

CIVIL LAW. CONTRACTS

GRADO EN DERECHO / BACHELOR OF LAWS

Professor: **BEATRIZ GREGORACI FERNANDEZ**

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Degree course: FIRST

Semester: 2º

Category: BASIC

Number of credits: 6.0

Language: English

PREREQUISITES SUBJECT DESCRIPTION

Contracts are on 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 among the Law.

However, far from being a theoretical subject, Contract Law should start from reality. In this sense, it is a common place 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.

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.

think out of the box of established concepts. In this respect, 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 clue to determine the outcome of transactional problems. A complete analysis requires an introduction to Torts with which Contract Law shares, in certain issues, confusing boundaries.

OBJECTIVES AND SKILLS

This course aims at:

- 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, with particular emphasis on the Draft Common Frame of Reference (DCFR).

By the end of the course, students will be expected to be able to:

- Describe the main elements of Contract Law in the main European Common and Civil Law jurisdictions.
- Discuss about 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 and Tort systems, and international conventions.

METHODOLOGY

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 in the class their achievements 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 case study sessions, where students will have to reveal their progress. Finally, 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 Contracts and Torts, which form the basis of Private Law. Students will discover the essence of the law of obligations by reading, thinking and discussing about all the topics included in this course.

| Teaching methodology | Weighting | Estimated time a student should dedicate to prepare for and participate in |
|----------------------|-----------|----------------------------------------------------------------------------|
| Lectures | 26.0 % | 39 hours |
| Discussions | 0.0 % | 0 hours |

| | | |
|---------------------------|---------|-----------|
| Exercises | 0.0 % | 0 hours |
| Group work | 13.33 % | 20 hours |
| Other individual studying | 60.67 % | 91 hours |
| TOTAL | 100.0 % | 150 hours |

PROGRAM

A. INTRODUCTION

SESSION 1

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

SESSION 2

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

B. THE FORMATION OF CONTRACTS. REQUIREMENTS

SESSION 3

Offer

SESSION 4

Acceptance. The intention to create legal relations.

SESSION 5

Case study

SESSION 6

Cause

SESSION 7

Consideration

SESSION 8

The formation of smart contracts

SESSION 9

Form. Pre-contractual liability

C. INVALIDITY

SESSION 10

Mistake and fraud in the Civil law. Duties of information

SESSION 11

Mistake and Misrepresentation in English Law

SESSION 12

Threat. Undue influence.

SESSION 13

Illegal contracts. Case study

D. THE CONTENTS OF A CONTRACT

SESSION 14

Express terms. Interpretation.

SESSION 15

Mid-term exam

SESSION 16

Implied terms. Non-mandatory law and implication of terms

SESSION 17

The role of good faith and the policing of unfair terms.

SESSION 18

Terms in specific contracts (I). Sales

SESSION 19

Terms in specific contracts (II). Services. Leases. Donations

SESSION 20

Terms in specific contracts (III). Other contracts

SESSION 21

Agency.

SESSION 22

Case study

E. NON-PERFORMANCE AND REMEDIES

SESSION 23

Performance and terms. Breach. Specific performance

SESSION 24

Withholding performance. Termination

SESSION 25

Damages

SESSION 26

Excusability: force majeure and hardship. Frustration. Case study

F. TORTS

SESSION 27

The French and Spanish systems

SESSION 28

The German and English systems

SESSION 29

Strict liability. Liability for others (vicarious).

SESSION 30

Final exam

BIBLIOGRAPHY

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5.1. COMPULSORY (but see note in 5.2.)

Title: Contract Law. A comparative introduction (320 pages)

Author: J. Smits

Publisher / Edition / Year: Edward Elgar/2nd/2017

ISBN / ISSN: 978-1-785368783

Medium: PRINT

5.2. RECOMMENDED

Title: European Contract Law (464 pages). **IMPORTANT NOTICE:** This book can substitute the compulsory one although former students have found it harder to follow. A free online version of the book may be accessed through the university library's webpage.

Author: H. Kötz

Publisher / Edition / Year: OUP/2nd/2017

ISBN / ISSN: 9780198800040

Medium: PRINT

Title: Cases, Materials and Text on Contract Law (1358 pages)

Author: H. Beale, B. Fauvarque-Cosson, J. Rutgers, D. Tallon & S. Vogenauer

Publisher / Edition / Year: Hart Publishing/2nd/2010

ISBN / ISSN: 978-1-84113-604-2

Medium: PRINT

Title: Contract Law. An introduction to the English Law of Contract for the Civil Lawyer

Author: J. Cartwright

Publisher / Edition / Year: Hart/2nd/2013 ISBN

/ ISSN:

Medium: PRINT

Title: The Law of Contract

Author: G. Treitel/E. Peel

Publisher / Edition / Year: Sweet & Maxwell/13th/2011 ISBN

/ ISSN:

Medium: PRINT

Title: Traité de Droit Civil

Author: J. Ghestin

Publisher / Edition / Year: LGDJ ISBN

/ ISSN:

Medium: PRINT

Title: The Principles of European Contract Law

Author: O. Lando/H. Beale

Publisher / Edition / Year: Kluwer/1st/ ISBN

/ ISSN:

Medium: PRINT

Title: Principles, Definitions and Model Rules of European private Law

Author: C. von Bar/E. Clive (Eds.) Publisher/Edition/Year:

OUP/1st/2010.

