

# Module:

# Spain

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# 1. The Spanish Legal System

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The legal system in Spain is characterised by following the “continental mode”. This mode is known for the separation between the public and private sectors of the legal system, and the primacy of statute and written law. Also, the judiciary is hierarchically organised with a system of judicial appeals. The current Spanish legal system is regulated by the Spanish Constitution of 1978. However, the legal system has faced many points until arriving to the current situation. (European Justice)

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## 1.1. Roman Empire

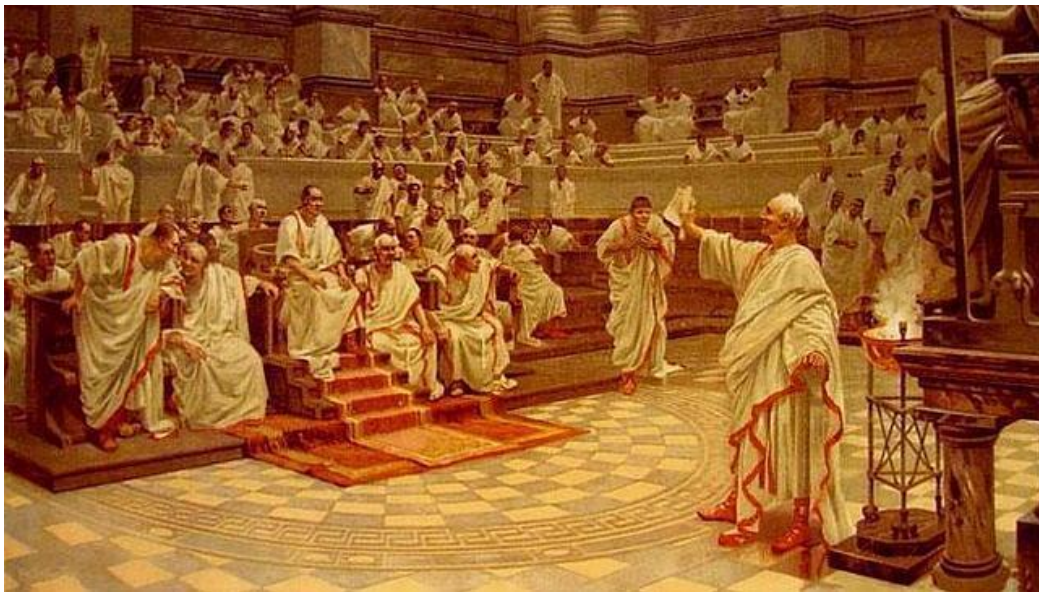
One of the most important facts in the Spanish ancient history was the conquest of the Iberian Peninsula by the Roman Empire. The same legal system was used in the whole Roman Empire (with some peculiarities in each territory) and went through an elaboration process that started and finished with the empire itself, for more than 1,200 years.

The beginning of that system was the “*mores maiorum*” in which Pontiffs had a juridical monopoly. During the VI Century B.C., a series of laws called “*Lex Regia*” gave some power to kings, and at the middle of the V Century B.C. appeared the “*Law of the XII Tables*”, that stated the interpretation of the “*mores maiorum*” to the Law “*prudence*”, called the Jurisprudence. Other important periods of Roman law were the “*Period of Principality*”, and the “*Juridical Order of Dominado*”, from which different juridical recompilations have been retrieved.

The Provincial Rights of Hispania were configured through a “*Lex Provinciae*”, a law by which the Roman Senate established the juristic situation of all lands under

the Roman Empire. Also, Hispania was given special laws such as the “Laws of Colonies and Municipalities” and the “Law of Osuna”.

The Roman Empire gave specific laws to Hispania due to the commercial interest of some lands, such as provincial laws devoted to mines. Other relevant dispositions were found, such as the Edict that gave freedom to slaves of some parts of the country, giving them the property of lands they cultivated as slaves. (Pensamiento Español 2016)



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## 1.2. From a Visigoth Hispania to the current Civil Code

In the V Century, the Visigoths conquered part of the Roman Hispania, dividing the land and settling a new legal system. Many parts of the Visigoth system suffered a Romanisation, including the legal system; the Visigoths traditional system was based on the “Eurico Code” and the “Leovigildo Code”, which was later on turned into the “Liber Iudiciorum”, with roman influences. However, it is also important to note that the legal system had a very nationalistic note, contrarious to the Roman one. Another important fact about this code is that it was the first complete code meant for Visigoths and romans living in Hispania, while before it each had their own laws. (Derecho en la red 2012)



The VIII century saw the Muslim conquer of Spain. This turned the country into Al-Andalus (although not all parts of the modern Spain were conquered), and the legal system went to depend on the Cadies, who had a similar role to the current judges. Cadies had to be experts in Law and needed to show good conduct. There were many requirements to access to the position, but it also gave them a good reputation. Cadies needed to be Muslim, free adult men, intelligent and they needed to be trusted by the Caliph and the Great Cadi of Cordoba.

Another important point of the legal system during the Muslim time was the lack of a “judged matter”, this means, the same issue could be judged more than once, creating an important insecurity. Also, the legal system depended on the Muslim laws. (López Corsi 2014)

In 1492 the Catholic Monarchs conquered the resting part of Al-Andalus and the whole territory known nowadays as Spain was “united” in a catholic empire. From the XV century, the legal system of Spain was the Castilian Juridical System, which had as main important point the progressive loss of power of the autonomies and the increase of power in the Castilian kings. This legal period was highlighted by the personal legal activity of kings that created the majority of dispositions; only the “Fuero Real” and the “Fuero Juzgo” (that belonged to concrete municipalities of the



kingdom) kept their local power. By the XVII century, the Courts had lost practically all their power. (Derecho en red 2013)

During the following years, apart from the importance of the American colonies in legal terms, there was a change of monarchy in Spain (XVIII century). The legal system was even more centralised and the Church, who used to have a lot of legal power in the country, saw this power cut. (Jaimes de Amat, y otros 2005)

The XIX century (1812) saw the first constitution in Spain, a legal text against the French Conquer. This constitution tried to codify all legal system for the whole monarchy (civil, criminal and commerce civil code) but due to the autonomic power of some parts of the country it was not quite possible. However, this century saw some important laws such as the Law of Civil Marriage or the Law of Civil Registry.

