

Academic Year: ( 2020 / 2021 )

Review date: 28-06-2020

Department assigned to the subject: Private Law Department

Coordinating teacher: CANDELARIO MACIAS, MARIA ISABEL

Type: Electives ECTS Credits : 2.0

Year : 1 Semester : 2

**REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)**

Materials that are characteristic of the Degree in Law: Civil Law, Commercial Law, among others.

**OBJECTIVES****BASIC SKILLS**

- CB6 Possess and acquire knowledge that provides a basis or opportunity to be original in the development and/or application of ideas, often in a research context.
- CB7 Make the students able to apply the knowledge acquired, and their ability to solve problems in environments that are new or little known within broader contexts (or multidisciplinary) related to their field of study.
- CB8 Make the students able to integrate knowledge and face the complexity of exercising judgment from information that, being incomplete or limited, includes reflections over the social and ethical responsibilities linked to the application of their knowledge and judgments.
- CB9 Make the students capable to communicate their conclusions and the knowledge and ultimate reasons that support those conclusions, to a public that may be specialized or non-specialized in a clear and unambiguous manner.
- CB10 Make the students possess the learning skills that allow them to continue studying in a way that will, to a great extent, have to be self-directed and autonomous.

**GENERAL SKILLS**

- CG1 Understand the multidisciplinary nature of the legal order and the necessarily interdisciplinary approach to legal problems, especially from an international perspective.
- CG2 To integrate, manage, identify, organize and analyze information of a legal nature.
- CG3 To formulate critical judgments, evaluate them, and communicate their conclusions in a clear and orderly manner.
- CG4 To evaluate the development of personal and collective actions, identifying rigorous and well-finished work, as well as mistakes, making arguments, and proposing alternative solutions to improve processes and outcomes.
- CG5 To acknowledge the growing importance of teamwork and show initiative, creativity and sense of responsibility, maintaining a lively interest during the whole process.
- CG6 To adapt and blend into different working groups, keeping fluid relationships and communication, respecting ideas and solutions proposed by others with an attitude of cooperation and tolerance, sharing responsibilities and issuing and receiving instructions.
- CG7 To develop professional works in interdisciplinary and international teams, with the ability to integrate diverse contributions in diverse and multicultural legal environments, all towards a common goal.
- CG8 To acquire an adequate and correct attitude at an international level, especially in the context of legal compliance and the management of conflicts of interest in the negotiation of contracts and their performance, as well as in the dispute resolution stage.
- CG9 Ability to understand the advisory role in the broader transnational environment.
- CG10 Ability to apply in new and multidisciplinary environments the concepts, principles, theories or models related to the globalization and internationalization of the law.

**SPECIAL SKILLS**

- CE1 To be able to draft legal documents in Spanish and English in the context of contract negotiation, the execution of transnational transactions, as well as in international conflictual contexts.
- CE2 To understand the different types of conflicts present in every negotiation or dispute resolution activity in the context of international legal practice and to analyse its influence in the development of

the legal service to be rendered with regard to the parties involved: businesses, the State, or physical persons.

CE3 To negotiate to resolve and/or avoid situations of legal conflict, which will permit the lawyer to improve the efficiency of its work.

CE7 To learn the key legal concepts and institutions in other jurisdictions, especially those coming from a common law system, and their comparison and contrast with the main legal institutions of civil law.

CE8 To learn the key legal principles and institutions in Transnational Law and Public International Law, and to understand the channels through which the interests protected by the different branches of the law can be interwoven and interrelated, either through the transfer of principles or lessons learned, or through the conflict between them, and the need to achieve complex equilibria.

CE9 Capacity to understand the economic implications of legal decisions, and the financial perspective when evaluating a client or a project.

CE10 Capacity to understand commercial companies in terms of the diversity of interests that are present in them, their points of confluence, and of conflict, as well as the diversity of agency problems that can arise, and the mechanisms, arising from the law or from party autonomy, for their solution.

