

Academic Year: ( 2023 / 2024 )

Review date: 28-04-2023

Department assigned to the subject: Private Law Department

Coordinating teacher: MARTIN SALAMANCA, SARA

Type: Electives ECTS Credits : 3.0

Year : 1 Semester : 2

## OBJECTIVES

### BASIC SKILLS

CB6 Ability to provide a basis or opportunity to be original in the development and / or application of ideas, often in a research context

CB7 Know how to apply acquired knowledge and problem-solving skills in new or little-known environments within broader (or multidisciplinary) contexts related to the area of study

CB8 Integrate knowledge and face the complexity of making judgments based on information that, incomplete or limited, includes reflections on social and ethical responsibilities related to the application of knowledge and judgments

CB9 Know how to communicate conclusions and knowledge and last reasons that support them to specialized and non-specialized audiences in a clear and unambiguous way

CB10 To develop learning skills that allow to continue studying in a way that will be largely self-directed or autonomous.

### GENERAL COMPETENCES

CG1 Understanding the importance of civil liability as a sector of law with its own entity

CG2 Learn to identify civil liability relationships and learn about their legal treatment

CG3 Perceive the unitary character of civil liability and the necessary multidisciplinary view of the legal problems it poses

CG4 Knowing the legal regime of civil responsibility from different perspectives of the Law, not only national, also from the international discipline

CG5 Learning to identify the legal problem and give a solution to it

CG6 Issue critical judgments on legal issues related to civil liability.

CG7 Apply legal analysis methods that allow the student to be able to study and synthesize the information received.

### SPECIFIC COMPETENCES

CE1 Understand the treatment of civil liability from the standpoint of private law

CE2 Identify the most appropriate civil liability action for the case and know what are the elements necessary for the success of such action and damages that can be repaired

CE10 Analyze the different treatments of civil liability, its problems and its solutions.

CE11 Understand the assumptions of civil liability from a global perspective, as a whole, with legal problems arising from the different branches of law.

### RESULTS OF LEARNING

The objective of this matter is for the student to know the pillars of the system of non-contractual liability, as well as its normative and jurisprudential evolution, both in Spain and in the countries of our legal environment, especially in relation to new types of damages whose reparation according to Traditional system presents certain difficulties.

This will allow you to have the necessary instruments to know, in each specific case, what type of civil liability action you have to exercise, what are the elements necessary for the success of such action and what damages can be repaired.

## DESCRIPTION OF CONTENTS: PROGRAMME

Contents common to the subjects:

The general rules of civil, contractual and extracontractual liability are set out in the Civil Code. Alongside this there are special laws aimed at regulating the repair of certain types of damages.

In this matter, the contents of non-contractual liability from the point of view of civil law are combined, which means that it begins by distinguishing contractual liability from non-contractual liability and, in relation to the latter, that derived from crime and harmful facts Not constituting an offense. The central object of this subject is the study of what is currently known, among specialists in the field, as a general part of the law of damages - that is, the budgets and basic elements of noncontractual civil liability - and part Special of the Law of damages ", which studies certain types of damages that, either have a special regulation, or they present peculiarities that require to adapt of a careful way the general rules of responsibility.

Specific contents to each subject:

The subject "Responsibility derived from infringements of intellectual property rights" affects the study of some of these special cases of responsibility. Specifically, it focuses on the analysis of damages derived from injuries to the right of intellectual property, through the use of protected works and external services. The approach of the subject aims to meet the peculiarities of the requirement of responsibility for infringement of intellectual property rights, motivated by both the special regulation applicable and the practical interaction with other disciplines. To them have been added two factors of spectacular importance: 1) the profound impact of the new technologies on the exploitation of works and protected benefits, and, consequently, on infringements of intellectual property rights; And (2) the consolidation of a European (legislative and administrative) action program to articulate a cohesive European digital environment in terms of intellectual property.

In correspondence with the above, the program of the subject begins with a general notions about the legal regime of intellectual property law, in order to place the student in the relevant legal and jurisprudential context. The following are analyzed the forms of legal tension and infringement of the different manifestations of exclusive that implies the right of intellectual property, with. Last but not least, the situations legally considered as exemption of liability (limits) are reviewed. Finally, we review, in particular, the means of protection against intellectual property infringements (preventive and reactive, both judicial and extrajudicial and administrative), the peculiarities of valuation of compensable damage and legitimization, with particular reference to On-line infringements and European law.

