

## Legal Methodology

Academic Year: ( 2019 / 2020 )

Review date: 01-06-2019

Department assigned to the subject: International Law, Ecclesiastical Law and Philosophy of Law Department

Coordinating teacher: PEREZ DE LA FUENTE, OSCAR

Type: Compulsory ECTS Credits : 1.0

Year : 1 Semester : 1

### OBJECTIVES

Know and understand:

- The characteristics of the legal method and its philosophical implications and for judicial function.
- Different arguments of interpretation
- Different approaches to legal interpretation
- Different theories on legal weighting

Be capable of:

- Identifying and analyzing different arguments of different theories
- Making arguments in favour and against of one vision
- Analyzing critically any point of view of the different iusphilosophical controversies
- Applying different theories and arguments to practical cases, based generally in sentences

### DESCRIPTION OF CONTENTS: PROGRAMME

#### 1.- LEGAL METHOD CHARACTERISTICS

- 1.1.- Logic and Law. Internal and external justification
- 1.2.- Legal formalism
- 1.3.- Arguments of the legal interpretation
- 1.4.- Precedents and criteria for justification

#### 2.- LAW, RIGHTS AND INTERPRETATION

##### 2.1.- Canons of legal interpretation. Easy cases and hard cases

##### 2.2. Some theories on interpretation

- 2.2.1.- The Noble Dream
- 2.2.2.- The Nightmare
- 2.2.3.- The Vigil

#### 3.- CONSTITUTIONAL DILEMMAS AND CONCEPTIONS OF LEGAL WEIGHING

- 3.1.- Sceptic theories
- 3.2.- Universalist theories
- 3.3.- Particularist theories

### LEARNING ACTIVITIES AND METHODOLOGY

According to the ECTS system, the two credits of this subject correspond to 25 hours of student's work. These Works hours are distributed in the following way:

- 6 hours of in person class in which are included theoretical and practical sessions.

These sessions are based specially in Professor's explanations on basic concepts and general indications for reading and practical cases. These classes are active for students and require their participation with questions and debates.

- 9 hours of individual study by the students on the recommended readings of the bibliography and practical cases.
- 20 hours of elaboration and presentation of a work. This work should be done individually and consists of applying the knowledge on legal arguments.
- There will be a system of tutorials for the students.

#### ASSESSMENT SYSTEM

The assessment is based specially on the work. It is also assessed the students participation and the presentation of expositions.

Class participation 10%

Individual final work 90%

<b>% end-of-term-examination:</b>	0
<b>% of continuous assessment (assignments, laboratory, practicals...):</b>	100

#### BASIC BIBLIOGRAPHY

- Alexy, Robert Teoría de la argumentación jurídica, Centro de Estudios Constitucionales, 2002
- Asís Roig, Rafael de Jueces y normas, Marcial Pons, 1995
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- Atienza, Manuel Las razones del derecho. Teorías de la argumentación jurídica, Centro de Estudios Constitucionales, 1993
- Barranco Aviles, M Carmen Derecho y decisiones interpretativas, Marcial Pons, 2004
- Calvo García, Manuel Los fundamentos del método jurídico: una revisión crítica, Tecnos, 1984
- Dworkin, Ronald Law's Empire, Fontana Press, 1991
- Dworkin, Ronald Los derechos en serio, Ariel, 1984
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- García Amado, Juan Antonio Teorías de la topica jurídica, Civitas, 1988
- Habermas, Jürgen Facticidad y validez, Trotta, 2000
- Hart, L.H.A. El concepto de Derecho, Abeledo Perrot, 2007
- Larenz, K. Metodología de la ciencia del Derecho, Ariel, 1994
- Perelman, Ch. La lógica jurídica y la nueva retórica, Civitas, 1979
- Raz, Alexy, Bulygin Una discusión sobre Teoría del Derecho, Marcial Pons, 2007
- Sunstein, Cass Legal reasoning and political conflict, Oxford University Press, 1996