

## UČNI NAČRT PREDMETA / COURSE SYLLABUS

<b>Predmet:</b>	Temeljne pravice in zasebno pravo
<b>Course title:</b>	Fundamental Rights and Private Law

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Študijski program 3. stopnje Pravo Study programme of 3 degree - Law		2.	Zimski ali letni Autumn or Spring

**Vrsta predmeta / Course type** Izbirni / optional

**Univerzitetna koda predmeta / University course code:** D035

Predavanja Lectures	Seminar Seminar	Vaje Tutorial	Klinične vaje work	Druge oblike študija	Samost. delo Individ. work	ECTS
20	10				240	9

**Nosilec predmeta / Lecturer:** Petra Weingerl

**Jeziki / Predavanja / Lectures:** Slovenski in angleški / Slovene and English  
**Languages: Vaje / Tutorial:** /

**Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:**

Poznavanje temeljev ustavnega prava, civilnega prava in prava EU.

**Prerequisites:**

Basic knowledge of constitutional law, private law and EU law.

**Vsebina:**

**Content (Syllabus outline):**

- Delitev na javno in zasebno pravo skozi zgodovino
- Razvoj varstva temeljnih pravic
- Viri temeljnih pravic
- Razmerje med temeljnimi pravicami in zasebnim pravom
  - a) Ustavne vrednote in zasebno pravo
  - b) Vertikalni in horizontalni učinek temeljnih pravic

- The public/private divide: a historical perspective
- The evolution of the protection of fundamental rights
- Sources of fundamental rights
- The relation between fundamental rights and private law
  - a) Constitutional values and private law
  - b) Vertical and horizontal effect of fundamental rights

<ul style="list-style-type: none"> <li>c) Neposredni in posredni učinek temeljnih pravic</li> <li>• Vloga ustavnih in supranacionalnih sodišč pri konstitucionalizaciji zasebnega prava <ul style="list-style-type: none"> <li>a) Vloga ustavnih sodišč - primerjalnopravni pregled</li> <li>b) Vloga ESČP</li> <li>c) Vloga Sodišča EU</li> </ul> </li> <li>• Temeljne pravice in zasebno pravo v EU <ul style="list-style-type: none"> <li>a) Ustavni okvir in pristojnosti EU</li> <li>b) Listina EU o temeljnih pravicah</li> <li>c) Splošna načela prava EU in zasebnopravna razmerja</li> </ul> </li> <li>• Zasebno pravo kot orodje za zaščito temeljnih pravic</li> <li>• Temeljne pravice in gospodarski subjekti</li> <li>• Izbrana področja <ul style="list-style-type: none"> <li>a) Temeljne pravice in obligacijsko pravo</li> <li>b) Temeljne pravice in stvarno pravo</li> <li>c) Temeljne pravice in družinsko in dedno pravo</li> <li>d) Temeljne pravice in delovno pravo</li> <li>e) Temeljne pravice na internetu</li> </ul> </li> </ul>
---

<ul style="list-style-type: none"> <li>c) Direct and indirect effect of fundamental rights</li> <li>• The role of constitutional and supranational courts in the constitutionalisation of private law <ul style="list-style-type: none"> <li>a) The role of the constitutional courts - a comparative view</li> <li>b) The role of the ECtHR</li> <li>c) The role of the Court of Justice of the EU</li> </ul> </li> <li>• Fundamental rights and private law in the EU <ul style="list-style-type: none"> <li>a) The EU's constitutional framework and competences</li> <li>b) Charter of Fundamental Rights of the EU</li> <li>c) General principles of EU law and private law relationships</li> </ul> </li> <li>• Private law as a tool for fundamental rights protection</li> <li>• Fundamental rights and corporations</li> <li>• Case studies <ul style="list-style-type: none"> <li>a) Fundamental rights and the law of obligations</li> <li>b) Fundamental rights and property law</li> <li>c) Fundamental rights and family law and inheritance law</li> <li>d) Fundamental rights and labour law</li> <li>e) Fundamental rights on the Internet</li> </ul> </li> </ul>
--

### Temeljni literatura in viri / Readings:

Benöhr I, *EU Consumer Law and Human Rights* (OUP 2013)

Brownsword R et al (eds), *Foundations of European Private Law* (Hart Publishing 2011)

Brügge-meier G, Colombi Ciacchi A and O'Callaghan P, *Personality Rights in European Tort Law* (CUP 2010)

Cafaggi F and Muir-Watt H (eds), *The Regulatory Function of European Private Law* (Edward Elgar 2009)

Canaris C-W, 'Grundrechte und Privatrecht' (1984) 184 *Archiv für die civilistische Praxis* 3 201

Cherednychenko, O O, 'Fundamental rights and private law: A relationship of subordination or complementarity?' (2007) 3 *Utrecht Law Review* 2 1–25

— 'Towards the control of private acts by the European Court of Human Rights?' (2006) 13 *Maastricht Journal of European and Comparative Law* 2 195-218

