments that include a reflection on social, scientific or ethical relevant issues.
B5	Acquisition and assessment of those learning skills necessary to undertake further studies with a high degree of autonomy
B6	Learning to learn.
B8	Critical, logical, and creative thinking.
B9	Working autonomously on own initiative with a lifelong learning approach.
B11	Ethical and social responsibility.
C1	Adequate oral and written expression in the official languages.
C4	Exercising an open, educated, critical, committed, democratic and supportive citizenship for the sake of the common good.
C6	Critically assess the knowledge, technology and information available to solve the problems they face.
C7	Assume as a professional and citizen the importance of lifelong learning.



C8	Valuing the importance of research, innovation and technological development for the socioeconomic and cultural progress of society.
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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	1. Constitutionalization and Neo-constitutionalism: beyond formalism. 2. Globalization: beyond the State.
5. Overcoming Legal Positivism	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"> <li>1. Hermeneutics.</li> <li>2. Ontology.</li> <li>3. Justice.</li> </ol>
7. Justice and Rights	<ol style="list-style-type: none"> <li>1. Doing the right thing.</li> <li>2. The great happiness principle. Utilitarianism.</li> <li>3. Do we own ourselves? Libertarianism.</li> <li>4. Hired help. Markets and morals.</li> <li>5. What matters is the motive. Immanuel Kant.</li> <li>6. The case for equality. John Rawls.</li> <li>7. Arguing affirmative action.</li> <li>8. Who deserves what? Aristotle.</li> <li>9. What do we owe one another? Dilemmas of loyalty.</li> <li>10. Justice and the common good.</li> </ol>

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	40	42	82
Workbook	A2 A4 A5 A6 A10 B8 B1 B2 B5 C7	0	15	15
Seminar	A3 A4 A5 A8 A10 A11 A12 A14 B8 B11 B2 B3 B5 C1 C4 C8	15	18	33
Mixed objective/subjective test	A2 A3 A5 A6 A8 A10 B8 B9 B2 B3 C1 C6	3	9	12
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).
Mixed objective/subjective test	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.

Assessment
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Methodologies	Competencies / Results	Description	Qualification
Mixed objective/subjective test	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

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%).

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.

For those that do not pass Seminar and Long answer assessment, the alternative assessment in paragraph two is also possible in July.

### Sources of information

<b>Basic</b>	<ul style="list-style-type: none"> <li>- Pedro Serna (2006). Filosofía del Derecho y paradigmas epistemológicos. México, D.F.: Porrúa</li> <li>- Michael J. Sandel (2011). Justicia. ¿Hacemos lo que debemos?. Barcelona: Debate</li> </ul> <p>PARTE TEÓRICA (Sesiões maxistras) 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. Mercado, ¿Derechos insostenibles?, en J. A Estevez Araújo (ed.), El libro de los deberes, Madrid, Trotta, 2013. &amp;nbsp; M. Balaguer, ¿La maternidad subrogada y el cuerpo de la mujer?, en M. Balaguer, Hij@s del mercado. La maternidad subrogada en un estado social, Madrid, Cátedra, 2017. L. Peña, ¿La deuda histórica del norte con el sur del planeta?, en L. Peña, Estudios republicanos, Madrid, Plaza y Valdés, 2009. M. Sandel, ¿De qué manera los mercados desplazan a la moral?, en M. Sandel, Lo que el dinero no puede comprar. Los límites morales de los mercados, Barcelona, Debate, 2018. &amp;nbsp;</p>
<b>Complementary</b>	<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 Filosofia 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. Sodero 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.