

# INTRODUCTION TO LAW

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## Course objectives

This course aims to provide a general introduction to Law, introducing students to the ever-changing functions and shapes of the Law in our societies, and presenting some of the key challenges facing the Law and the legal profession in the 21st century. It seeks to (1) harmonize levels of understanding of Law among lawyers and economists, (2) facilitate a mutual understanding of basic legal concepts and doctrines among lawyers coming from various countries, and (3) introduce both lawyers & economists to legal concepts and methods that are instrumental in the field of Law and Economics.

## Description

Lectures (x6) set the scene and introduce students to relevant legal notions and methodologies. Tutorials (x3) focus on case studies and discuss complimentary legal questions. Tutorials build on active participation by students, and offer hands-on learning through group discussions and a role-play.

## Materials

- Akkermans B. & Hage J. (Eds.), *Introduction to Law* (2<sup>nd</sup> ed. 2017).
- Recommended readings are indicated below the lectures/tutorials.
- Case law and additional readings are available in the online course folder.

## Evaluation

*Written final exam (85%) and 1 written assignment (15%).*

*Assignment (writing a short memo):* students select one topic among the 6 proposed below (*Topics A to F*), and write a short memo to be handed in (or sent by email) before the start of the relevant tutorial. The memo should be concise (3 pages max, font: *Times*, size: 11,5), and include relevant sources. The memo will be evaluated on 3 main criteria: clarity and structure of the text (1), relevance and originality of contents and examples (2), and quality of sources (3).

## Additional information

*Role-play (arguing):* before Tutorial 3, students will be divided in teams. In class, they will argue and exchange arguments in favour or against the introduction of legal instruments facilitating the collective enforcement of rights.

*Course dictionary entries:* Students prepare a definition for each entry indicated in the syllabus. Entries will be discussed in class.

## L 1- GENERAL INTRODUCTION - LAW IN THE 21<sup>ST</sup> CENTURY

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- Functions of the law
- Portrait of the 21<sup>st</sup> century lawyer
- Legal families (Civil Law & Common Law traditions and their relevance for L&E)
- Legal sources
- Legal reasoning & interpretation
- Rules & standards
- Dealing with borderline cases
- Methodology & legal research – tips and advice

### ➤ Tutorial 1

- **Topic A:** *Is there something special about legal reasoning?*
- **Topic B:** *Select and discuss a borderline case. Where does the vagueness of the Law come from? Is it a rule or a standard, and why so? Briefly explain the court reasoning.*

**Course dictionary entries:** “Legal transplant”, “Legal realism”

#### **Recommended readings:**

- F. Schauer, *Thinking like a lawyer – a new introduction to legal reasoning*, 2009 (chap. 1 & 7)
- M. Sandel, *Justice- What’s the right things to do?*, 2009 (chap.1 and 2)
- M. Sandel, ‘What money can’t buy – the moral limits of market’, *Tanner Lectures on Human Values*, 1998.
- R. Posner, ‘The decline of law as an autonomous discipline’, *Harvard Law Review*, 1987
- R. Lanneau, ‘To what extent is the opposition between Civil Law and Common Law relevant for Law & Economics, in K. Mathis (Ed.), *Law and Economics in Europe*, 2013, pp.23-46.
- C. Sunstein, ‘The problem with rules’, *California Law Review*, 1995.
- A. Porat & L. Strahilevitz, ‘Personalizing default rules and disclosures with Big Data’, *Michigan Law Review*, 2014.

## L 2 - INTRODUCTION TO PRIVATE LAW

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- Contract: contractual freedom and its limits, formation, execution, breach and remedies, harmonization of contract law.
- Tort: functions of tort law, evolution of liability regimes, standards of care, liability rules in digital environments, harmonization of tort law.
- Basic notions of property law.

### ➤ Tutorial 2

- **Topic C:** *The case of prohibited contracts: select one example, explain the legal reasons for prohibiting the contract, and find a counter-example (in another legislation/country).*
- **Topic D:** *How will new technologies challenge the foundations of tort law? Discuss and illustrate with an example.*

**Course dictionary entry:** “Good faith”, “punitive damages”

#### **Recommended readings:**

- M. Sandel, *What money can’t buy – the moral limits of markets*, 2012
- O. Rachum-Twaig, ‘Whose robot is it anyway? Liability for artificial intelligence-based robots’, *Univ. Of Illinois Law Review*, 2020.

