Course: Comparative Law and Economics of Contracts

NYU School of Law, Fall Term 2012

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SYLLABUS

CLASS HOURS:
Tuesday, Friday, 9.35-10.50, FH 326

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GOAL OF THE COURSE

The goal of the course is to present the major principles and doctrines of Contract Law both in a comparative and an economic framework. As to the former, the emphasis will be on a functional analysis of relevant cases in major Common Law and Civil Law jurisdictions, as well as some of the most important texts in European Contract Law, most notably the Draft Common Frame of Reference and the Regulation Proposal on a Common European Sales Law. Regarding the Law and Economics dimension, the economic foundations and consequences of Contract Law principles and doctrines will be systematically analyzed, and a strategic view of Contract Law will be used to provide the organizing scheme of the legal materials in this field.

MATERIALS

The materials bearing a star (*) are supplemental and optional.

GENERAL LITERATURE
In addition to the specific literature referenced below, there are some general texts that may be used to complement the required materials:


EUROPEAN LEGAL MATERIALS

The text of the Regulation Proposal on a Common European Sales Law (CESL) may be found at the following link:


The text of the Comments to the CESL may be found at the following link:

TBC

The Principles, Definitions and Model Rules of European Private Law, Draft Common Frame of Reference (DCFR) may be found at the following link:


SOME ADDITIONAL INTERNET RESOURCES

Social Science Research Network: www.ssrn.com

The Berkeley Electronic Press: www.bepress.com
TOPICS

1. The basic economics of cooperation and contracts. Contract Law and completion of incomplete contracts
   - Ganuza and Gomez, The Strategic Structure of Contract Law (Book draft), chapter 1.

2. The realm of Contract Law: Legally binding contracts and other extra-legal social relationships
   - Ganuza and Gomez, chapter 3.

3. The Law and Economics of contract formation
   3.1. Contract formalities and rights of withdrawal
      - ECJ 22.4.1999, Case C-432/97, [1999], Travel-Vac v Manuel Jose Antelm Sanchis.
      - BGH 3.11.2010 (NJW 2011, 56, par. 15-33).
      - Ganuza and Gomez, chapter 4.

3.2. Tacit consent
- Court of First Instance Butzbach, 14 June 2002, Micklitz et al. p. 211
- Reichsgericht, 1 February 1926, Beale et al. pp.289-290
- Ganuza and Gomez, chapter 5.

### 3.3. Offer and acceptance

- Byrne v. Van Tienhoven, (1880) 5 CPD 344.
- Gibson v Manchester City Council [1978] 1 WLR 520 CA.
- Ganuza and Gomez, chapter 5.

### 3.4. The use of standard forms and the battle of the forms

- Ganuza and Gomez, chapter 8.

### 3.5. Standard form contracts, consumers’ consent and unconscionability

- ECJ 3.6.2010, Case C-4842/08, [2010], *Caja de Ahorros y Monte de Piedad de Madrid v Ausbanc*.
- ECJ 1.4.2004, Case C-4842/02, [2004], *Freiburger Kommunalbauten GmbH Baugesselschaft & C. KG v Ludger Hofstetter and Ulrike Hofstetter*
3.6. Preferences, information and consent

a. Duress


- Ganiuza and Gomez, chapter 7.

b. Fraud, mistake and misrepresentation


- Cass. civ. 2.10.1974, Beale et al. pp. 515-517
3.7 M&A, letters of intent and pre-contractual liability

- Empro Manufacturing Co, Inc v Ball-Co Manufacturing, Inc, 870 F2d 423 (7th Cir 1989).

- Infiniteland Ltd. v. Artisan Construction Ltd. [2005] EWCA Civ 758


- Ganuza and Gomez, chapter 9.

4. Contracts against public policy: private and public remedies


- Ganuza and Gomez, chapter 6.

5. The Law and Economics of contract breach

5.1 What is breach of contract


- Ganuza and Gomez, chapter 11.
5.2 The remedy of specific performance

- STS 16.10.2006. MP: Ignacio Sierra Gil de la Cuesta
- Ganuza and Gomez, chapter 12.

5.3 The remedy of damages

- ECJ 12.3.2002, Case C-168/00, [2002], Simone Leitner v TUI Deutschland GmbH & Co. KG.
- STS, 1ª, 28.3.2005 (Ar. 8687). MP: Xavier O’ Callaghan Muñoz
- Ganuza and Gomez, chapter 12.

5.4 The remedy of liquidated damages

- Wasserman’s Inc. V. Township of Middletown, Supreme Court of New Jersey, 1994. 137 N. J. 238, 645 A. 2d 100.
- Ganuza and Gomez, chapter 12.

5.5 The remedy of termination
5.6 Warranties in consumer sales


6. The Law and Economics of distribution contracts

- DCFR, Book IV. PartE