Colombi Ciacchi A, Brügge-meier G, & Commandé G (eds), *Fundamental Rights and Private Law in the European Union: Volume 1, A comparative overview* (Cambridge University Press 2010)

Frantziou E, 'The Horizontal Effect of the Charter of Fundamental Rights of the EU: Rediscovering the Reasons for Horizontality' (2015) 21 *European Law Journal* 5 657–679

Friedman D and Barak-Erez D (eds), *Human Rights in Private Law* (Hart Publishing 2002)

Gerstenberg O, 'Constitutional Reasoning in Private Law: The Role of the CJEU in Adjudicating Unfair Terms in Consumer Contracts' (2015) 21 *European Law Journal* 5 599–621

Grimm D, 'The role of fundamental rights after sixty-five years of constitutional jurisprudence in Germany' (2015) 13 *International Journal of Constitutional Law* 1 9-29

Grundmann S, *Constitutional Values and European Contract Law* (Kluwer Law International 2008)

Gutman K, *The Constitutional Foundations of European Contract Law: A Comparative Analysis* (OUP 2014)

Harris D, O'Boyle M, Bates E, and Buckley C, *Law of the European Convention on Human Rights* (OUP 2018)

Kumm, K, 'Who is Afraid of the Total Constitution' (2006) 7 *German Law Journal* 4 341

Leczykiewicz D, 'Horizontal Application of the Charter of Fundamental Rights' (2013) 38 *E.L. Rev.* 490

— and Weatherill S (eds), *The Involvement of EU Law in Private Law Relationships* (Hart Publishing 2013)

Micklitz H-W (ed), *Constitutionalization of European Private Law* (OUP 2014)

Nolan D and Robertson A, *Rights and Private Law* (Hart Publishing 2011)

Ondřejek P, 'A Structural Approach to the Effects of Fundamental Rights on Legal Transactions in Private Law' (2017) 13 *European Constitutional Law Review* 2 281-304

Reich N, *General Principles of EU Civil Law* (Intersentia 2014)

Roedl F, 'Fundamental Rights, Private Law, and Societal Constitution: On the Logic of the So-Called Horizontal Effect' (2013) 20 *Indiana Journal of Global Legal Studies* 2 1015–1034

Somers S, *The European Convention on Human Rights as an Instrument of Tort Law* (Intersentia 2018)

Study Group on Social Justice in European Private Law, 'Social Justice in European Contract Law: a Manifesto' (2004) 10 *European Law Journal* 653

Trstenjak V, and Weingerl P (eds), *The influence of human rights and basic rights in private law* (Springer 2016)

Weatherill S, *EU Consumer Law and Policy* (2nd edn, Edward Elgar 2013)

Weingerl P, 'Sodišče EU kot motor evropeizacije zasebnega prava: *ignorantia iuris Europae nocet*' (2014) 33 *Pravna praksa* II

—, Weatherill S and Vogenauer S, 'Private autonomy and protection of the weaker party' in: Vogenauer S, and Weatherill S (eds), *General principles of law: European and comparative perspectives* (Hart Publishing 2017) 255-268

Zgliniski, J, 'Doing Too Little or Too Much? Private Law Before the European Court of Human Rights' (2018) *Yearbook of European Law*.

Študenti bodo o novejši literaturi obveščeni tudi na predavanjih / konzulacijah.

#### Cilji in kompetence:

Cilj tega predmeta je pridobiti poglobljeno znanje o razmerju med temeljnimi pravicami in zasebnim pravom, torej o stičišču javnega in zasebnega prava, ki je podvrženo dinamičnemu razvoju. K obravnavanim problemom se pristopa medsebojno povezovalno, ob upoštevanju sodne prakse in pravne teorije. Študent pridobi sposobnost znanstvene analize problemov tako s področja javnega kot tudi zasebnega prava, vrednotenja različnih teoretičnih stališč, uporabo primerjalnopravne metode, kritične analize različnih teoretičnih pristopov in sodne prakse. Predmet je razdeljen na dva vsebinska sklopa. V prvem sklopu predmet obravnava razloge za tradicionalno delitev na javno in zasebno pravo, ter vpliv temeljnih pravic na to delitev. Obravnava tako vpliv temeljnih pravic na zasebno pravo, kot tudi uporabo zasebnega prava kot orodje za varstvo temeljnih pravic. Posebna pozornost je namenjena

#### Objectives and competences:

The aim of this course is to provide an in-depth understanding of the relationship between fundamental rights and private law, i.e. the intersection of public and private law, which is the subject of dynamic evolution. The examined problems are dealt with interconnectedly, while taking into account the case law and legal scholarship. The student acquires the ability to scientifically analyse problems from both public and private law, to examine various theoretical positions, to use a comparative legal method, to critically analyse different theoretical approaches and the case law. The subject is divided into two parts. In the first part, the course thoroughly examines the reasons underpinning the traditional public/private divide, and the influence of fundamental rights on this division. It addresses both the impact of fundamental rights on private law and the use of

obveznosti spoštovanja temeljnih pravic s strani gospodarskih subjektov.

