



## COMPARATIVE HEALTH LAW

AREA:  
HEALTH LAW

SESSIONS: 14

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, and at the University of Pau et des Pays de l'Adour in France, he is specialized in Health and Medical Law, as well as Biotechnology and Life Sciences Law, also from International and Comparative Law perspectives. He belongs to several academic research groups in France and in Spain dealing with Health and Public Law issues. 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; topics: *Bioethics and the Law*

## **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 Civil 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 (protection of human subjects) and bioethics;
6. Medical malpractice issues.

In each session two, or more 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 in European Union Law, will also 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 **(14) fourteen in-class sessions of 100 minutes each**.

**Materials concerning other countries legal systems when not found in English, will not be provided. Thus, we will still study the particularities of these countries legal systems in class, comparing concepts. Students that speak other languages such as Spanish, French, Italian, or Brazilian among others, can do research on their own about the topic of each session.**

## **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 suitable 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 pretends to bring ideas and 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** eventually, and **final exam**.

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

- To **figure out cases**, or
- The writing of briefs commentaries or **essays**, or
- 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. In case the answer to some of the questions asked couldn't be directly extracted from the documents given, students should look for it, in order to develop practice research skills.

## **EVALUATION CRITERIA**

**Individually**, each student will have to work for every session on the assignments asked for that day. These assignments 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.

**Oral presentation**: in groups or individually, every student will have to make an oral presentation at least once during the course. This aspect will be determined with students the first day of class. Each group or student will have to write an essay for one of the next sessions (one of the thirteen sessions remaining), essay that would be consecutively presented orally for 15 minutes at the beginning of each session by the respective group or person. Every group or person should present orally once. The written extension of that work is free, but the time of presentation should be done in 15 minutes. Group work will represent 25% of the final mark. In case groups would be constituted, the grade will be shared by all the members of the respective group.

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

The **final written exam**, that will take place on **May, 2<sup>th</sup> 2017**, will represent 25% of the final mark.

### **Final 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 materials long enough before the sessions. Students are supposed to have read the corresponding material, and work on their individual assignment 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 Common Law and Civil Law legal systems**

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

- What are the main differences between legal systems?
- Why is Health Law relevant today? In what Comparative Health Law is useful to the evolution of Law?

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### **2. The notion of Patient's Rights**

**Session 2: Right to Health protection:** 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?
- Is health, its access or its protection, a human right? Why?

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**Session 3: Protection of Health Information:** Medical records and data protection in the United States, the United Kingdom and Spain.

- What is the content of a right to protect medical information?
- What is the extent of Right to Privacy? What is the difference with confidentiality?

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

- What is informed consent?

- Are there differences between countries in terms of minors giving consent? What is the difference between consent and assent?

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**Session 5: End of Life:** 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, and Switzerland.

- What are the main lines of the different legal systems in terms of end's life legislation?
- What is euthanasia? What is palliative care? What are the ethical and legal implications?

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**Session 6: Conscientious Objection in Health:** Conscientious objection in health and drugs in the United States, the United Kingdom, France and Spain.

- What is Conscientious Objection? It is justified in healthcare?
- Is there a limit to the freedom of conscience?

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### 3. **Elder Law and Health: discrimination and disabilities**

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

- Why ageing and its legislation is so relevant today? Could ageing be considered a Human Right?
- What are the legal systems existing in the United States and the United Kingdom for elder social and healthcare protection?
- What is regulated in Spain and Brazil about this topic?

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### 4. **Healthcare, Healthcare systems and Health professions regulations**

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

- What makes healthcare in prisons particular?
- What are the principles leading prison's healthcare systems in the different countries studied?

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**Session 9: National Healthcare Systems:** National Healthcare Systems in United States, the United Kingdom, Spain, France and Italy. Member States legal competences and Healthcare in the European Union

- Healthcare in the European Union: what is and what are the main issues related to Health Tourism phenomenon?
- What are the differences between Medicaid and main European Healthcare systems?
- Public healthcare systems vs. private healthcare systems. What system would you recommend?

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**Session 10: Health professional's regulation:**

- What are the principles of the legal frameworks allowing to have access to medical professions in the United States, the United Kingdom, and Spain? and the European Union in general?
- What are the different professional relationships existing between health professionals and hospitals in the US, the UK and Spain?

