



| Teaching Guide      |  |        |   |           |
|---------------------|--|--------|---|-----------|
| Identifying Data    |  |        | 2020/21   |           |
| 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 Privado  |        |   |           |
| Coordinador         | Serna Bermudez, Pedro  | E-mail | pedro.serna@udc.es  |           |
| Lecturers           | Crego Blanco, Jorge<br>Pereira Saez, Maria Carolina<br>Rivas Pala, Pedro<br>Serna Bermudez, Pedro<br>Vergara Lacalle, Oscar  | E-mail | jorge.crego@udc.es<br>c.pereira.saez@udc.es<br>pedro.rivas@udc.es<br>pedro.serna@udc.es<br>oscar.vergara@udc.es |           |
| Web                 |  |        |   |           |
| General description | 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. |        |   |           |



## Contingency plan

### 1. Modifications to the contents

No changes will be made. Only those contents actually developed in the exhibition classes or in the small group sessions will be subject to evaluation.

### 2. Methodologies

\*Teaching methodologies that are maintained

All the planned methodologies are maintained. Only the realization scenario will change, going from the face-to-face scenario to the online one.

\*Teaching methodologies that are modified

Master lectures and seminars will be held online through Teams.

An essay test will be added to reduce the value of the final oral exam and to assess through it the acquisition of some of the learning achievements and skills of the course.

### 3. Mechanisms for personalised attention to students

a) Moodle. It will be used to make available to students the (enriched) presentations of the contents of each topic. This will have been done from the beginning of the course.

It will also be used for general communication with students. It will be assumed that all students are informed of what lecturers have published in Moodle.

In addition, links to the recordings of the online lectures will be uploaded weekly.

Finally, it will be used for the completion and delivery of the written test.

b) Teams. It will be used every week for the lectures (2 hours per turn), except for the weeks in which more classes are scheduled. These lectures will be recorded and a link to them will be included in Moodle so that students can watch them if they couldn't connect, or watch them again if there is something they want to clarify.

It will also be used for small group sessions (1 hour per week for each small group). These sessions will not be recorded, normally.

They can also be used for individual and group tutoring sessions with students (as necessary, according to demand, up to a maximum of 6 hours per week).

Finally, they will be used for oral exams, which will be recorded, as well as their respective revisions.

c) E-mail. It will be used for the resolution of doubts and individual tutoring with students and for communication with the representatives. We will try to respond as soon as possible, in any case within a maximum period of one week.

### 4. Modifications in the evaluation

The final exam will be worth 50% of the final grade. It will be an oral exam through Teams, which will be recorded. There will be 3 or 4 questions, chosen from a list that will be provided to students in advance to facilitate the preparation of the exam.

The seminars will continue to be worth 30% of the final grade and the evaluation criteria will not change.

A written test will be introduced, representing 20% of the final grade. In it, a set of essay questions related to a part of the content of the course will have to be answered, as indicated by the teacher, in which the students will have to connect what they have learned with other knowledge acquired during their undergraduate studies.

\*Evaluation observations:

Students who have difficulties in making their presentation in the seminars by connecting through Teams may, after informing the teacher in charge of their small group, follow the system foreseen in the teaching guide for students with



dispensation from attending classes. If they have already participated assiduously throughout the course and the difficulty in making their intervention in the form of a question or comment is occasional, they can make it through the Teams chat or send it by e-mail to the teacher.

Those who do not pass the part of the seminars in May must present themselves in July, carrying out the tasks foreseen in the teaching guide for students who are dispensed from attending classes.

Students of the Simultaneous Program of the Bachelor in Business Administration and Bachelor in Law will take the course in the first four-month period. Those who have to attend the July opportunity, if they have the seminar part due, will have to do the tasks foreseen for the students with dispensation to attend classes. If they have the theoretical part due, they will have to carry out the evaluation activities in the form foreseen for them that is in force when they are to be held (in person or online).

## 5. Modifications to the bibliography or webgraphy

No changes are planned. For the students in the English language group, documents or links will be added for voluntary consultation to websites where they can find support material for the preparation of part of the topics set out in the lectures. Care will be taken not to increase the workload associated with the subject.