In 1889 was approved the Civil Code, which respected the power of the autonomies that still owned it. This Civil Code is the one that is currently on use in Spain, although with many modifications.

It is also worth mentioning that Spain suffered a dictatorship from 1939 until 1975, known as “Franquismo”. During this time, all legislative and executive powers were united in the figure of the dictator, Francisco Franco. It was not until the dead of the “Caudillo” in 1975 that Spain did not officially work to become a democracy and created the current Spanish Constitution (1978).

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### 1.3. Sources of Spanish Law

The main source of the Spanish Legal System is the Civil Code, and the jurisprudence establishes the Supreme Court to interpret and apply law, costumes and general legal rights. Tribunals are established by the Spanish Constitution (1978), which highlights the principle of jurisdictional unity in the organisation and functioning of tribunals. Judges and Tribunals have their work divided and they can only work in the cases where law establishes they should.

The Organic Law of Judicial Power (article 122 of the Spanish Constitution) determines three main parts of the Justice System:

- Territorial aspect: division of Spain in Autonomic Communities created by regions. From that division, each court and tribunal has concrete power in their community. However, the National Audience, the Supreme Court and the Central Court have national power.
- Unipersonal or Collegiate character of the Organs: all organs are unipersonal except the Supreme Court, National Audience, Superior Courts of Justice and the Provincial Audiences.
- Competency aspect: it is possible to divide four big aspects as to the topics related to justice: civil, penal, administrative and social. Additionally, the Military Jurisdiction has its own regulation. There are not specialised courts but some topics (such as gender violence, issues related to underage...) have a specialisation even if they are under ordinary jurisdiction. (European Justice)

#### 1.4. The Administration of the Spanish Justice System

The jurisdictional power is given to the following courts and tribunals (Ministerio de Justicia):

- Peace courts
- First Instance Courts: market, gender violence, penal, administrative, social, underage, penitence vigilance.
- The Supreme Court is composed of a president, a room president and the magistrates determined by law in each room and section. It is made of five rooms: civil, penal, administrative, social, military.
- The National Audience is composed of a president, a room president and the magistrates determined by law in each room and section (appellation, penal, administrative and social).

- The Superior Courts of Justice have three rooms (civil and penal, administrative and social). The president is also president of the first two rooms.
  - The Provincial Audiences are composed of a president and two or more magistrates. They are related to civil and penal orders.
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## 1.5. The Judicial Process

The judicial process in Spain can be divided in Civil Judicial Processes and Penal Judicial Processes.

### a) The Civil Judicial Processes

They are divided in types depending on two criteria: the matter to be discussed and the amount of the claim. It is possible to find 4 types of procedures:

- Ordinary judgement: this procedure is initiated through a complaint in which the intervenient parts need to be clarified, and where a lawyer is compulsory. The judge will declare the admission of the demand and will try that they reach an agreement. If they do not, each part will present their allegations and the judge will give a sentence.
- Verbal judgement: in this type, it is not compulsory to have a lawyer as long as the amount of the reclaim is lower than 2,000€. Both parts need to come (if the defendant does not show it will be considered in “rebellion” and if the claimant does not it will be considered he surrenders and will have to pay the costs of the trial).
- Monitory judgment: judgement for situations in which there is a debt that has been recorded in a document. The document can be of any type as long as the signature of the debtor appears.
- Changing judgment: procedure to pay a bill of exchange, a check or a promissory note that meets all legal requirements. (iAbogado)

## b) The Penal Judicial Processes

When it comes to Penal matters, it is necessary to determine the type of procedure applicable to each concrete case, depending on the severity of the facts:

- Facts that are a “fault” are judged through the “judgment of faults”.
- Facts that constitute a felony need to be distinguished on whether they can be sanctioned with more or less than 9 years. The first case goes to the “abbreviated procedure” (the most common in Spain), and in the second case, “ordinary procedure”.

There is also a procedure that due to the matter are done through a Jury Tribunal through the procedure “habeas corpus”. (Universidad de Valencia)

## 1.6. Spain's Accession in the EU

Spain asked to enter the EU (in that moment EEC) in 1977; its entrance was approved in 1985. From that date on there were significant points in the economic, political and legal history of the country: (Ministerio de Asuntos Exteriores 2015)

### 12 June 1985

- Entrance of Spain in the Economic European Community

### June 1989

- Incorporation of Peseta into the Exchange Mechanism of the European Monetary System

### June 1991

- Entrance in the Schengen Agreement

### 1992

- Cohesion Funds: support to revitalise and develop regions

### 2002

- Incorporation of the Euro

## 1.7. EU Implications on the Spanish Legal System

The EU legal system has a great importance on the Spanish one, as it must be followed in the country. The international treaties, once validated, become part of the internal regulation of Spain.

However, although it exists a transfer of competences from Spain to the EU the Constitution also extends the limits of that transfer. These limits are related to: the State sovereignty; the Spanish constitutional structures: and the ential values and principles consecrated in the Constitution.

