

# ELTE LAW SCHOOL RENEWS CURRICULUM

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“Justice is an unswerving and perpetual determination to acknowledge all men’s rights. Learning in the law entails knowledge of God and man, and mastery of the difference between justice and injustice.” The quotation is from Emperor Justinian’s seminal *Institutes*, which was used as a manual for jurists in training and was later given the authority of law.<sup>1</sup> But the question arises: how best to transfer such knowledge fifteen hundred years later, in the second decade of the twenty-first century? What should be the mission of a law school? How much of the immense body of law should be taught? How to learn the problem-solving approach to legal practice? As from the 2010-2011 academic year, a renewed curriculum has been used at the Faculty of Law and Political Sciences of ELTE University in Budapest. The makers of that curriculum had to face all those questions.

The explicit aim of the curriculum overhaul has been more thoroughly to adjust full-time legal education to the challenges of post-transition [1990] Hungary, the establishment of the rule of law, the restoration of private property, the deployment of a market economy with welfare services, accession to the European Union and Hungary’s full integration into the international economic relations.<sup>2</sup> As opposed to isolated changes in the curriculum in previous decades, the new one includes structural transformation and reflects a systems approach.

We consider preparing our students for traditional legal occupations, careers in the civil service and legal assignments in domestic and foreign companies as the *main objective* of legal education. In other words, to help them become expert jurists, legal practitioners. Although it is not among our immediate goals to train people of a rich cultural awareness, the classes that cover the history of law, social theory and positive law contribute to their overall erudition. Law school graduates can therefore also enter politics and the media world.<sup>3</sup>

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<sup>1</sup> Book One, Chapter One, Justice and Law. Translated by Peter Birks and Grant McLeod. Ithaca, NY, Cornell University Press, 1987, p. 238.

<sup>2</sup> The general direction of the curricular reform was defined in a decree issued by the Ministry of Education. “Alap- és mesterképzési szakok képzési és kimeneti követelményeiről szóló 15/2006. (IV. 13.) OM rendelet” 3. sz. mellékletének, V./3. pontja. (Item V/3 of Supplement Three of Decree 15/2006 (IV. 13) of the Ministry of Education on the Training and Output Requirement of the Bachelors’ and Masters’ Programmes). The decree provides that the length of legal education is ten terms and students have to obtain 300 credits. The decree includes information on the foundation courses, the core courses, key areas of specialized knowledge, and the related minimum and maximum values of credits.

<sup>3</sup> On the aims of legal education see: JAKAB, András: “A magyar jogi oktatás megújításához szükséges lépések - Reformjavaslat összehasonlító áttekintésre alapozva” (Steps Required for the Renewal of Legal Education in Hungary—A Proposed Reform as Based on a Comparative Survey), *Magyar Jog*, 2010, No 4., pp. 204 and 210.

The new curriculum retains the *undivided* structure of legal education. Numerous countries of Europe have already realized the disadvantages of the 3+2-year Bologna system in legal education, and several universities are returning to the original, time-honoured curriculum.<sup>4</sup> Reactions seen abroad have been confirmed by the attitude of courts, law offices and the prosecution service in Hungary: they would be unwilling to employ graduates with a three-year Bachelor's degree in law<sup>5</sup>, whom we could refer to as legal technicians.

The architects of this reform sought a *balance of tradition and transformation*. High-quality legal education started at this Faculty in 1667. It would be a mistake to discard hundreds of years of experience in, for instance, teaching history of law, theory of law and the *political and cameral sciences* just to serve the often changing requirements of entities that will employ the young graduates. However, students and their future employers are pressing us to teach the rules of the democratically functioning state and the market economy and, generally speaking, the *statutes in force* in a higher number of lessons, with an in-depth approach and occasionally even in tutorials of small groups. As the transition (1990) brought an end to the "era of private law without private property"<sup>6</sup>, civil law and commercial law gained in importance. Because there is a reasonable limit to increasing the number of lessons and credits, it was inevitable to make substantial changes in the curriculum and transform the internal proportions of subjects *to the benefit of subjects that cover positive law*.

