UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	**Izvršljivost pravnih poslov v teoriji in praksi**
Course title:	**Enforceability of Legal Transactions in Theory and Practice**

Študijski program in stopnja **Study programme and level**	**Študijska smer** **Study field**	**Letnik** **Academic year**	**Semester** **Semester**
Pravo – 1. stopnja		3	2
Law – 1st degree		3	2

Vrsta predmeta / Course type:	izbirni / elective
Koda predmeta /Course code:	izbirni / elective

Predavanja **Lectures**	**Seminar** **Seminar**	**Vaje** **Tutorial**	**Druge oblike študija** **Other type study**	**Samost. delo** **Individual work**	**ECTS**
30				120	6

Nosilec predmeta / Lecturer:		doc. dr. Nina Pleterski / Asst Prof Nina Pleterski
Jeziki/Languages:	Predavanja / Lectures:	slovenski jezik / Slovenian
	Seminar / Seminar:	slovenski jezik / Slovenian

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

Vpis v 3. letnik študija.
Zahteva se vsaj 80 % prisotnost na predavanjih.

Prerequisites:

Enrollment in the 3rd year of studies.
At least 80% attendance at lectures is required.

Vsebina:

Predmet obravnava temeljne institute izvršilnega prava in njihovo povezanost z obligacijskim, družinskim in dednim pravom ter s pravno ureditvijo neposredno izvršljivih notarskih zapisov.

Študentje se seznanijo z razliko med veljavnostjo, pravnimi učinki in izvršljivostjo pravnih poslov ter z vlogo določnosti oziroma objektivne določljivosti, zapadlosti in obličnosti obveznosti kot ključnih predpostavk za pravno varnost in učinkovito izvršbo.

Ob upoštevanju relevantnih določb Zakona o izvršbi in zavarovanju (ZIZ), Obligacijskega zakonika (OZ), Zakona o notariatu (ZN), Družinskega zakonika (DZ) in Zakona o dedovanju (ZD) predmet obravnava zlasti:

- vrste izvršilnih naslovov, pogoje za izvršljivost ter primernost izvršilnega naslova za izvršbo;
- neposredno izvršljiv notarski zapis, zlasti soglasje z neposredno izvršljivostjo, zapadlost terjatve ter določnost oziroma objektivno določljivost obveznosti;
- obličnost in vsebino listin, ki lahko predstavljajo izvršilni naslov;
- razliko med neposredno izvršljivim notarskim zapisom, sodno odločbo in sodno poravnavo ter med neposredno izvršljivimi

Content (Syllabus outline):

The course examines the fundamental institutions of enforcement law and their relationship with the law of obligations, family law and inheritance law, as well as the legal regulation of directly enforceable notarial deeds.

Students become familiar with the distinction between the validity, legal effects and enforceability of legal transactions, and with the role of certainty or objective determinability, due date (maturity) and form of obligations as key prerequisites for legal certainty and effective enforcement.

Taking into account the relevant provisions of the Enforcement and Security Act (ZIZ), the Code of Obligations (OZ), the Notaries Act (ZN), the Family Code (DZ) and the Inheritance Act (ZD), the course in particular covers:

- the types of enforcement titles, the requirements for enforceability and their suitability for enforcement;
- directly enforceable notarial deeds, in particular consent to direct enforceability, the due date (maturity) of the claim, and the certainty or objective determinability of obligations;
- the form and content of documents that may constitute an enforcement title;

listinami in listinami, ki postanejo izvršljive po sodni poti; – izvršljivost denarnih in nedenarnih obveznosti ter posebnosti oblikovanja obveznosti dati, storiti, opustiti ali dopustiti; – potrošniški vidik neposredno izvršljivih notarskih zapisov, zlasti vprašanje nepoštenih pogodbenih pogojev in meje sodnega nadzora v izvršilnem postopku; – praktične vidike priprave pogodb in oblikovanja tožbenih zahtevkov, ki omogočajo učinkovito izvršbo.	– the distinction between a directly enforceable notarial deed, a judicial decision and a judicial settlement, as well as between directly enforceable instruments and those that become enforceable through judicial proceedings; – the enforceability of monetary and non-monetary obligations and the specific features of structuring obligations to give, to do, to refrain from doing or to tolerate; – the consumer-law aspects of directly enforceable notarial deeds, in particular unfair contract terms and the limits of judicial review in enforcement proceedings; – practical aspects of drafting contracts and formulating claims in a manner that enables effective enforcement.