Anyway, the jurisprudence of the European Court of Justice and the European Court of Human Rights must be accomplished in the country. (Moreno Bobadilla 2016)

## 1.8. Short Story

Anne and John are talking with some friends, and they just told them about a trial they will have soon, and in which the parts have decided not to hire a lawyer.

Anne and John are very surprised, because they thought that any type of judgement required lawyers to be present. However, their friends explained them that this trial will be pursued through “Verbal Judgement”, and since the reclaim is lower than €2,000 it is not necessary for any of the parts to hire lawyers.

**Do you think you could explain Anne and John the difference between ordinary judgement (the one Anne and John were thinking about) and verbal judgement?**

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## 1.9. Summary

The Spanish Legal system has gone through very different history lines and changes, from romans to Muslims and more, until arriving to the modern situation. However, all those different legal systems that the country has lived have had their own influence, whereas it is only on vocabulary used nowadays or with real ideas that are used in the current times; and maybe even more things that we are unaware of. The important point to highlight is how all different ages that Spain has lived (even before being called Spain) have meant something and have helped the country reach its current Constitution and Civil Code, as well as the legal system.

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## 2. Contract Law

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The legislation that defines the Spanish Contract Law is The Civil Code (Real Decreto de 24 de julio de 1889, texto de la edición del **Código Civil**). (Boletín Oficial del Estado)

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### 2.1. What is a contract?

The concept of what a contract is continues being the same as the one written in Civil Code in 1889, “a contract exists since one or a group of persons agree on obligating, one over another, to give something or provide a service”. In a contract is possible to designate the objective, legal situation coming from the contract and which originates rights and obligations for all included parts, with no variations due to the environment (market, business...). (Ministerio de Gracia y Justicia)

#### 2.1.1. Contract Elements

The elements of a contract can be defined as essential, natural or accidental.

##### *Natural Elements*

Those elements that are previewed for each type of contract and are going to be part of it, unless the parties decide to erase them.

##### *Accidental Elements*

Accidental elements are those introduced by the parties in the contract, based on a principle of intention to contract.

##### *Essential Elements*

Those that are necessary for the contract to exist. They are included in the article 1,261 of the Civil Code: offer and acceptance, certain object which is subject of contract, and obligation cause established. (Rodríguez 2016)

### 2.1.2. Offer and Acceptance

According to the article 1262.1 from the Civil Code, “acceptance is manifested by the concurrence of the offer and acceptance about the matter and cause, which ought to constitute the contract”. Offer and acceptance are declarations of will done at the same time. Frequently they are included in one single document, signed by both parts at the same time. However, it can occur that they are issued in different moments and places, even if it is not reflected in the documents.

It should also be taken into account that the form is not an essential requisite of the contract, so the offer and acceptance are not subject to any form. (Derecho en la Red)

### 2.1.3. The Intention to Contract

This is the base of the general theory of Law. It implies the acknowledgement of a power to regulate the objectives and interest desired by all parties. It is the base of contracts as well, which means that the individual has freedom to decide over contracting or not; also, parts have a total freedom of choice regarding the type of contract; parts can freely celebrate atypical contracts; and finally, parties have the capacity to modify the content of the typical contracts. However, contractual freedom has a series of limits established by the Civil Code. (Iberley)

### 2.1.4. Capacity to Contract and Minors

The following groups cannot give consent (Sanahuja Miranda Asociados):

- ❖ Minors who are not emancipated (unless those contracts allowed by law to be done by themselves or with assistance of their representatives, and contracts related to goods and services typical to their age and social uses).
- ❖ People with legally modified capability, in the legal resolution agreed terms.

In case of minors who are emancipated, this situation will take place under the following circumstances:

- ❖ Being 16 or more.
- ❖ Agreement of those owning the custody.
- ❖ Legal concession.

#### 2.1.5. Corporations or Legal Persons

Legal persons, as they have their own legal personality (which is independent to the ones of each of their members), they have the complete capacity to act and establish contract relationships.

#### 2.1.6. Persons of Unsound Mind

They can intervene in contracts as long as they are legally assisted when necessary. The necessary figures to include are:

- ❖ Guardianship: authority given by law to an adult to take care of a person and his/her goods when not able to do it alone.
- ❖ “Curatela”: legal institution by which the person named to complement the capacity of the disabled does so, in all acts and legal businesses necessary.
- ❖ Legal Defendant

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## 2.2. Consideration of Contract

This is one of the basic requirements for the existence of a contract. It is the main motive that makes the parts obligate one against another. The referred motives have no legal relevance as well as they licit; the cause is the stereotyped motive in contracts. But when the motive is not licit, it becomes relevant and can cause the nullity of the contract. (Travezaño)

### 2.2.1. The Nature of Consideration and Rules that govern Consideration

In order for the cause to be considered it needs to exist, be licit and true (the parts need to be after the cause celebrated).

### 2.2.2. Illegality

A contract can be considered illegal when it is not considered to have a cause. Also, it will be considered illicit when it is seen to be against imperative or moral laws. (Wolters Kluwer)

## 2.3. Contract Terms

Contract terms are stated through the different articles from the Civil Code.

