

Curricular unit sheet

Masters in legal practice

Course

Liability for ecological damage and environmental damage

Responsible Academic staff

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Teaching objectives (knowledge, skills and competences to be developed by students)

Liability for damages is one of the most recent areas in environmental law. It is intended with this course that students obtain a comprehensive cross-sectional knowledge on this topic, through the study of different legal regimes that impose duties of reparation. The approach will be multilevel, integrating public international law, European Union law, and national law.

Through a comprehensive understanding of the normative system, students should be able to identify legal situations of environmental/ecological damage and the legal regulation applicable to the case (in substantive and adjective terms).

Through the adopted teaching methods, students should also develop skills in terms of researching sources of information (legal and extra-legal), critical understanding and seeking legal solutions for problem solving, teamwork, as well as logical-argumentative skills.

Syllabus

I. Framework

1. Environmental liability: delimitation
2. Environmental liability in environmental law
3. The grounds of environmental liability
 - 3.1. The duty to repair
 - 3.2. The duty to ensure environmental quality
4. Models of environmental liability
 - 4.1. The civil liability model
 - 4.2. The model of environmental duties

II. Environmental damage

5. Environmental damage and ecological damage
 - 5.1. Injury to the environmental legal asset; in particular, the assumption of significance
 - 5.2. Damage to other legal assets
 - 5.3. Collective or community damage
 - 5.4. Damage to people's rights
6. Environmental damage, depending on the natural element: damage to species and habitats, damage to water, damage to soil, damage to air; damage to the landscape?
7. Environmental damage, depending on the source: diffuse and specific sources
8. Environmental damage according to the legal framework: foreseen and unforeseen damage; current and historical.



III. The duty to repair

9. The grounds of the duty to repair: the polluter-pays principle, fundamental rights, and duties of environmental protection
10. Comprehensive, specific, and effective reparation
11. Types of environmental reparation
 - 11.1. Ecological restoration, ecological compensation and cash compensation
 - 11.2. The issue of pecuniary compensation

IV. Ruling law

12. *Ex ante* reparation norms and *ex post* reparation norms
13. The legal regime of liability for environmental damage
 - 13.1. Conditions for imputation
 - 13.1.1. Damage: types of environmental damage and excluded environmental damage
 - 13.1.2. Subject: the operator of an occupational activity
 - 13.1.3. Harmful act: the temporal limitation
 - 13.1.4. Fault: objective and subjective liability and exclusion of payment duties
 - 13.1.5. Weakened illegality and the exclusion of the duty to pay the costs (administrative legality and development risks)
 - 13.1.6. Weakened causation, concausality and diffuse pollution
 - 13.1.7. Exclusions from the scope
 - 13.1.8. Causes of exclusion of liability
 - 13.2. The duties of the responsible operator
 - 13.2.1. The duty to prevent
 - 13.2.2. the duty to repair
 - 13.2.3. The duty to provide a financial guarantee
 - 13.3. Damage prevention and repair procedure
 - 13.3.1. The responsible operator's initiative
 - 13.3.2. The pivotal role of administration
 - 13.3.3. The role of the interested public
 - 13.3.4. Multipolar administrative relations
 - 13.4. Determining the remedial measure
 - 13.4.1. Primary, complementary and compensatory repair
 - 13.4.2. The criteria for determining the remedial measure
 - 13.5. The repair of environmental damage and the repair of other damage
 - 13.6. Administrative procedure and access to courts
14. Other reparative regimes
 - 14.1. Natura 2000
 - 14.2. Environmental impact assessment
 - 14.3. Integrated pollution prevention and control regime
 - 14.4. The penal and administrative offense regime
 - 14.5. Water protection
 - 14.6. Waste management
15. The (virtually) inexistence of ground damage repair regulation. The American case and the German case

Demonstration of the coherence of the syllabus contents with the objectives of the course

The syllabus addresses and deepens the theme of liability for environmental damage in its theoretical and practical dimensions, including a preliminary conceptual analysis, the identification of its legal foundations, and a multilevel cross-sectional study of the legal system in the various areas of environmental law considering four themes: the assumptions of environmental responsibility, the resulting duties, the determination of repair measures, and the operationalization of the repair. This comprehensive perspective - not exclusively focused on the legal regime of liability for environmental damages -, and the substantive structuring of the program around the remedial standards,

allows for a comprehensive knowledge of the remedial legal system and a critical perspective regarding its omissions and inconsistencies.

Teaching methodologies/Evaluation

Classes will follow a flipped-classroom model: recommended readings are to be carried out before each class; work of critical analysis of the will be developed in class, between students and mediation by the teacher, based on problems and case studies for matters relating to current law, and conceptual and argumentative discussion for theoretical matters. At the end of each class, the teacher will make the conclusive systematization of the readings and the work developed. Each student will deepen a topic of their choice for the purpose of preparing a paper, which should be developed throughout the semester, with supervision by the teacher.

The assessment is based on the following elements:

- Participation in classes (50%);
- Elaboration of a paper on the theme of the program (50%).

Demonstration of the coherence of the methods with the learning goals of the course

The teaching method is focused on active student learning, using collaborative work in class, with prior individual work. This method allows for individualization in the relationship between teacher and student and constant monitoring of the evolution of the learning process, as well as flexibility around the preferred themes (with freedom on the choice of the paper's theme). Collaborative work shows superior effectiveness in the construction of consolidated knowledge by the student and the development of general skills, problem solving and critical analysis, and logical-argumentative skills.

Main bibliography

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