V drugem delu predmet obravnava vpliv temeljnih pravic na izbrana področja zasebnega prava.

private law as a tool for the protection of fundamental rights. Particular attention is paid to the corporations' obligation to respect fundamental rights.

In the second part, the subject explores the impact of fundamental rights on the selected areas of private law.

#### **Predvideni študijski rezultati:**

##### Znanje in razumevanje:

- Po zaključku študija predmeta bo študent sposoben na znanstveni ravni izkazati razumevanje problemov, ki so povezani z razmerjem med temeljnimi pravicami in zasebnim pravom;
- razumeti znanstvene in strokovne diskusije glede razmerja med temeljnimi pravicami in zasebnim pravom ter na splošno glede delitve na javno in zasebno pravo;
- razumeti vse večjo prepletenosti med različnimi pravnimi področji ter kritično ovrednotiti predviden nadaljnji razvoj;
- diskutirati o dilemah in razvoju na tem področju in izsledke prenašati v pisni obliki v znanstvena dela.

##### Prenesljive / ključne spretnosti in drugi atributi:

Ustno in pisno izražanje na znanstvenem nivoju o najzahtevnejših pravnih problemih povezanih z razmerjem med temeljnimi pravicami in zasebnim pravom.

#### **Intended learning outcomes:**

##### Knowledge and understanding:

Upon completion of the course, the student will be able to:

- demonstrate an understanding of the problems related to the relationship between fundamental rights and private law at the scientific level;
- understand scientific and professional discourses on the relationship between fundamental rights and private law, and in general regarding the public/private divide;
- understand the increasing interconnectedness between different legal fields and critically examine anticipated further development;
- discuss the dilemmas and developments in this field and to publish the results as scientific publications.

##### Transferable/Key Skills and other attributes:

Oral and written scientific discourse on the most complex legal problems related to the relationship between fundamental rights and private law.

#### **Metode poučevanja in učenja:**

- Predavanja,
- seminarji,
- seminarske vaje,
- samostojno delo,
- obravnava sodnih odločitev in zakonodajnih predlogov

#### **Learning and teaching methods:**

- Lectures,
- seminars,
- tutorial,
- individual work,
- discussion of case law and legislative proposals

#### **Načini ocenjevanja:**

Delež (v %) /

Weight (in %)

**Assessment:**

<ul style="list-style-type: none"> <li>• ustni izpit</li> <li>• seminarska naloga na znanstvenem nivoju</li> </ul>	60 % 40 %	<ul style="list-style-type: none"> <li>• oral exam</li> <li>• scientific written paper</li> </ul>
--	--------------	---

**Reference nosilca / Lecturer's references:**

Weingerl P, 'Consumer protection and the sharing economy' v: Hojnik, J (ur.). *Sharing economy in Europe: opportunities and challenges* (ELF 2018) 75-85

— in Trstenjak V (ur.), *The influence of human rights and basic rights in private law* (Springer 2016)

—, Weatherill S in Vogenauer S, 'Private autonomy and protection of the weaker party' v: Vogenauer S (ur.), Weatherill S (ur.). *General principles of law: European and comparative perspectives* (Hart Publishing 2017) 255-268

—, 'The CJEU and the interpretative principles as vehicles for development of damages actions in EU (competition) law: any room for overcompensation?' v: Szabó M (ur.), Láncoš P L (Ur.), Varga R (ur.), *Hungarian yearbook of international law and European law 2016* (Eleven intl publ 2017) 591-611

—, 'Varstvo potrošnikov in digitalna ekonomija v EU: kdo je potrošnik?' v: Repas, M (ur.): *Digitalno gospodarstvo: konferenčni zbornik, X. posvet Pravo in ekonomija* (Univerzitetna založba Univerze v Mariboru 2018) 1-16

—, 'Varstvo potrošnikov in sodelovalno gospodarstvo' v: Dnevi slovenskih pravnikov, 11. do 13. oktober 2018, Portorož, (Podjetje in delo, ISSN 0353-6521, [letn.] 44, [št.] 6/7). Ljubljana: GV založba [i. e.] IUS SOFTWARE. 2018, str. 991-1003

—, Civil liability in the EU: exploring the implications of the recent case law and legislation on causal link' (2014) 6 *European journal of commercial contract law* 3-4 62

—, 'Varstvo konkurentov pred nepoštenimi poslovnimi praksami na podlagi pravil varstva potrošnikov' (2013) 68 *Pravnik* 3/4 177

—, The implementation of the consumer rights directive in Slovenia - 'information, termination, no hidden costs' v: Welser, R(ur.). *Die Umsetzung der Verbraucherrechte-Richtlinie in den Staaten Zentral- und Osteuropas*, (Manz 2015) 259

—, 'Sodišče EU kot motor evropeizacije zasebnega prava: ignorantia iuris Europae nocet' (2014) 33 *Pravna praksa* II

— in Trstenjak V, 'Enforcement and effectiveness of consumer law in Slovenia' v: Micklitz, H-W. (ur.), Saumier, G (ur.). *Enforcement and effectiveness of consumer law* (Springer 2018) 547-564