- ❖ When the terms are clear, contractors will follow the literal meaning; but when they seem contrary to the intention of the contractors, intention will prevail over words.
- ❖ In order to judge the intention of contractors, it should be attended the acts of the parts.
- ❖ It should not appear in the contract different things to those about which the interested parties contacted.
- ❖ If any part of the contract admits more than one meaning, it should be understood the one which is more adequate for the effect to be produced.
- ❖ The contract clauses should be interpreted one for another, so that in case there is any doubt the rest of the clauses give sense to it.
- ❖ Words with different meaning will be understood according to the meaning which is more fitting to the contract.
- ❖ Interpretation of any doubtful part of the contract should not favour the contractor responsible for creating that part.
- ❖ When it becomes impossible to solve the doubts by the stablished means, if they fall over accidental circumstances and are free, they will be solved in favour of the lower transmission of rights and interests. In case it is not free,

it should be solved looking for the highest reciprocity of interests. (Boletín Oficial del Estado)

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## 2.4. Discharge of a contract

A contract is discharged when it does not arrive to unfold the effects to what it was destined to. Discharges of a contract can be divided in two types (Gómez 2015):

### 2.4.1. Disability

It occurs when the contract is affected by the existence of essential elements which are not applicable by the legal system. Depending on the gravity of the circumstances it can be distinguish between:

#### *Lack of existence*

A contract is considered inexistent when it omits an element required by the legal business.

#### *Nullity*

It is the greatest qualification of the legal system. It revokes any legal effectiveness to the contract relationship. It occurs when the contract is against imperative or prohibited norms, or when it lacks any requirement understood as inexistent.

### 2.4.2. Cancellation

It presents some anomaly proceeding from determined conflicts on the capability or willingness giving place to the action of nullity or impugnation.

Cancellation is a class of disability focused to the protection of one of the parts of the contractual relation, only when that part is legitimated to plead, which will produce the destruction of the act with retroactive character or co-validation of the contract through confirmation.

### *Causes of cancellation*

Mistake: in order for the mistake to cause the cancellation, it should fall over the substance of the matter which was object of the contract, or over those conditions which were principally giving motive to it. A mistake about the person will only cancel the contract when the person was the principal cause of the contract.

### Violence

It is considered as violence when “in order to get the agreement it is used an irresistible force”. It is given in the causes when the willingness of the contractor is replaced by the one of the aggressor.

### Intimidation

It occurs when it is inspired in one of the contractors a rational and funded fear to suffer an imminent harm, either to the person, goods, descendants, family...

It must exist an efficient relation of causality between the fear and the agreement. The threat needs to announce an upcoming and grave evil, and it needs to be unjust and extravagant to Law. If the threat is merely related to the exercise of law, it is not considered intimidation.

### Malice

It consists on inducing other people to celebrate a contract incurring in an error. It occurs when someone makes a contractor participate in a contract through words and schemes, when he/she would have not participated otherwise. In order for the contract to be annulled, it should be grave.

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## 2.5. Short Story

Anne and John just got a new job in Spain, but they are upset due to the written contract they have received.

Some of the clauses do not correspond with the previously agreed contract. They are wondering if the contract is legal considering the incongruences.

According to the Civil Code, in the contract it should not appear anything different to the agreement which the interested parties reached. Taking this into account, the contract that Anne and John received should not be considered legal, and they are entitled to ask for a rectification that meets the previous agreement set by both parties.

**Try to answer these questions: can Anne and John be obliged to sign the contract as it is? Are they entitled to ask the employer to change the contract?**

## 2.6. Summary

Contracts always need to be freely agreed by all sides participating in the contract. It will always be done under a common agreement by all parts, and when the main cause is not fulfilled or any of the parts is not freely agreeing to the terms, it will be not considered valid.

It is also important to bear in mind how some groups (such as under aged, mentally disabled) require special conditions when being part in a contract.

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# 3. Employment Law

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Employment Law in Spain is regulated by the Labour Code and the Civil Code. The labour code is made of different consolidated norms in which all redactions are included. More concretely, it includes text from the Spanish Constitution, the Labour Legislation, Social Security, laws of Prevention of Occupational Hazards, Infractions and Sanctions on the Social Order and Social Jurisdiction. (Ministerio de la Presidencia y para las Administraciones Territoriales 2017)

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## 3.1. Employment Contract

Employment Contract Laws are under the Labour Legislation. All details and information related to the contract (information about the elements, main conditions related to the work performance, etc.) are regulated by the Royal Decree 1659/1998. (Ministerio de la Presidencia y para las Administraciones Territoriales)

The employment contract and the requirements to work in Spain for people that do not own the Spanish nationality varies depending on the country of origin. However, all citizens from the European Union Member States, Iceland, Liechtenstein, Norway and Sweden, can benefit from the same requirements.

All formalities ought to be done if the person is going to stay more than three months in Spain; the person must personally ask to be inscribed in the Central Registry of Foreigners in the Foreign Office (or police station) of the region the person is going to live. That is the only requirement (and only if the person is going to stay for more than 3 months) to stay and/or work in Spain. The foreign person from the mentioned countries will enjoy and be subject of the same laws and norms as the Spanish nationals. (Universitat de Barcelona)

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## 3.2. Different types of employment

There are different types of labour contracts in Spain, divided depending on different aspects: regarding the duration of the contract, we can find indefinite contract and contracts for a defined time period; regarding the hours worked per day, we find full-time contracts and part-time contracts. However, inside these “big” types we can find multitude of contracts in Spain.

