

LITIGACIÓN Y PRUEBA
SYLLABUS

Universitat Pompeu Fabra
Second Term
Academic Year 2025-2026

LITIGACIÓN Y PRUEBA

An introduction

Comparative Evidence Law will be mainly taught by Prof. JOAN PICÓ I JUNOY, Full Professor of Procedural Law of Universitat Pompeu Fabra (UPF) of Barcelona, Vice-President and General Secretary of the Ibero-American Institute of Procedural Law, and member of the International Association of Procedural Law (IAPL); and also mainly by Prof. JUAN ANTONIO ANDINO LÓPEZ, Professor of Procedural Law of Universitat Pompeu Fabra (UPF) of Barcelona, Lawyer, Vice-President of the Association of Forensic and Evidence, and member of the International Association of Procedural Law (IAPL).

Overview and Course Plan

The main idea behind the course is to provide the students of Pompeu Fabra University with the explanation and tools to compare Evidence in the US with Evidence in *continental law*, understanding by “*continental law*” the regulation of evidence in France, Germany, Italy and Spain, with the aim of comparing *common law* (mainly US, England and Wales) with *civil law*.

This course will focus on civil evidence for practical reasons: as future practice of the Law will likely involve students (future Lawyers) dealing with civil, rather than criminal, judicial proceedings abroad, with clients requiring legal assistance outside Spain for proceedings issued by creditors, customers and the like. It is understood that a judicial proceedings will be held by a local lawyer; however, a study of foreign legal proceedings could lead to a mutual cooperation and understanding in benefit of the client.

To avoid a tedious mere description of the regulation in Europe and in the US, we will try to draw general categories of application of the Law from the continental law point of view, and later compare them with the legal system of evidence applied in the US. However, we also understand that students have the right to check legal sources taken into consideration to encourage them to prepare a paper that will have to be exposed and explained in class session. To fulfill this purpose, the concrete articles and rules in force in continental law

regarding evidence will be distributed via Aula Global, having previously been translated into English. Moreover, from the US perspective we will only take into consideration the Federal Rules of Evidence, and not cover Evidence Rule specific to any US State, such as, California Evidence Code, for example. Although a general comment about legal sources in Europe and US will be highlighted.

Readings

With the aim to help students with their research paper and its exposition in class, at the beginning of the Course we will distribute via Aula Global (1) a pdf with the content of the sessions, explained and detailed with references to legislation, court cases and the opinion of scholars, (2) a document with the main articles that rule Evidence in France, Germany, Italy and Spain (since the regulation of England and Wales can be easily found in internet, and we will provide the concrete link as to proceed), (3) a paper published at the International Journal of Evidence & Proof regarding the regulation of the correspondence between lawyers around the World. Thus, we will distribute the PowerPoint presentations via Aula Global after each class.

Class Schedule and assessment of the subject

Our plan is to meet at class and proceed to explain the following issues:

- Session 1: The right to evidence
- Session 2: Judge vs. Jury
- Session 3: Relevance and admissibility of evidence
- Session 4: Disclosure and Discovery
- Session 5: Expert evidence.
- Session 6: Assessment of Evidence
- Session 7: Witness psychology, character evidence and hearsay evidence

- Session 8: Legal privilege and correspondence between lawyers
- Session 9: Judge and Evidence: a complex relationship
- +
Session 10: The future of evidence law and online trials

As mentioned, a research paper will have to be prepared by each student regarding any topic of Evidence Law but must involve a comparative issue. Further explanations regarding the research paper will be stated at class; however, please be advised that every statement of the paper must be based, supported and quoted on the law, on court cases and/or on the opinion of the scholars. Students must expose and explain their research papers in class, with a PowerPoint presentation, and we welcome the explanations that ease further debate and discussion. The assessment of the subject will be held to the following: 80% of the assessment will correspond to the research paper, and 20% of the assessment will correspond to the intervention of the students during the above-mentioned sessions.

Office Hours

As our days during the Academic Year are fairly unstructured, we are happy to chat by phone or Zoom or in person whenever it's convenient for you. Please reach out to us at joan.pico@upf.edu and / or juanantonio.andino@upf.edu to set up a time to meet or chat.

