

Academic Year/course: 2021/22

27735 - Legal Interpretation and Argument

Syllabus Information

Academic Year: 2021/22

Subject: 27735 - Legal Interpretation and Argument

Faculty / School: 102 - Facultad de Derecho

Degree: 421 - Degree in Law

ECTS: 3.0

Year: 4

Semester: Second semester

Subject Type: Optional

Module:

1. General information

1.1. Aims of the course

This course offers a both theoretical and practical introduction to legal interpretation and argumentation, with the focus being on archetypal problems faced by courts when applying the law. The course pursues a twofold objective, namely: to strengthen students' ability to critically analyse the justification of judicial decisions, and to make students exercise and improve their own legal argumentation skills, particularly as regards statutory and constitutional construction and evidential reasoning.

1.2. Context and importance of this course in the degree

Seven (out of thirteen) specific competences or skills underlying the degree programme in law are directly related to legal interpretation and argumentation, and three of them even include an explicit mention of the ability to interpret and apply the law and to build legal arguments. Being the only course in the law curriculum that is entirely devoted to developing and practising these competences, *Legal Interpretation and Argumentation* may well be seen as a crosscutting learning opportunity. Not only does it reinforce the skills students have previously acquired throughout the degree programme, especially in the so-called dogmatic subjects, but also provides a useful methodological and practical training for any (future) lawyer.

1.3. Recommendations to take this course

No specific theoretical background in legal interpretation and argumentation is required to successfully complete this course. Active involvement during the class greatly contributes to achieving the learning goals ? and hence a good final mark.

2. Learning goals

2.1. Competences

This course helps undergraduate law students to consolidate the following basic (bC) and specific competences (sC) defined in the law curriculum:

[bC2] to apply theoretical knowledge to professional practice, including argument development and problem solving skills within a given area of study;

[bC4] to be capable of conveying information, ideas, problems and solutions to both expert and non-expert audiences;

[bC5] to develop skills needed to carry out further study programmes with a high level of autonomy;

[sC2] to identify and apply constitutional principles and values when it comes to interpreting the legal order;

[sC3] to analyse normative (legal) structures;

[sC4] to apply legal rules and principles in particular cases, thereby solving these cases according to acceptable patterns of legal methodology;

[sC5] to construe legal texts from an interdisciplinary perspective and in the light of relevant legal, ethical and deontological principles or values;

[sC7] to develop plausible legal arguments both orally and in written;

[sC9] to analyse the legal order in a critical, original and innovative way;

[sC10/11] to retrieve and adequately handle legislative information, case law and doctrinal or scholarly resources; and [sC12] to properly organise and plan one's own learning activities, and to be proficient in team working.

2.2. Learning goals

After completing this course, students shall have a sufficient capacity?

[G1] to explain, interrelate and apply basic theoretical notions of legal interpretation and argumentation, as well as to identify and compare the methodological implications of different conceptions of law;

[G2] to justify and evaluate interpretations of legal texts, and to correctly utilise typical interpretative arguments and criteria under Spanish law;

[G3] to critically review and to properly perform subsumptions, analogies and proportionality analyses (including balancing) in real or hypothetical scenarios;

[G4] to evaluate the cogency of an evidential reasoning as delivered by a court, and to state the reasons why a given set of alleged facts should, or should not, be held to be proved;

[G5] to reconstruct a judicial argumentation, and to visually represent its structure and content; and

[G6] to elaborate a plausible argumentation to justify a decision (or an interpretative stance) in view of a case, and to explain and defend this argumentation, orally or in written.

2.3. Importance of learning goals

The course focus is on the forensic context, and may hence be most interesting to students who aspire to be judges, prosecutors, barristers, or solicitors. Yet, the tasks of interpreting legal materials and legally relevant facts, and of arguing about this interpretation, inhere any branch of the legal profession, so the above learning goals are likewise relevant in other contexts (legal academy, public administration, legislative bodies?).

3. Assessment (1st and 2nd call)

3.1. Assessment tasks (description of tasks, marking system and assessment criteria)

To complete this course, students have to obtain a pass in both the general and the applied part (50% of the course mark, i.e. up to 5 points, is accorded to each part). As for the general part of the course, students' achievement is assessed through a final, written exam at the end of the term. To pass the applied part of the course, students may opt either for a continuous assessment model based on periodic assignments or for taking a problem/case-based exam at the end of the term.

