

SYLLABUS  
FAMILY LAW  
BACHELOR'S DEGREE IN LAW

**Academic course:** 2014 - 2015

**Subject:** Family Law

**Code:** 22741

**Type of course:** Compulsory

**ECTS:** 4

**Total amount of working hours:** 100

**Knowledge area:** Private Law (Law Department)

**Studies:** Bachelor's Degree in Law

**Year:** 3rd

**Term:** 3rd

**Period:** April – June 2015

**Lecturers:** Esther Farnós Amorós (plenary lectures and seminar groups)

**Group:** 3

**Consultation hours:** Tuesdays from 11 to 13 (other days, by previous appointment: [esther.farnos@upf.edu](mailto:esther.farnos@upf.edu))

**Venue:** Roger de Llúria building (plenary sessions and seminar sessions, except seminar group 303)

Classrooms: 40.004 (plenary sessions) / 40.S03 (301, 304 and 305); 40.S14 (302); 23.S03 (303)

## I. INTRODUCTION TO THE SUBJECT

*Family Law* is an introductory course to the law regulating family relationships. Students will be acquainted with the different types of family structures, the legal relevance of family relationships, the main public policy concerns about families, the different regulatory options to the most common concerns and conflict situations in families, and the sources of family law both at international and domestic level. The course will examine the family relationships between adults based on marriage and the main issues concerning the family economy (primary regime and marital property issues); the establishment of legal parentage based on natural reproduction, on techniques of assisted reproduction and on adoption; the rights and duties derived from parenting (parental responsibility); and the consequences of family breakdown, both in relation to children and between the spouses or non-married partners.

All these topics raise similar questions and conflict situations in all western societies and therefore will be presented in the abstract, as typical issues which are tackled by legal systems with similar or sometimes different conceptual tools. The course will point out some relevant international developments (ECHR, EU legislation, Principles of European Family Law) and contrast them with the approach followed by the Catalan and Spanish civil codes and the case law from Catalan and Spanish courts.

## II. PREREQUISITES

Following the course requires being well acquainted with the main categories and institutions taught in previous private law courses: *Foundations of Private Law and Commercial Law* (1st year), *Contracts* (2nd year) and *Property Law* (2nd year).

## III. SKILLS TO BE ACQUIRED BY STUDENTS AND LEARNING AIMS

### 1. General or transversal skills

- Ability to analyze and synthesize information
- Ability to understand social complex issues
- Development of critical thinking
- Acquisition of fluency in oral and written communication
- Acquaintance with patterns of legal reasoning
- Ability to search legal sources

## 2. Discipline-specific skills and learning aims

- Understanding of the relevant issues addressed by a family law system
- Awareness of the different alternatives to tackle family law problems with the assistance of comparative law
- Awareness of the value systems which inform different regulatory options
- Understanding of the functions of public policy and private law ordering in family law
- Knowledge acquisition in the regulatory decisions made by Catalan and Spanish family law
- Ability to assess the outcomes of legal regulations by means of critical thinking
- Ability to break down complex family law problems and come up with workable and welfare-enhancing solutions

## IV. GRADING SYSTEM

### 1. Grading system

The final grade is the combined result of an ongoing assessment of the student's performance during the course and a final exam, according to the following rules:

|                    |  |  |
|--------------------|--|--|
| ONGOING ASSESSMENT | SUBMISSION OF 3 WRITTEN REPORTS ON 3 CASE STUDIES AND ACTIVE PARTICIPATION IN THE SEMINAR SESSIONS | 25% (WRITTEN REPORTS)<br>+<br>5% (PARTICIPATION) |
| FINAL EXAM         | WRITTEN ESSAY QUESTIONS  | 70%  |

The **ongoing assessment** requires submitting three written reports on three case studies which will be posted in the Aula Global at least one week in advance. The assignments must be submitted on the due dates with no exceptions. Attendance to seminars is mandatory, except for excusable serious reasons. Students must be able to discuss in the classroom the questions posed by the case study and argue their proposals. The written reports account for 25% of the final grade and oral communication skills for up to an additional 5%.

Outgoing UPF students participating in Erasmus or other mobility programs who are not able to attend the seminars may nevertheless opt for participating in the ongoing assessment activities, if they so request to their seminar instructor at the beginning of the term and submit the seminar assignments by e-mail or other means as agreed with him/her. In this case, the written reports account for 30% of the final grade.

The **final exam** (90 minutes) will consist of three questions from the syllabus to be developed in writing. The exam accounts for 70% of the final grade. The grading takes into account the mastering of the topic, the ability to analyze and synthesize its content, the creativity in connecting it to other topics of the course or to other knowledge sources, as well as the written communication skills.