In this connection we regarded it a priority to expose first-year students to the *statutes in force*, that is, positive law, early on. It is essential that, simultaneously with attending foundation classes on legal theory and history of law, students should learn about today's legal system, its European and international dimensions, furthermore, the crucial components of legal practice: the laws and other statutes and judicial decisions. To ensure early exposure, we included in the first semester a subject entitled "Introduction to Handling Legal Databases". That subject is taught by instructors of departments that are in charge of the core courses, and it covers both domestic and foreign electronic databases (Complex, Complex HMJ [Hungarian Statutes in Hungarian, German and English], Parliamentary Documents, EUR-Lex, Curia, WestLaw, Beck Online and so on). The slideshow presentations explain the use of those databases and shed light on how to explore the legislative background to legal disputes.

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<sup>4</sup> HAMZA, Gábor: "Észrevételek a Bologna-folyamat ésszerűségéről és időszűkítéséről a jogi felsőoktatásban" (Observations on the Rationality and Timeliness of the Bologna System in Tertiary Legal Education), in: *Jogtudományi Közlemény*, 63 (2008), pp. 191-195, FÖLDI, András: "Der Bologna-Prozess und die Juristenausbildung in Ungarn", in: Baldus, Christian, Finkenauer, Thomas, Rüfner, Thomas (ed.), *Juristenausbildung in Europa zwischen Tradition und Reform*, Trier, Germany, 23 November 2007-25 November 2007, Tübingen: Mohr Siebeck Verlag, pp. 145-166.

<sup>5</sup> On 19 March 2010 the Hungarian Board of Deans of Faculties of Law issued a statement on the need to retain undivided legal education in Hungary. The statement says that the Board is concerned to see that "despite disquieting signals at home and abroad, domestic educational policymakers are reluctant to realize the potential harmful consequences that introducing a two-phase training would entail for the quality of higher education. In several areas the European experiences of the Bologna process are highly disadvantageous, in legal education more than anywhere else. Employers are reluctant to hire law school graduates who only have a BA as based on three years of study.

"In view of recent renewed attempts at introducing the two-phase regime in legal education and mindful of the general European tendencies, the Board of Deans of Faculties of Law declares that undivided legal education is an eminent asset of higher education in Hungary. There are powerful quality assurance considerations and related social and professional arguments in its favour."

<sup>6</sup> "Privatrecht ohne Privateigentum", see VÉKÁS, Lajos: "Integration des östlichen Mitteleuropa im Wege rechtsvergleichender Zivilrechtserneuerung", *ZEuP*, 22 (2004), pp. 454-476, p. 454 ff.

ELTE University and its law school are standing their ground and retaining their top position in a *tough competition* in Hungary. The makers of the curriculum are convinced that our institution can only stay on top of this strong competition if greater scope is assured for a regulated competition among the subjects taught at this Faculty. Consequently, the number of *elective subjects* has been increased. Add to it the following qualitative leap: some of the compulsory elective courses (as for instance, foundation classes in social and legal sciences) will be taught in small groups and will compete with one another at Faculty level. That has brought an end to the cushioned status of elective courses: when students take courses, their choices can be seen as a vote about the merits of competing courses. The compulsory elective courses are complemented by optional courses as in past.

Our students continue to receive a uniform Juris Doctor diploma but, given a broader choice of subjects, those with clear-cut career plans and a strong motivation have a greater scope for *specialization* early on. It helps the orientation of students that the existing *modular system of certain courses* (whose attendance earns a special certificate for students) has been complemented by mandatory elective courses. Presently there are four such modules: *Criminal Law, Civil Law Studies, European and International Law, and Public Law*. Those modules cover the majority of related elective<sup>7</sup> and optional subjects. As in the past, students will not be obliged to select any of those modules; neither is choosing a module a precondition for taking elective courses.