## LIABILITY FOR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

### I.- GENERAL NOTIONS: THE RIGHT OF INTELLECTUAL PROPERTY

1. Intellectual property in Spanish law. International law, European law and national legislation
2. Protected subjects
  - 2.1. Copyright of authors
  - 2.2. Related, neighboring or related intellectual property rights
3. Object.
  - 3.1. Works: originality and conditions of protection
  - 3.2. Other protected benefits
4. Content
  - 4.1. Moral monopoly and patrimonial monopoly on the exploitation
  - 4.2. Duration
  - 4.3. Assignment
  - 4.4. Remuneration rights

### II.- VULNERATION OF MORAL LAW

1. Authors and Artists
2. Postmortem exercise auctoris moral law
  - 2.1. Legitimate Subjects
  - 2.2. Content, extension and limits
3. Plastic and sculptural works
4. Audiovisual works
5. Plagiarism: jurisprudential evolution
6. Vulnerabilities in the internet environment

### III.- VULNERATION OF PATRIMONIAL RIGHTS

1. Infringement of the exclusive right of reproduction
  - 1.1. Exclusive right of reproduction and quotation
  - 1.2. Exclusive right of reproduction and provisional reproductions
  - 1.3. Reproduction of plastic and sculptural works
2. Violation of the exclusive right of distribution: tension with the doctrine of exhaustion of the right
3. Violation of the exclusive right of public communication
  - 3.1. Notion of 'audience'
  - 3.2. Communication "public" or "not public"

- 3.3. Linking activities
- 3.4. File sharing platform activities
4. Specificities in software and database cases
5. Infringement of technological measures and infringement of exclusive rights

#### IV.- EXEMPTIONS OF LIABILITY: LIMITS

1. Limits linked to activities or educational or research purposes
2. Limits linked to information dissemination activities
3. Use of orphan works
4. Parody
5. Private copy
6. Other limits
7. The rule of art. 40.bis

#### V.- INTELLECTUAL PROPERTY GUARANTEE

1. Preventive measures
2. Measures of repressive protection. Brief reference to the criminal protection of IP
3. Civil liability for the infringement of intellectual property rights.
  - 3.1. Legislative background.
  - 3.2. Directive 2014/48 / EC: Guiding principles. Analysis of art. 13
4. Budgeting of civil liability: action, criterion of subjective attribution of responsibility and causal relationship.
5. Civil liability budget: The damage
  - 5.1. Patrimonial damages: The hypothetical royalty. The negative economic consequences. The restitution of benefits derived from the infringement: the enrichment action
  - 5.2. The moral damage
  - 5.3. Punitive damages and intellectual property
6. Procedural aspects of the action of damages: Active legitimization. Passive legitimization
7. Significant resolutions on the subject: The CORSA index. Resolutions of the CJEU
8. The liability of on-line service providers for infringement of copyright and other related rights
9. Correlation with civil liability derived from the violation of other intangible assets

### LEARNING ACTIVITIES AND METHODOLOGY

#### TRAINING ACTIVITIES OF THE STUDY PLAN RELATED TO SUBJECTS

- AF1 Theoretical class
- AF2 Practical classes
- AF5 Tutorials
- AF6 Group work
- AF7 Individual student work

#### Code

Activity Nº Total hours Nº Hours Presencial% Presencialidad Student

AF1	60	60	100%
AF2	45	45	100%
AF5	15	15	100%
AF6	100	0	0%
AF7	160	0	0%
TOTAL MATERIA	375	120	32%

#### TEACHING METHODS

- 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 lecturer: Sentences and resolutions, press articles, reports, manuals and / or academic articles, or for later discussion in class, or to expand 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 Preparation of individual and group work and reports

### ASSESSMENT SYSTEM

#### EVALUATION SYSTEM OF THE PLAN OF STUDIES WITH REGARD TO SUBJECTS

- SE1 Class participation
- SE2 Individual or group work done during the course

## SE3 Final exam

Evaluation System	Minimum Weighting (%)	Maximum Weighting (%)
SE1	10	15
SE2	40	45
SE3	40	50

**EVALUACIÓN EXTRAORDINARIA:** In the extraordinary or second examination, 100% of the final grade will be determined by a single theoretical examination.