Outgoing UPF students on mobility who did not opt for submitting the seminar assignments will have to solve a practical case study (45 extra minutes), which will account for 30% of the final grade.

Students are allowed to write their seminar assignments and the final exam in Catalan or Spanish language, if they so wish.

## **2. Conditions for resiting**

Only students who submitted at least 2 out of 3 seminar assignments and took the final exam are allowed to resit the exam, if their final term grading was “fail”. Exceptionally, outgoing UPF students in a mobility program are allowed to resit even if they did not attend the final exam.

The resit will take place between the 8 and 11 July (in a date to be announced in advance). It will have the same structure and follow the same grading criteria than the previous final exam.

Students have only (and are allowed only) to resit the part or parts in the evaluation process (seminar assignments, essay questions, or both) in which they got a mark below 5.

Students who need to resit the seminar assignments will have to solve a practical case study (45 minutes), which will account for 30% of the final grade.

**1. Family law, families and kinship**

- 1.1. The “family” notion in the law and the society. The constitutional protection of families. New family models and their legal relevance.
- 1.2. Relations of kinship. Duties of maintenance between family members: scope; obligated persons and beneficiaries; amount; payment by third parties.

**2. Marriage and its celebration**

- 2.1. The Spanish marriage system. Forms of marriage celebration.
- 2.2. Capacity to marry. Grounds of invalidity. Marriage dispensations.
- 2.3. The consent to marry. Absence of consent and vitiated consent.
- 2.4. Cure of invalidity.
- 2.5. Formalities of civil marriage celebration and specialities in civil marriage. Marriage registration.
- 2.6. Promise of marriage.

**3. Financial consequences of marriage. Property and financial agreements between spouses**

- 3.1. Housekeeping rights and duties.
- 3.2. The family dwelling and its protection.
- 3.3. Protection of creditors in front of spouses.
- 3.4. Property and financial agreements between spouses: scope; requirements for conclusion; modification; consequences of supervening circumstances. Publicity and registration system.
- 3.5. Surviving spouse’s benefits.

**4. Property relations between spouses (I): regimes of separation of property and participation in acquisitions**

- 4.1. Regimes of separation of property: main features from a comparative viewpoint.
- 4.2. The regime of separation of property in the Catalan civil code. Determination of assets: presumptions; disputed entitlements. Compensation of inequalities for household work: requirements; amount; payment.
- 4.3. Regimes of participation in acquisitions: main features.
- 4.4. Acquisitions with a right of survivorship: joint tenancy; consequences of seizure and other supervening circumstances; consequences on death.

**5. Property relations between spouses (II): regimes of community of property**

- 5.1. Regimes of community of property: main models from a comparative viewpoint and relevant features.
- 5.2. The regime of community of acquisitions (*sociedad de gananciales*) in the Spanish civil code: joint and separate assets; management of common property; liability vis-à-vis creditors; community dissolution and distribution of assets.

**6. Parentage by natural reproduction**

- 6.1. Legal parentage: concept and relevance. Grounds for legal parentage. Consequences of legal parentage. The right of access to biological origins.
- 6.2. Establishing maternity.
- 6.3. Establishing paternity: paternity presumption; acknowledgement of paternity; establishment by registration proceedings.
- 6.4. Court proceedings to establish and contest parentage. Proceedings to establish paternity or maternity: legal standing; time limits. Proceedings to contest paternity or maternity: legal

standing; time limits.

## **7. Parentage resulting from assisted reproduction. Adoption**

- 7.1. Assisted reproductive technologies: types of techniques; access to treatment.
- 7.2. Determination of parentage resulting from assisted reproductive technologies.
- 7.3. Adoption: types of adoption; access to adoption and prohibitions to adopt.
- 7.4. Establishment of parentage by adoption: proceedings; persons that need to consent, assent and be heard.
- 7.5. Consequences of adoption.
- 7.6. Termination and revocation of adoption.

## **8. Parental responsibility**

- 8.1. Parental responsibility: concept and holders.
- 8.2. Acquisition and exercise of parental responsibility. The position of third persons (step-parent; person cohabiting with a parent; other family relatives).
- 8.3. Content of parental responsibilities: care, protection and education; administration of the child's property.
- 8.4. Termination of parental responsibility. Discharge and restoration of parental responsibility.

## **9. Family dissolution: proceedings and private ordering**

- 9.1. Marriage annulment. Proceedings for annulment. Consequences of annulment.
- 9.2. Separation and divorce. Requirements for separation and divorce. Proceedings: contested and non-contested separation and divorce.
- 9.3. Family mediation in separation and divorce cases.
- 9.4. Private ordering in separation and divorce cases: pre-nuptial and post-nuptial agreements in anticipation of a future marital breakdown; separation agreements incorporated into court proceedings; separation agreements concluded out of court.