It goes without saying that the *compulsory subjects* account for the mainstay of legal education, and the subjects in the various modules of specialization and the elective courses (that compete with one another) do not affect them. It is not our intention to grant full freedom for the students in compiling their own “custom-tailored” educational programme. The compulsory subjects—Constitutional Law, Criminal Law, Administrative Law, Civil Law, Procedural Laws, Theory of Law And State, European Law, International Law, International Private Law, to mention some of them—ensure that the diplomas of the graduates of this Faculty should be of equal value. It is the compulsory subjects that guarantee that knowledge that is indispensable for all legal practitioners is taught. Professional orientation and specialization only complement that. That having said, we found it justified somewhat to modify the proportion of the compulsory subjects in the whole set. Accordingly, Prison Law is now compulsory in one semester instead of two, and those interested can complement it with an elective course that can be found in the Criminal Law module. Legal Dogmatics, alongside with some other theoretical foundation courses, has become an elective course instead of being compulsory. Legal Policy will not be a subject taught in MA programme. In some cases it was necessary entirely to revise the teaching material and related textbooks.

Effort has been made to treat full-time legal education and doctoral education as *related components of an organic system* even if presently only a fraction of our graduates will become students of our doctoral school. The foundation courses of History of Law, and Social

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<sup>7</sup> At present 48 electives belong to those four modules. Let us mention some areas where they offer in-depth knowledge: the work of the Constitutional Court, real estate right, the enforcement of judgments, criminal policy and criminal sentencing and the relations between the European Union and the World Trade Organization.

Sciences, pave the way for research careers for interested students. Treating undergraduate training and doctoral training as a unified whole, it will become possible to include legal policy – a subject that is not taught in undergraduate training anymore – in doctoral training later on, albeit with a renewed content. After finishing the transformation of full-time legal education one of the next steps will be to prepare the renewal of doctoral training at the Faculty.

*Curriculum of a spiral nature.* In the new curriculum increased effort is made to revisit knowledge that students are first exposed to in early semesters in some historical and theoretical subjects in a new context, when students are better informed about positive law. The same approach could already be seen in connection of the subject called “Fundamental Doctrines of Law” and the Theory of Law and State. It is recommended that the subject called “Universal History of Law” should be transferred (with a thoroughly modified content) to the third or fourth year where, renamed as “*Comparative History of Law*”, it will compare the most important legal institutions of the major legal systems of the Modern Age.<sup>8</sup> We hope that this arrangement will create a closer relationship between the history of law classes and those addressing positive law. With the same consideration in mind, we have transferred ethics, which used to be a part of the curriculum of the fourth semester, to the third or fourth year, renamed as *Ethics for Legal Practitioners*.

To improve the efficiency of education, it is our priority to strengthen the status of *education in small groups* (practical courses), especially for subjects that conclude in a final examination. Accordingly, in Civil Law practical courses are held to discuss the law of persons and property, the general part of the Law of Contracts, Company Law, and the Law of Intellectual Property. Practical courses are added to Constitutional Law and Administrative Law, and a truly practical course is restored for International Law.

*Final examination in European and international law.* As the Law of the European Union is having an ever stronger impact on the legal systems of the EU Member States and occasionally it even reshapes traditional branches of law, the importance of European Law has steadily increased over the past decades. Ever since 1990 European Law has been a compulsory subject at ELTE’s law school. It is evident that those Member States can effectively assert their interests in the European Union—alongside other prerequisites—that have highly qualified legal practitioners and civil servants who know Community Law well. In Europe the European Law is a *lingua franca* that enables universities to join the unified European Space for Higher Education in legal education and it enables legal practitioners to become part of international legal practice.<sup>9</sup> Thus in the era of integration and globalization the European and international law studies have necessarily gained in significance. Now that

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<sup>8</sup> As for the importance of comparative history of law, it is worth quoting words of Gábor Vladár, a minister of justice of the past: “Even if it rarely has a direct practical use, knowledge of the interplay between foreign legal systems and the Hungarian Constitution and history of law should be a part of the erudition of all legal practitioners and it protects all of us from a biased, chauvinistic outlook”, which has the tendency to consider all legal institutions as the [sole] accomplishment of bright minds of Hungary. VLADÁR, Gábor: *Visszaemlékezéseim* (My Reminiscences), Budapest, Püski, 1997, p. 72.