### *Indefinite contract*

Contract established with no limits of duration of the job performance. Indefinite contracts can be full time, part time, or for the offer discontinued services. (Ministerio de Empleo y Seguridad Social)

### *Defined time period contract*

Contract in which it is established a labour relationship for a determined time, either full time or part time. (Ministerio de Empleo y Seguridad Social)

### *Training agreement*

Type of contract destined to improve the professional qualification of the youth. In this type of contract the student has a retributive labour experience in a company at the same time as an educational experience (VET, education...). (Ministerio de Empleo y Seguridad Social)

### *Internship*

Type of contract that looks to provide a student with the adequate professional formation to the education owned. It is not only related to acquiring experience, but to acquire experience related to the curssed studies. It is a type of contract reserved to owners of University degree titles, of VET titles. (Ministerio de Empleo y Seguridad Social)

### *Part-time contract*

Contract in which the worker and company have agreed a number of hours worked that is inferior to the ones of a full-time worker on a comparable position. (Ministerio de Empleo y Seguridad Social)

### *Group contract*

Type of contract between the employer and the chief of a group of workers (group chief) in which the employer does not have any rights or responsibilities towards the members of the group individually, only against the group chief. (Ministerio de Empleo y Seguridad Social)

### *Distance job contract*

Contract in which the majority of the job is done in the employee's home or a place selected by the employee, instead of the company's centre of work or offices. (Ministerio de Empleo y Seguridad Social)

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## 3.3. Basic Obligations of the Parties

### *Employer*

The obligations of the employer are very wide (López):

- The employer is responsible for determining the Collective Agreement used in the working relation between employer and employee.
- They are also responsible for respecting all rights included in the Workers Statute Law.
- They need to adjust to the General Law of Social Security, including points such as inscribing the worker on the Social Security.
- Comply with the Law of Prevention of Occupational Hazards.

## *Employee*

According to the Workers Statute Law, workers have as basic obligations (BOE 2017):

- Accomplish the concrete obligations of the working position
- Observe any labour risk prevention measures adopted
- Follow orders of the employer related to the regular commanding of their directive faculties
- Do not concur with the activity of the company
- Contribute to the improvement of productivity
- Anything derived of the concrete labour contract

### 3.4. Basic Rights of Employees stemming from legislation

According to the article 4 of the Workers Statute Law, workers have a series of basic rights (BOE 2017):

- Work and freedom of choice of profession
- Free syndication
- Collective negotiation
- Adoption of collective conflict measures
- Strike
- Reunion
- Information, consult and participation in the company

Workers also have a series of rights related to work:

- Effective occupation
- Promotion and professional formation at work, including formation related to the adaptation of modifications of the working position, etc.

- To not be discriminated direct or indirectly for the job or once employed, due to reasons of gender, civil status, age, race, social condition, religion, political ideology, sexual orientation, affiliation to a syndicate, or due to the language.
  - To not be discriminated for a disability, as long as it allows to develop the working position.
  - To their physical integrity and an adequate policy of prevention of occupational hazards.
  - Respect to their intimacy and dignity.
  - Punctual perception of the agreed or legally established remuneration.
  - Individual exercise of actions coming from their labour contract.
  - Any other rights specifically agreed on the labour contract.
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### 3.5. Short Story

Ana and Juan work in Human Resources in a company, and they would like to hire a specialist in one of the main working topics of the company. However, the specialist would only be able to work on very concrete hours if she had to come to the office, as she lives in a different town.

For this reason, Ana and Juan are thinking whether they prefer to offer a part-time contract or a distance job contract to the specialist.

In order to decide, they should take into account if the number of hours worked is more important than having the person physically available in the office.

**Would you be able to explain them the types of contracts available in Spain depending on the hours worked? Do you think there is any other type of job contract they should consider?**

### 3.6. Summary

Employment in Spain is extensively protected by law, with all different types of employment contracts covered and the rights and duties of the parties clearly specified along the labour laws.

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# 4. Business Law

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## 4.1. What is a Company

According to Commercial Law, it is possible to consider a company as the professional exercise of an organised economic activity, with the intention of acting in a goods and services market. It includes all company sizes, from big companies to SMEs. The points distinguishing a constitutive form of company are (Derecho en la Red 2012):

- ❖ Economic activity that allows to distinguish the activity of the company from merely artistic or intellectual activities.
- ❖ Organised activity, directed to accomplish a rational project.
- ❖ Activity continued, professional, systematic and thought to last with an intention to provide a benefit that constitutes a way of life, distinguishing it from other economic activities not exercised professionally.

## 4.2. Available company types

There are numerous types of company available for creation. The most suitable type to choose when deciding to create a company depends mostly on three points.

### 4.2.1. Points influencing company types

#### *Liability*

A company can be either of limited or unlimited liability. Limited liability means that the liability does not exceed the investment made in the company, which means that even if the company goes bankrupt or has remaining debt, the partner does not have to comply to more than the amount invested (Investopedia). However, in unlimited



liability company owners are equally responsible for debt independently of the amount invested.

### *Number of partners*

Depending on the type of company that wants to be created, it is necessary to have a minimum number of partners: from 0 to more than 3.

### *Social Capital*

Some company types require a minimum social capital, while other have no minimum.

#### 4.2.2. Company types

Once understood the main points that can influence on the decision as to what type of company form, it is time to take a look at the main company types that can be found on the Spanish legal system (Ministerio de Economía, Industria y Competitividad):

Type of Company	Number of partners	Social Capital	Liability
Individual	1	There is no legal minimum	The partner is responsible with all his property
Limited Liability Entrepreneur	1	There is no legal minimum	Unlimited with exceptions
Community of property/goods	At least 2	There is no legal minimum	The partner is responsible with all his property
Civil Society/partnership	At least 2	There is no legal minimum	The partner is responsible with all his property
Collective society	At least 2	There is no legal minimum	The partner is responsible with all his property

