

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

<b>Code</b>	44558
<b>Name</b>	Economic constitution
<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. Period year</b>
2217 - Master's Degree in Law, Business and Justice	Faculty of Law	1 First term

**Subject-matter**

<b>Degree</b>	<b>Subject-matter</b>	<b>Character</b>
2217 - Master's Degree in Law, Business and Justice	11 - Constitución económica	Obligatory

**Coordination**

<b>Name</b>	<b>Department</b>
OLAVARRIA IGLESIA, JESUS	70 - Mercantile Law 'Manuel Broseta Pont'

**SUMMARY**

The course addresses the meaning of economic constitution, the economic clauses of constitutional status and its historical evolution. From these ideas the meaning and scope of the principle of economic initiative and its projection in the field of freedom of enterprise, focusing on the principle of corporate pluralism arises. Then regards public intervention in the economy, the activities / services of general economic interest and the impact that it has especially in competition law.

**PREVIOUS KNOWLEDGE**



### **Relationship to other subjects of the same degree**

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

### **Other requirements**

Preferably, legal knowledge from Law or Legal Sciences Degree, in accordance with the Master's verifica.

## **COMPETENCES (RD 1393/2007) // LEARNING OUTCOMES (RD 822/2021)**

### **2217 - Master's Degree in Law, Business and Justice**

- 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 possess and understand foundational knowledge that enables original thinking and research in the field.
- Saber aplicar los conocimientos adquiridos durante el curso, a través de la resolución de problemas puntuales y multidisciplinares desde la óptica de la actividad comercial nacional e internacional y la seguridad jurídica.
- Identificar, analizar e interpretar los problemas jurídicos complejos conforme a criterios jurídicos y deontológicos, con el debido respecto a valores democráticos y a principios fundamentales, sin que tenga cabida la discriminación por razón de sexo, creencia o lugar de procedencia.
- Conocer y aplicar las técnicas de comunicación y expresión oral y corporal en los debates y discusiones planteadas respecto de problemas jurídicos actuales, participando de forma activa en la resolución de los mismos.
- Capacidad de trabajo en equipos multidisciplinares para la resolución de casos y situaciones jurídicas complejas nacionales e internacionales.
- Capacidad de implementación práctica de los conocimientos aprendidos en los debates y discusiones, así como ser capaces de dirigirlos e identificar y analizar las conclusiones más relevantes.
- Identificar y valorar los problemas jurídicos de interés en una sociedad globalizada en el ámbito de la actividad empresarial que requieren de una profundización en la investigación jurídica para ser afrontados de forma plural.
- Utilizar los conocimientos avanzados adquiridos aplicables a la realidad empresarial de forma solvente, tanto de forma individual como en equipo, desde una perspectiva pluridisciplinar.
- Saber identificar los posibles conflictos de interés en el seno de las empresas y operadores económicos en sus relaciones con otros agentes y, especialmente, con los consumidores, para conocer y desarrollar técnicas y mecanismos de tutela y protección de los derechos e intereses de las partes de la relación jurídica.



- Aplicar los conocimientos y técnicas adquiridos a entornos y situaciones interdisciplinarias complejas para anticiparse a los problemas, valorando la creatividad y solvencia de las propuestas.
- Saber trabajar el liderazgo en equipos específicos e interdisciplinarios.
- Adquirir y/o mejorar la capacidad y habilidad de coordinación, así como desarrollar destrezas interpersonales que faciliten el trabajo en grupo.
- Saber precisar, comparar y contrastar mediante razonamientos lógicos argumentos proporcionados por otros, bien en debates, bien cuando se trabaje en grupo, sobre la base del respeto mutuo.

## LEARNING OUTCOMES (RD 1393/2007) // NO CONTENT (RD 822/2021)

The course aims students to analyze in the study and understanding of what is known as economic constitution or set of constitutional provisions that enshrine the principles and rules by which must govern the economic activity carried out by individuals and by the initiative public, as well as its economic implications, social, political and ideological.

The aim is that the student completes the course with the knowledge and skills necessary to move with a certain familiarity and rigor by different constitutional texts identifying and knowing the meaning and implications of the essential elements that make up the model or economic system that implement or embody these Constitutions.

## DESCRIPTION OF CONTENTS

### 1. The concept of economic constitution

- 1.1. The different concepts of economic constitution.
- 1.2. Substantive economic constitution.
- 1.3. The economic activity in the Liberal Constitutions of the 19th century.
- 1.4. The economic constitution after the II World War.

### 2. Main constitutional economic clauses. Its historical evolution

- 2.1. The principle of freedom.
- 2.2. The principle of equality.
- 2.3. The principle of free development of the personality.
- 2.4. Private property.
- 2.5. Free choice of profession or trade.
- 2.6. Freedom of private economic initiative (freedom of enterprise) and the economy.
- 2.7. Freedom of association.
- 2.8. Social clauses.



### 3. The principle of economic initiative

- 3.1. Private initiative and public initiative.
- 3.2. The principle of subsidiarity, the principle of joint initiative
- 3.3. The principle of equal treatment.

