

**Civil Litigation**

Code: 44218  
ECTS Credits: 9

Degree	Type	Year	Semester
4313312 Legal Profession	OB	1	1

**Contact**

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**Prerequisites**

Is essential to be in possession of the Degree in Law

Teaching staff

Litigació Civil I

Joan Manel Abril Campoy (catalan)

Xavier Cecchini Rosell (catalan)

M<sup>a</sup> del Carmen Gete-Alonso y Calera (spanish)

Carles Górriz López (spanish)

Jorge Miquel Rodríguez (spanish)

Ramón Morral Soldevila (catalan)

Judith Solé Resina (catalan)

Litigació Civil II

Manuel Cachón Cadenas (spanish)

Albert Fauria (spanish - catalan)

Justo Franco Arias (spanish)

Laura Cachón (spanish)

Nuria Reynal Querol (catalan)

Carme Fernández (spanish)

José M<sup>a</sup> Asencio (spanish)

Verónica Dávalos (spanish)

Francisco Ramos (spanish)

**Use of Languages**

Principal working language: catalan (cat)

## Objectives and Contextualisation

The objective is to acquire the necessary skills to prepare and direct a civil process, in any of its modalities and from both the position of actor and the defendant.

The Civil Litigation module is subdivided, for teaching purposes, into two sub-modules:

- Civil Litigation 1 (Subjects of Civil Law and Commercial Law) Coordinator: Prof. Dra. M<sup>a</sup> del Carmen Gete-Alonso Calera.
- Civil Litigation 2 (Civil procedural law) Coordinator: Dra. Nuria Reynal Querol

Each sub-module is organized and rated independently and has a value of 50%.

The final qualification of the assignee is a single note of the Civil Litigation module. It is the result of the sum between the notes of the two submodules.

In each sub-module, in order to obtain the final mark, the note obtained in the respective continuous assessment is taken into account.

## Competences

- Choose the correct strategy for defending clients' rights, while keeping in mind the particular demands of each area within professional practice.
- Communicate and justify conclusions clearly and unambiguously to both specialist and non-specialist audiences.
- Integrate knowledge and use it to make judgements in complex situations, with incomplete information, while keeping in mind social and ethical responsibilities.
- Know the techniques for ascertaining the facts in different types of procedure, especially the production of documents, examination and expert evidence.
- Present facts and their corresponding legal implications orally and in writing, in a way that is appropriate to the context and the addressees and, where necessary, to the established procedures.
- Put into practice the specialist academic knowledge acquired on the degree programme in order to avoid damage, risk or conflict with respect to clients' interests or regarding professional practice before the courts and other authorities and when offering consultancy services.

## Learning Outcomes

1. Apply this strategy through written and oral briefs throughout the process.
2. Communicate and justify conclusions clearly and unambiguously to both specialist and non-specialist audiences.
3. Conduct negotiations aimed at avoiding proceedings.
4. Conduct negotiations aimed at finalising the proceedings that are underway.
5. Integrate knowledge and use it to make judgements in complex situations, with incomplete information, while keeping in mind social and ethical responsibilities.
6. Master the techniques for gathering evidence.
7. Master the techniques of trial examination.
8. Plan and conduct the appropriate strategy for defending the client's legal interests.
9. Present facts and their corresponding legal implications orally and in writing, in a way that is appropriate to the context and the addressees and, where necessary, to the established procedures.

## Content

CONTENT

For teaching purposes the Civil Litigation module is subdivided in two modules: Civil 1 (Civil Law and Commercial Law) and Civil 2 (Civil Procedural Law)

SUBMODULE CIVIL 1 (Coordination: Dra. M<sup>ª</sup> del Carmen Gete-Alonso y Calera)

## I. CIVIL LAW

### FAMILY / PERSON LAW

#### THEME 1. FILIATION- IDENTIFICATION OF THE PERSON

1. Filiation's principles. The relationship of filiation
2. The legal period of conception
3. Identification of the person: registration of maternity and paternity.
4. The recognition. File of voluntary jurisdiction.
5. Assisted reproduction: requirements and configuration. Post-mortem assisted reproduction
6. Surrogate motherhood.