Limited Partnership	Simple	At least 2	There is no legal minimum	The partner is responsible with all his property
Limited Society	Liability	At least 1	At least 3.000 euros	Limited to the agreed/ included capital for the society
Limited Society of Formation	Liability Successive	At least 1	There is no legal minimum	Limited to the agreed/ included capital for the society
New Public Limited Liability Society		At least 1 Maximum 5	At least 3.000 Maximum 120.000	Limited to the agreed/ included capital for the society
Limited Company		At least 1	At least 60.000 euros	Limited to the agreed/ included capital for the society
Limited Partnership with a share capital		At least 2	At least 60.000 euros	The partner is responsible with all his property
Limited Society	Labour	At least 2	At least 3.000 euros	Limited to the agreed/ included capital for the society
Labour Company	Limited	At least 2	At least 60.000 euros	Limited to the agreed/ included capital for the society
Cooperative		1 <sup>st</sup> Degree cooperatives: At least 3 2 <sup>nd</sup> Degree Cooperatives: 2 cooperatives	At least what is agreed on the statutes	Limited to the agreed/ included capital for the society
Associated Cooperative	Workers	At least 3	At least what is agreed on the statutes	Limited to the agreed/ included capital for the society

Professional Societies	At least 1	Depends on the social form adopted	Limited to the agreed/ included capital for the society
Agrarian Transformation Company	At least 3	There is no legal minimum	The partner is responsible with all his property
Mutual Guarantee Association	At least 150 participant partners	At least 10.000.000 euros	Limited to the agreed/ included capital for the society
Venture Capital Entity	At least 3 members on the Administration Council	Venture Capital Society: at least 1.200.000 €. Venture Capital Funds: at least 1.650.000 €	Limited to the agreed/ included capital for the society
Economic Interest Groupings	At least 2	There is no legal minimum	The partner is responsible with all his property

### 4.3. Company Formation

The formation of a company has many points that in general are similar independently of the country, while others highly depend on the place where the company is going to be located. (Centro de Información y Red de Creación de Empresas)

For example, the first steps include conducting a SWOT (strengths, weaknesses, opportunities, threats) analysis and creating a Business Plan, which has to be done by any person interested in creating a company independently of the place.

However, the next step, selecting the legal form, is highly dependent on the place; in Spain, the available legal forms to create an entity are basically the ones included in the previous point. Following with the creation of the company, depending on the selected legal form it will be necessary to go through different types of paperwork

(unless we are talking about an autonomous entrepreneur, who has no constitution paperwork). In the following website is possible to see the required things in Spain for each type of company: [Website "Creación de Empresas"](#). In this same page is also possible to see the different procedures necessary to follow depending on the legal form, in order for the company to start business.

Independently to all those procedures, some types of legal forms have the possibility to do some parts of them online.

#### 4.4. Company Operation-Obligations

There are several legal obligations to be performed before the constitution and during the activity of the company.

Before starting the activity, it will be necessary to present a fiscal registration and register on the Economic Activities Tax in the required Treasury.

Once started the activity, it will be necessary to declare the VAT, to tax the PIT, declare the annual operations with third parties, or any other necessary legal requirement concretely to the type of legal form.

Regarding any labour obligations, self-workers will have to register at the Self-Working Regime of Social Security, while companies will register at the General Regime of Social Security. Companies need to register their workers as well in Social Security. They are also legally compelled to register workers on a regime of working accidents, professional sicknesses or a mutual work accident insurance company. (Mataró Empresa)

#### 4.5. Company Liquidation

A company liquidation occurs when there is no interest in continuing pursuing the business and the property is not going to be transferred, or there is a general bankruptcy that prevents from continuing the activity.

In order to pursue the liquidation all partners need to agree on it and there cannot be any workers or partners owned money to. All working relationships need to be legally finished before proceeding with the company liquidation.

The liability of the partners will depend on the legal type of organisation; in the previous point where the types were explained it is possible to see the liability related to each of them.

Also, there is a series of legal procedures related to liquidation. Most of these procedures are very similar as the ones done in the creation of the organisation, but with the opposite intention:

- ❖ Tax Register Declaration of ending activity in the Register of Business from the corresponding Tax Register Agency.
- ❖ Leave of the partner or person, if necessary, in the general regime of Social Security.
- ❖ Communication of the definitive ending in the Business Register.
- ❖ Dissolution of the society in front of a Notary.

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## 4.6. Short Story

Anne and John have decided to create a new company, but they are not sure of which legal form should they use; on the one hand, they would prefer to create a Civil Society since it does not need any minimum capital, but they are scared of the total liability that comes with it.

On the other hand, they could create a Limited Company, since the liability only includes the assets included in the company, but the necessary capital is too high.

**Could you explain Anne and John the differences between those types of legal forms? Do you think there is any other type they should consider?**

## 4.7. Summary

Knowing what a company is and the responsibilities and duties that all parts have in a business relationship is highly important to pursue a successful relationship.

There are many legal aspects to consider in business law; one of the most important things is the necessity to always bear in mind that depending on the legal type of organisation, the legal activity to do is going to be different. Anyhow, there are general aspects common to all of them.

Having a clear vision of what is going to be legally needed to the concrete type of organisation will help in all the steps of an organisation's life (from creation to liquidation).

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# 5. Important Aspects of Civil Law and Public Law

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It is possible to find Public and Private Law; Public Law is the one related to aspects in which intervenes a figure of authority, while Private Law talks about the relationship between particulars. In Spain, one of the parts composing Private Law is known as Civil Law. (De Castro Vitores 2004)

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## 5.1. Civil Law

Civil Law is focused on the individual person, they intend to guard the rights of the individual (such as house rights, nationality, capacity...). But civil law is also focused on the legal aspects of the concept of family, patrimony, etc. (De Castro Vitores 2004). In Spain, it is regulated by the Civil Code.

### 5.1.1. Valid marriage and divorce

#### Types of marriage in Spain

##### *Religious Marriage*

The only needed legal procedure to make valid a religious marriage in Spain is to present the ecclesiastic certification with any circumstances required by the law.

In the case of marriages from Islam, Jewish, or the Federation of Evangelic Religious Entities of Spain, it will be necessary to proceed with the papers previous to the process of marriage capability for the two last ones and advisable for the first one.