### 4. Freedom of enterprise

- 4.1. The protection of freedom of enterprise. Freedom of enterprise, a subjective right and / or a fundamental right and / or a constitutional guarantee?
- 4.2. The essence of freedom of enterprise.
  - 4.2.1 The freedom of creation and freedom of enterprise market access.
  - 4.2.2. freedom of activity: freedom of organization and management of the company.
  - 4.2.3. Freedom of cessation in the market.

### 5. Public intervention in the economy.

- 5.1 Guiding principles of social and economic policy.
- 5.2. public economic initiative
- 5.3. Reservations to public sector

### 6. Activities / economic services of general interest

- 6.1. Public services and economic activities/services of general interest.
- 6.2. Activities/services of general interest, freedom of enterprise and free trade.

### 7. Freedom of enterprise and competition law

- 7.1. Prohibited behavior
  - 7.1.2. cartels
  - 7.1.3. Abuse of dominant position
  - 7.1.4. Acts of unfair competition that distort free competition
- 7.2. Merger control
- 7.3. Public aid
- 7.4. Competition authorities: different systems.



## WORKLOAD

ACTIVITY	Hours	% To be attended
Theory classes	19,50	100
Seminars	6,00	100
Classroom practices	4,50	100
<b>TOTAL</b>	<b>30,00</b>	

## TEACHING METHODOLOGY

The methodology combines lectures with student interventions readings teacher assigned to each of them, by a class system that favors dialogue discussion led by the teacher on certain issues, cases and rules.

The development of the subject requires an activity of study, research and analysis by students during the sessions and later.

## EVALUATION

1. Evaluation of attendance and participation in seminars and other activities, assessing not only the number of interventions but also the quality of them. 25.0%
2. Evaluation of mentoring, in which the degree of preparation of the student and assimilation of acquired knowledge will be analyzed 30.0%
3. Assessment of public interventions to be carried out each of the students in the sessions. 45.0%

## REFERENCES

### Basic

- MENÉNDEZ MENÉNDEZ, Aurelio, Constitución, sistema económico y Derecho Mercantil, en HPE (Hacienda Pública Española), n.º 94, 1985, pág. 47-77.
- ARAGÓN, Manuel, Constitución económica y libertad de empresa, en Estudios Jurídicos en Homenaje al Profesor Aurelio Menendez, Madrid, 1996, págs. 163-180.
- GORDILLO PÉREZ, Luis I., Constitución económica y gobernanza económica Unión Europea, Pamplona, Aranzadi, 2019.
- NIETO CAROL, U., La Constitución económica de 1978, Tirant, Valencia, 2019.
- PAZ-ARES, C. y, ALFARO AGUILA-REAL, J., "Ensayo sobre la libertad de empresa", en Estudios homenaje a Luis Diez-Picazo, tomo IV, Thomson/ Civitas Ed., Madrid, 2003, pp 5971-6040 en <http://www.uam.es/centros/derecho/privado/mercanti/investigacion/CPA%20y%20JAAR%20-%20libertad.pdf>
- ROJO, Angel, Actividad económica pública y actividad económica privada en la constitución, en Revista de Derecho Mercantil, 1983, pags. 309-341.





-RUBIO LLORENTE, Francisco, "La libertad de empresa en la Constitución", en Estudios Jurídicos en Homenaje al Profesor Aurelio Menéndez, Madrid, 1996, pp. 431-446.

#### Additional

- ALBERTÍ ROVIRA, Enoch, La Constitución económica de 1978. Reflexiones sobre la proyección de la Constitución sobre la economía en el XXV Aniversario de la Constitución española, Revista española de derecho constitucional, Año nº 24, Nº 71, 2004 (Ejemplar dedicado a: XXV aniversario de la Constitución (III)), págs. 123-160
- AIMONE GIBSON, E. y SILVA WALBAUM, A., "La noción de Derecho económico", RDPUCV, 2015, nº 44.
- ARAGÓN REYES, M., Libertades económicas y Estado social, ed. McGraw Hill, Madrid, 1995
- ARIÑO ORTIZ, Gaspar, Principios Constitucionales de la libertad de empresa. Libertad de comercio e intervencionismo administrativo, ed. Marcial Pons, Madrid 1995, págs. 21-39, 81-125
- BASSOLS COMA, Martín, Constitución y sistema económico, ed. Tecnos, Madrid, 1988
- CIDONCAH, Antonio, La libertad de empresa, IEE-Thomson Civitas, Cizur Menor, 2006
- GUERRERO BECAR, José L., La Constitución Económica chilena, Ed. Der, Santaigo de Chile, 2018.

#### ADDENDUM COVID-19

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

This subject is taught during the second semester of the academic year 2021-22. The CCA of the Master will proceed to adopt, where appropriate, and taking into account the evolution of the current pandemic of COVID-19 and the indications of the academic and health authorities, the measures it deems appropriate to ensure the normal development of the subject during the months from January to March 2022 in which the face-to-face phase of the Master will be developed. Measures that will be communicated publicly and immediately to all the students of the subject and that will seek, at all times, to combine the permanence of the teaching activity with the preservation of the health of teachers and students.