ISBN / ISSN:

Medium: PRINT

EVALUATION CRITERIA

6.1. GENERAL OBSERVATIONS

Students are expected to have prepared the materials beforehand and to participate in the class. Their interventions will be a part of the final grade. 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. Class preparation and class participation are essential in order to pass the course. During the exams the use of Internet, mobile phones, books or other materials is not allowed.

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 a retake before the final exam. The retake will be oral if the student has obtained at least a 5.0 in the midterm.

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 70% of the sessions. Students who do not comply with the 70% 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.

6.2. RETAKE 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.

o 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. o

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 70% 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, case discussions and group exercises.

| Criteria | Percentage | Comments |
|---------------------|------------|----------|
| Final Exam | 30 % | |
| Midterm | 30 % | |
| Case studies | 20 % | |
| Class Participation | 20 % | |

PROFESSOR BIO

Professor: **BEATRIZ GREGORACI FERNANDEZ**

E-mail: bgregoraci@faculty.ie.edu

Beatriz Gregoraci earned a degree (2001) and Ph.D (2005) in law from the Universidad Autónoma de Madrid; her doctoral thesis on indirect representation received an award for special recognition. Throughout her research career, she has received competitive national scholarships and grants from the Spanish Government including a Ramón y Cajal senior grant, a Juan de la Cierva junior grant, a University Professor Training scholarship and a collaboration scholarship, among others. Her research is focused on contract law, tort law and property law and she has published three books, multiple journal articles and international reviews, and several book chapters. She has also worked in European private law, as a reporter covering Spanish law, and as a translator and proof reader. Professor Gregoraci has had research fellowships in the United Kingdom (University of Sheffield and University of Warwick) and in Germany (Centrum für Europäisches Privatrecht. Institut für Internationales Wirtschaftsrecht. Institut für Rechtsgeschichte). She has vast experience teaching civil law at the undergraduate and graduate level, mainly at the Universidad Autónoma de Madrid and the Universidad de Santiago de Compostela. She has also worked as an attorney in the Litigation & Arbitration Department of Garrigues (Madrid, 2008).

Office hours are available prior appointment. To this end, students should contact the Professor at bgregoraci@faculty.ie.edu

OTHER INFORMATION

CODE OF CONDUCT IN CLASS

1. **Be on time:** : Students arriving more than 5 minutes late will be marked as “Absent”.

Only students that notify in advance in writing that they will be late for a specific session may be granted an exception (at the discretion of the professor).

2. **If applicable, bring your name card and strictly follow the seating chart.** It helps faculty members and fellow students learn your names.
3. **Do not leave the room during the lecture:** Students are not allowed to leave the room during lectures. If a student leaves the room during lectures, he/she will not be allowed to re-enter and, therefore, will be marked as "Absent".

Only students that notify that they have a special reason to leave the session early will be granted an exception (at the discretion of the professor).

4. **Do not engage in side conversation.** As a sign of respect toward the person presenting the lecture (the teacher as well as fellow students), side conversations are not allowed. If you have a question, raise your hand and ask it. If you do not want to ask it during the lecture, feel free to approach your teacher after class.

If a student is disrupting the flow of the lecture, he/she will be asked to leave the classroom and, consequently, will be marked as "Absent".

5. **Use your laptop for course-related purposes only.** The use of laptops during lectures must be authorized by the professor. The use of Social Media or accessing any type of content not related to the lecture is penalized. The student will be asked to leave the room and, consequently, will be marked as "Absent".
6. **No cellular phones:** IE University implements a "Phone-free Classroom" policy and, therefore, the use of phones, tablets, etc. is forbidden inside the classroom. Failing to abide by this rule entails expulsion from the room and will be counted as one absence.
7. **Escalation policy: 1/3/5.** Items 4, 5, and 6 above entail expulsion from the classroom and the consequent marking of the student as "Absent." IE University implements an "escalation policy": The first time a student is asked to leave the room for disciplinary reasons (as per items 4, 5, and 6 above), the student will incur one absence, the second time it will count as three absences, and from the third time onward, any expulsion from the classroom due to disciplinary issues will entail 5 absences.