

## **CIVIL LAW. CONTRACTS**

**Bachelor of Laws LLB [2504110] SEP-2023 CLC-NLL.1.S.A**

Area Private and Business Law

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Degree course: FIRST

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Pablo Hernández Collado (LLM) is an Adjunct Professor at IE University. He has also held professor positions at ISDE Law Business School (Madrid). He focuses on Comparative Private Law, in particular Contracts. He is a Bachelor of Laws (LLB) graduate at the Universidad de Granada (UGR) and a Master of Laws (LLM) and Master in Corporate Law graduate at the Universidad Pontificia de Comillas (ICADE). He is a member of the Madrid Bar Association and has more than five years' experience working as a Corporate/M&A lawyer in some renowned Spanish law firms such as Ontier or Uría Menéndez, where he has acted as legal expert in some of the most significant M&A transactions in recent years in Spain

### **Office Hours**

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## **SUBJECT DESCRIPTION**

Contracts are at the basis of society, not only in respect of patrimonial matters –on which this course will focus- but also as regards extra-patrimonial issues. The approach taken by the government, legislators, judges, lawyers, companies, private parties and other stakeholders in relation to the formation and performance of contracts has a profound effect on the economies and legal certainties of countries and constitute an important element in the reception of national and foreign investments. Therefore, contracts have traditionally deserved a distinguished place within Law.

However, far from being a theoretical subject, Contract Law should start from reality. In this sense, it is a commonplace that globalization has caused a profound transformation in the geographical and personal basis of transactions –which are ruled by contracts-. The so-called «information society» has allowed people to be better communicated and has fostered international contracts. In addition to the aforementioned, the increasing technological development has reinforced imbalances among parties, which are not only found in the business to consumers (B2C) relationship but also among business contracts (B2B). For several decades now, legal transactions have shown that the presupposition of absolute equality between the parties, a cornerstone of classic contract law is rarely fulfilled, above all if examining inequality is not limited to the different condition (mainly professional or otherwise) of the parties, but also includes informational inequality and situational asymmetries.

The said changes in the economic reality have shaken the structure of contract law. The nineteenth-century (national) concept of contracts and rules that applied to them –which are still largely in force, at least from a formal perspective- have proven to be unable to cope with the current status quo. The contract is not in crisis as it was supposed to be some decades ago, but the nineteenth-century dogma that has for long defined it. It is essential to rebuild the notion of contract in order to bridge the enormous gap existing between the theoretical concepts that are formulated and the realities of life to which they are applied. This task of reconstruction—in a context that is still changing—has not yet been completed.

In this scenario, a comparative methodology seems to be an essential tool. The global market requires lawyers that are able to understand the similarities and differences of distinct legal systems and to think out of the box of established concepts. In this respect, the internationalization of contracts is an issue that can no longer be ignored as it is also having a strong influence on the modernization of national laws, in an often controversial and not always correctly appreciated process. The understanding of classic contract law and the detection of the most relevant new features of it are key to determine the outcome of transactional problems.

This course is taught by the Jean Monnet Centre of Excellence for Law & Automation, an IE University undertaking supported by the prestigious Jean Monnet Programme of the European Commission. The course is designed to train students in the richness and variety of European legal traditions as the best asset to cope with the most innovative of topics such as AI and robotics. Combining diverse national laws with EU law will embed in students the capacity of Europe to provide the best legal standards in this matter. This will help future policy makers to design regulation and help lawyers to be more creative in the application of the law. The combination of lectures, cases studies, and individual presentations aims to provide students with a participative, practical and supervised learning, which will reinforce their capacity to approach challenges such as the one posed by AI.

## **LEARNING OBJECTIVES**

- Facilitating a general understanding of contract law in the main European common and civil law jurisdictions.
- Deepening in the meaning and function of the main institutions of contract law.
- Analyzing the possible existence of a common international contract law.
- Determining possible common outcomes to similar facts, in different legal systems.
- Understanding the reasoning behind standing differences between European systems.
- Studying the context and status of the European process of unification and harmonization of contract law.
- Equipping students with the ability to propose how new technologies that impact contracts, in particular AI, should be regulated in the EU.
- Describe the main elements of contract law in the selected European common and civil law jurisdictions.
- Discuss the ongoing tensions between classic and modern contract law.
- Describe the key aspects in respect of contract formation, interpretation and performance.
- Look into the legal framework of contract law in different countries.
- Solve cases related to contract law in different European countries.
- Critically analyze different contract law systems and international conventions.
- Suggest a legal framework for new technologies, with a special focus on AI.

