

**Constitutional Law II**

Code: 102215  
ECTS Credits: 6

Degree	Type	Year	Semester
2500786 Law	OB	2	1

The proposed teaching and assessment methodology that appear in the guide may be subject to changes as a result of the restrictions to face-to-face class attendance imposed by the health authorities.

**Contact**

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**Use of Languages**

Principal working language: spanish (spa)  
Some groups entirely in English: No  
Some groups entirely in Catalan: No  
Some groups entirely in Spanish: Yes

**Teachers**

Mercè Barceló Serramalera  
María Jesús García Morales  
José Carlos Remotti Carbonell

**Prerequisites**

The subject of Constitutional Law II does not require prior knowledge or requirements. However, it is a subject of the same range of knowledge of the Degree in Law, and this is why it is recommended to refresh the knowledge and competences acquired in the subjects of "Constitutional Organization of the State" and "Constitutional Law" taught in the first year.

Professors:

Constitutional Law II (01). Dra. Mercè Barceló

Subgroup 11: Dra. M. Barceló (cat.)

Subgroup 12: Sr. José Algarrada (cast.)

Subgroup 13: Sra. V. Maglietta (cast.)

Constitutional Law II (02). Dr. J. C. Remotti

Subgroup 21: Dr. J. C. Remotti (cast.)

Subgroup 23: Dr. Tomás Gil (cast.)

Subgroup 23: Sr. José Algarrada (cast.)

Constitutional Law II (51). Dra. M.J. García Morales.

Subgroup 51: Dra. M.J García Morales (cast.)

Subgroup 52: Sr. A. Andrade (cast)

Subgroup 53: Sra. V. Maglietta (cast.)

## Objectives and Contextualisation

Constitutional Law II is a subject being taught in the first half of 2nd year in the Degree of Law. It's a subject used for students to learn basic notions about the framework of fundamental rights in the Spanish Constitution of 1978. This subject is helpful as introduction to other topics being later developed in several subjects of the Constitutional Law area as well as in other areas being taught at the Degree in Law.

From a perspective of formative education, Constitutional Law II aims to further several goals, specially among them:

- The constitutional system of fundamental rights. Rights and duties. Setting elements of rights.
- Guarantees and defence mechanisms of rights. Limits and suspension of rights.
- Rights of personal autonomy. Participative rights. Social, Economic and Cultural rights.

## Competences

- Defending and promoting the essential values of the social and democratic State of Law.
- Efficiently managing information, being capable of assimilating a considerable volume of data in a limited amount of time.
- Identifying the underlying conflicts of interest in disputes and real cases.
- Managing bibliographic and documentary resources: databases, browsing, etc.
- Use different information and communication technologies.
- Using the main constitutional principles and values as a working tool in the interpretation of the legal system.

## Learning Outcomes

1. Analysing and assessing in a legal-constitutional way several current problems of society.
2. Assessing the diversity and plurality of society.
3. Defining the different mechanisms of defence and guarantee of rights.
4. Efficiently managing information, being capable of assimilating a considerable volume of data in a limited amount of time.
5. Establishing that those current social problems do not only have one valid solution, but that there might be other democratically and constitutionally valid solutions.
6. Establishing the cases where it might be a suspension of rights, both in exceptional and individual assumptions of suspension of rights.
7. Identifying the different procedural mechanisms for the protection and guarantee of rights.
8. Knowing different constitutionally valid methods and paths in order to find a way out for the different current problems of society.
9. Knowing in depth the constitution configuration of certain important rights nowadays, such as liberty and personal security, inviolability of the home, secrecy of communications, honour, intimacy and personal image, freedom of speech, right to effective judicial protection and procedural safeguards...
10. Knowing that rights are not unlimited and as such, knowing the legitimate and constitutional sources of limits to the rights.
11. Knowing the legitimating role of the fundamental rights in the system, in every democratic society, and also that the acknowledgement, guarantee and efficacy of the fundamental rights constitute the material element of the democratic system.
12. Knowing the regulatory, objective and institutional nature of rights, their configurational elements, the limits to the rights and their possible suspension, as well as their defence and guarantee mechanisms.

