



## Teaching Guide

Identifying Data					2023/24
<b>Subject (*)</b>	Philosophy of Law	<b>Code</b>	612G01026		
<b>Study programme</b>	Grao en Dereito				
Descriptors					
Cycle	Period	Year	Type	Credits	
First and Second Cycle	2nd four-month period	Third	Obligatory	6	
<b>Language</b>	SpanishGalicianEnglish				
<b>Teaching method</b>	Face-to-face				
<b>Prerequisites</b>					
<b>Department</b>	Dereito Privado				
<b>Coordinador</b>	Serna Bermudez, Pedro	<b>E-mail</b>	pedro.serna@udc.es		
<b>Lecturers</b>	Calvo de la Uz, Isaías Juan Crego Blanco, Jorge Pereira Saez, Maria Carolina Rivas Pala, Pedro Seoane Rodriguez, Jose Antonio Serna Bermudez, Pedro	<b>E-mail</b>	isaias.calvo@udc.es jorge.crego@udc.es c.pereira.saez@udc.es pedro.rivas@udc.es jose.antonio.seoane@udc.es pedro.serna@udc.es		
<b>Web</b>					
<b>General description</b>	The course seeks to provide a global understanding of the legal phenomenon through a critical review of the historical, political and scientific basis of the dominant paradigm in contemporary Law. It also aims to provide students with a deeper understanding of some central notions, institutions, processes and structures studied throughout the degree, unifying and synthesizing this knowledge. Therefore, the aim is to carry out a work of synthesis and deepening, both historically and conceptually. In addition, it is intended to introduce students to the knowledge and understanding of the transformations that affect current law and which require a revision of the dominant paradigm (legal positivism) and, finally, to suggest the basic lines of a legal philosophy that allows a more adequate understanding of the Law of the present moment.				

## Study programme competences

Code	Study programme competences
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.

Learning outcomes			
Learning outcomes	Study programme competences		
Achieve a global vision of Western Law during Modernity, of the deep transformations experienced by contemporary legal systems, as well as of the main current debates on the political framework of Law.	A2 A3 A4 A6 A10 A12	B9 B1 B2 B3 B5	C4 C6 C7
Develop conceptual and methodological tools for the critique of the general approach to Law received as an implicit part of the degree.	A2 A5 A6 A8 A11 A14	B6 B8 B11 B1 B2 B3	C4 C6 C8
Develop the capacity of legal and ethical-political argumentation with a critical sense and in a creative way.	A4 A8 A10 A11 A12	B8	C1 C4 C6
Understand the main lines of modern and contemporary thought on justice in its relation to Law, and developing a personal critical point of view on their application to current debates.	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. Philosophy of law as historical knowledge. 2. Thinking about one's own time, the task of the Philosophy of Law. 3. Where to start? The problem of the starting point. The dominant paradigm as a starting point: cultural, political and legal modernity and legal positivism.
2. Legal Positivism and Legal Modernity	1. Legal positivism: a descriptive approach. 2. The theoretical and ideological bases of the modern State. 3. The transformations of the Law from the Civil Codification. 4. The aspiration to make a science of Law: legal science in the 19th and 20th centuries.
3. The weaknesses of the positivist paradigm.	1. The unilateralism of the positivist concept of law. 2. The difficulties of positivism in explaining legal practice and in providing tools to operate in it. 3. The ideological nature of scientism and the necessarily evaluative nature of legal activity.



4. Current Law: Evolution of Western Legal Systems since the second half of the 20th century and the beginning of the 21st century	<ol style="list-style-type: none"> <li>1. Constitutionalization of legal systems.</li> <li>2. Transcending the framework of the State and the State-Law equation.</li> <li>3. The debate on the sources of legitimacy: democracy and/or rule of law</li> <li>4. New human rights versus classic human rights.</li> <li>5. Political Power and Law in The Liquid Modernity</li> </ol>
5. Attempts to manage the argumentative and deliberative dimension of the Law.	<ol style="list-style-type: none"> <li>1. Some theories of legal argumentation Contributions and limits.</li> </ol>
6. Guidelines for the implementation of a legal philosophy which is able to explain current Law.	<ol style="list-style-type: none"> <li>1. An ontologically founded hermeneutic approach.</li> <li>2. Law as a form of coexistence.</li> </ol>
7. Theories of justice and their impact on current debates	<ol style="list-style-type: none"> <li>1. The basic historical frameworks: utilitarianism, libertarianism, kantism and aristotelism.</li> <li>2. Market and morality.</li> <li>3. Political justice and contemporary social democratic ethics (Rawls).</li> <li>4. Arguments for and against affirmative action. Feminism and gender policies.</li> <li>5. The question of merit.</li> <li>6. Citizenship and the requirements and limits of loyalty: what we owe each other.</li> <li>7. Justice and the common good.</li> <li>8. Sustainability.</li> <li>9. The invasion of markets on morality: from the subrogation of the female body to the purchase of honors.</li> <li>10. The North-South debt and the responsibility of developed countries.</li> </ol>