CE11 Capacity to extrapolate the interests at stake in business transactions to a cross-border environment, where the preferences of the different parties may vary, and the legal mechanisms to solve the conflicts may be different, so that it becomes possible to understand each party's priorities in each context.

CE12 Capacity to put together the contractual perspective, which is subject to party autonomy, and bilateral negotiation, with the multi-lateral perspective, and the public interest perspective, as reflective of a different agency, and to reconcile the interests not present in the negotiating process, and the limits to party autonomy.

CE13 Capacity to understand the main tax aspects that need to be taken into account in the context of a cross-border activity, particularly those that arise from international treaties and international tax planning.

CE14 Capacity to reconcile perspectives of legal interpretation with economic and accounting perspectives to design the transactions and structures that reconcile tax optimization with the most scrupulous compliance with legality.

CE15 To know the steps that form the different arbitral and judicial proceedings at an international level.

CE16 Capacity to integrate the understanding of the different stages of international proceedings in a sequential perspective, where the different scenarios are anticipated, in order to prepare the best strategy for the proceedings.

CE17 Advanced skills for the transnational execution and coordination of actions for the practice of evidence, especially the production of documents, witness testimonies and expert evidence in complex situations.

CE18 To know and be able to integrate the defence of the interest of the client within the framework of international protection systems.

CE19 Capacity of critical analysis of contractual and procedural documents and legal texts with an international origin for their correct interpretation and execution.

CE20 Capacity to draw common criteria from diverse sources from different legal traditions, and to formulate proposals and positions not based on arguments of authority, but of consistency.

CE21 To advice in matters of legal compliance, or corporate law, contract law, procedural law, labour law, administrative law or tax law from the perspective of international advocacy.

## LEARNING RESULTS

After taking this course the student will be able to:

-Acquire a comprehensive view of the more relevant transactions in international legal practice, which will encompass the corporate and contractual perspective, as well as the regulatory one.

-Know the more usual proceedings in an international environment, both judicial as well as arbitral, as well as their different stages and requirements.

-Be able to draft procedural briefs and documents corresponding to judicial and arbitral proceedings at an international level.

-To know how to evaluate the risks and to plan the strategies that arise in international negotiation or mediation with the goal of reaching an agreement between the parties involved.

-To know and explain the main human and fundamental rights and their protection in the main international instruments.

-To know the main legal situations and issues that arise in the transnational mobility of workers, persons and citizens, as well as those arising from family and succession law at an international level.

-To put in practice the essential elements of international advocacy in a way sensitive to the different substantive areas where transnational practice takes place.

## DESCRIPTION OF CONTENTS: PROGRAMME

### International insolvency proceedings

1.- Pre-insolvency scenarios. Pre-insolvency and schemes of arrangement

2.- Beginning of the insolvency

- a) Situation of insolvency.
- b) Standing request opening, and insolvent company
- c) Insolvency and groups of companies

3.- International insolvency proceedings

- a) General matters: territorialist and universalist views.
- b) Jurisdiction and applicable law.
- c) Secondary proceedings and cross-border groups.

4.- Consequences of insolvency

- a) Impact on debts outstanding and executory contracts.
- b) Avoidance actions.
- c) Subordination.
- d) Liability.
- e) Applicable law to property and security rights, set-off, avoidance, subordination and liability.

## LEARNING ACTIVITIES AND METHODOLOGY

### TRAINING ACTIVITIES FOR MATTERS

AF1 Theoretical class  
AF2 Practical classes  
AF3 Theoretical practical classes  
AF6 Group work  
AF7 Individual student work

### TEACHING METHODOLOGIES BY SUBJECT

MD1: Presentations in the teacher's class with support of computer and audiovisual media, in which the main concepts of the subject are developed and the bibliography is provided to complement the students' learning.

MD2: Critical reading of texts recommended by the teacher of the subject: Press articles, reports, manuals and / or academic articles, either for later discussion in class, or to broaden and consolidate the knowledge of the subject.