13. Managing bibliographic and documentary resources: databases, browsing, etc.
14. Understanding that the several current problems of society must be addressed from tolerance and respect for diversity, fundamental rights and free development of the personality, which are characteristic of a Social and Democratic State of Law.
15. Understanding the insufficiency of formal elements to provide a system the status of democratic.
16. Understanding the need for efficiency of the fundamental rights, their mere statement not being enough.
17. Understanding the risks towards rights that might arise from the new technologies.
18. Use different information and communication technologies.

## Content

This is a framework program of the subject where its contents are indicated. But each professor, coordinator of group, can adapt it according to what is established in the Virtual Campus

Fundamental Rights.

Historical evolution, foundation and concept of Fundamental Rights. The distinction between Human Rights and Fundamental Rights - Problems and general characteristics of Fundamental Rights in the Spanish Constitution. The constitutional duties.- Subjective and objective dimension of Fundamental rights as legal relationships- Fundamental rights classification. Fundamental rights Object. Fundamental rights: Defense rights and Rights of provision

Fundamental rights framework.

Entitlement, recipients and effectiveness of private relationships - Fundamental rights entitlement - Fundamental rights recipients - Effectiveness of rights in front of private persons

Regulations on fundamental rights.

The binding force of rights and freedoms in the 1st Title of Spanish Constitution- Matters reserved to law in the field of fundamental rights- Delimitation and limits of fundamental rights- Core content of fundamental rights and constitutional control. Principle of proportionality

Fundamental rights guarantees.

Judicial guarantee of fundamental rights. The sense of judicial guarantee of fundamental rights: remedy of amparo with the Constitutional Court. - The Ombudsman - European framework of protection: European Court of Human Rights - Suspension of Fundamental Rights

The principle of equality

Function and organisation of the principle of equality in the Spanish Constitution - Distinction between equality before the law and equality in the application of law - Non-discrimination clauses

Rights in the field of personal sphere

The right to life and physical and moral integrity - The right to freedom of thought and the freedom of religion - The right to personal freedom and security. Habeas corpus - The right to private life: honour, privacy and own image. Personal data protection

Individual rights

The right to inviolability of the home - The right to secrecy of communication - The right to freedom of movement and freedom of residence.

Informative freedoms and rights of political participation

The right to freedom of expression and information - The right to freedom of assembly - The right to freedom of association - The right to freedom of political participation. The right to petition

The right to effective remedy

Meaning and problems on article 24 of the Spanish Constitution - The right of access to the courts and to a judicial body laid down by law - General procedural guarantees. Reference to the evidence obtained with violation of fundamental rights - Specific guarantees of criminal proceeding

Cultural, economic and social rights

Academic freedom and the right to education. - The right to property and entrepreneurial freedom - Labour and professional rights

## Methodology

The learning process focuses on the work of the student, who learns working individually and in groups, the mission of the teaching staff being to help him in this task by providing information and showing him the techniques and sources where it can be obtained. The development of teaching of the subject and student training is based on the following activities:

### 1. Directed activities:

1.1. Theoretical class: where the student acquires through the transmission of knowledge from the professor the conceptual bases of the subject and establishes the doctrinal, normative and jurisprudential legal framework.

1.2. Seminar: they will occupy the assigned hours. The student individually or in small groups, analyzes and solves, together with the professor, questions, practical cases or news related to the topic just developed in the theoretical class. Attendance at the seminars, except if there is just cause, is mandatory.

### 2. Supervised activities: tutorials

3. Autonomous activities: these are activities in which students organize their time and effort independently, either individually or in groups.

#### 3.1 Study of the subject.

#### 3.2 Reading of documents that will be analyzed in the classroom.

#### 3.3 Search of bibliography, jurisprudence and materials for the resolution of practical cases.

Annotation: Within the schedule set by the centre or degree programme, 15 minutes of one class will be reserved for students to evaluate their lecturers and their courses or modules through questionnaires.