<sup>9</sup> For more details about legal education in Europe, see: DE WITTE, Bruno, and FORDER, Caroline (ed.), *The Common Law of Europe and the Future of Legal Education*, Deventer, Maastricht, METRO, Kluwer, p. 764, 1992. On the impact of the European space for higher education, see KIRÁLY, Miklós: *Unity and Diversity: The Cultural Effects of the Law of the European Union*, Budapest, Eötvös University Press, Eötvös Loránd University, 2011, p. 304, (pp. 137-147).

students may choose to take the final examination in European Law instead of the Theory of Law, a decade-old demand has been satisfied.

As Wilhelm von Humboldt once wrote, a university treats science as an unsolved problem. It is therefore in a constant state of research. By contrast, a school handles knowledge that is ready and finished; a school only teaches such knowledge. Consequently, the attitude of both the teacher and the student is bound to change. The first is not there to serve the latter; instead, both of them are there to serve science. The teacher's work depends in part on the presence of the students; without them he or she could not work so effectively—wrote Humboldt. And indeed the *quality of scholarly research* has a decisive influence on the quality of training at our Faculty. ELTE University is a research university and the brunt of related work is done by the departments. Those efforts are augmented by the recently established *Jean Monnet Centre of Excellence* and the Kuncz Ödön Legal Centre of Knowledge. Applied legal research is done at the latter by instructors and students of the Doctoral School, as commissioned by companies, law offices and agencies of public administration.

It logically follows from the high level of education at ELTE University that there has been an increasing demand for intensive forms of knowledge transfer, including preference for seminars, especially in subjects belonging to the core courses. Only seminars offer the right platform for developing the *problem-solving approach*, which is indispensable in legal practice and also for coming to know the instruments for the interpretation of law and the exploration of the social contexts of decisions. At our Faculty the problem-solving method does not mean a direct adoption of the *case method*, which is used in the United States. Instead, the lectures that lay the foundations of legal dogmatics are augmented by tutorials of small groups, where facts of fictitious cases are discussed and concrete court judgments are analysed. That method is widely used in the United Kingdom, Austria and Germany.<sup>10</sup>

We are of the view that these teaching methods are not in an irreconcilable conflict with the demand that students should be familiar with the statutes in force because the requisite skills are meant to encourage the appropriate application of legal norms. Besides, if a student does not know black letter law, he or she cannot identify broad underlying considerations. It is not easy to strike the right balance between teaching black letter law and legal skills. As illustrated by the example of other countries, such a “tightrope act” always draws some criticism.<sup>11</sup>

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<sup>10</sup> An article published in the 1960s gave an in-depth analysis of legal education in the United States. See MÁDL, Ferenc: “Az amerikai jogi oktatásról és jogtudományról” (Legal Education and Jurisprudence in the United States), *Állam- és Jogtudomány*, 1968, pp. 100-136. There is a more recent account: Mádl, Ferenc: “Találkozásom Hans Kelsennel” (My Meetings with Hans Kelsen), in: Cs. Kiss, Lajos (ed.): *Hans Kelsen jogtudománya* (The Way Hans Kelsen Interprets Law), Budapest, Gondolat Kiadó, 2007, pp. 35- 46. On the differentiation of the case method and the problem-solving method, see JAKAB, András, op. cit, pp. 206-207. See also Campbell, Dennis: The Long Arm of American Law and Education, manuscript, 2010, p. 15.

<sup>11</sup> “Academics who welcomed the new direction of the vocational courses thought that black letter law still dominated while practitioners criticized the emphasis on practical skills at the expense of black letter law.” A. BOOM, J. WEBB, Legal Education and Training in England and Wales: Back to the Future? in: *Journal of Legal Education*, March 2008, pp. 79-121.

