Law of obligations and tort law

Academic Year: (2019 / 2020) **Review date: 29-04-2020**

Department assigned to the subject: Private Law Department

Coordinating teacher: OLMO GARCIA, PEDRO DEL

Type: Compulsory ECTS Credits : 6.0

Year : 2 Semester : 2

REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)

Law of Contracts

OBJECTIVES

In this subject, students have to achieve a satisfactory degree of knowledge on the basic features of the rules on the general part of the law of obligations, including the regime of non contractual liability civil and unjustified enrichment. Also, students have to
- Apply rules to different kinds of social facts
- Use the principles and practice of drafting legal opinions on different aspects of the law of obligations
- Read, deeply understand and use of case law, especially in non-contractual scenarios
- Analyze some contracts, focusing in issues related to the elements of obligations and its guarantees
- Read, understand and fruitfully use some doctrinal writings and commentaries to legal texts

DESCRIPTION OF CONTENTS: PROGRAMME

LESSON 1 CONCEPT AND SOURCES OF OBLIGATIONS

1. Obligation and obligatory relationship.
2. Duty and liability. Natural obligations.
3. Elements of obligations. The roles of creditors and debtors.
4. The sources of obligations at the Spanish Civil Code.
5. Unilateral will as a source of obligations. Public promise.

LESSON 2 ELEMENTS OF THE OBLIGATION: SUBJECTS

1. The parties in the obligatory relationship.
2. Plurality of persons in the obligatory relationship: Solidarity is not the default rule.
3. Joint or common obligations. Divisibility and indivisibility in obligations.
4. Joint and severally liability.

LESSON 3 ELEMENTS OF THE OBLIGATION: OBJECT AND CIRCUMSTANCES

1. Object:
a. The act of performance (prestación): Concept and classes.
b. Generic obligations.
c. Alternative obligations. Facultative obligations.
d. Pecuniary obligations and the obligation to pay interest.
e. Bilateral obligations.
2. Circumstances:
a. Terms and periods.
b. Conditions.

LESSON 4 PERFORMANCE AND ITS SUBSTITUTES

1. Performance: Concept and legal nature.
a. Subjects at performance. Payment of another¿s debt.
b. Objective requirements of performance.
c. Place and time requierements of performance.

d. Proof of performance. The costs of performance.
e. Imputation of performance.
2. The performance substitutes.
a. Tender and consignation of performance. Mora creditoris.
b. Setoff of obligations.
c. Datio in solutum.
d. Payment by assingment of property.
e. Remission of obligations.

LESSON 5 THE GUARANTIES OF OBLIGATIONS

1. Concept and kinds of guaranties.
2. Penalty clause.
3. Earnest money and deposit.
4. The right of retention.
5. Guaranty.
a. Concept, features, sources and capacity
b. The guarantor¿s obligation and the principal obligation
c. The relationship between creditor and guarantor. The relationship between debtor and guarantor
d. Extinction of the guaranty
e. Special forms of guaranties.
6. Independent guaranties.

LESSON 6 THE MODIFICATION AND EXTINCTION OF OBLIGATIONS.

1. The modification of obligations.

a. Basic types and principles of the modifications of obligations. The concept of novation in the Civil Code.
b. Credits assignment.
c. Changing the debtor's person: expromissio, delegatio and assumption of debts.
d. Transmission of contracts.

2. The extinction of obligations

a. Termination by agreement.
b. Unilateral termination.
c. Confusion. ¿What if the creditor becomes her own's debtor (or viceversa)?

LESSON 7 NON-PERFORMANCE AND REMEDIES FOR NON-PERFORMANCE (I)

1. Non-performance of the obligation and non-performance of the contract: two different models of regulation

a. The traditional model of non-performance. Mora debitoris, impossibility of performance and performance by equivalent. The remedies' scheme.
b. The modern model of non-performance. Non-conformity as an unified and neutral conecpt. The remedies' scheme.

