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## INTRODUCTION

**Brief description:** U.S. Litigation and Alternative Dispute Resolution is an important course for students with an interest in an international legal practice. A lawyer with an international practice will likely have some exposure to legal issues

- **Titulación:** Anglo-American Law Program, Grado en Derecho, Grado en Relaciones Internacionales
- **Módulo/Materia:** Optatividad, derecho angloamericano
- **ECTS:** 3
- **Course, semester:** Third course, second semester
- **Carácter:** Optativa
- **Professor responsible for the subject:** Alberto Muñoz
- **Visiting Professor:** Thomas B. Metzloff (Duke University)
- **Idioma:** Inglés
- **Schedule and location:** The course will be delivered in an intensive format every afternoon from April 8 to April 19. The schedule will be from 5:30 pm to 7:30 pm. Please check WebUntis for the classroom information.

Please note that the schedule is subject to changes due to reasons beyond our control.

## COMPETENCIAS

De acuerdo con la **Memoria del Grado en Derecho**, las competencias que los estudiantes deben llegar a dominar asociadas a las asignaturas Optat American Law Program del que forma parte esta asignatura son las siguientes:

### Competencias básicas

CB1 -

Que los estudiantes hayan demostrado poseer y comprender conocimientos en un área de esta base de la educación secundaria general, y se suele encontrar a un nivel que, si bien se apoya en libros de texto avanzados, incluye tamb

CB2 -

Que los estudiantes sepan aplicar sus conocimientos a su trabajo o vocación de una forma prof la resolución de problemas dentro de su área de estudio.

CB3 -

Que los estudiantes tengan la capacidad de reunir e interpretar datos relevantes (normalmente para emitir juicios que incluyan una reflexión sobre temas relevantes de índole social, científica

CB4 - Que los estudiantes puedan transmitir información, ideas, problemas y soluciones a un público tanto especializado como no especializado.

CB5 -

Que los estudiantes hayan desarrollado aquellas habilidades de aprendizaje necesarias para er

### Competencias generales



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CG1 - Poseer un conocimiento general de la disciplina y la metodología jurídicas que permita el ejercicio de actividades de carácter profesional en el ámbito del Derecho o la adquisición de los títulos complementarios exigidos por la ley para determinadas actividades

CG2

- Expresar y transmitir adecuadamente ideas complejas que permitan comunicar, de manera oral o escrita, soluciones fundadas en Derecho a un público especializado o no.

CG3

- Localizar y gestionar correctamente las fuentes jurídicas, tanto legales, jurisprudenciales y doctrinarias.

## SYLLABUS

### **CLASS 1: UNDERSTANDING CIVIL LITIGATION IN THE UNITED STATES: THE PROBLEMS AND POTENTIAL OF PUNITIVE DAMAGES**

Perhaps the most famous case in the United States involves McDonald's. In that case, an elderly woman spilled hot coffee on herself suffering severe burns. She sued McDonald's and won a \$2.1 million dollar punitive damage verdict. Many people think the case is a great example of problems in the American system of litigation. Others see this case as an excellent example of the American litigation system working well to protect consumers. What about US litigation is different than in the EU? Can juries in the US be entrusted to decide whether punitive damages should be awarded in cases like this? We will then focus on the Supreme Court and its efforts to control "runaway juries."

#### **CLASS 2:**

##### **PART A: DUE PROCESS AND CONTROL OF PUNITIVE DAMAGES: BMW V. GORE**

In response to the perceived crisis of punitive damages, the Supreme Court eventually held that the "due process" guarantees in the Constitution required that courts review the amount of all punitive damages awards. In BMW v. Gore, the Court established a three-part test which was then later refined in State Farm v. Campbell. What is this test and does it work effectively to control "runaway juries?"

##### **PART B: GETTING A LAWSUIT STARTED: THE AMERICAN "LIBERAL" APPROACH TO LAWSUITS**

The first phase of the American litigation process is known as the "pleadings" stage and involves the initial description of the claims involved in the case. As compared to other litigation systems, the American system is a "liberal" one meaning that it has traditionally been very easy to begin a lawsuit. This class will describe the American approach and discuss its relative advantages and weaknesses.

### **CLASS 3: CONTROLLING "JUNK" CASES: THE AMERICAN "LIBERAL" APPROACH TO LAWSUITS**

In the past few years, the United States Supreme Court has decided two important cases that have changed the traditional "liberal" approach to pleading. Those who represent defendants hail the change as a good thing that will protect legitimate interests. Others – those representing plaintiffs – see the new approach as a dangerous and very un-American response that will make the US system less responsive to ensuring just results. We will look at the cases and explore the recent controversy. A related issue is how to identify and deal



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with attorneys who file frivolous cases. How much investigation should attorneys do before deciding to file a lawsuit? What should happen to the attorney if it turns out not to be a good claim?