Temeljna literatura in viri / Readings:

Obvezna / Compulsory:
Rijavec, V. (2003). Civilno izvršilno pravo. Ljubljana: GV Založba.
Zakon o izvršbi in zavarovanju (ZIZ) - izbrana poglavja.
Obligacijski zakonik (OZ) - izbrane določbe.
Zakon o notariatu (ZN) - izbrane določbe.
Družinski zakonik (DZ) - izbrane določbe.
Zakon o dedovanju (ZD) - izbrane določbe.
Izbrana sodna praksa Vrhovnega sodišča Republike Slovenije in višjih sodišč o izvršljivosti notarskih zapisov, pogojnih obveznostih in določnosti zahtevkov. / Selected case law of the Supreme Court of the Republic of Slovenia and the higher courts concerning the enforceability of notarial deeds, conditional obligations, and the determinability of claims.

Priporočena / Recommended:
Gentile, G. (2023). Effective Judicial Protection: Enforcement, Judicial Federalism and the Politics of EU Law. European Law Open, 2(1), str. 128–143.
Lipovec, B. (1996). Izterjava dolgov v teoriji in praksi s primeri. Radovljica: Skriptorij KA.
Merc, I. (2021). Recovery of Interest in Enforcement Procedure in the Republic of Slovenia. Lexonomica, 13(1), str. 69–90.
Pleterski Puharič, N. (2021). Premoženjskopravne posledice sklenitve zakonske zveze. Podjetje in delo, 47(2), str. 261–278.
Zupančič, K., Žnidaršič, V. (2009). Dedno pravo. Ljubljana: Uradni list Republike Slovenije.

Cilji in kompetence:

Študentje bodo razvili **splošne kompetence**:
- sposobnost analize in kritične presoje vprašanj s področja izvršilnega in civilnega prava;
- sposobnost uporabe zakonodaje in sodne prakse pri reševanju konkretnih pravnih vprašanj;
- sposobnost samostojnega pravnega razmišljanja in oblikovanja utemeljenih pravnih stališč;
- sposobnost jasnega ustnega in pisnega pravnega izražanja;

Objectives and competences:

Students will develop the following **general competences**:
- the ability to analyse and critically assess issues in enforcement and civil law
- the ability to apply legislation and case law in resolving concrete legal problems;
- the ability to engage in independent legal reasoning and formulate well-founded legal arguments;
- the ability to communicate legal reasoning clearly in oral and written form;

