

EXECUTIVE PROCEDURE

Degree in Legal Studies (Solicitors)

Degree in Legal Studies (Solicitors)

Code: 16912

Main Scientific Area: Legal Practice

Lecturer: Diana Isabel da Silva Leiras

Language of Instruction: Portuguese

Regime: S1

Contact Hours: 60h Total Workload: 108h

ECTS: 6,0

Objectives

- Contextualizing the enforcement proceedings in the current paradigm by examining the basic principles of the latest reforms of the enforcement proceedings.
- Observe the particularities of the general principles of civil procedural law in enforcement proceedings.
- Study the concept and purposes of enforcement proceedings.
- Analyze, critique and expand on the inadmissibility of general and specific enforcement.
- Explore and analyze the phases and the formalities of enforcement proceedings for payment of certain amount.
- Studying the declarative grafts in the executive, opposition to the implementation, opposition to the seizure, liquidation, and graduation and verification of claims.

Learning Outcomes

- Frame and recognize the characteristics of the enforcement proceedings in accordance with the basic procedural models.
- Knowing the evolution of the paradigm of proceedings in the Portuguese law.
- Knowing the actors involved in proceedings, and their functions, responsibilities and procedural status.
- Identify the actions on the executive order before a specific situation.
- Being able to identify and classify the enforcement orders, and the requirements of certainty, enforceability and liquidity of the obligation being enforced.
- Apply the general prerequisites in enforcement proceedings, recognizing their differences.
- Given specific situations, apply the procedure action, since the entry of the request until the stage of payment.
- Know and identify situations that determine the existence of ancillary proceedings and know their procedure in practical cases.

Course Contents

A) GENERAL FRAMEWORK FOR ENFORCEMENT ACTIONS

1. Enforcement

1.1 Concept and legal framework

1.2 Single enforcement and universal enforcement

1.3 Purposes

1.4 Forms of proceedings

2. Enforcement action and some fundamental principles of civil procedure

3. The enforcement agent

3.1 Functional competence

3.2 Exercise of functions

3.3 Fees and expenses

3.4 Performance of duties by bailiffs

4. Powers of the enforcement judge

5. Powers of the registry

B) ENFORCEMENT PROCEEDINGS - GENERAL PART

1. Specific procedural prerequisites for enforcement action

1.1 The enforcement order

1.2 Requirements of the enforceable obligation

2. General procedural prerequisites for enforcement actions

2.1 Legal representation

2.2 Jurisdiction of the court

2.3 Legal standing

2.4 Plurality of subjects - joint ventures and coalitions

2.5 Plurality of claims - cumulation of executions

C) ENFORCEMENT ACTION FOR PAYMENT OF A SUM CERTAIN IN THE ORDINARY COMMON FORM

1. Scope

2. Enforcement application
3. Injunction order and possible contents of the injunction order
4. Service on the defendant and waiver of prior service
5. Opposition to enforcement by means of a motion to stay enforcement
 - 5.1 Concept, legitimacy and opportunity
 - 5.2 Grounds: in enforcement of judgement and in enforcement of another title
 - 5.3 Formalities, effects and procedure
6. Attachment
 - 6.1 Concept and general principles
 - 6.2 Effects of attachment
 - 6.3 Limits on attachment
7. Attachment stage
 - 7.1 Consultation and steps for attachment
 - 7.2 Order of attachment
 - 7.3 Reinforcing, replacing or lifting the attachment
 - 7.4 Methods of realising attachment
8. Opposition to attachment
 - 8.1. Scope, grounds and procedure
 - 8.2 Third-party embargoes
 - 8.3 Formalities
9. Summons and contest of creditors
 - 9.1 Summoning the defendant's spouse and creditors
 - 9.2 Claims
 - 9.3 Challenging claims made
 - 9.4 Verification and ranking of claims

10. Payment

10.1 Modalities

10.2 Adjudication of seized assets

10.3 Consignment of income

10.4 Payment in instalments and global agreement

10.5 Executive sale

11. Suspension, cancellation, renewal and annulment of enforcement

11.1 Suspension of enforcement

11.2 Termination of enforcement

11.3 Renewal of enforcement

11.4 Cancellation of enforcement

D) THE ORDINARY SUMMARY ENFORCEMENT PROCEDURE FOR PAYMENT OF A SUM CERTAIN

1. Scope

2. Procedure

2.1 Introductory phase

2.2 Subsequent phase

3. The enforcer's liability

4. Conversion of enforcement

E) BRIEF REFERENCE TO OTHER ENFORCEMENT PROCEDURES

1. Common enforcement procedures for the delivery of a certain thing and for the performance of a deed

2. Special enforcement proceedings for maintenance

3. Extrajudicial pre-enforcement procedure

Recommended Bibliography

GONÇALVES, Marco Carvalho de, Lições de Processo Civil Executivo, 5.^a edição, Almedina, 2023;

FREITAS, José Lebre, A ação executiva à Luz do Código de Processo Civil de 2013, 7.^a edição, Gestlegal, 2017;

LEIRAS, Diana, A determinação dos bens a penhorar no Código de Processo Civil. Contributo para a sua compreensão, Gestlegal, 2020;

MESQUITA, Lurdes/ROCHA, Francisco Costeira da, A ação executiva no Novo Código de Processo Civil, VidaEconómica, 3.^a edição, 2014.

Learning and Teaching Methods

The objectives of the course are adequate for the syllabus and are developed in accordance with the evolution of the learning contents. The contents of Part A and D on the General Part and Other Processes Execution of the executive action would achieve the objectives outlined in 1-6. In Part B and C of the program, where enforcement process to pay certain amount is treated, are covered content that will provide the student achieve the objectives 7-12.

Assessment Methods

1. In the continuous and periodic evaluation, the evaluation will be realized to following elements:

a) A practical case, presencial, with a weighting of 35% in the final grade.

b) A test, presencial, presencial, with a weighting of 65% in the final grade.

A minimum complete score of 8.0 is required (without rounding) in each evaluation element.

The students will get approval with a classification equal to or higher than 10 values, after the proper weighting of the evaluation components has been carried out.

The dates on which the evaluations will be carried out shall include the schedule drawn up by the Course Director.

2. Evaluation by final exam is conducted through written exam with 100 % weighting. Students obtain approval rating equal to or higher than 10.

* Oral tests will not be performed.