## **CLASS 4: INTRODUCTION TO AMERICAN DISCOVERY**

Another important aspect to understanding the American system is its reliance on extensive “discovery” that permits parties to investigate the claims. Each side can seek wide-ranging information from their opponents. This can result in ensuring just results as all parties have access to relevant information, but it can also result in great delay and expenses. This section will provide an introduction to the tools used in the discovery process. We will also focus on the “scope of discovery” – what is it that American litigation permits you to investigate.

## **CLASS 5: CONTROLLING DISCOVERY**

There are serious potential problems with a “liberal” discovery system as employed in the United States. It can cost a great deal as parties explore all aspects of a case, sometimes forcing parties to give up or settle the case. It can cause delays, and thus deny a quick resolution of a matter. It can also result in invasions of privacy. The concern with the potential abuse of discovery has become even a greater concern in a world in which so much information exists in a digital format. Cases in which there used to be thousands of documents now have millions of “electronically stored information” or ESI documents. How can US courts control discovery effectively?

## **CLASS 6: THE ADVERSARIAL EXPERT: THE USE AND MISUSE OF EXPERT WITNESSES IN US LITIGATION**

Expert witnesses play a critical role in American litigation. In most cases, the parties routinely hire one or more “expert” witnesses who are often critical in presenting the case. In most other countries, expert witnesses are used less frequently, and often need to be approved or even selected by the court. Who are these experts? Are they in fact well-qualified? How does the American system control the qualifications of experts?

## **CLASS 7: UNDERSTANDING THE SUMMARY JUDGMENT PROCESS**

American civil procedure is focused on preparing a case for trial, usually before a jury. Jury trials are often long and expensive, and present great risk to defendants should they lose. Given a liberal pleading and discovery system, what prevents weak claims from going before sympathetic juries who might find in favor of injured plaintiffs? A critical part of the US system is the motion for summary judgment in which the court can assess whether the case has sufficient merit to proceed to trial.

## **CLASS 8: THE JURY IN AMERICAN LITIGATION**

The jury is a venerable institution in the United States. While most countries have abandoned or greatly limited the use of the jury in civil cases, it remains the centerpiece of the resolution process in the US. Indeed, the right to trial by jury is included in the US Constitution. This has profound consequences for the civil justice system. We will explore the nature of the constitutional right to a jury trial and then explore how a jury is actually selected in the US.

## **CLASS 9: ALTERNATIVES TO LITIGATION IN THE US: ARBITRATION**

In an effort to improve the litigation process and/or to lower costs, alternatives to litigation have greatly expanded in the United States. For example, in most countries, arbitration is



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routinely used to handle commercial disputes or international matters. In the United States, however, the use of arbitration is more controversial. Consumers do not want to be forced into arbitration where there are no juries.

## **CLASS 10: AMERICAN PERSPECTIVES ON JURISDICTION: WHERE TO FILE YOUR CASE AND THE CONCEPT OF PERSONAL JURISDICTION**

The United States is a very large country. It has fifty states each of which exercises governmental power through its own system of state courts. Indeed, the large majority of cases are filed in state courts in the United States and not in our federal (national) court system. Many cases involving disputes between people or companies from different states. How do we decide which state has the power to handle the lawsuit? Plaintiffs may well do "forum shopping" and file their case in one state because they think they will get a better result. This raises a very important issue in the United States involving what courts have "personal jurisdiction" over a particular defendant.

## **EDUCATIONAL ACTIVITIES**

The time distribution of the student's workload measured in hours is the following:

- Theory in-class instruction and discussion periods: 15 h
- Practical in-class periods: 15 h
- Pre-class preparation of reading assignments /research/case solving: 15 h
- Personal study and exam preparation (personal notes and notebooks): 30 h
- Reaction papers to videos: 15 h
- Examination: 5 h

## **EVALUACIÓN**

### **CONVOCATORIA ORDINARIA**

Your grade for the course will be based on your performance on the final examination, which will be proctored on a date and time, to be announced, after the course ends. Although your work on the final examination is expected to be entirely your own, the exam will be "open book" and "open notes." The slides covered in the course, as well as a review document, will also be available to you when you take the final.

Your regular, active, and insightful participation in class discussions each week is important. I expect everyone to have completed the readings each week and to come to class prepared to participate in our discussions.

### **CONVOCATORIA EXTRAORDINARIA**

Your grade will come entirely from your June exam.

## **OFFICE HOURS**



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You can make an appointment with Prof. Metzloff at metzloff@law.duke.edu.

## **BIBLIOGRAPHY**

The course will have reading material that you can find in the Documents section.

For further reading, please see:

Jack H. Friedenthal, Et Al., Civil Procedure Cases and Materials (10<sup>th</sup> Ed. 2009) ("Casebook")  
[Find it at the library](#)

Jack H. Friedenthal, Et Al., Civil Procedure Supplement (2009) ("Supplement") [Find it at the library](#)

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