Planning				
Methodologies / tests	Competencies	Ordinary class hours	Student?s personal work hours	Total hours
Guest lecture / keynote speech	A2 A3 A4 A5 A6 B6 B3 C4 C6	40	49	89
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
Speaking test	A2 A3 A5 A6 A8 A10 B8 B9 B2 B3 C1 C6	1	4	5
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	They will have an introductory character to the main topics of the course, or else of recapitulation. This methodology is related to competences A4, A6, A8 and A14.
Workbook	The development of critical thinking and autonomous learning requires that the study be based on a direct reflection of the students from the reading of classic and contemporary texts, as well as normative texts -legislative and case law-, referring to part of the thematic contents of the subject. This activity is related to competences A4, A6, A10, B1, B3, B4 and C6.
Seminar	<p>The seminars will be held in small groups to analyse and discuss the issues relating to the theory of justice indicated in topic 7. They require the active participation of the students, who will have to present and critically analyse the texts and issues that are the subject of each session.</p> <p>They serve to develop argumentative, oral and written skills, and to develop systematic, creative and critical thinking. This methodology is related to the competences A4, A5, A8, A10, B3, B6, C1, C4 and C6.</p>



Speaking test	This exam combines objective and essay/developmental examination. The contents of the lectures, including the readings related to the contents of the first 6 topics, will be evaluated by using this type of exam. This activity is related to competencies B1, B3, C1, and C6. The lecturer in charge of the keynote speeches of each group, at his or her discretion, can combine this test with a written test, covering part of the subject matter. In case this test takes place it will liberate the assessed questions or topics for those who pass it. The marks received will proportionally weigh their value with that of the final speaking test, according to the proportion of the total subject matter covered by it.
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## Personalized attention

Methodologies	Description
Guest lecture / keynote speech	Students may consult with the professor about any doubts or difficulties that may arise with regard to the lectures, readings or seminars.
Workbook	They may do so in individual or group sessions organized for this purpose within the teachers' tutoring hours. There is also the possibility of clearing up doubts via e-mail when the nature of the doubts allows it. And there is also the possibility of carrying out virtual group or individual sessions through Skype, Teams or other similar means.
Seminar	

## Assessment

Methodologies	Competencies	Description	Qualification
Speaking test	A2 A3 A5 A6 A8 A10 B8 B9 B2 B3 C1 C6	The exam will be used to assess the learning of the contents of the lectures and the capacity of critical reflection achieved around them. In the objective part of the exam, special emphasis will be put on understanding the contents, the ability to identify precisely the answers to the questions and the ability to respond with conceptual and linguistic accuracy, avoiding ambiguities and misunderstandings. In the questions that require reflection, the ability to synthesize, identify problems and personal reflection will also be valued. Correctness of expression will be relevant in the assessment. The percentage of this test will be proportionally shared with the written (midterm) test when the lecturer decides to carry it out.	70
Seminar	A3 A4 A5 A8 A10 A11 A12 A14 B8 B11 B2 B3 B5 C1 C4 C8	The assessment of the participation in the small group sessions will refer to the students' presentations and the interventions in the subsequent discussions. In the presentations, it will be possible to obtain up to one point, and the fluency of the presentation and the capacity for analysis and synthesis will be judged. In both (presentations and interventions), students will be assessed on their ability to master the thematic content, their argumentative skills and their capacity to counterargument and evaluate the different points of view in a well-founded manner. Up to 2 points can be achieved by the interventions. As this is a continuous assessment, the quality of the interventions will be considered first and, secondly, the frequency or total number of them throughout the course. The correction in oral expression will be relevant in the assessment. As a general indication, continuous evaluation cannot be approved if 4 or 5 interventions of significant value are not made in different sessions of the seminar.	30

## Assessment comments



In order to pass the course, the sum of the marks of all the assessments must reach 5 points.

The two grades will not be added together if at least 1.2 points (out of a possible 3) are not obtained in the seminars; and 3.5 points (out of a possible 7) in the speaking test and the possible average with the midterm exam.