## **TEACHING METHODOLOGY**

IE University teaching method is defined by its collaborative, active, and applied nature. Students actively participate in the whole process to build their knowledge and sharpen their skills. Professor's main role is to lead and guide students to achieve the learning objectives of the course. This is done by engaging in a diverse range of teaching techniques and different types of learning activities such as the following:

The course adopts a comparative law methodology, from a functional perspective, whereby legal rules are compared from their application to similar factual problems. The course combines theoretical lessons and applied exercises (case studies or fact patterns). During the theoretical sessions the professor will lead the learning process, in combination with a practical approach. For those sessions the syllabus indicates readings, which are mandatory except otherwise stated. To adequately attend class it is crucial to read those materials beforehand. Reading quizzes will be frequent to ensure that. The syllabus specifies those sessions that are reserved for case studies. Those sessions have a practical approach and will consist in solving cases (fact patterns), in groups, that will have to be turned in before the beginning of the class.

Participation of students will be a key aspect of the course. The Professor will lead their learning process through presentations and lectures, but students are expected to show an active attitude and demonstrate their achievements in class through their interventions. Students will be involved in collaborative and competitive activities in order to obtain the maximum results. Answering questions and questioning will be also part of the methodology. Other important elements of the learning process are workshops and online fora, where students will have to reveal their progress.

It is expected that students become familiar with the use of legal texts and case law. Legal materials and discussions will help students to learn the core concepts of contract law. Students will discover the essence of the law of contracts by reading, thinking and discussing about all the topics included in this course.

Learning Activity	Weighting	Estimated time a student should dedicate to prepare for and participate in
Lectures	48.0 %	72.0 hours
Discussions	6.67 %	10.0 hours
Group work	20.0 %	30.0 hours
Individual studying	25.33 %	38.0 hours
TOTAL	100.0 %	150.0 hours

## PROGRAM

### A. INTRODUCTION

#### SESSION 1 (LIVE IN-PERSON)

??Introduction to the subject. Methodology. Introduction to the Law of Contracts. The sources of Contract Law and the Law of Obligations.

#### SESSION 2 (LIVE IN-PERSON)

Categories of contracts. The requirements for a valid contract: presentation.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapter 5 (See Bibliography)*

### B. THE FORMATION OF CONTRACTS. REQUIREMENTS

#### SESSION 3 (LIVE IN-PERSON)

Offer.

#### SESSION 4 (LIVE IN-PERSON)

Acceptance.

#### SESSION 5 (LIVE IN-PERSON)

Case Study?

#### SESSION 6 (LIVE IN-PERSON)

Pre-contractual liability.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapter 13 (See Bibliography)*

## **SESSION 7 (LIVE IN-PERSON)**

Cause.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapter 11 (See Bibliography)*

## **SESSION 8 (LIVE IN-PERSON)**

Consideration.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapter 11 (See Bibliography)*

## **SESSION 9 (LIVE IN-PERSON)**

Formalities.

## **SESSION 10 (LIVE IN-PERSON)**

Illegal contracts.

## **C. VICES OF CONSENT**

## **SESSION 11 (LIVE IN-PERSON)**

Mistake and fraud in the civil law. Duties of information?.

## **SESSION 12 (LIVE IN-PERSON)**

Misrepresentation and mistake in English law?.

## **SESSION 13 (LIVE IN-PERSON)**

Threat. Undue influence. Unconscionable bargains. Algorithmic bias.

## **SESSION 14 (LIVE IN-PERSON)**

Case study.

## **SESSION 15 (LIVE IN-PERSON)**

Midterm exam.

## **D. THE CONTENTS OF CONTRACTS**

## **SESSION 16 (LIVE IN-PERSON)**

Terms (introduction: types, sources). Express Terms.

## **SESSION 17 (LIVE IN-PERSON)**

Interpretation (of express terms).

## **SESSION 18 (LIVE IN-PERSON)**

The control of unfair terms.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapter 21 (See Bibliography)*

## **SESSION 19 (LIVE IN-PERSON)**

Non-mandatory law and implication of terms.

## **SESSION 20 (LIVE IN-PERSON)**

Terms in specific contracts: Sales.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapters 19 & 27 (See Bibliography)*

## **SESSION 21 (LIVE IN-PERSON)**

Terms in specific contracts: Services. Leases.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapter 19 (See Bibliography)*

## **SESSION 22 (LIVE IN-PERSON)**

Terms in specific contracts: other contracts.