#### THEME 2. FILIATION ACTIONS

1. Filiation actions. General rules
2. Reclamation actions : matrimonial filiation and non-marital filiation. Reclamation and Impugnation
3. Impugnation actions: Impugnation maternity. Impugnation matrimonial paternity
4. Impugnation of recognition.
5. The presumption of non-marital paternity

#### THEME 3: MARRIAGE: NULLITY, SEPARATION AND DIVORCE

1. The procedure
2. Preliminary measures and provisional measures
3. Definitive measures proposed in the regulatory agreement
4. Definitive measures agreed by the judicial authority
5. Agreements outside the regulatory agreement
6. Modification of measures
7. Family mediation
8. The custody of the children.
9. Parental responsibility
10. The parenting plan

## CONTRACTS

#### THEME 4: ACTIONS IN CONTRACTUAL MATTERS

1. The nullity of the contract. Special reference to the abusive clauses and the control of formal and material transparency.

2. The voidability of the contract. The vices of consent
3. The resolution of the purchase contract. Analysis of the regulation of Llibre VI CCCat: lack of conformity, essential breach.
4. The rescission of the contract of sale: the unjust enrichment and the rescission due to injury.

## REAL RIGHTS

### THEME 5: JUDICIAL PROTECTION OF POSSESSION

1. Concept of possession, acquisition and loss of possession
2. Summary protection of possession
  - 2.1. Active legitimization
  - 2.2. Passive legitimization
  - 2.3. Object
  - 2.4. Term
3. Public action

### THEME 6: JUDICIAL PROTECTION OF PROPERTY RIGHTS

1. Concept of property
2. Claim action: Requirements
3. Declarative domain action
4. Exclusion actions
  - 4.1. Negative action: Active legitimization. Passive legitimization. Exercise budgets: immissions: 4.1. Negative action: Active legitimization. Passive legitimization. Exercise budgets: illegitimate immissions; 4.2. The closing of farms; 4.3. The demarcation and demarcation action

### THEME 7: THE REGISTRATION OF PROPERTY

1. Effects of the Land Registry for the registry holder: 1.1. The principle of registration legitimization (Article 38 LH); 1.2. The principle of presumption of accuracy: consequences
2. Usucapio: Concept and requirements. The usucapio secundum tabulas and the usucapio contra tabulas
3. The registration action (Article 41 LH): basis, distinction of summary custody of possession. Legitimation active and passive. Procedure: causes of opposition.
4. Effects of the Registry against third parties: 4.1. The unenforceability of unregistered titles (art 32 LH): requirements; 4.2. The principle of good faith registration: protection of the third (art 34LH): requirements

## SUCCESSION LAW

### THEME 8: ACTIONS IN SUCCESSION LAW

1. The opening of the succession: applicable law: EU Regulation 650/2012.
2. Voluntary disclosure. The "interpellatio in iure". Acceptance and inheritance to heritage. The challenge of business mortis causa.

3. Legal delation: declaration of heir's ab intestato.
4. The hereditary community and the inheritance partition.
5. The protection of the creditors of the deceased. The separation benefit.
6. The inheritance claim action. The claim of the legitimate i the supplement. The reduction of legacies and inofficiously donations.
7. The protection of the surviving consort or cohabiter: vidual benefits. The fourth vidual.

## II. COMMERCIAL LAW

### THEME 1. BANKRUPTCY LAW

### THEME 2: COMMERCIAL CONTRACTATION

### THEME 3. COMPANIES LAW

## SUBMODULE CIVIL 2 (Coordination: Dra. Nuria Reynal Querol)

### CIVIL PROCEDURAL LAW

1. Civil jurisdiction and procedural parties
  - 1.1. The civil jurisdiction
  - 1.2. The international judicial competence (or international jurisdiction) of the Spanish Civil Courts
  - 1.3. Objective jurisdiction
  - 1.4. Territorial jurisdiction
  - 1.5. Functional jurisdiction
  - 1.6. The distribution of matters
  - 1.7. Control of the jurisdiction and of the different kinds of competence
  - 1.8. The procedural parties
  - 1.9. Capacity to be party and procedural capacity
  - 1.10. Standing
  - 1.11. The succession of parties
  - 1.12. The joinder of parties
  - 1.13. The procedural intervention
  - 1.14. The procedural representation
2. Preliminary investigative measures and pleadings phase
  - 2.1. Classes of preliminary investigative measures
  - 2.2 Jurisdiction
  - 2.3. Proceedings