## **10. Consequences of separation and divorce (I): child care**

- 10.1. Parental planning in separation or divorce proceedings.
- 10.2. Parental responsibility after separation or divorce.
- 10.3. Child custody: types of custody; criteria for allocating custody.
- 10.4. Rights of access to children.

## **11. Consequences of separation and divorce (II): property and financial provision**

- 11.1. Dissolution of the matrimonial property regime and distribution of assets.
- 11.2. Child maintenance.
- 11.3. Spousal compensatory payments: rationale; award criteria; payment; consequences of supervening circumstances.
- 11.4. Allocation of the use of the family dwelling.

## **12. Cohabitation**

- 12.1. Models of cohabitation. Unmarried cohabiting couples: regulatory models and their rationale.
- 12.2. Legal consequences of stable cohabitation: qualifying requirements.
- 12.3 Consequences of ongoing cohabitation and separation.

### 1. REFERENCE TEXTBOOKS

#### *Catalan Law*

- EGEA FERNÁNDEZ, J. / FERRER RIBA, J. (Dir.) / FARNÓS AMORÓS, E. (Coord.), *Comentari al llibre segon del Codi civil de Catalunya. Família i relacions convivencials d'ajuda mútua*, Barcelona, Atelier, 2014.
- GETE-ALONSO, M.C. / YSAS, M. / SOLÉ, J., *Derecho de familia vigente en Cataluña*, 3<sup>rd</sup> ed., València, Tirant lo Blanch, 2013.
- LUCAS ESTEVE, A. (Dir.), *Dret Civil Català Volum II. Persona i Família*, Barcelona, J.M. Bosch Editor, 2012.
- DEL POZO CARRASCOSA, P. / VAQUER ALOY, A. / BOSCH CAPDEVILA, E., *Derecho civil de Cataluña. Derecho de familia*, Marcial Pons, Madrid-Barcelona-Buenos Aires -Sao Paolo, 2013.
- PUIG FERRIOL, L. / ROCA TRIAS, E., *Institucions del dret civil de Catalunya*. Vol. II-2, València, Tirant lo Blanch, 2014.

#### *Spanish Law*

- ALBALADEJO, M., *Curso de derecho civil*. Vol. IV. *Derecho de familia*. Madrid, Edisofer, 2008.
- DÍEZ-PICAZO, L. / GULLÓN, A., *Sistema de derecho civil*, Vol. IV (T.I), *Derecho de familia*, 10<sup>th</sup> ed., Madrid, Tecnos, 2012.
- LACRUZ BERDEJO, J. L. et al., *Elementos de derecho civil*, IV. *Familia*, 3<sup>rd</sup> ed., Madrid, Dykinson, 2008.

#### **European and Comparative Law**

- BOELE-WOELKI, K. / PINTENS, W. / FERRAND, F. / GONZÁLEZ-BEILFUSS, C. / JÄNTERÄ-JAREBORG, M. / LOWE, N. / MARTINY, D. (Ed.), *Principles of European Family Law regarding Divorce and Maintenance Between Former Spouses*, *European Family Law*, Vol. 7, 2004.
- BOELE-WOELKI, K. / FERRAND, F. / GONZÁLEZ-BEILFUSS, C. / JÄNTERÄ-JAREBORG, M. / LOWE, N. / MARTINY, D. / PINTENS, W. (Ed.), *Principles of European Family Law regarding Parental Responsibilities*, *European Family Law*, Vol. 16, 2007.
- BOELE-WOELKI, K. / FERRAND, F. / GONZÁLEZ-BEILFUSS, C. / JÄNTERÄ-JAREBORG, M. / LOWE, N. / MARTINY, D. / PINTENS, W. (Ed.), *Principles of European Family Law regarding Property Relations Between Spouses*, *European Family Law*, Vol. 33, 2013.
- GEORGE, Rob, *Ideas and debates in family law*, Oxford, Hart Publishing, 2012.
- HERRING, J., *Family law*, 6<sup>th</sup> ed., Harlow, Pearson, 2013.
- HERRING, J., *Family law: a very short introduction*, Oxford, Oxford University Press, 2014.
- RIBOT, J., "The financial consequences of divorce across Europe", *ERA Forum* (2011) 12: 71-87.

## 2. SUPPLEMENTARY BIBLIOGRAPHY

### *Catalan Law*

- BARRADA ORELLANA, R. / GARRIDO MELERO, M. /NASARRE AZNAR, S. (Coord.), *El nuevo Derecho de la persona y de la familia. Libro segundo del Código Civil de Cataluña*, Barcelona, Bosch, 2011.
- INSTITUT DE DRET PRIVAT EUROPEU I COMPARAT DE LA UNIVERSITAT DE GIRONA (Ed.), *Qüestions actuals del dret català de la persona i de la família, Materials de les Dissetenes Jornades de Dret català a Tossa*, Girona, Documenta Universitaria, 2013.
- ROCA TRÍAS, E. / ORTUÑO MUÑOZ, P. (Coord.), *Persona y Familia. Libro Segundo del Código Civil de Cataluña*, Las Rozas, Sepín, 2011.