Note that the importance of the problem-solving method was acknowledged as early as over a hundred years ago by some bright minds of Hungarian jurisprudence. As Béni Grossschmid Zsögöd put it in his book, entitled: *Jogszálytan* (A Study of Statutes): “Practising law entails thinking independently. Devotion to study is not enough to obtain that skill. We need to become immersed in that medium and “swim” in it, difficult as that is. Law is more than the sum of doctrines just as a sea is more than the waves it includes. It is the sum of components, which keep changing and yet always remain the same.”<sup>12</sup> As early as in 1884 Gusztáv Szász-Schwarz addressed that issue in a monograph,<sup>13</sup> and later he translated into Hungarian and localized a collection of legal cases by Rudolf Jhering.<sup>14</sup>

Alongside other dilemmas of the overhaul of the curriculum, we had to ponder on how to react to the following phenomena: first-year students widely vary in erudition and more and more of them have poor skills and insufficient factual knowledge. Eventually we concluded that it is not a university’s duty to rectify the shortcomings of secondary schools. That having said, the foundation courses of the first two semesters undoubtedly help weak students in catching up with their more erudite peers. Bearing that in mind, we have retained two practical lessons for the study of Hungarian legal history over two semesters.

We strongly encourage departments to offer a sufficient number of elective and optional courses in foreign languages. It is essential to have a considerable number of courses in foreign languages also to serve the needs of *Erasmus students*.<sup>15</sup>

We believe that the reformed curriculum will fully satisfy the requirements of legal education in the opening decades of the twenty-first century and continue ensuring the ELTE law school’s domestic market leading role.<sup>16</sup> If that is accomplished, we will live up to the motto of “Quality since 1667”.

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<sup>12</sup> GROSSCHMID, Béni, *Jogszálytan* (A Study of Statutes), 1905, p. 8; quoted by Vladár, Gábor, op. cit. p. 83.

<sup>13</sup> SCHWARZ, Gusztáv, *A jogi semináriumok kérdéséhez* (About Seminars in Legal Education), Budapest, Franklin Társulat, 1884.

<sup>14</sup> JHERING, Rudolf: *Magánjogi Esetek* (Cases in Private Law), translated and augmented by SCHWARZ, Gusztáv; Budapest, Politzer Zsigmond és fia, 1901, p. 154. At the beginning of the twentieth century practical course books of Roman law were also used in legal education.

<sup>15</sup> During the 2011-2012 academic year the ELTE law school offers the following courses in English: History of Roman Law, Introduction to Hungarian Civil Law, Hungarian Tort and Insurance Law in Comparative Perspective, Managing Public Finances, An Introduction to Principles of American Business Law, Criminal Law in Europe, European Environmental Law, European Labour Law, European Tax Law, EU Budget and Taxation, The Most Recent Case Law of the European Court of Justice, The Impact of the European Union on Culture, Transnational Justice, Terrorism and Human Rights, International Humanitarian Law, International State Liability, International and Comparative Tax Law, Introduction to the Practice of Capital Markets. A similar number of courses are available in German. Source: <http://www.ajk.elte.hu/en>.

<sup>16</sup> In 2011 in Hungary there were 722 state-subsidized places for full-time law students. Nearly half of them, 356, were filled at ELTE’s law school.

## Supplement

The subjects taught at the Faculty of Law and Political Sciences of ELTE University, Budapest in the new curriculum (number of lessons per week, number of credits, type of activity: lecture, seminar or practical course).

<u>Category</u>	<u>Name of Subject</u>	<u>Lecture per Week</u>	<u>Seminar/Practical Class per week</u>	<u>Credit</u>
<b>Social science— foundation</b>				
	Philosophy	3	2	5
	Ethics for Legal Practitioners	1		1
	Economics	3	4	7
	Latin		4	4
	Political Science	4		4
	Statistics	2		2
	Social Science elective 1	2		2
	Social Science elective 2	2		2
		<b>17</b>	<b>10</b>	<b>27</b>
<b>Jurisprudence— foundation</b>				
	Introduction to Handling Legal Databases		2	
	Comparative History of Law	4	2	8
	History of Hungarian State and Law	4	4	10
	Roman Law	4	2	8
	Theory of Law and State	4	4	10
	Fundamental doctrines of Law	2		2
	Sociology of Law	2	2	4
	Constitutional Law 1	2	1	3
	Administrative Law 1	2	1	3
	Criminal Law 1	2	1	3
	Civil Law 1	4	2	6
	Criminology	4		4
	Theory of Law—elective	2		2
		<b>38</b>	<b>19</b>	<b>63</b>
<b>Core courses</b>				
<b>Private Law</b>				
	Agrarian Law	2	2	4