## L 3 - INTRODUCTION TO CRIMINAL LAW

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- Functions of criminal law
- Criminalization/decriminalization of wrongdoings
- Goals and theories of punishment
- Elements of criminal liability
- Guiding principles of criminal law (formality, legality, *Ne bis in idem*, fair trial)
- Structure of criminal trials
- AI & criminal investigations
- Development of EU and international criminal law

**Course dictionary entry:** “Ne bis in idem”, “fair trial”

#### **Recommended readings:**

- T. Bingham, *The Rule of Law*, 2010.

- Law Society, *Algorithms in the criminal justice system*, June 2019, [www.lawsociety.org.uk/support-services/research-trends/algorithm-use-in-the-criminal-justice-system-report/](http://www.lawsociety.org.uk/support-services/research-trends/algorithm-use-in-the-criminal-justice-system-report/)

## L 4 - INTRODUCTION TO PUBLIC LAW

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- Differences between private and public law
- Differences between administrative and judicial justice
- The notion of "Constitution"
- Review of constitutionality
- Multilayer governance
- Independent public agencies
- Guiding principles of administrative law (legality, impartiality, proportionality, etc.)
- Public maladministration & toolbox of citizens against States (ombudsmen, right to petition, judicial remedies, etc.)

### *Recommended readings:*

- Harlow, 'Public' and 'Private' Law: Definition without Distinction, *Modern Law Review*, 1980.
- M. Rosenfeld, 'Rethinking the boundaries between public law and private law for the twenty first century: An introduction', 2013.

## L 5 - INTRODUCTION TO ENFORCEMENT & PROCEDURAL LAW

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- "Law in the books" v. "Law in action"
- Public & private enforcement
- Collective enforcement of rights
- Enforcement techniques & innovative methods
- Role of procedural law
- "Procedural justice theory"
- "Proceduralisation" of decision-making

### ➤ **Tutorial 3**

- **Topic E:** Differences between "Law in the books" v. "Law in action": discuss an example in your country, explain the underlying reason(s).
- **Topic F:** Presenting legal and economic arguments for (both) supporting and preventing the adoption of tools aimed at the collective enforcement of rights.
- **ALL:** role-play on the collective enforcement of rights/class actions

**Course dictionary entries:** "Law in action vs. Law in the books", "Panopticon"

### *Recommended readings:*

- EU Communication, *EU Law: Better results through better application*, 2017/C 18/02, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2017.018.01.0010.01.ENG&toc=OJ%3AC%3A2017%3A018%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2017.018.01.0010.01.ENG&toc=OJ%3AC%3A2017%3A018%3ATOC)
- EU Commission, *A New Deal for Consumers*, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1523866913149&uri=COM:2018:183:FIN>
- EU Commission, Proposal for a directive on representative actions for the protection of collective interests of consumers, 11 April 2018, [https://ec.europa.eu/info/sites/info/files/proposal\\_for\\_a\\_directive\\_on\\_representative\\_actions\\_for\\_the\\_protection\\_of\\_the\\_collective\\_interests\\_of\\_consumers\\_0.pdf](https://ec.europa.eu/info/sites/info/files/proposal_for_a_directive_on_representative_actions_for_the_protection_of_the_collective_interests_of_consumers_0.pdf)
- Tyler T., 'Procedural Justice Research', *Social Justice Research*, 1987

## L 6 – INTRODUCTION TO EU LAW

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- Basic architecture of EU law
- Guiding principles of EU law (precedence, direct effect, subsidiarity, etc)
- Sources of EU law
- Court of Justice of the European Union and preliminary ruling mechanism
- "Better Regulation" Agenda

**Course dictionary entries:** "Subsidiarity", "Better Regulation"

### *Recommended readings*

- EU Commission, *Better Regulation guidelines*, pp.1-10, <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>
- M. Dawson, 'Better Regulation and the future of EU regulatory law and politics', 53 *Common Market Law Review*, 2016, pp. 1209-1235