### *Spanish Law*

- DELGADO DE MIGUEL, J.F. (Coord. gral.), *Instituciones de derecho privado*, T. 4, Vol. 1 and 2, Madrid, Consejo General del Notariado, Civitas, 2001.
- FERRER-RIBA, J., "Marital Agreements and Private Autonomy in Spain", in SCHERPE, J. M (Ed.), *Marital Agreements and Private Autonomy in Comparative Perspective*, Oxford, Hart, 2012, pp. 350-369.
- FERRER-RIBA, J., "Same-sex Marriage, Express Divorce and Related Developments in Spanish Marriage Law", *International Family Law*, September (2006), pp. 139-143.
- GIMENO Y GÓMEZ-LAFUENTE, J.L. / RAJOY BREY, E. (Coord.), *Regímenes económico-matrimoniales y sucesiones: derecho común, foral y especial* (2 vol.), Centro de Estudios Registrales de Aragón, Cizur Menor (Navarra), Thomson-Civitas, 2008.
- LAMARCA, A., "Same-sex marriage in Spain: the decisión of the Constitutional Court", *International Family Law*, March (2013), pp. 76-78.
- LAMARCA, A., "Regulating cohabitation in Spain: the unconstitutionality of current legislation", *International Family Law*, March (2014), pp. 44-47.
- YZQUIERDO TOLSADA, M. / CUENA CASAS, M. (Dir.), *Tratado de Derecho de Familia*, Madrid, Civitas, 2011 (8 vol.).

### *European and Comparative Law*

- BAINHAM, A., "Arguments about Parentage", *Cambridge Law Journal* 67(2), 2008, pp. 322-351.
- DETHLOFF, N., "Contracting in Family Law: a European perspective", in BOELE-WOELKI, K. / MILES, J. / SCHERPE, J.M. (Ed.), *The future of family property in Europe*, Cambridge – Antwerp – Portland, Intersentia, 2011, pp. 65-94.
- FERRER-RIBA, J., "Adoption", "Parentage", "Parental Responsibility", in BASEDOW, J. / HOPT, K.J. / ZIMMERMANN, R. / STIER, A. (Ed.), *The Max Planck Encyclopedia of European Private Law*, Vol. I and II, OUP, 2012, pp. 24-28 (Vol. I) and 1242-1252 (Vol. II).



- GARRISON, M., "Cohabitation obligations: contract versus status", in BOELE-WOELKI, K. / MILES, J. / SCHERPE, J.M. (Ed.), *The future of family property in Europe*, Cambridge - Antwerp - Portland, Intersentia, 2011, pp. 115-137.
- PINTENS, W., "Matrimonial property law in Europe", in BOELE-WOELKI, K. / MILES, J. / SCHERPE, J.M. (Ed.), *The future of family property in Europe*, Cambridge - Antwerp - Portland, Intersentia, 2011, pp. 19-46.
- SCHERPE, J.M., "Establishing and ending parental responsibility: a comparative view", Ch. 3, in PROBERT, R. / GILMORE, S. / HERRING, J., *Responsible parents and parental responsibility*, Oxford, Hart, 2009, pp. 43-62
- SCHERPE, J.M., "Cohabitation", in BASEDOW, J. / HOPT, K.J. / ZIMMERMANN, R. / STIER, A. (Ed.), *The Max Planck Encyclopedia of European Private Law*, Vol. I, OUP, 2012, pp. 230-233.
- WALLBANK, J. / CHOUDHRY, S. / HERRING, J. (Ed.), *Rights, Gender and Family Law*, Abingdon, Routledge, 2010.

## VII. OTHER LEARNING RESOURCES

- EGEA FERNÁNDEZ, J. / FERRER RIBA, J., *Codi civil de Catalunya i legislació complementària amb notes de concordança i jurisprudència*, 14<sup>th</sup> ed., Barcelona, Flor del viento, 2011.
- HUDOC (<http://www.echr.coe.int/echr/en/hudoc>): database which provides free access to the case law of the European Court of Human Rights, the European Commission of Human Rights and the Committee of Ministers.
- InDret ([www.indret.com](http://www.indret.com)): e-Review on the Analysis of Law.
- Norm@ Civil (<http://civil.udg.es/normacivil/>): free access to Catalan and Spanish private law statutes, as well as to case law of the Catalan High Court of Justice.