2. The right to enforce performance and its limits. Impossibility and abuse of rights.

LESSON 8 NON-PERFORMANCE AND REMEDIES FOR NON-PERFORMANCE (II)

3. Termintation and other remedies of the so called bilateral obligations: withholding performance and price reduction.
4. Damages
a. The damage and the causation requirements
b. Atribution of liability. Fault. Liabiltiy for auxiliaries. The idea of the sphere of control
c. Meassuring damages. The duty to mitigate
d. Agreements on damages

TEMA 9 NON-PERFORMANCE AND REMEDIES FOR NON-PERFORMANCE (III)

5. Hardship and rebus sic stantibus
6. Mora debitoris and money not accepted/deposit
7. Non-performance and the intervention of a third party.
8. Actio pauliana and actio subrogationis

LESSON 10 NON-CONTRACTUAL LIABILITY (I)

1. Non-contractual liability (NCL). Its concept and functions
2. A comparative view of NCL.
3. The evolution of NCL. The current situation of the understanding of fault.
4. NCL and contractual liability
5. NCL and civil liabilities incurred in a criminal scenario.

LESSON 11 NON-CONTRACTUAL LIABILITY (II)

1. The requirements of NCL
2. Damage. Patrimonial damage and non-pecuniary damage. Moral damage and biological damage.
3. The link of causation: Causation in fact and legal causation .
4. Fault, pressumption of fault and strict liability.
5. Defences from liability

LESSON 12 NON-CONTRACTUAL LIABILITY (III)

1. Fault liability and liability for others
2. NCL arising from damage caused by animals and things.
3. Special Acts on NCL. Road traffic accidents, defective products and other cases of strict liability
4. Assesment of damages. The claimant and the debtor of damages. Prescription of the claim.
5. Third party insurance

LESSON 13 THE BENEVOLENT INTERVENTION ON ANOTHER'S AFFAIRES, UNDUE PAYMENT AND UNJUSTIFIED ENRICHMENT.

1. The legal concept of quasi-contract..
2. Negotiorum gestio: The benevolent intervention on another's affaires without mandate.
3. Undue payments. Mistake and restitution
4. Unjustified enrichment: a unitarian perspective vs a typological view. The different kinds of condictiones.

LESSON 14 INSOLVENCY

1. La responsabilidad universal del deudor y las situaciones de insolvencia. Antecedentes legislativos.
2. La insolvencia del deudor y el concurso de acreedores. Órganos del concurso.
3. Efectos de la declaración de concurso.
4. Determinación de la masa. los privilegios y la prelación de créditos. Los créditos subordinados
5. Las soluciones del concurso

LEARNING ACTIVITIES AND METHODOLOGY

Weekly, the normal activities consist in:
- One hour and a half of theoretical class
- One hour and a half of practice session in which some real conflicts (normally based on Supreme Court Decisions) will be solved. A booklet containing the cases an legal issues to be solved in each class can be found in the moodle.

ASSESSMENT SYSTEM

To evaluate the practical part of the students performance, the teacher will take into account the oral participation in the classes and the making of the required cases (up to 4 points of the final mark). With regard to the theoretical part of the subject, students have to take a multiple choice exam (up to points of the final mark).

% end-of-term-examination:	60
% of continuous assessment (assigments, laboratory, practicals…):	40

BASIC BIBLIOGRAPHY

- DÍEZ-PICAZO y GULLÓN Sistema de Derecho civil, II-1 y II-2,, Tecnos.
- E. Cordero Lobato y M.J. Marín López Derecho de obligaciones y contratos en general, Tecnos.
- LACRUZ BERDEJO et al. Elementos de Derecho Civil II-1 y II-2, Bosch.
- LASARTE ÁLVAREZ Principios de Derecho Civil. Tomo II,, Marcial Pons.
- LÓPEZ LÓPEZ y VALPUESTA (eds) Derecho civil patrimonial, I, Tirant lo Blanch.

ADDITIONAL BIBLIOGRAPHY

- Bercovitz (dir.) Comentarios al Código Civil, Tirant lo Blanch.
- Cañizares et. al (dirs.) Código Civil comentado, Civitas.
- Domínguez Luelmo (dir) Comentarios al Código civil, Lex Nova.
- Díez-Picazo Fundamentos del Derecho civil patrimonial, II y V, Civitas.
- Puig Brutau Fundamentos de Derecho civil, I-2º y II-3º, Bosch.
- Reglero Campos y Busto Lago (dirs.) Tratado de Responsabilidad Civil, Aranzadi.
- Roca Trías y Navarro Mitchell Derecho de Daños: textos y materiales, Tirant lo Blanch.