Attendance and research paper

Even though a research paper will have to be prepared by the students, class attendance is important and compulsory to generate in-class debates and legal discussions.

A research paper must be submitted according to the instructions to be given in class. However, papers must be between 10-15 pages, Times New Roman 11 (quotes in Times New Roman 10), with 12 points of space between paragraphs and 1.5 of line spacing.

Each research paper must begin with the title and name of the author, followed by an abstract, key words and summary. Titles will be stated as follows:

- 1.- INTRODUCTION
- 2.- (FIRST POINT TREATED)
 - 2.1.- (Sub-point).
 - 2.2.1.- (Sub-sub-point).
 - 2.2.2.- (Sub-sub-point).
 - 2.2.- (Sub-point).
- 3.- (SECOND POINT TREATED)
 - 3.1. (Sub-point treated).
 - 3.2.-Etc.
- 4.- CONCLUSIONS

Finally, please see citation guidelines attached to this Syllabus.

Sick Days

If you feel sick, please see a doctor or allow yourself bed rest. However, please alert us before class if you will be absent. If we are ill, we will meet by Zoom.

Access and Accommodations and Student Wellbeing

We will strive to make our classroom a welcoming and accessible space for every student. Disabled students are a valued and essential part of the Pompeu Fabra community, and the University is committed to providing equal educational opportunities for all.

If you experience a disability, please register with the University. Professional staff will evaluate your needs, support appropriate and reasonable accommodations, and prepare an Academic Accommodation Letter for faculty.

A Hope

We hope our classroom will be a place of mutual respect, thoughtful exchanges of opinion, and will highlight and explore the main differences and similarities of regulation of evidence in the USA, France, Germany, Italy, Spain, England and Wales. And also, a place to learn how to focus comparative law and approach to the history behind them; we also hope you enjoy the sessions and learn how to compare evidence of different legal systems. If we fall short of this goal, please let us know. We welcome all suggestions for improvement.

CITATIONS GUIDELINES

FOR FOOTNOTES:

Book: MARTÍNEZ VAL, J. M., "ABOGACÍA Y ABOGADOS", Edit. J. M. Bosch, Barcelona, 1993, p. 235.

CRESPO MORA, M. C., "LA RESPONSABILIDAD DEL ABOGADO EN EL DERECHO CIVIL", Editorial Aranzadi, Cizur Menor (Pamplona), 2005, nota 75, p. 50.

Book chapter: GAY MONTALVO, E., "*The long road towards a new General Statute of the Legal Profession: novelties and permanences*", in COMMENTS ON THE GENERAL STATUTE OF SPANISH LAWYERS, Thomson Civitas, Madrid, 2003, p. 24.

Journal article: SOLDADO GUTIÉRREZ, J., "*El secreto profesional del abogado*", REVISTA JURÍDICA DE ANDALUCÍA, no. 17, 1995, pp. 1186-1191.

CITATION OF SPANISH CASE LAW (AS A FOOTNOTE):

- STC 1/2018, of 20 February, fj. 1º.
- STS no. 234/2023, of 30 March (rec. no. 877/2019), fj. 3º.
- SAP Barcelona no. 767/2023, of 9 September (rec. 322/2022), fj. 5º

FOR THE BIBLIOGRAPHY:

Book: MARTÍNEZ VAL, J. M., "ABOGACÍA Y ABOGADOS", Edit. J. M. Bosch, Barcelona, 1993.

CRESPO MORA, M. C., "THE LAWYER'S RESPONSIBILITY IN CIVIL LAW", Editorial Aranzadi, Cizur Menor (Pamplona), 2005.

Book chapter: GAY MONTALVO, E., "*The long road towards a new General Statute of the Legal Profession: novelties and permanences*", in COMMENTS ON THE GENERAL STATUTE OF THE SPANISH LEGAL PROFESSION, Thomson Civitas, Madrid, 2003, pp. 21-35.

Journal article: SOLDADO GUTIÉRREZ, J., "*El secreto profesional del abogado*", REVISTA JURÍDICA DE ANDALUCÍA, no. 17, 1995, pp. 1170-1198.