

**Advanced Master in Legal Sciences /  
Master in European and Global Law  
2016-2017**

**Contract Law in the Global Economy**

**Term: 2**

**ECTS Credits: 4**

**Language: English**

**Prof. Fernando Gómez Pomar / Prof. José Ramón Salelles Climent**

**Office hours:** By appointment only

**Contact:** [fernando.gomez@upf.edu](mailto:fernando.gomez@upf.edu); [ramon.salelles@upf.edu](mailto:ramon.salelles@upf.edu)

**Course description**

This course aims to provide the tools and analytical techniques to understand the role of contracting and contract law in global business behavior and strategy.

The first part of the course focuses on how different legal rules and doctrines of the Law of Contracts affect bargaining, contract formation, performance, and breach of a contract. A number of issues arising from incompleteness of contract and changed circumstances will be addressed.

The second part of the course is devoted to contracting in a number of global business contexts. A list of topics includes: exemption clauses; shareholder agreements, principal-agent problems; and the impact on competition on contract law.

This course is addressed to students interested in learning how to design contract strategies to deal with a wide range of practical and theoretical challenges. In particular, two are its main goals:

1. Providing a toolkit for understanding the role of Contract Law, specially European Contract Law in the contracting practices of firms.
2. Promoting an analytical approach to legal issues from different perspectives, including law and economics and comparative law.

**Prerequisites**

A basic background on Contract Law is strongly recommended.

Suggested readings:

- Douglas G. Baird, *Reconstructing Contracts*, Harvard University Press (2013).
- Jan Smits, *Contract Law: A Comparative Introduction*, Edward Elgar (2014).
- Ángel Carrasco Perera, *Derecho de contratos*, Aranzadi (2010).

### Methodology

Microeconomics and game theory tools will be used to analyze the effects of legal rules and doctrines on parties' behavior, as well as on particular industries and the economy at large.

Course materials include Spanish, European and US case law, legal scholarship in Spanish and English, and some hypotheticals to illustrate different issues.

### Syllabus

<b>1<sup>st</sup> session</b>	Contracting and the effects of Contract Law. Economic approach to Contract Law <b>Activity:</b> Exercise 1
<b>2<sup>nd</sup> session</b>	Contract formation I: Scope and formalities
<b>3<sup>rd</sup> session</b>	Contract formation II: avoidance and public policy issues
<b>4<sup>th</sup> session</b>	Asymmetric information in contracting and duties to disclose <b>Activity:</b> Exercise 2
<b>5<sup>th</sup> session</b>	Standard form contracts
<b>6<sup>th</sup> session</b>	Contract negotiation, letters of intent and pre-contractual liability <b>Activity:</b> Exercises 3 and 4
<b>7<sup>th</sup> session</b>	Breach of contract in Comparative Contract Law
<b>8<sup>th</sup> session</b>	Remedies for breach of contract in Comparative Contract Law
<b>9<sup>th</sup> session</b>	Economic effects of remedies for breach of contracts <b>Activity:</b> Exercise 5
<b>10<sup>th</sup> session</b>	Waiver, release and limitation of liability in business contracts: contract formation and interpretation
<b>11<sup>th</sup> session</b>	Waiver, release and limitation of liability in business contracts (II): contracting around liability <b>Activity:</b> Exercise 6
<b>12<sup>th</sup> session</b>	Contract law and Company law. Shareholder agreements. Contracts, mergers and acquisitions.  <b>Activity:</b> Exercise 7
<b>13<sup>th</sup> session</b>	Principal-Agent relationship in business contexts
<b>14<sup>th</sup> session</b>	Contractual implications of Unfair Competition and Antitrust Law

### Essays

Eight activities will be conducted during the course on the following subjects:

- 1) Contractual completeness
- 2) Information asymmetries and duties to disclose
- 3) MOU
- 4) Precontractual liability
- 5) Remedies for breach of contracts
- 6) Exemption clauses
- 7) Contract law and Company Law

### Grading

Grading will be based on an essay dealing with some of the issues discussed during the lectures. In case the essay will not reach the minimum quality requirements, a second essay will be needed.

### Readings and materials

Jesús ALFARO (2009), "Contra la armonización positiva: la Propuesta de la Comisión para reforzar el *private enforcement* del Derecho de la competencia", *Indret* ([www.indret.com](http://www.indret.com)).

Ángel CARRASCO PERERA (2010), *Derecho de contratos*, Aranzadi, Cizur Menor.

Robert D. COOTER and Thomas ULEN (2011), *Law and Economics*, 6<sup>th</sup> ed., Addison Wesley Longman of Reading, Massachusetts.