<b>% end-of-term-examination:</b>	50
<b>% of continuous assessment (assignments, laboratory, practicals...):</b>	50

### BASIC BIBLIOGRAPHY

- BERCOVITZ RODRÍGUEZ-CANO, Rodrigo (coord) Comentarios a la Ley de Propiedad Intelectual, Tecnos, 2019
- CÁMARA ÁGUILA, María Pilar El derecho moral del autor, Comares, 1998
- MADRIÑÁN VÁZQUEZ, Marta. Sucesion post mortem auctoris de los derechos morales, Reus, 2016
- MARTIN SALAMANCA, Sara Remuneración del autor y comunicación pública, Reus, 2004
- RODRÍGUEZ TAPIA, José Miguel (dir) Comentarios a la Ley de Propiedad Intelectual, Civitas, 2009
- VEGA GARCÍA, Paula La protección de los derechos morales de autor en Internet, Aranzadi, 2022
- null Memento de Propiedad Intelectual e industrial, Francis Lefebvre, 2011
- ORTEGA DÍAZ, Juan Francisco; SANDÓVAL GUTIÉRREZ, José Fernando Protección jurisdiccional y observancia de la propiedad industrial y de los derechos de autor, Universidad de los Andes, 2022
- REGLERO CAMPOS, Fernando Tratado de Responsabilidad Civil, Aranzadi, 2014
- SÁNCHEZ ARISTI, Rafael Jurisprudencia del tribunal de justicia de la unión europea en materia de propiedad intelectual. Análisis y comentarios. , Instituto de Autor, 2023
- VV.AA Practicum de Daños, coord.. por Ana Soler y Pedro del Olmo, Aranzadi Thomson Reuters, 2019
- VV.AA Propiedad Intelectual y Mercado Único Digital Europeo, Tirant lo Blanch, 2019
- VV.AA. Memento de Propiedad Intelectual e industrial, Francis Lefebvre, 2011
- VV.AA. Manual de Propiedad Intelectual, Tirant lo Blanch, 2018
- VV.AA. Derecho de la Propiedad Intelectual. Derecho de Autor y Propiedad Industrial, dir. Miguel Ruiz Muñoz, Tirant lo Blanch, 2017
- VV.AA. Practicum de Propiedad Intelectual, coord.. Adriana Moscoso del Prado, Aranzadi, 2022
- VVAA Comentarios a la Ley de Propiedad Intelectual, Tirant lo Blanch, 2017

### ADDITIONAL BIBLIOGRAPHY

- ANGELOPOULOS, Christina European Intermediary Liability in Copyright, Wolters Kluwer, 2017
- FICSOR, Mihaly. The Law of Copyright and the internet. The 1996 WIPO Treaties, their interpretation and implementation, Oxford University Press, 2002
- GOLDSTEIN, Paul; HUGENHOLTZ, Bernt. International Copyright. Principles, Law and Practice, , Oxford, 2013
- HUSOVEC, Martin. Injunctions Against Intermediaries in the European Union. Accountable but Not Liable?, Cambridge University Press, 2017
- JÜTTE, Bernd Justin Reconstructing European Copyright Law for the Digital Single Market, Nomos, 2017
- LÓPEZ MAZA, Sebastián Límites del derecho de reproducción en el entorno digital, Comares, 2009
- MONTAGNANI, Maria Lilla Internet, contenuti illeciti e responsabilità degli intermediari, Egea, 2018
- PALOMAR LICERAS, ¿Resoluciones de actualidad en materia de propiedad intelectual y música?, Revista Aranzadi de Derecho de Deporte y Entretenimiento, Aranzadi, 2020
- PEGUERA POCH, Miquel. La exclusión de responsabilidad de los intermediarios en internet, Comares, 2007
- ROGEL VIDE, Carlos Estudios completos de propiedad intelectual Vol VI, Reus, 2021
- SAIZ GARCÍA, Concepción; EVANGELIO, Raquel Propiedad Intelectual y Mercado Único Digital Europeo., Tirant lo Blanch, 2019
- VV.AA. Copyright Reconstructed. Rethinking Copyright's Economic Rights in a Time of Highly Dynamic

Technological and Economic Change, ed. by P.Bernt Hugenholtz, Wolters Kluwer, 2018

- VV.AA. Problemática actual de la tutela civil ante la vulneración de la propiedad industrial e intelectual, coord. por J.A. Moreno Martínez, Dykinson, 2017

- VV.AA. Concise European Copyright Law, 2nd ed. Thomas Drier y P.Bernt Hugenholtz, Wolters Kluwer, 2016

- VV.AA. La reforma de la Ley de Propiedad Intelectual, dir. Rodrigo Bercovitz, Tirant lo Blanch, 2015

- VVAA Cuestiones clásicas y actuales del Derecho de daños estudios en homenaje al profesor Dr. Roca Guillamón, Aranzadi, 2021