MD3: Resolution of practical cases, problems, etc., raised by the teacher individually or in a group

MD4: Exposition and discussion in class, under the moderation of the professor of subjects related to the content of the subject, as well as of practical cases

MD5: Individual and group work and reports

## ASSESSMENT SYSTEM

### MATERIAL ASSESSMENT SYSTEMS

SE1 Class participation  
SE2 Individual or group work done during the course  
SE3 Final exam

System of

Evaluation Minimum Weighting (%) Maximum Weighting (%)

SE1 20% 30%

SE2 40% 60%

SE3 20% 40%

DAY 1. Alfonso CARRILLO. Lawyer Broseta Pont Office.

MODULE I. PRACTICE: "EXPLANATION AND RESOLUTION OF THE CASE". CONTINUATION.

DAY 2. Emilio GONZÁLEZ BILBAO, Lawyer INSOLVALIA.

MODULE I. PRACTICE: "EXPLANATION AND RESOLUTION OF THE CASE".

DAY 4 and 4. María Isabel CANDELARIO MACÍAS. Associate Professor of Commercial Law, Universidad Carlos III de Madrid.

MODULE II. THEORETICAL: "THE LAW OF INSOLVENCY IN THE EUROPEAN UNION AND THE TRANSNATIONAL INSOLVENCY. UNCITRAL MODEL LAW".

MODULE II. THEORETICAL. CONTINUATION.

FINAL EXAM: Maria Isabel CANDELARIO MACÍAS. Associate Professor of commercial law, Universidad Carlos III de Madrid.

-Test that consists of 10 type test questions, each one of them will be worth 0.20 to get 2 points.

#### EVALUATION SYSTEM

The course will be taught by 77% in English and the rest 23% in Spanish. It consists of three distinct parts, namely:

- Part one consists of three practice group. Every well-executed practice is valued over 1 point and adds 0.5 for participation. This block has a value of 3.5 points.

-Second part consists of three practice group. Every well-executed practice is valued over 1 point and adds 0.5 for participation. This block has a value of 3.5 points.

In other words, the practical portion has a maximum value of 7 points. (70% global note).

-Third, another 30% of the score (3 points) is obtained in the following way:

-20% of the theoretical examination type test with the use of all materials provided. Earning 2 points.

-10% of the realization of a practical case (the student participation) carried out in class and by groups about Community law and / or UNCITRAL Model Law. Obtaining 1 point.

The master in International advocacy is a master's degree that is taught in person. Therefore, students are required to attend all the theoretical and practical classes that the master has programmed. A student may only be absent for no reason from a maximum of 15 per cent of the classroom hours (i.e. not the sessions or days) in each subject. In case of excused absences, the total maximum will be 25%. If the student hold an absence greater than those indicated, a "0" will be computed on the continuous evaluation rating. Likewise, the absences lower than those percentages may be taken into account when it comes to modulate downward the qualification of the continuous evaluation, especially if it includes a participation note.

In the extraordinary call the weight will be: Final examination: 60% and continuous evaluation: 40%.

#### ONLINE EVALUATION:

There are several options:

1. Research work will be carried out, the topics of which will be offered by the Faculty. Said works will be delivered in writing via e.mail or electronic means, as well as orally presented through the online platform.

2. There will be an oral exam through the online platform.

<b>% end-of-term-examination:</b>	40
<b>% of continuous assessment (assignments, laboratory, practicals...):</b>	60

#### BASIC BIBLIOGRAPHY

- BEALE, Simon and KEDDIE, Paul. Insolvency and Restructuring Manual, Bloomsbury Publishing Ltd., 2018

- HEINZ VALLENDER Judicial Cooperation within the EC Insolvency Regulation,

<https://www.iiiglobal.org/sites/default/files/heinzvallender.pdf>.

- null Regulation (EU) 2015/848 of the European Parliament - EUR-Lex, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri...>

- HUFELD, Felix; KOIJEN, Ralph S.J.; Editor Thimann, Christian. The Economics, regulation, and systemic risk of insolvency markets. , Oxford University Press , 2018