## **SESSION 23 (LIVE IN-PERSON)**

Agency.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapter 32 (See Bibliography)*

## **SESSION 24 (LIVE IN-PERSON)**

Case study.

## **E. NON-PERFORMANCE AND REMEDIES**

## **SESSION 25 (LIVE IN-PERSON)**

Performance. The notion of breach and remedies. The remedy of specific performance.

## **SESSION 26 (LIVE IN-PERSON)**

Termination and withholding performance.

## **SESSION 27 (LIVE IN-PERSON)**

Damages.

## **SESSION 28 (LIVE IN-PERSON)**

Excusability: force majeure and frustration. Hardship.

*Book Chapters: H Beale et al. (2019). Cases, materials and text on Contract law. 3rd. Hart, Chapters 28 & 29 (See Bibliography)*

## **SESSION 29 (LIVE IN-PERSON)**

Case study.

## **SESSION 30 (LIVE IN-PERSON)**

Final exam.

## **EVALUATION CRITERIA**

### **GENERAL OBSERVATIONS**

Students are expected to prepare the materials in advance and to participate in the class. Attendance does not amount to participation, which requires an active role from the students. Not only the frequency of interventions, but also the quality of the arguments will be taken into account. Therefore, an adequate preparation of the materials before every session will be required. Reading quizzes will be frequent. Participation in online fora, if it adds value, will enhance the students' participation grade. Class preparation and class participation are essential in order to pass the course. During the exams the use of Internet, mobile phones, smart watches, books, notes, and other materials is not allowed except otherwise indicated by the Professor, in writing.

Students obtaining a grade of at least 7.0 in the mid-term exam may sit for the final exam just for the sessions lectured after the mid-term, as long as the attendance requirement is met. The topics lectured before the mid-term exam are expected to be known and will be needed to successfully pass the final exam. Students obtaining a grade of less than 7.0 in the midterm should sit for the whole subject in the final exam.

In any case, a failure in the final exam (i.e. grade below 5.0) will require sitting for a retake exam of the whole course in order to pass it.

Each student has four attempts over two consecutive academic years to pass this course. Dates and location of the final exam will be posted in advance and will not be changed.

Students must attend at least 80% of the sessions. Students who do not comply with the 80% attendance rule will receive a 0.0 on their first and second attempts and go directly to the third one (they will need to enroll in this course again the following academic year).

Students who are in the third or fourth attempt should contact the professor during the first two weeks of the course.

<b>criteria</b>	<b>percentage</b>	<b>Learning Objectives</b>	<b>Comments</b>
Final Exam	30 %		
Group Work	20 %		
Class Participation	20 %		
Intermediate tests	30 %		

### **RE-SIT / RE-TAKE POLICY**

Any student whose final grade is below 5 will be required to sit for the retake exam to pass the course (except those not complying with the attendance rules, whom are banned from this possibility).

Grading for retakes will be subject to the following rules:

The retakes will consist on a comprehensive exam. The grade will depend only on the performance on this exam; continuous evaluation over the semester will not be taken into account.

The exam will be designed bearing in mind that the passing grade is 5 and the maximum grade that can be attained on the second and fourth attempts is 8 out of 10.

The third attempt will require the student to complete:

- a midterm exam,
- a final exam.

This is also applicable to students who do not have required attendance, e.g. sickness.

Dates and location of the retakes will be posted in advance and will not be changed.

In case of grade below 5.0, the student is required to take the retake exam to pass the course.

The maximum grade in the retake period is 8.0 and all exams will be graded taking this into consideration.

Students who do not comply with the 80% attendance rule will lose their 1st and 2nd chance, and go directly to the 3rd one (they will need to enroll again in this course the following academic year). Students who are in third or fourth call should contact the professor during the first two weeks of the course.

The exam will cover everything that students have learnt in class, including lectures, fora, case discussions and group exercises.

### **BIBLIOGRAPHY**

#### **Recommended**

- H Beale et al. (2019). *Cases, materials and text on Contract law*. 3rd. Hart. ISBN 9781509912575 (Printed)

### **BEHAVIOR RULES**

Please, check the University's Code of Conduct [here](#). The Program Director may provide further indications.

### **ATTENDANCE POLICY**



Please, check the University's Attendance Policy [here](#). The Program Director may provide further indications.

## **ETHICAL POLICY**

Please, check the University's Ethics Code [here](#). The Program Director may provide further indications.