Luis Díez-PICAZO (2007), *Fundamentos del Derecho civil patrimonial. Las relaciones obligatorias*, Vol. II., 6<sup>th</sup> ed., Thomson-Civitas, Madrid.

Allan E. FARNSWORTH (2004), *Contracts*, 4<sup>th</sup> ed., Aspen Publishers, Inc, New York.

Fernando GÓMEZ POMAR (1999), "El daño moral", *InDret* 1/1999 ([www.indret.com](http://www.indret.com)).

Fernando GÓMEZ POMAR (2002), *Previsión de daños, incumplimiento e indemnización*, Civitas, Madrid.

Fernando GÓMEZ POMAR (2007), "European Contract Law and Economic Welfare: A View from Law and Economics", *InDret* 1/2007 ([www.indret.com](http://www.indret.com)).

José M<sup>a</sup> GARRIDO (1995), *Las instrucciones en el contrato de comisión*, Civitas, Madrid.

Thomas J. MICELI (2008), *The Economic Approach to Law*, 2<sup>on</sup> ed., Stanford Economics & Finance, Stanford (CA).

Luis Alberto MARCO ARCALA (2014), "Indemnización de daños y perjuicios derivados de ilícitos contra la libre competencia por infracción de reglas sobre acuerdos verticales", RCD.

José MASSAGUER y otros (dir.) (2015), *Comentario a la Ley de Defensa de la Competencia*, 4<sup>a</sup> ed., Thomson-Reuters-Civitas.

Antonio Manuel MORALES MORENO (2006), *La modernización del derecho de obligaciones*, Civitas, Madrid.

M. Isabel SAEZ LACAVE (2009), "Los pactos parasociales de todos los socios en Derecho español. Una materia en manos de los jueces", *Indret*. ([www.indret.com](http://www.indret.com)).

José Ramón SALELLES CLIMENT (2007), *Exclusión y limitación de responsabilidad en la contratación entre empresarios*, Publicaciones del Real Colegio de España, Bolonia.

José Ramón SALELLES CLIMENT (2014), "La incidencia de la deslealtad de los actos de engaño, de las omisiones engañosas y las prácticas agresivas sobre la formación de la voluntad negocial", *Tratado de la Compraventa, Homenaje al profesor Rodrigo Bercovitz*, t. I, Thomson-Reuters-Aranzadi.

Steven SHAVELL (2004), *Foundations of Economic Analysis of Law*, Harvard University Press, Cambridge (Massachusetts), London (England).

#### **Further readings:**

Hugh BEALE, William BISHOP, and Michael FURMSTON (2008), *Contract. Cases and Materials*, 5<sup>th</sup> ed., Oxford University Press.

Alberto BERCOVITZ (dir.) (2004), *Contratos mercantiles*, 3<sup>a</sup> ed., Thomson-Aranzadi, Cizur Menor, Navarra.

Alfonso L. CALVO y Luis FERNÁNDEZ DE LA GÁNDARA (dir.) (1997), *Contratos internacionales*, Tecnos, Madrid.

Hein KÖTZ and Axel FLESSNER (1997), *European Contract Law, Volume 1: Formation, Validity, Agency, Third Parties and Assignment*, translated from German by Tony Weir, Oxford Clarendon.

*The New Palgrave Dictionary of Economics and the Law* (1998), Edited by Peter Newman.

[See also <http://www.dictionaryofeconomics.com/dictionary>]

A. M. POLINSKY and Steven SHAVELL (2007), *Handbook of Law and Economics*, North Holland.

Richard A. POSNER (2010), *Economic Analysis of Law*, 8th ed., Aspen Publishers, New York.

Hans Bernd SCHÄFER and Claus OTT (2005), *The Economic Analysis of Civil Law*, Mass. Edward Elgar Pub., Northampton.

Donald A. WITTMAN (2006), *Economic Foundations of Law and Organization*, Cambridge University Press, New York, Melbourne, Madrid, Cape Town, Singapore, Sao Paulo.

Reinhard ZIMMERMANN (2006), *The New German Law of Obligations*, Oxford University Press, Oxford.

### **On-line resources**

- InDret: <http://www.indret.com>
- Social Science Research Network: <http://www.ssrn.com>
- The Berkeley Electronic Press: <http://www.bepress.com>
- National Bureau of Economic Research: <http://www.nber.org>
- Law & Economics Working Papers. University of Chicago Law School: <http://www.law.uchicago.edu/Lawecon/workingpapers.html>
- University of California. Berkeley Law and Economics: <http://repositories.cdlib.org/blewp/>
- Cornell Law School: <http://lsr.nellco.org/cornell/clsops/>