- 2.4. The claim
- 2.5. Form and structure of the claim
- 2.6. Determining the application kind of proceedings
- 2.7. Determination of the amount in dispute
- 2.8. Determination of the object of the proceedings
- 2.9. Filing of documents and other evidence with the claim
- 2.10. Copies of the claim and documents
- 2.11. Admission, rejection or suspension of the admission of the claim
- 2.12. Effects produced by the claim
- 2.13. Expansion of claim
- 3. Pleadings phase (continued)
  - 3.1. The joinder of actions
  - 3.2. The joinder of proceedings
  - 3.3. Service of the claim to defendant
  - 3.4. Procedural positions that the defendant can adopt against the claim
  - 3.5. Procedural effects of defendant's failure to appear (articles 496 et seq. LEC)
  - 3.6. Participation of the defendant without answering the claim
  - 3.7. The reply to the claim
  - 3.8. Filing of documents and other evidence with the answer to the claim, and filing of copies of the reply to the claim and the documents accompanied
  - 3.8. Allegation of exceptions as counterclaims by the defendant
  - 3.9. The counterclaim
  - 3.10. Reply to counterclaim
- 4. Special procedures: payment injunctions and proceedings based on bills of exchange
  - 4.1. The payment injunction process: general notions
  - 4.2. General scheme of the payment injunction procedure
  - 4.3. The European order for payment procedure
  - 4.4. The proceedings based on bills of exchange
- 5. The preliminary hearing
  - 5.1. Convocation of the preliminary hearing
  - 5.2. Appearance of the plaintiff
  - 5.3. Appearance of the defendant

- 5.4. Attempt to conciliate
- 5.5 Debate and resolution on questions of a procedural nature that have been raised in the briefs of the parties
- 5.6. Integration of the allegations and petitions made in the initial writings, and the evidence provided with these writings
- 5.7. Position of the parties on the evidence provided up to that moment
- 5.8. Proposition and admission of means of evidence
- 5.8. Fixing of a trial date
- 6. The trial. Judgment. The legal costs
  - 6.1. The trial of the ordinary proceedings
  - 6.2. The hearing of the verbal proceedings
  - 6.3. The final investigative measures
  - 6.4. Judgment
  - 6.5. Res judicata
  - 6.6. Ways to end the proceedings alternative to the judgment
  - 6.7. Legal costs
- 7. Preliminary measures and execution
  - 7.1. Role of preliminary measures
  - 7.2. Jurisdiction
  - 7.3. Preliminary measures that can be adopted
  - 7.4. Requirements necessary to adopt preliminary measures
  - 7.5. Procedural moments in which preliminary measures can be requested and procedure for their adoption
  - 7.6. Modification of preliminary measures and delivery of substitutive bond
  - 7.7. The provisional enforcement
  - 7.8. The enforcement action and the enforcement title
  - 7.9. Jurisdiction over enforcement
  - 7.10. Active and passive standing in the enforcement process
  - 7.11. The enforcement claim
  - 7.12. Enforcement order
  - 7.13. Enforcement measures to be adopted by the court clerk after the enforcement order
  - 7.14. Opposition to enforcement
- 8. Enforcement (continued)
  - 8.1. Seizure preparation acts

