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# EUROPEAN LEGAL HISTORY

PROFESSOR: **MARCO DE BENITO**

DEGREE: DUAL  
ACADEMIC YEAR: 2013-2014  
YEAR: 1<sup>st</sup>  
SEMESTER: 1<sup>st</sup>  
CATEGORY: COMPULSORY  
NO. OF CREDITS (ECTS): 6  
LANGUAGE: ENGLISH

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## 1. SUBJECT DESCRIPTION

This course provides an overview of European legal history, without which the current European legal systems cannot be fully understood.

Traditionally, legal history was studied in terms of national history. In the last few decades, however, factors such as the process of European integration and the debate on a common private law in Europe have made the European standpoint a more fruitful and attractive one.

The course is also based on the conviction that sound understanding of the law of past times is facilitated by making reference to its cultural, philosophical, and political context.

This course forms part of the European Module “Towards a Common Private Law of Europe,” a IE University undertaking headed by Prof. Marco de Benito and supported by the prestigious Jean Monnet Programme of the European Commission.

## 2. OBJECTIVES AND SKILLS

This course aims at helping the students develop the skills required to critically analyze, synthesize, present, and reason on contents related to legal history.

In particular, it will help them understand the formation and historical evolution of the common legal background of Europe, along with its diverse traditions and national expressions, up to the ongoing movement for the unification of European private law.

### **3. CONTENT**

#### **PART I: ROMAN LAW**

1. INTRODUCTION
2. ARCHAIC ROMAN LAW
3. CLASSICAL ROMAN LAW I
4. CLASSICAL ROMAN LAW II
5. POST-CLASSICAL ROMAN LAW
6. ROMAN LAW I
7. ROMAN LAW II
8. ROMAN LAW III
9. MID-TERM TEST

#### **PART II: THE CIVIL LAW TRADITION**

10. GERMANIC LAW
11. EARLY MIDDLE AGES
12. LATE MIDDLE AGES
13. *IUS COMMUNE* AND *IURA PROPRIA*
  
14. THE SCHOOL OF SALAMANCA
15. THE AFFIRMATION OF THE MODERN STATE
16. CASE STUDY: BURGUNDY AND THE FORMATION OF MODERN STATE
17. HUMANIST JURISPRUDENCE
18. LECTURE: GROTIUS AND HIS INFLUENCE ON EUROPEAN PRIVATE LAW
  
19. CODIFICATION I
20. CODIFICATION II
21. POSITIVISM, ROMANTICISM, PANDECTISM
22. CASE STUDY: THE CODIFICATION OF CRIMINAL LAW

#### **PART III: THE COMMON LAW TRADITION**

23. HISTORY OF THE COMMON LAW I
24. HISTORY OF THE COMMON LAW II

#### **PART IV: A LEGAL TRADITION UNDER SIEGE**

25. LAW IN THE SOVIETIC WORLD
26. LAW IN THE NAZI REGIME

#### **EPILOGUE: TOWARDS A EUROPEAN CIVIL CODE**

27. TOWARDS A COMMON PRIVATE LAW OF EUROPE I
28. TOWARDS A COMMON PRIVATE LAW OF EUROPE II
29. REVIEW
30. EXAM

#### 4. METHODOLOGY AND ECTS WEIGHTING

European Legal History is designed to provide a strong intellectual framework to help the students place their future professional activity in a wider political, economical, intellectual, and social context, and assess it critically and independently.

This course looks to European legal history from the variety of perspectives that form this discipline: law, history, politics, economics, etc. In order to show the importance of this multidisciplinary approach, a number of case studies will be introduced where historical legal texts will be discussed within the context in which they were generated, as well as their position within the evolution of legal history.

Learning will be based on three main methods:

1. Lectures, in which the students will be provided with the overall view of a specific aspect of legal history. The students will have to prepare each session with assigned readings, which will be defined in due time.
2. Independent work, which will be written by students and, if considered appropriate, presented in subsequent sessions. Those students most interested in a particular aspect of legal history will be given the opportunity to carry on their research with the help of the lecturer.
3. Case studies, in which texts or topics will be presented and discussed, individually or in groups.

Teaching methodology	Weighting	Estimated time a student should devote
Lectures (preparation and assistance)	33.3%	22 sessions of 1.5 hours each, multiplied with factor 1.5 for preparation = 50 hours
Case studies (preparation and assistance)	16.6%	3 sessions of 1.5 hours each, multiplied with factor 5.5 for preparation = 25 hours
Exams (preparation and assistance)	50%	2 sessions of 1.5 hours, multiplied with factor 25 for preparation = 75 hours
TOTAL	100%	150 hours

## **5. EVALUATION SYSTEM**

### **A. GENERAL OBSERVATIONS**

Each student has four attempts over two consecutive academic years to pass this course.