• sposobnost povezovanja izvršilnega prava z obligacijskim, družinskim, dednim in civilnim procesnim pravom.	the ability to connect enforcement law with the law of obligations, family law, inheritance law and civil procedure.
Študentje bodo razvili **predmetno-specifične kompetence**: • sposobnost samostojne analize izvršljivosti pravnih poslov; • sposobnost prepoznavanja in pravne presoje pogojev za pridobitev lastnosti izvršilnega naslova; • sposobnost oblikovanja pravnih poslov in obveznosti z vidika njihove izvršljivosti; • sposobnost oblikovanja tožbenih zahtevkov, primernih za učinkovito izvršbo; • sposobnost pravilne in argumentirane uporabe določb ZIZ, ZN, OZ, DZ in ZD v konkretnih primerih; • sposobnost prepoznavanja in preprečevanja tveganj neizvršljivosti, zlasti zaradi nedoločnosti, pomanjkljive določljivosti, neustrezno opredeljene zapadlosti ali nespoštovanja obličnosti; • sposobnost uporabe sodne prakse o neposredni izvršljivosti in določljivosti terjatev.	Students will develop the following **course-specific competences:** • the ability to independently analyse the enforceability of legal transactions; • the ability to identify and assess the requirements for obtaining the status of an enforcement title; • the ability to structure legal transactions and obligations with regard to their enforceability; • the ability to formulate claims suitable for effective enforcement; • the ability to correctly and in a reasoned manner apply the provisions of ZIZ, ZN, OZ, DZ and ZD in concrete cases; • the ability to identify and prevent risks of non-enforceability, in particular due to lack of certainty, insufficient determinability, improper definition of maturity or failure to comply with formal requirements; • the ability to use case law concerning direct enforceability and determinability of claims.

Predvideni študijski rezultati: **Znanje in razumevanje:**	**Intended learning outcomes:** **Knowledge and understanding:**
Študent bo: • sposoben opredeliti pojem izvršljivosti ter razlikovati med veljavnostjo, pravnimi učinki in izvršljivostjo pravnih poslov; • zmožen razložiti vrste izvršilnih naslovov ter pogoje za njihovo izvršljivost in primernost za izvršbo; • zmožen pojasniti vlogo obličnosti, določnosti oziroma objektivne določljivosti in zapadlosti obveznosti za izvršljivost pravnih poslov; • zmožen razlikovati med neposredno izvršljivimi listinami in listinami, ki postanejo izvršljive po sodni poti, ter pojasniti njihovo razmerje do sodne odločbe in sodne poravnave; • zmožen analizirati povezavo med določbami ZIZ, ZN, OZ, DZ in ZD pri oblikovanju pravnih poslov in obveznosti; • zmožen oblikovati obveznosti tako, da so določene ali objektivno določljive ter ustrezno opredeljene glede zapadlosti; • zmožen pripraviti osnutek pravnega posla, primernega za neposredno izvršljiv notarski zapis ali za uveljavljanje po sodni poti; • zmožen oblikovati tožbeni zahtevek, primeren za učinkovito izvršbo;	**Students will:** • be able to define the concept of enforceability and distinguish between the validity, legal effects and enforceability of legal transactions; • be able to explain the types of enforcement titles and the requirements for their enforceability and suitability for enforcement; • be able to explain the role of form, certainty or objective determinability and maturity of obligations for enforceability; • be able to distinguish between directly enforceable instruments and instruments that become enforceable through judicial proceedings and explain their relationship to judicial decisions and settlements; • be able to analyse the interaction between ZIZ, ZN, OZ, DZ and ZD in structuring legal transactions and obligations; • be able to structure obligations so that they are certain or objectively determinable and properly defined in terms of maturity; • be able to draft a legal transaction suitable for a directly enforceable notarial deed or for judicial enforcement; • be able to formulate a claim suitable for effective enforcement;

• zmožen uporabiti ustrezne zakonske določbe in sodno prakso pri reševanju konkretnih primerov; • zmožen prepoznati in pravno ovrednotiti tipične napake, ki vodijo v neizvršljivost, ter predlagati ustrezne rešitve; • zmožen pravno utemeljiti izbiro ustrezne poti izvršbe, zlasti med neposredno izvršljivostjo ter izvršbo na podlagi sodne odločbe ali sodne poravnave; • zmožen kritične refleksije vprašanj izvršljivosti pravnih poslov ter njihovega pomena za pravno varnost in učinkovito sodno varstvo; • usposobljen za avtonomno iskanje, razlago in uporabo pravnih virov ter sodne prakse pri reševanju zahtevnejših vprašanj izvršljivosti pravnih poslov.	• be able to apply relevant statutory provisions and case law in concrete cases; • be able to identify and legally evaluate typical errors leading to non-enforceability and propose appropriate solutions; • be able to justify the choice of the appropriate enforcement route, in particular between direct enforceability and enforcement based on a judicial decision or judicial settlement; • be capable of critical reflection on issues of enforceability of legal transactions and their significance for legal certainty and effective judicial protection; • be trained to independently search for, interpret and apply legal sources and case law in resolving more complex issues of enforceability of legal transactions.

