

COMPARATIVE HEALTH LAW

AREA:
HEALTH LAW

SESSIONS: 13

PROFESSOR: **ALFONSO LÓPEZ de la OSA ESCRIBANO**

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Professor of Law

Alfonso LOPEZ de la OSA is an Adjunct Professor at the University of Houston Law Center. Former professor of Public Law at the Complutense University of Madrid in Spain, for 10 years and at the University of Pau et des Pays de l'Adour in France for 2 years, he is specialized in Health and Medical Law, as well as Biotechnology and Life Sciences Law, also from a Comparative Law perspective. He belongs to several academic research groups in France and in Spain. He is the author of a book, several chapters in collective books, and articles. He has been a litigation lawyer on Medical malpractice for many years in Spain.

After a 2 years working experience at the European Parliament at the end of the 90's, he obtained his PhD in Public Law from the *Paris I Panthéon-Sorbonne University* on the subject "*La convergence de la responsabilité hospitalière en France et en Espagne, étude comparée*", (*Magna cum laude*). He analyzed the systems ruling in France and in Spain medical malpractice and the liability of public hospitals, using a comparative law method.

Academic Background

- PhD in Public Law, University of *Paris I – Panthéon Sorbonne*, Paris, France
- D.E.A. (*Diplôme D'Etudes Approfondies*) in "*Droit public comparé des Etats Européens*", University of *Paris I, Panthéon-Sorbonne*, Paris, France
- Master in European Union Law, University Complutense of Madrid, Spain
- Law Degree, University Complutense of Madrid

Academic Experience, since 2003:

- Professor, University Complutense of Madrid, Spain; topics: *Administrative Law; Introduction to French Public and Private Law; European Union Law; Civil Servants Legislation*
- Associate Professor; University of Pau et des Pays de l'Adour, France; topics: *European Law and Human Rights; Vertical Dimension of Power : State and Infra-State Entities: Comparative Law; Social Human Rights; Equality, Gender Equality and Non-Discrimination;*
- Associate Professor, *Legal issues in Global Business and Finance*, Master on Biotechnology and Management, Madrid, Spain
- Visiting Professor, *Centre de Droit de la Santé* (CDSA – Health Law Center), Law Center, *Aix-Marseille Université*, France; topics: *Spanish Medical Law in Spain.*
- Visiting Professor, Anahuac University of Mexico, Mexico City, Mexico, topic: *European Union Law*
- Visiting Professor, University *Jean Moulin, Lyon III*, Lyon, France; topics: *National Health Care System in Spain*
- Visiting Professor, European Summer University in Health Law, Paul Sabatier University, Toulouse, France

COURSE CONTENTS AND OBJECTIVES

COMPARATIVE HEALTH LAW course focuses on the analysis of health foreign legal systems and topics, comparing them to the structure and notions existing in the US.

The content of this course is organized around the following main 6 areas:

1. The difference between legal systems (Common Law and Continental Law) related to Health Law;

2. The notion of Patients' Rights;
3. Elder Law and Health;
4. Healthcare, Healthcare systems and Health professions regulations;
5. Human biotechnology, research and bioethics;
6. Medical malpractice issues.

In each session two, three or four foreign legal systems and its aspects related to health will be compared (during the whole course, the US will be compared to Spain, France, the United Kingdom, Italy, Brazil, or New Zealand among others countries). By means of transversal projection, when suitable, the main issues related to health and belonging to legal competences shared between Member States and the European Union, from a European Union Law perspective, will be highlighted.

The objective is to study through practical cases and legal notions and structures, a number of chosen aspects related to Health Law from an international and comparative point of view. Doing so, the target is:

- To analyze the different health legal systems existing in the world and to define the interactions national healthcare legal systems can have worldwide.
- To foster interest in comparative law methods in Health to bring solutions to globalize matters and inspire further legislation.

Lectures will be structured in **(13) thirteen in-class sessions of 108 minutes each**.

CLASS METHODOLOGY

Legal, ethical and social conflicts will be exposed from a Comparative Health Law approach. The discipline of comparative law allows by means of analysis, contrast, and classification of concepts to understand foreign legal systems in a whole. Applied to Health, we will be able to draw conclusions related to a growing globalized healthcare sector where common and different aspects would be outlined. We would look to make conceptual comparisons, integrating legal concepts and avoiding when possible a mere exposition of the foreign system. The aim of using the comparative law method would be to confirm a divergence or convergence of notions and systems in each topic, besides the ability gained in understanding other legal schemes, taking distance from our own. The Comparative Law method does not pretend to create a uniform international legal framework, but to bring ideas or inspiring new solutions, when possible, that may arise to deal with the inherent adaptive process of the evolution of Law.

Each student thoughtful attitude, shown in the **debate and discussion** that will take place in the classroom will be evaluated together with its **individual work, group work and final exam**.

