

**COURSE DATA****Data Subject**

|                      |                                                 |
|----------------------|-------------------------------------------------|
| <b>Code</b>          | 42671                                           |
| <b>Name</b>          | Mediation and arbitration in law of obligations |
| <b>Cycle</b>         | Master's degree                                 |
| <b>ECTS Credits</b>  | 3.0                                             |
| <b>Academic year</b> | 2021 - 2022                                     |

**Study (s)**

| <b>Degree</b>                                                      | <b>Center</b>  | <b>Acad. year</b> | <b>Period</b> |
|--------------------------------------------------------------------|----------------|-------------------|---------------|
| 2122 - M.U. en Mediac, arbitr y gest de conflictos en dcho privado | Faculty of Law | 1                 | First term    |

**Subject-matter**

| <b>Degree</b>                                                      | <b>Subject-matter</b>                               | <b>Character</b> |
|--------------------------------------------------------------------|-----------------------------------------------------|------------------|
| 2122 - M.U. en Mediac, arbitr y gest de conflictos en dcho privado | 6 - Mediation and arbitration in law of obligations | Obligatory       |

**Coordination**

| <b>Name</b>             | <b>Department</b> |
|-------------------------|-------------------|
| GUILLÉN CATALAN, RAQUEL | 50 - Civil Law    |

**SUMMARY**

This subject has as main objective, and employing a very practical methodology, with a high level of participation of students, to acquire knowledge about some important issues applicable both in mediation and arbitration in relation to the Law of Obligations and Contracts:

- Implementation of mediation and arbitration to civil conflicts in the field of relations mandatory
- Statement of Principles informants in civil mediation. Limits to the private autonomy, especially in the area of Consumer Rights
- Fixing the legal framework of the civil-legal conflicts in the field of the law of obligations



- Resolution of typical civil conflicts through practical cases to develop through "role play": vices of the construction, leases, sale, loan, transfer of rights of author, etc.
- Practical development of a mediation process in its integrity in the field of the Law of Obligations: request to an institution of mediation, designation of the mediator, Inaugural Session and its Act and the Mediation Contract, individual sessions, collective and collective with invited experts, Final session with its act and agreement. Termination without agreement
- Practical development of an arbitration process in its integrity in the field of the Law of Obligations: claim, defendant writ and award

## PREVIOUS KNOWLEDGE

### Relationship to other subjects of the same degree

There are no specified enrollment restrictions with other subjects of the curriculum.

### Other requirements

## OUTCOMES

### 2122 - M.U. en Mediac, arbitr y gest de conflictos en dcho privado

- Students should be able to integrate knowledge and address the complexity of making informed judgments based on incomplete or limited information, including reflections on the social and ethical responsibilities associated with the application of their knowledge and judgments.
- Students should communicate conclusions and underlying knowledge clearly and unambiguously to both specialized and non-specialized audiences.
- Students should demonstrate self-directed learning skills for continued academic growth.
- Elaborar y manejar los escritos, informes y procedimientos de actuación más idóneos para los problemas suscitados.
- Adquirir los instrumentos para poder planificar, ordenar y encauzar actividades de manera que se eviten en lo posible los imprevistos, se prevean y minimicen los eventuales problemas y se anticipen sus soluciones.
- Contemplar en conjunto y tener en cuenta los distintos aspectos y las implicaciones en los distintos aspectos de las decisiones y opciones adoptadas, sabiendo elegir o aconsejar las más convenientes dentro de la ética, la legalidad y los valores de la convivencia social.



- Use different presentation formats (oral, written, slide presentations, boards, etc.) to communicate knowledge, proposals and positions.
- Proyectar sobre problemas concretos sus conocimientos y saber resumir y extraer los argumentos y las conclusiones más relevantes para su resolución.
- Conocer y usar con fluidez las categorías, prescripciones y procedimientos relevantes para cada caso y sus antecedentes y soluciones más significativas.
- Analizar y delimitar el ámbito de derecho dispositivo específico de la materia en cada supuesto de la resolución alternativa de controversias.
- Aplicar las diferentes técnicas y conocimientos jurídicos a la resolución práctica de los proceso de mediación y arbitraje de materias específicas.

## LEARNING OUTCOMES

Once finished the subject the student:

- Knows the norms, recommendations and directives of mediation in the various levels: European Union, the Spanish State, Autonomous Communities and contextual structures in the field of mediation and arbitration, especially applicable to conflicts of the Law of obligations affecting the subjects in conflict.
- Deepens in the acquisition of mediation techniques on the basis of the specificity of the process of mediation in the scope of application.
- Is able to apply a mediation process in a particular scope, related to the law of obligations.
- Knows the mechanical procedural and documentary of a mediation process and the usual development of the mediation sessions.
- Knows the mechanical procedural and documentary of an arbitration process.
- Is able to apply an arbitration process in a particular scope related to the law of obligations.



## DESCRIPTION OF CONTENTS

### 1. Mediation and arbitration in the Law of Obligations

Definition. Features. Participants. Conflicts in the field of the Law of Obligations susceptible of mediation and arbitration. Legal effects of the Agreement.