In the case of students with recognition of part-time dedication and academic dispensation of attendance who cannot participate in the seminar sessions, the evaluation of the corresponding competences (30% of the final mark) will be carried out by means of a written work on one of the headings of topic 7 and an oral discussion with the lecturer in charge of the corresponding group of seminars, which will deal with the remaining contents of topic 7, in which these students must show their level of deepening in the contents of the texts proposed for the seminars and development of a critical viewpoint. This alternative evaluation will be carried out before the start of the final examination period, on a date and at a time agreed with the lecturer. The deadline for the submission of the written work and for the oral discussion is the start day of each examination period.

Students who cannot participate in the seminar sessions for justified reasons, which must be appreciated by the coordinating lecturer of the course, can also take advantage of this alternative form of evaluation. They must inform the professor of the circumstances that justify the exceptionality within the first two school weeks of the four-month period. If the circumstances are supervened, they must be communicated as soon as they occur. Students who apply for the second call or opportunity (July) will keep their seminar grades, if they had achieved at least 1.2 points out of 3. Students who do not achieve a score of 1.2 in the May-June call in the evaluation of the seminars must follow the alternative evaluation described above in the July call or opportunity. For those who do not achieve a score of 1.5 the withdrawal of the mark for the seminars will be optional. In the opportunity of July, the deadline for the delivery of the works and of the oral discussion will be determined by the lecturers. It cannot be after the day of the official exam for that opportunity.

Plagiarism in any essay or copying during the written exam implies a 0 marks in that activity.

Students that fail the course will retain the marks of the parts they have passed, but only for the following year.

## Sources of information

<b>Basic</b>	<ul style="list-style-type: none"><li>- Pedro Serna (2006). <i>Filosofía del Derecho y paradigmas epistemológicos</i>. México, D.F.: Porrúa</li><li>- Michael J. Sandel (2010). <i>Justice: What's the Right Thing to Do?</i>. London: Penguin</li></ul> <p>PARTE TEÓRICA (Sesiones maxistras) Pedro Serna, <i>Filosofía del Derecho y paradigmas epistemológicos</i>, México, D.F.: Porrúa, 2006. PARTE PRÁCTICA (Seminarios e sesiones de grupo reducido) Michael J. Sandel, <i>Justicia ¿Hacemos lo que debemos?</i> (2009), traducción de Juan Pedro Campos Gómez, Barcelona, Debate, 2011. P. Mercado, 'Derechos insostenibles?', en J. A Estévez Araújo (ed.), <i>El libro de los deberes</i>, Madrid, Trotta, 2013. M. Balaguer, 'La maternidad subrogada y el cuerpo de la mujer?', en M. Balaguer, <i>Hij@s del mercado. La maternidad subrogada en un estado social</i>, Madrid, Cátedra, 2017. L. Peña, 'La deuda histórica del norte con el sur del planeta?', en L. Peña, <i>Estudios republicanos</i>, Madrid, Plaza y Valdés, 2009. M. Sandel, 'De qué manera los mercados desplazan a la moral?', en M. Sandel, <i>Lo que el dinero no puede comprar. Los límites morales de los mercados</i>, Barcelona, Debate, 2018. P. De Lora, <i>El laberinto del género. Sexo, identidad y feminismo</i>, Madrid, Alianza, 2021.</p>
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<b>Complementary</b>	<ul style="list-style-type: none"> <li>- Robert Alexy (2009). A Theory of Legal Argumentation. The Theory of Rational Discourse as Theory of Legal Justification. Oxford: Oxford University Press</li> <li>- John Finnis (2011). Natural Law and Natural Rights. Oxford: Clarendon Law Series</li> <li>- H.L.A. Hart (2012). The Concept of Law. Oxford: Clarendon Law Series</li> <li>- Hans Kelsen (2009). Pure Theory of Law. New Jersey: The Lawbook Exchange</li> <li>- Karl Olivecrona (1971). Law as Fact. London: Sweet &amp; Maxwell</li> <li>- Chaim Perelman (1979). The new rhetoric and the humanities: Essays on rhetoric and its applications. Dordrecht: Springer</li> <li>- John Rawls (1999). A Theory of Justice. Cambridge: Harvard University Press</li> <li>- Robert Nozick (2013). Anarchy, State, and Utopia. New York: Basic Books</li> <li>- Aulis Aarnio (1987). The Rational as Reasonable. A Treatise on Legal Justification. Dordrecht</li> </ul> <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. 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>
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## 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  
 Person's 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.