## Activities

Title	Hours	ECTS	Learning Outcomes
Type: Directed			
Theoretical classes and Seminar	39	1.56	1, 17, 15, 14, 8, 12, 9, 11, 3, 6, 5, 4, 13, 7, 10, 2
Type: Supervised			
Tutorships	5	0.2	4
Type: Autonomous			
To study. Writing of works. Reading of texts. Search of documents and bibliography	106	4.24	1, 17, 15, 14, 8, 12, 9, 3, 6, 5, 4, 7, 10, 18, 2

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## Assessment

The competences of these subjects will be evaluated continuously through the following activities:

- Final theoretical exam to be carried out on the date officially indicated by the academic secretary. You will receive 50% of the note. The teaching team corresponding to each of the groups will indicate the format of this exam.
- A minimum of two other evaluation activities whose weight in the grade will be the remaining 50%: For these purposes, in each of the subject groups the respective teaching team must select at least two different evaluation activities (determining the weight of each one of them in the percentage of the qualification within the present 50%). Example of these possible activities, and only by way of example: partial exam (non-liberatory), practical cases, reports, reviews, legal writings, opinions, preparation of research papers, reviews, book reviews, case law, attendance, participation (it is about active participation throughout the subject, of quality, legally based, adequate and pertinent to the topics discussed). The selected activities may be carried out, as provided by the teaching team, individually or in groups.

The teaching team of each group, at the beginning of the course, will specify the framework program of the subject provided in this guide, explaining the order and the topics to be discussed. It will also present the schedule of teaching activities (theory and seminars), specify the continuous evaluation system that has been selected and set the percentage assigned to each of the selected activities and their date of completion, as well as the re-evaluation system for suspended activities. The reevaluation can only be carried out if the student has followed the continuous evaluation and has obtained at least a 3 in the subject. Such indications will be displayed on the virtual campus.

The student who copies or attempts to copy on a final exam will have a 0 on the exam. A student who presents a practice in which there is plagiarism will obtain a 0 and receive a warning. In case of repetition of the behavior, the student will suspend the subject.

## Assessment Activities

Title	Weighting	Hours	ECTS	Learning Outcomes
Final theoretical exam	50%	0	0	12, 9, 11, 3, 6, 7
Partial exam, practical cases, reports, reviews, legal writings, opinions, preparation of research papers, reviews, book reviews, attendance, participation	50%	0	0	1, 17, 15, 16, 14, 8, 12, 9, 11, 5, 4, 13, 7, 10, 18, 2

## Bibliography

### A) Reference Books:

\* APARICIO PÉREZ, Miguel Angel. (dir.)- APARICIO PÉREZ, Miguel A.; BARCELÓ, Mercè (coords), *Manual de Derecho Constitucional*, Atelier, Barcelona, 2016 (3a ed.).

\* BALAGUER CALLEJÓN, Francisco (y otros) *Derecho Constitucional*, 2 vols., Tecnos. Madrid, 2020 (15a ed.).

\* LÓPEZ GUERRA , Luis et. al., *Derecho Constitucional*, volumen I, Tirant lo Blanch, València, 2018, 11.ed [Digital resource]

\* PÉREZ ROYO, Javier, CARRASCO DURÁN , Manuel, *Curso de Derecho Constitucional*, Marcial Pons, Madrid, 2018, 16 ed.

#### B) Legal texts:

\* DE CARRERAS SERRA, Francesc- GAVARA, Juan Carlos, *Leyes políticas*, Aranzadi, Pamplona.

\* ALBERTÍ, Enoch - GONZALEZ,Markus, *Leyes políticas del Estado*, Civitas, Madrid.

#### C) Comments to the Constitution:

\* PÉREZ TREMPES, Pablo; SÁIZ ARNÁIZ, Alejandro, *Comentario a la Constitución Española. 40 Aniversario. 1978-2018*. 2 tomos, Tirant lo Blanch, Valencia, 2018 [Digital resource]

#### D) Web links

Selection and commentary on the most relevant constitutional and international jurisprudence in relation to fundamental principles and rights.

[https://www.boe.es/legislacion/derechos\\_fundamentales.php](https://www.boe.es/legislacion/derechos_fundamentales.php)

## Software

Virtual Campus