Class attendance is compulsory. Absence from more than 30% of the classes will result in a grade of 0.0 for the subject. In addition, students not fulfilling the attendance requirement will automatically lose the first extraordinary attempt to pass the course.

Students must do the readings and the assigned tasks for each class. Class preparation and class participation are essential in order to pass the course.

The grade will be generally determined based on the following criteria:

1. Attendance, attitude, class participation: 20%
2. Mid-terms, case studies, written assignments: 30%
3. Final exam: 50%

A grade of less than 4 in the final exam will suffice to fail the whole course.

### **B. RETAKE POLICY**

In July's retake the maximum final score would be of 8 out of 10.

The exam will cover everything that students have learned in class, including lectures, case discussions and group exercises.

Students facing their 3<sup>rd</sup> or 4<sup>th</sup> call must contact the professor during the first two weeks of the course.

Grading for retakes will be subject to the following rules:

- If the student has participated in the process of continuous evaluation, the grade achieved during the period of continuous evaluation will be taken into account, and the extraordinary exam in July may have a lower weight in the overall grade, subject to the instructor's assessment to mirror the student's performance.
- If a student's course grade is below 5.0, the student is required to take the retake exam to pass the course.
- A student who has missed over 30% of the class meetings will not be allowed to take the retake exam. He will only have two attempts left to pass the course during the following academic year.

### **C. USE OF ELECTRONIC DEVICES IN CLASS**

This subject does not require the use of a laptop in class; nevertheless, if you want to bring your laptop, please contact the professor.

## 6. BIBLIOGRAPHY

### A. COMPULSORY

- LESAFFER, R., *European Legal History*, Cambridge, 2009.

### B. RECOMMENDED

- BAKER, J. H., *An Introduction to English Legal History*, London, 2002.
- BELLOMO, M., *The Common Legal Past of Europe, 1000-1800*, Washington, D.C., 1995.
- BERMAN, H. J., *Law and Revolution. The Formation of the Western Legal Tradition*, Cambridge (Mass.) / London, 1983.
- BRUNDAGE, J. A., *Medieval Canon Law*, London / Nueva York, 1995.
- DU PLESSIS, P., *Borkowski's Textbook on Roman Law*, Oxford, 2010.
- GROSSI, P., *A History of European Law*, Oxford, 2010.
- KELLY, J. M., *A Short History of Western Legal Theory*, Oxford, 1992.
- LANDO, O., BEALE, H. (eds), *Principles of European Contract Law*, Parts I and II, The Hague, 2000.
- LANDO, O., PRÜM, A., CLIVE, E., ZIMMERMAN, R. (eds.), *Principles of European Contract Law*, Part III, The Hague, 2003.
- STEIN, P., *Roman Law in European Legal History*, Cambridge, 1999.
- VON BAR, C., CLIVE, E., SCHULTE-NÖLKE, H., *et al.* (eds.), *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)*, outline edition, München, 2009.
- WATSON, A., *The Evolution of Western Private Law*, Baltimore, 2001.
- WAUTERS, B., DE BENITO, M., *Historia del derecho en Europa*, Cizur Menor, 2013.

## 7. PROFESSOR'S BIO

Dr. Marco de Benito Llopis-Llombart is a full professor at IE University. He has lectured, inter alia, at the Università degli Studi di Bologna, the Scuola Superiore Sant'Anna, in Pisa, the Universidad Francisco Marroquín in Guatemala, the Universidad Autónoma de Madrid, and the Universidad Pontificia Comillas in Madrid. His areas of interest include European legal history, private law, civil procedure, and international arbitration.

Prof. de Benito holds a doctorate in law from Universidad Pontificia Comillas in Madrid. He has been a Visiting Scholar at the Yale Law School and the Max-Planck-Institut für ausländisches und internationales Privatrecht, in Hamburg. He is a Corresponding Fellow of the Spanish Royal Academy of Jurisprudence and Legislation.

He practiced as an attorney at Uría Menéndez from 2002 to 2011. Today he is Of Counsel at Moscardó & Asociados, and sits regularly as an arbitrator. He has acted in arbitration proceedings in the energy, infrastructure, and financial sectors, seated in Madrid, Barcelona, Paris, Geneva, London, and Washington DC, under the rules of the ICC, ICSID, and the Swiss Rules, among others.

Prof. de Benito heads the European Module "Towards a Common Private Law of Europe" within the Jean Monnet Programme of the European Commission.

He has co-authored a handbook on European Legal History (2013), coordinated a collective book on international arbitration in Europe (2013) and authored a book on the binding efficacy of arbitration agreements (2010). He publishes and speaks regularly on his fields of interest. Some of his publications can be accessed at <http://ie.academia.edu/MarcodeBenitoLlopisLlombart>.

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