	Family Law	2		2
	Labour Law	4	2	6
	Civil Law	10	8	18
	Civil procedure	4	4	10
	Civil Out-of-court Proceedings	3		5
	Cooperative Law	1	1	2
<b>Public Law</b>				
	Constitutional Law	4	4	10
	Administrative Law	8	6	14
	Finance Law	4	3	9
<b>Criminal Law</b>				
	Criminal Procedure	7	2	10
	Prison Law	2		2
	Criminal Law	8	6	14
	Criminalistics	2		2
<b>International and European Law</b>				
	International Law	4	2	8
	International Private Law	4		6
	European Public Law and Politics	4		4
	Commercial Law of European Communities	4		4
		<b>77</b>	<b>40</b>	<b>130</b>
<b>Specialized areas of the core courses</b>				
				<b>30</b>
<b>Optional courses</b>				
				<b>16</b>
<b>Internship</b>	<b>total of 240</b>			<b>re-quired</b>
<b>Preparatory course for final exam</b>	<b>total of 100</b>			
<b>Term paper 1–2</b>				<b>2+2</b>
<b>Diploma thesis</b>				
				<b>30</b>
<b>Total</b>				
				<b>300</b>

## SUMMARY

### **ELTE Law School Renews Curriculum**

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The new curriculum the Faculty of Law and Political Sciences of ELTE University introduced in the 2010-2011 academic year is meant to keep abreast with the 21st century developments in legal education.

The curriculum has been renewed, on the one hand, to respond to the challenges of post-transition [1990] Hungary and of the country's accession to the European Union and, on the other, to maintain commitment to the Faculty's centuries old traditions of a five-year educational programme. To strike a balance between tradition and change, the History of Law, Theory of Law and Social Sciences courses have been retained, while the number of lessons devoted to the subjects of positive law – which are the mainstay of legal education – and those spent in seminars have been increased.

The content of the Comparative History of Law and Ethics for Legal Practitioners courses has been revised and those subjects will be taught at later stages of the five-year programme than before. The consideration behind that change is to teach those historical and theoretical subjects in new contexts, with a synthetic approach, for students who by then will have a more profound knowledge of positive law.

A final examination may also be taken in European Law and International Law as from 2012. That move is a clear expression of the considerable impact European Law has had on the law of Hungary.

## RESÜMEE

### **Neues Curriculum in der ungarischen Juristenausbildung**

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Die neue, ab dem Studienjahr 2010/11 eingeführte Studienordnung der Fakultät für Rechtswissenschaften der Lorand-Eötvös-Universität (ELTE) ist bestrebt, den Erwartungen zu entsprechen, die im 21. Jahrhundert an die Juristenausbildung gestellt werden.

Das neue Curriculum möchte einerseits auf die Wende und den Beitritt zur Europäischen Union reagieren, andererseits jedoch die jahrhundertelangen Traditionen der traditionell

fünfjährigen Ausbildung bewahren. Das Gleichgewicht zwischen Tradition und Veränderung konnte geschaffen werden, indem die Kurse zur Rechtsgeschichte, Rechtsphilosophie und den Gesellschaftswissenschaften beibehalten wurden, aber die Stundenzahl der Kurse zum positiven Recht, die das Grundgerüst der Ausbildung darstellen, bzw. der praxisbezogenen Kurse in kleinen Gruppen (Seminare) erhöht wurde.

Der Studienplan ist bestrebt, die historischen, theoretischen Kenntnisse - bereits in Besitz des entsprechenden Wissens im Bereich des positiven Rechts - in neuem Kontext, auch auf synthetisierende Art und Weise vorzustellen. Diesem Ziel dienen in den höheren Jahrgängen der Kurs Vergleichende Rechtsgeschichte, der inhaltlich überarbeitet wurde, bzw. der Kurs Juristenethik.

Ab dem Jahr 2012 kann eine Abschlussprüfung auch in europäischem und internationalem Recht abgelegt werden. Dadurch wird die bedeutende Wirkung des europäischen Rechts auf das ungarische Recht anerkannt.