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### 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 legal and ethical issues arising in the different legal systems studied, in terms of sex selection and legal status of embryos?

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**Session 12: The protection of human subjects in research:** The protection of human subjects in research in the US, France and Spain

- What has to be protected in terms of human subjects participating in research?
- How do Institutional Review Boards (IRB) work?

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**Session 13: Human tissues, organ donations and transplants:** Human tissues, organ donations and transplants system in the United States, the United Kingdom and Spain.

- How can we link the notion of property to human body and body parts?
- What are the particularities of the donation and transplant system existing in Spain (*Organización Nacional de Transplantes - ONT*)?

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## 6. **Medical malpractice issues**

**Session 14: Medical malpractice:** Liability of physicians in public and private hospitals: medical malpractice and insurance aspects in the United States, Mexico, 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?
- How do these systems evaluate tort?

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## **BIBLIOGRAPHY**

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SÁNCHEZ-CARO, J, ABELLÁN, F. *Medicina Genética y Clínica del siglo XXI. Consideraciones científicas, éticas y legales*, Ed. Fundación Salud 2000, Granada, 2009

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**CHRONOGRAM COURSE « COMPARATIVE HEALTH LAW » SPRING 2017  
PROFESSOR ALFONSO LÓPEZ DE LA OSA ESCRIBANO  
UNIVERSITY OF HOUSTON - LAW CENTER**

**Class Time:** Tuesday, from 10 am to 12 pm.

**Location:** *to be confirmed*

T, 01/17/17	<b>Session 1: Difference Between Legal Systems: Common Law and Continental law.</b> A projection to Health Law.	A. López de la Osa
T, 01/24/17	<b>Session 2: Right to Health Protection:</b> Right to Health and Health protection from a public/constitutional law perspective and human rights; Universal Care notion; Best-effort Obligation or Obligation of means vs. Performance Obligation or Obligation of result in healthcare.	A. López de la Osa
T, 01/31/17	<b>Session 3: Protection of Health Information:</b> Medical records and data protection	A. López de la Osa
F, 02/03/17	<b>Session 4: Right to Information and Informed Consent:</b> Patient' rights (I).	A. López de la Osa
T, 02/07/17	<b>Session 5: End of life:</b> Patient's rights (II): Advanced Directives and End of Life	A. López de la Osa
T, 02/21/17	<b>Session 6: Conscientious Objection in Health:</b> Right to conscientious objection in health and drugs.	A. López de la Osa
T, 02/28/17	<b>Session 7: Elder Law and Health:</b> Ageing and the Law.	A. López de la Osa
T, 03/07/17	<b>Session 8: Healthcare Access in Prisons.</b>	A. López de la Osa
T, 03/21/17	<b>Session 9: National Healthcare Systems:</b> public vs private? Member States legal competences and Healthcare in the European Union.	A. López de la Osa
T, 03/28/17	<b>Session 10: Health professional's regulation:</b> what is the legal framework to have access to medical professions?	A. López de la Osa
T, 04/04/17	<b>Session 11: Human Biotechnology and Bioethics:</b> Human Enhancement, Sex selection and Legal status of embryos.	A. López de la Osa
T, 04/11/17	<b>Session 12: The Protection of Human Subjects in Research:</b> IRB's	A. López de la Osa
T, 04/18/17	<b>Session 13: Human Tissues, Organ Donations and Transplants Systems.</b>	A. López de la Osa
T, 04/25/17	<b>Session 14: Medical Malpractice:</b> Liability of physicians in public hospitals and in private hospitals: medical malpractice and insurance aspects.	A. López de la Osa
T, 05/02/17	<b>Final Exam</b>	

Health law and policy in Nigeria is an evolving and complex field of law, spanning a broad legal landscape and drawn from...<sup>Â</sup> Books related to Comparative Health Law and Policy. Skip this list. The Social Transformation of American Medicine. Paul Starr. \$31.99. Health and Health Care Delivery in Canada - E-Book. Valerie D. Thompson. EU health law was previously seen as either non-existent, or so broad as to be meaningless, or as existing only in relations between EU law and health (the "and" approach), or as consisting of a body of barely or loosely connected policy domains (the "patchwork" approach). The process of bringing EU health law into being is a process of narration. The ways in which EU health law is narrated (and continues to be narrated) involve three main groups of actors: the legislature, courts and the academy. View.