Metode poučevanja in učenja:	**Learning and teaching methods:**
Oblike dela: ☒ Frontalna oblika poučevanja ☐ Delo v manjših skupinah oz. individualno ☒ Samostojno delo študentov ☒ Študij s pomočjo IKT tehnologij ☐ drugo (vpišite) _____ **Metode (načini) dela:** ☒ Razlaga ☒ Razgovor/ diskusija/debata ☒ Delo z besedilom ☐ Proučevanje primerov raziskav ☐ Igra vlog ☐ Druge vrste nastopov študentov ☒ Reševanje nalog/vaje ☐ Študijski obiski podjetij ipd. ☐ Vključevanje gostov iz prakse ☐ Udeležba na okrogli mizi, na konferenci ☒ Ustno odgovarjanje na vprašanja in ustno reševanje krajših primerov na predavanjih	**Types of learning/teaching:** ☒ Frontal teaching ☐ Work in smaller groups or individual work ☒ Independent student work ☒ Study with the help of ICT technologies ☐ other _____ **Teaching methods:** ☒ Explanation ☒ Conversation/discussion/debate ☒ Work with texts ☐ Research case studies ☐ Role-play ☐ Different presentation ☒ Solving exercises/study exercises ☐ Field work (e.g. company visits) ☐ Inviting guests from companies ☐ Attending round table and conference ☒ Oral responses to questions and oral resolution of shorter cases during lectures

Načini ocenjevanja: **Način (pisni izpit, ustno izpraševanje, naloge, projekt)**	**Teža (v %) /** **Weight (in %)**	**Assessment:** **Type (examination, oral, coursework, project)**
Sprotno ustno preverjanje znanja (aktivno sodelovanje pri predavanjih)	**10 %**	Oral verification and assessment of knowledge (active participation in lectures)
Končni izpit (pisni)	**90 %**	Final examination (written)

Reference nosilca / Lecture's references:

Nina Pleterski je docentka za Civilno in gospodarsko pravo na Evropski pravni fakulteti Nove univerze ter odvetnica in soustanoviteljica Odvetniške pisarne Pleterski Puharič, d.o.o. Naziv univerzitetne diplomirane pravnice in doktorice pravnih znanosti je pridobila na Pravni fakulteti Univerze v Ljubljani. V svojem strokovnem, raziskovalnem in pedagoškem delu se posveča civilnemu pravu ter aktualnim in razvojnim vprašanjem zasebnega prava, pri čemer posebno pozornost namenja povezovanju pravne teorije in prakse. Objavlja znanstvene in strokovne članke v domačih in tujih revijah s področja premoženjskopravnih razmerij, veljavnosti pravnih poslov ter pravnih izzivov novih tehnologij.
E-povezava do bibliografije v sistemu SICRIS https://cris.cobiss.net/ecris/si/sl/researcher/56687.

Nina Pleterski is Assistant Professor of Civil and Commercial Law at the European Faculty of Law (New University), an attorney-at-law and co-founder of the law firm Pleterski Puharič, Ltd. She obtained her LL.B. and PhD in Law from the Faculty of Law at the University of Ljubljana. Her professional, research and teaching work focuses on civil law and on contemporary and emerging questions of private law, with particular attention to bridging legal theory and practice. She publishes scholarly and professional articles in domestic and international journals on property relations, the validity of legal transactions, and the legal challenges posed by new technologies.
Electronic link to the bibliography in the SICRIS system https://cris.cobiss.net/ecris/si/sl/researcher/56687.