Reflection and participation will be promoted through three kinds of exercises:

- To **figure out cases**
- The writing of briefs commentaries or **essays**
- The **writing of a structure-plan** dealing to a dissertation: in this exercise, the content would be briefly mentioned by mean of key ideas (no need of a detailed composition), giving also importance to the titles or structure of the work going from general to particular arguments; giving importance to what is principal and making the difference to what is accessory. Synthesis is essential in that exercise.

Through these exercises the students will show the research done before the sessions, allowing them to approach, comment and eventually solve the problems presented.

EVALUATION CRITERIA

Individually, each student will have to work for every session on the exercises asked for that day. These exercises could be eventually collected to be marked. As a guideline, individual works and essays extension would preferably be between 3 to 4 pages (Arial 12, single). Individual work will represent 25% of the final mark.

A number of **students groups** will be created the first day of class. Each group will have to write an essay for one of the next sessions (one of the twelve sessions remaining), essay that would be consecutively presented orally for 15 minutes at the beginning of each session by the respective group. Every group should present orally once. The written extension of that work is free, but the time of presentation should not be more than 15 minutes. Group work will represent 25% of the final mark. The Group grade will be equal for all members of the group.

Oral **class participation** will be highly appreciated and the level of knowledge, motivation and interest of the student shown orally will represent 25% of the final mark.

The **final written exam**, that will take place on **December, 14th 2016**, will represent 25% of the final mark.

Mark:

Individual Work	25% of the final mark
Group Work	25% of the final mark
Class Participation	25% of the final mark
Final Exam	25% of the final mark

DOCUMENTATION

In order to be able to prepare the sessions, students will receive documentation enough before the sessions, with materials and book references. Students are supposed to have read the corresponding material and work on it before the beginning of the session. Additional material (slides, articles, cases, solutions, etc.) could be given or presented in class.

CLASS SCHEDULE

1. Difference between legal systems

Session 1: Difference between legal systems: Common Law and continental law. A projection to Health Law

- Why is Health Law relevant today? In what Comparative Health Law is useful to the evolution of Law?

2. The notion of Patient's Rights

Session 2: Right to Health and Health protection from a public, constitutional law perspective and human rights in the United States, the United Kingdom, France and Spain.

- What is Universal Care notion?

Session 3: Medical records and data protection in the United States, the United Kingdom and Spain.

- What is the extent of Right to Privacy?

Session 4: Patient's rights (I): Right to Information and Informed Consent in the United States, the United Kingdom in France and Spain.

- Is the right to medical information a Human Right?

Session 5: Patient's rights (II): advanced directives and end of life: Will or Law? Main countries of interest: the United States, the United Kingdom, France, Spain, Belgium, Switzerland, Belgium and the Netherlands?

- What are the main lines of the different legal systems in terms of end of life legislation?

Session 6: Right to conscientious objection in health and drugs in the United States, the United Kingdom, France and Spain.

- Is there a limit to the freedom of conscience? When can it be invoked?

3. Elder Law and Health

Session 7: Elder Law: Ageing and the Law in the United States, the United Kingdom, Spain and Brazil.

- Is ageing a Human Right? What can be highlighted from Brazilian legislation?

4. Healthcare, Healthcare systems and Health professions regulations

Session 8: Healthcare in prisons in the United States, the United Kingdom, Spain and France.

- What makes healthcare in prisons particular?
- What are the main lines of prison's healthcare systems existing in the different countries?

Session 9: National Healthcare systems in United States, the United Kingdom, Spain, France and Italy: public vs private? Member States legal competences and Healthcare in the European Union

- Healthcare in the European Union
- What is Health Tourism?

Session 10: Health profession's regulation:

- What is the legal framework to have access to medical professions in the United States, the United Kingdom, Spain and the European Union?

5. Human biotechnology, research and bioethics

Session 11: Human biotechnology and bioethics: human enhancement, sex selection and legal status of embryos in the United States, the United Kingdom, Spain and France.

- What are the ethical issues behind the different legal systems in terms of sex selection and legal status of embryos?

Session 12: Human tissues, organ donations and transplants system in the United States, the United Kingdom and Spain.

- How can we link to notion of property to human body and body parts?
- What are the particularities of the donation and transplant system in Spain?

6. Medical malpractice issues

Session 13: Liability of physicians in public hospitals and in private hospitals: medical malpractice and insurance aspects in the United States, the United Kingdom, France, Spain and New Zealand; best-effort Obligation or Obligation of means vs. Performance Obligation or Obligation of result in healthcare

- What is a non-fault compensation system?
- What is a best effort's obligation vs. a performance's obligation?

BIBLIOGRAPHY

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WELLONS, H.B., SMITH EWING, E. and others, *Biotechnology and The Law*, American Bar Association, Chicago, 2007

Bookmark not defined. Comparative Public Health Law and Ethics. 13. 1. Healthcare is a complex and fast-changing industry that touches many areas of law, including litigation and transactional work in the public and private sectors, and work with non-legal entities. Legal jobs related to health care pop up in federal and state government, private firms, and in-house legal departments in big companies, among others.