Once this is done, the marriage will need to be celebrated in a maximum time of 6 months. (Ministerio de Justicia)

### *Civil Marriage*

Civil marriages can be celebrated in different ways:

- ❖ Marriage celebrated before the Registrar of Civil Registration or the Peace Judge. The celebration minutes of civil marriage will be the inscription, which will be signed by the Registrar of Civil Registration, both contractors, both witnesses and the Secretary.
- ❖ Marriage celebrated before the Mayor or Council in which the Mayor delegates: the marriage act will be given to the Civil Registry from the place where the marriage was celebrated, and the Civil Registry will be responsible of doing the inscription.
- ❖ Marriage celebrated in front of a Judge Secretary: it will be included in the minutes and if it is done in front of a Notary it will be considered public writing. It should be signed, apart from the person in front of whom is going to be celebrated, by the contractors and the witnesses. Each one of the contractors will have a copy of the marriage celebration and the Authorizer will forward an authorised copy of the document to the Civil Register to its inscription. (Ministerio de Justicia)

### *Marriage in another country*

Marriages in another country include those marriages in which at least one of the contractors has the Spanish Nationality, even if it is acquired after celebrating the marriage. In order to make these marriages legal it is necessary (Ministerio de Justicia):

- ❖ For canonical marriages:
  - Presentation of the ecclesiastic certificate
  - Birth certificate of the Spanish contractor by the Spanish Civil Register
  - Birth certificate of the foreign contractor



- National Identification Document of Spanish nationality
- Accreditation of the place of living of the promotor in Spain
- Declaration data paper
- ❖ For civil marriages
  - Marriage certificate from the foreign Civil Register
  - Birth certificate of the Spanish contractor by the Spanish Civil Register
  - Birth certificate of the foreign contractor
  - National Identification Document of Spanish nationality
  - Accreditation of the place of living of the promotor in Spain
  - Declaration data paper

## Divorce

One of the most important things to bear in mind regarding divorce is that in Spain it is needed for the marriage to have lasted more than 3 months to get a divorce.

There are two types of divorce:

- ❖ Mutual agreement divorce: this type of divorce is either required by both parts or required by one and agreed by the other.
- ❖ Contentious divorce: required by only one part.

The necessary documentation to formalise the divorce will be:

- ❖ Marriage certificate
- ❖ In case of having children, birth certificate
- ❖ Documents backing the patrimonial situation of the family
- ❖ In case it is a mutual agreement divorce, proposition of regulation agreement between parts, in which it is established the consequences and the agreements after the divorce (use of the house, visit of the children...)

In case of a contentious divorce, there is no regulation agreement and it is not necessary to expose any reason. There is no need of accrediting anything to ask for this type of divorce.

Divorcing in Spain means losing the succession rights, widow's pension, but it also means a loss of all obligations related to marriage (help, share of food, care...) (UnComo).

### 5.1.2. Lease Agreements and acquisition of real estate

#### Lease Agreement

Lease agreements are regulated by the law 29/1994 of Lease Agreement, last modified in 2013.

According to the Spanish law, the amount of time of the lease is agreed between both parts, and the compulsory extension lasts 3 years, which can be increased 1 more if none of the parts says otherwise. In case the owner needs the house for a direct family member or spouse, it can be recovered after a year as long as the tenant is informed 2 months before.

Regarding the leave of the flat, the tenant can do so after 6 months without further explanation as long as it is notified to the owner 1 month before. Both parts can also agree on a condition in which the tenant will pay 1 month per year not accomplished of contract if leaving early, but that depends on the contract.

Bail cannot be increased during the first 3 years of contract but the owner can ask for a raise/ the tenant can ask for a drop, with each prorogation, until arriving to 1 or 2 monthly payments.

When a flat with tenants is sold, if there is a contract appearing in the Property Register, the tenants are allowed to stay as long as the contract says; in case it does not appear, if the new owner decides to not lease the flat, tenants can stay up to 3 months.

Rent payment can be substituted by work done in the house by the tenant; in case is the owner who does the work, if it has been more than 3 years since the beginning of the agreement it is allowed to increase rent.

Talking about defaulting eviction, after one month of default tenants have 10 days to pay before the owner is allowed to take judicial actions for eviction. However, that eviction must always be done through a judicial way.

Finally, it has been created a Registry of lack of payment sentences that owners will be allowed to see (only after accrediting a lease contract proposal with the person of interest). People appearing in the Registry will be allowed to be taken off it once they have paid their debt. (enalquiler 2017)

### 5.1.3. Tax Obligations

Tax obligations are legally collected on Article 17 from the Tax Obligations General Law, in which it is registered a tax relationship as the “extent of obligations, duties and rights originated from the application of taxes”.

#### *Obligations*

The principal obligation under this law is to pay the corresponding tax quote. Additionally, we find the “taxable event”, which is explained as the budget fixed by law to establish each tax and whose creation introduces the principal tax obligation.

Accrual is “the moment in which it is understood as done the taxable event and in which it is produced the principal tax obligation”.

Another important point are the exemptions, which shall not be confused with “no subjection”. Both concepts carry the same result, a lack of tax payment. However, they are legally different.

- ❖ Exemptions come from a tax standard with a defined taxable event, which usually originates a tax obligation. However, it exists an exemption norm ordering that the tax obligation is not fulfilled in certain cases, regardless of the taxable event.
- ❖ No subjection implies that taxes under it are not inside any taxable event, which means that the lack of inclusions negatively delimits the taxable event.

It is as well important in tax obligation to make account payments. It is defined as the tax obligation to satisfy an amount to the Tax Agency for the legal person obliged fractionated payments, the retainer or the legal person obliged to make deposits to an account.