3.1.1. Mixed model: periodic assignments (continuous assessment) plus final exam

The applied part of the course may be completed through the continuous assessment model (periodic assignments). To benefit from this model, students are required to attend all practice sessions (one session may be missed, though, with a written serious excuse); to submit all planned assignments on time; and to obtain an average mark of at least 2.5 points in the assignments. Consistent and thoughtful participation in class discussions may add up to 2.5 points to this mark. Besides passing the applied part of the course, under this model students must take a written exam to show their knowledge about ? and their ability in interrelating and exemplifying ? the topics covered during the semester (the exam may include essay-type questions). A minimum mark of 2.5 points is needed to obtain a pass in this part. Further details on the design of the exam, on how to prepare it, and on the assessment criteria will be announced at the beginning of the term.

3.1.2. Final assessment model

Students who cannot, or do not want to, follow the mixed assessment model are given the option to pass the course by taking two final exams at the end of the term, covering both the general and the applied part of the course. The general or theoretical exam is the same as in the mixed model. To pass the applied part of course, students must take a second, problem or case-based exam ? this option holds as well for students who have not obtained the minimum requisite grade in the assignments. Further details on the design of this exam, on how to prepare it, and on the assessment criteria will be announced at the beginning of the term.

3.2. Marks/Grades

Course marks range from 0 to 10 (one decimal place is allowed), with a mark below 5 being a fail. Numerical marks correlate with the following non-numerical marks:

[0 to 4,9] Fail (*suspense*): the student has not sufficiently achieved the learning goals.

[5,0 to 6,9] Pass (*aprobado*): the student has sufficiently (or slightly more than sufficiently) achieved the learning goals.

[7,0 to 8,9] Good, very good (*notable*): the student has achieved the learning goals far more than sufficiently, or has achieved them to a great extent.

[9 to 10] Outstanding (*sobresaliente*): the student has brilliantly achieved the learning goals.

An honors distinction (*matrícula de honor*) will be given to students who obtain a grade above 9.5 points ? note, however, that academic regulations do limit the number of honors per course.

4. Methodology, learning tasks, syllabus and resources

4.1. Methodological overview

The teaching/learning process designed for this course consists of theory-practice sessions (4.2.1), periodic assignments and practice sessions (4.2.2), and autonomous work and study (4.2.3).

4.2. Learning tasks

4.2.1. Theory-Practice Sessions

Method: ?theory session? (explanation and discussion of theoretical topics), combined with interactive teaching and classwork

Large group (0.6 ECTS)

Competences/Skills: Cb2, Cb4, Ce2, Ce3, Ce5, Ce9

Learning goals: G1, G2, G3, G4

4.2.2. Periodic assignments and Practice Sessions

Method: ?practice session?, case method, problem-based learning, simulation

Small group (0.4 ECTS) and work outside the classroom (1.1 ECTS)

Competences/Skills: Cb2, Cb4, Cb5, Ce3, Ce4, Ce5, Ce7, Ce9, Ce10/11, Ce12

Learning goals: G1, G2, G3, G4, G5, G6

4.2.3. Autonomous Work and Exam Preparation

Method: autonomous work, tutorials (0.8 ECTS, or 2.9 ECTS for those who follow the course only through the course online platform), final written exam (0.1 ECTS)

Competences/Skills: Cb2, Cb4, Ce3, Ce4, Ce5, Ce7, Ce9, Ce12

Learning goals: G1, G2, G3, G4, G5, G6

4.3. Syllabus

The following topics will be addressed during the semester:

- [1] Theoretical foundations of legal interpretation and argumentation.
- [2] Legal argumentation about facts and evidential reasoning.
- [3] Recurrent problems in interpreting and applying rules: legal gaps and defeasibility.
- [4] Constitutional interpretation. Proportionality and balancing.

4.4. Course planning and calendar

Further information on this course (timetable, classroom, office hours, examination dates and other details) will be provided on the first day of class and announced on the Faculty of Law website [derecho.unizar.es].

4.5. Bibliography and recommended resources

All learning materials, readings and resources for each unit will be made available on the course virtual platform [add.unizar.es] or handed out in class. Students willing to deepen into the course topics are encouraged to consult these books:

M. Atienza, *Curso de argumentación jurídica*, Madrid: Trotta, 2018.

http://roble.unizar.es/record=b1666781~S1*spi ? http://roble.unizar.es:2082/record=b2030628~S1*spi

J.A. García Amado, *Razonamiento jurídico y argumentación*, León: Leolas, 2020 (2nd ed.).

http://roble.unizar.es/record=b2034318~S1*spi

M. Gascón (ed.), *Argumentación jurídica*, Valencia: Tirant lo Blanch, 2014.

http://roble.unizar.es/record=b1708394~S1*spi

R. Guastini, *Interpretar y argumentar*, Madrid: CEPC, 2014.

http://roble.unizar.es/record=b1803184~S1*spi