### 2. Mandatory norms in the field of the Law of Obligations.

Limits to the mediation of obligations, special reference to the red lines fixed by Consumer Law.

### 3. Case studies

Theoretical knowledge will be applied to the resolution of various practical cases in relation to some of the following subjects:

Conflicts in contracts of sale  
conflicts in mortgage loan contract  
conflicts in rental housing  
conflicts in construction defects in the housing  
conflicts in intellectual property rights  
conflicts in consumer credit contract  
conflicts guarantees associated to the sale  
conflicts in the field of traffic accidents

## WORKLOAD

| ACTIVITY                          | Hours        | % To be attended |
|-----------------------------------|--------------|------------------|
| Theoretical and practical classes | 18,00        | 100              |
| Tutorials                         | 12,00        | 100              |
| <b>TOTAL</b>                      | <b>30,00</b> |                  |

## TEACHING METHODOLOGY

In addition to the exposition of the relevant theoretical content it is intended that the student will be able to apply in practice the knowledge acquired and develop the skills necessary for the performance of the functions of the mediation and arbitration.

For this reason, the teaching methodology will consist in:

- theoretical exposure of the basic contents of the program



- analysis of cases and resolving situations of practices on the part of the students
- Group Dynamics

Students will carry out the following tasks:

- active participation in classes
- assume roles of mediator and other participants involved in the mediation
- intervene in the dynamics of groups
- solve in the classroom case studies proposed by mediation or arbitration
- be capable of responding to the critical comments raised by the teacher or the colleagues

## EVALUATION

The proposed methodology must have its consequences at the level of the evaluation of the subject, as it is intended the acquisition by the student of a series of competences where the acquisition of theoretical knowledge is important, but even more the formation of a trained professional to the settlement of disputes in the field of the law of obligations by means of mediation and arbitration.

Therefore, to overcome the course the student must solve a case working in groups. This is not simply to issue an opinion to resolve the dispute but rather similar to the methodology of the Mootcourt, students should behave as true professionals, composing documents and acting at the oral level.

These works are described as 0 to 10 and in them value the following questions: 20% assistance and participation in the classroom; 80% resolution of the supposition in fact: contribution of the student; format of presentations and the oral exhibition in the classroom.

## REFERENCES

### Basic

- DIEZ RIAZA, SARA, GISBERT POMATA, MARTA, EL CONTRATO DE MEDIACIÓN Y EL ACUERDO DE MEDIACIÓN CIVIL Y MERCANTIL, CIVITAS, 2014

SOSPEDRA NAVAS, FRANCISCO JOSE, MEDIACIÓN Y ARBITRAJE, CIVITAS, 2014



ALONSO PUIG, JOSÉ MARÍA, ALZAGA VILLAMIL, OSCAR, CADARSO PALAU, JUAN, GONZÁLEZ SORIA, JULIO,

OLIVENCIA RUIZ, MANUEL, COMENTARIOS A LA NUEVA LEY DE ARBITRAJE, ARANZADI, 2011

BONET NAVARRO, ANGEL, PROCESO CIVIL Y MEDIACIÓN: SU ANÁLISIS EN LA LEY 5/2012, DE MEDIACIÓN EN ASUNTOS CIVILES Y MERCANTILES, ARANZADI, 2013

#### **Additional**

- DIEZ PICAZO Y PONCE DE LEON, LUIS, FUNDAMENTOS DE DERECHO CIVIL PATRIMONIAL T. IV: LAS PARTICULARES RELACIONES OBLIGATORIAS, CIVITAS 2010

CAMARA LAPUENTE, SERGIO, COMENTARIOS A LAS NORMAS DE PROTECCION DE LOS CONSUMIDORES, COLEX, 2011

GANDÍA SELLENS, MARÍA ARÁNZAZU, EL ARBITRAJE FRENTE A LOS LITIGIOS INTERNACIONALES EN MATERIA DE PROPIEDAD INTELECTUAL LA ARBITRABILIDAD Y LA ADOPCIÓN DE MEDIDAS CAUTELARES, ARANZADI, 2014

BLAKE, SUSAN H., BROWNE, JULIE, SIME, STUART A PRACTICAL APPROACH TO ALTERNATIVE DISPUTE RESOLUTION, OXFORD UNIVERSITY PRESS, 2014

KARTON, JOSHUA, THE CULTURE OF INTERNATIONAL ARBITRATION AND THE EVOLUTION OF CONTRACT LAW, OXFORD UNIVERSITY PRESS , 2013

ROVINE ARTHUR W., CONTEMPORARY ISSUES IN INTERNATIONAL ARBITRATION AND MEDIATION : THE FORDHAM PAPERS 2014 , BRILL NIJHOFF, 2015

#### **ADDENDUM COVID-19**

**This addendum will only be activated if the health situation requires so and with the prior agreement of the Governing Council**

#### **English version is not available**

Con el fin de no introducir nuevas incertidumbres a los estudiantes, se mantienen los contenidos de la asignatura y la distribución de porcentajes de evaluación, pero se adapta a las circunstancias de la no presencialidad tanto la metodología docente, como la evaluación a las herramientas tecnológicas con que cuenta la Universidad.

Se informará de las citadas medidas con suficiente antelación a los estudiantes.