- 8.2. Seizure
- 8.3. Immovable property
- 8.4. Legal effects derived from the embargo
- 8.6. The enforcement procedure: alternative forms to the auction
- 8.7. The auction
- 8.8. The enforcement of non-monetary sentences
- 9. The appeals
  - 9.1. Concept of an appeal
  - 9.2. Types of appeal
  - 9.3. Standing to appeal
  - 9.4. Possible effects of the admission of appeal
  - 9.5. Prohibition of reformatio in peius
  - 9.6. Reform appeal
  - 9.7. Review appeal
  - 9.8. Second instance Appeal
  - 9.9. Extraordinary appeal for procedural infringement and appeal in cassation
  - 9.11. Complaint appeal
  - 9.12. Challenge of final decisions: Rescission of final judgments at the request of the defendant in default, review of final judgments and annulment of proceedings
- 10. Procedural specialties in consumer matters
  - 10.1. Procedural specialties in consumer matters
  - 10.2. Special reference to the procedural problems derived from abusive clauses

## Methodology

During the course, the following activities will be carried out, with specific methodologies in each case:

Expositive classes

Case resolution classes

Oral presentation of works

Preparation of reports and works

## Activities

Title	Hours	ECTS	Learning Outcomes
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Type: Directed

Conference attendance.	65	2.6	7, 6, 3, 4, 5, 2, 9
Type: Supervised			
Study and work outside the classroom. Readings, preparation and writing of texts, search of bibliography and jurisprudence.	48	1.92	6, 4, 8, 1, 5, 2, 9
Type: Autonomous			
Study and work outside the classroom. Readings, preparation and writing of texts, search of bibliography and jurisprudence. Preparation examen	112	4.48	6, 8, 1, 5, 9

## Assessment

Evaluation:

Final qualification:

50% continuous evaluation: 5 points (over 10) + 50% final exam: 5 points (over 10)

1.- Continuous evaluation:

The teaching staff of the course determines the format and the continuous evaluation activities are made known through the Virtual Campus. They can be performed in 50% of the programmed sessions, approximately.

The failure to carry out these activities, whether justified or not, is not recovered, except in very specific cases (for example, prolonged absences due to health reasons or the like)

You can stop making up to two of these continuous evaluation activities in each sub module of Civil Litigation, without any justification. In the event that all the activities are carried out, the two that have obtained a lower score will not be computed.

It includes two types of activities:

A) Evaluable practical activities (writing of writs, resolution of practical cases, etc.); They are included in the course calendar and / or are notified in advance.

B) Short questionnaires (short, true or false question, question test, etc.) conducted in class on dates and times that are not previously communicated

2.- Final exam.

- Test of 25 questions from each part (total of 50 questions in two exams), according to the proof of access by the Ministry of Justice (4 response options, penalizing errors with -0.33)
- Only valid from a minimum of 3 (over 10), Who obtains a lower note, suspends the module.
- Possibility of reevaluation: who has obtained a mark of examination of less than 3, may return to submit to stop it. This recovery only affects the mark of the exam, not the rating of the continuous evaluation, which is maintained.

## Assessment Activities

Title	Weighting	Hours	ECTS	Learning Outcomes
Continuous evaluation	50%	0	0	7, 6, 3, 4, 8, 1, 5, 2, 9
Final exam	50%	0	0	8, 1, 2, 9

## Bibliography

AA VV, Nociones preliminares de Derecho Procesal Civil, dir. Jordi Nieva y Llorenç Bujisa, ed. Atelier, Barcelona, 2015.

GETE-ALONSO, M<sup>a</sup> del Carmen / SOLÉ RESINA, Judith. Lliçons de Dret Civil Català (Ed Tirant lo Blanch, Valencia 2016, 2017):

I Part General de Dret Civil

II Dret de la persona

III Dret de família

IV Dret d'obligacions

DEL POZO, Pedro/ VAQUER, Antoni/ BOSCH, Esteve. Derecho civil de Cataluña. Derechos reales, 5<sup>a</sup> ed. Marcial Pons, 2015.

DEL POZO, Pedro/ VAQUER, Antoni/ BOSCH, Esteve. Derecho civil de Cataluña. Derecho de Sucesiones, Marcial Pons, 2009.

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Codi Civil de Catalunya. Jurisprudència sistematizada. SOLÉ RESINA, Judith et alii. 3<sup>a</sup> ed, Tirant lo Blanch, València 2017.

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