The Tax Obligation Law allows each tax's own laws to establish different amounts to deduce than the ones fixed from the account payments made.

Finally, we find the obligations between particulars that come from a tax. They are defined as the obligations with a tax nature that can be demanded between tax obligors, considering obligations are generated as a consequence of acts of repercussion, retention or deposit to an account that are legally foreseen. (Fiscal Impuestos)

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## 5.2. Public Law

Public Law is related to a common, collective interest. It consists on creating general conditions (mainly related to freedom and security) that can allow individuals and groups to achieve their particular interests. Public Law is made of norms regulating the powers of the State, the relationships between those powers and also the relationship between the powers and individuals. (Derecho en la Red 2012)

Public Law is a very wide subject in which we can find several types of laws: administrative, financial, constitutional, penal, process, international (public), or labour laws. (Universidad Pompeu Fabra 2009)

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## 5.3. Short Story

Anne and John want to get married, but they would like to do it in Spain, since they are both living there. John is British but has the Spanish nationality, and Anne is German, and they are wondering which documents they should ask in their home

countries and Spain in order to ensure that the marriage, which is going to be celebrated in a religious way, is legally accepted in all countries.

Spanish marriages require one of the two parts to have the Spanish nationality. Since John has it, it would be possible for them to do it. Taking this into account, they would need a series of documents.

**Would you be able to tell Anne and John the documents they would need? Can you explain the legal differences between the religious marriage and civil marriage regarding paperwork? Do you think John and Anne could get married in other country and have their marriage recognised in Spain? Where?**

#### 5.4. Summary

Civil and public law are of extremely importance when living in a new country but also to know about your own country, since they direct many parts of the citizens life. For example, it is important to bear in mind the need of knowing about the different paperwork that is going to be needed when deciding to get married/divorced, and how these actions depend on the nationality of the person pursuing them. Also, it is essential because it controls necessary parts of living in a country as it is the renting of a flat.

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# 6. Data Protection

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The Data Protection Law was first instituted in Spain in 2000 and it has suffered several modifications since then, being the last one included in 2011. It can be found under the Organic Law 15/1999 of Personal Data Protection. (Boletín Oficial del Estado 2011)

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## 6.1. What is personal data?

According to the Spanish Law, personal data can be considered as any information related to physical persons who are either identified or could be identified. (Boletín Oficial del Estado 2011)

## 6.2. Sensitive Data Inside Personal Data

Sensitive data is a part of personal data that can show concrete information about the person, such as: race or ethnic background, political opinions, religious or moral convictions, syndicate affiliation, health or sex related information... In general, sensitive data englobes any data able to reproduce, either by its nature or its context, any type of discrimination towards the person.

Sensitive data is protected under article 7, and no one can be obliged to give this type of information to anyone. In case it is intended to gather information about sensitive data, it is compulsory to previously let know the person and to get the written consent of the person.

In the case of ideological, synodical affiliation, religion and beliefs information, the exception comes in the files about affiliates, associates of members that are owned by communities expressly due to these types of endings (religious, political, syndicates...), as long as the granting of that information has the consent of the person.

Information related to race, health and sex life can only be gathered if a law establishes it or there is an expressed consent.

It is forbidden to have a stocked file of sensitive information with the only excuse of stocking information.

Sensitive data, however, can be used by health personnel as long as the use is related to the prevention or medical diagnosis of the person. However, it must be done under professional secrecy. (Boletín Oficial del Estado 2011)

### 6.3. Collecting personal information

The collection notices, rights and obligations are included in Article 5 of the Data Protection law.

All people need to be previously warned and informed about any collection of personal information. They will also need to be informed about the existence of any files, the use it is going to be made of that data, and who is going to be receiver of the information.

In case the information about a person has not been obtained by the person, it will be compulsory to inform him/her in a maximum time of 3 months since the gathering, unless there is a law that says it is not necessary, or the data is going to be used for historical, scientific or statistical matters, if it becomes impossible to contact the person, or if the information comes from publicly accessed sources. (Agencia Española de Protección de Datos 2014)



## 6.4. Freedom of Information and Expression

According to Article 20 of the Spanish Constitution, they should be recognised and protected the rights to freely express and spread thoughts, ideas and opinions through words, writings or any other mean; the right of literary, artistic, scientific and technical creation; the right of academic freedom; and the right to communicate or receive information by any mean of diffusion. None of these rights can be restricted through censorship.

Those freedoms have the limit in the respect to the rights previously mentioned, the laws and the right of honour, intimacy, image and protection of youth and childhood. Only buy a legal resolution will be acceptable to agree a kidnapping of publications, recording or other means of information. (Congreso de los Diputados 2003)

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## 6.5. Short Story

Anne and John have realised that the webpage of a company which makes activities for children birthdays and events, has uploaded a picture of their son; they are upset because they did not recall signing any type of data protection agreement, and the child is under 18.

Since they were not warned about the use of that data, they firmly believe it is illegal from them to upload that picture.

According to the Spanish law, one of the limits regarding freedom of expression is the protection of youth and childhood. Considering this, it would not be legal for the webpage to post any image of an underage person unless they have written consent of the parents.

**Do you know any other limit regarding freedom of expression in Spain? Could you explain which data is considered “sensitive” and why?**

## 6.6. Summary

Personal data is a very delicate topic as it involves information about individuals that should not be disclosed before previous agreement. The treatment of that information should be highly careful.

Also, it is important to always remember the freedom of information and expression; however, it is a topic that can in some cases crash with personal data protection, since sometimes the information one is willing to obtain/promote involves another person's personal data.

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## 6.7. Bibliography

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