For the students in Galician/Spanish, the only book of basic bibliography, of which the coordinator of the course is the author, will be uploaded in pdf format to the course page in Moodle.



| 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 |    |
| To 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  | B9                          | C4 |
|  | A3  | B1                          | C6 |
|  | A4  | B2                          | C7 |
|  | A6  | B3                          |    |
|  | A10 | B5                          |    |
|  | A12 |                             |    |
| To develop conceptual and methodological tools for the critique of the general approach to Law received as an implicit part of the degree.   | A2  | B6                          | C4 |
|  | A5  | B8                          | C6 |
|  | A6  | B11                         | C8 |
|  | A8  | B1                          |    |
|  | A11 | B2                          |    |
|  | A14 | B3                          |    |
| Developing with a critical sense and in a creative way the capacity of legal and ethical-political argumentation.  | A4  | B8                          | C1 |
|  | A8  |                             | C4 |
|  | A10 |                             | C6 |
|  | A11 |                             |    |
|  | A12 |                             |    |



|  |     |     |    |
|--|-----|-----|----|
| Understanding 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  | B6  | C1 |
|  | A4  | B8  | C4 |
|  | A6  | B11 | C6 |
|  | A8  | B2  | C7 |
|  | A10 |     | C8 |
|  | A12 |     |    |

| Contents   |  |
|--|--|
| Topic  | Sub-topic  |
| 1. Philosophy of Law as Understanding and Critique of Contemporary Law   | 1. Philosophy as historical knowledge.<br>2. Thinking about one's own time, the task of the Philosophy of Law.<br>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.<br>2. The theoretical and ideological bases of the modern State.<br>3. The transformations of the Law from the Civil Codification.<br>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.<br>2. The difficulties of positivism in explaining legal practice and in providing tools to operate in it.<br>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 | 1. Constitutionalization of legal systems.<br>2. Transcending the framework of the State and the State-Law equation.<br>3. The debate on the sources of legitimacy: democracy and/or rule of law.<br>4. New human rights versus classic human rights.  |
| 5. Attempts to manage the argumentative and deliberative dimension of the Law.   | 1. Some theories of legal argumentation Contributions and limits.  |
| 6. Guidelines for the implementation of a legal philosophy which is able to explain current Law.                                   | 1. An ontologically founded hermeneutic approach.<br>2. Law as a form of coexistence.  |
| 7. Theories of justice and their impact on current debates   | 1. The basic historical frameworks: utilitarianism, libertarianism, kantism and aristotelism.<br>2. Market and morality.<br>3. Political justice and contemporary social democratic ethics (Rawls).<br>4. Arguments for and against affirmative action. Feminism and gender policies.<br>5. The question of merit.<br>6. Citizenship and the requirements and limits of loyalty: what we owe each other.<br>7. Justice and the common good.<br>8. Sustainability.<br>9. The invasion of markets on morality: from the subrogation of the female body to the purchase of honors.<br>10. The North-South debt and the responsibility of developed countries. |

| Planning                       |                               |                      |                               |             |
|--------------------------------|-------------------------------|----------------------|-------------------------------|-------------|
| Methodologies / tests          | Competencies                  | Ordinary class hours | Student?s personal work hours | Total hours |
| Guest lecture / keynote speech | A2 A3 A4 A5 A6 B6<br>B3 C4 C6 | 40                   | 42                            | 82          |



|   |  |    |    |    |
|---|--|----|----|----|
| Workbook  | A2 A4 A5 A6 A10 B8<br>B1 B2 B5 C7                          | 0  | 15 | 15 |
| Seminar   | A3 A4 A5 A8 A10 A11<br>A12 A14 B8 B11 B2<br>B3 B5 C1 C4 C8 | 15 | 18 | 33 |
| Speaking test   | A2 A3 A5 A6 A8 A10<br>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 | 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                        | 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.<br>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. |
| 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 competences B1, B3, C1 and C6.   |

| 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<br>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. | 70            |



|         |  |   |    |
|---------|--|---|----|
| Seminar | A3 A4 A5 A8 A10 A11<br>A12 A14 B8 B11 B2<br>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 mark obtained in the continuous assessment of the seminars and the mark of the test(s) will have to 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 tests.

There will be no mid-term exams.

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 interview with the professor 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 point of view. 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 professor, with a deadline for the submission of written work and for the oral test on 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 professor 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 have 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

## 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 maxistrais) 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> |
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| <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> |
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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.