

LAW FACULTY

## I. SUBJECT DETAILS

Data on the subject	
Name	Comparative Contract Law and International Contracts
Degree	Grado en Derecho y Diploma en Derecho de los Negocios (E-1 BL)
Year	Fourth year, first term
Type	Semester course
ECTS Credits	4.5 ECTS
Department	Private Law
Area (-s)	Civil Law and Private International Law
Teacher (-s)	Prof. Dr. Carlos Llorente Gómez de Segura, Attorney-at-Law

Data on the teaching staff	
Teacher	Prof. Dr. Carlos Llorente Gómez de Segura
Group	All groups
e-mail	cllorente@comillas.edu
Office	N/A

Contribution of the degree to the professional profile	
<p>This course deals with two apparently distinct but nevertheless closely related topics. On the one hand, comparative contract law. On the other hand, international contracts. Evidently, both parts of the course are connected to the same subject matter: contracts. Therefore, the course will deal essentially with this legal instrument. Students have had the opportunity to work with contracts previously, but</p>	

theirs has been so far a purely national approach to contract law. The turning point with this new course is its foreign and transnational perspective. Contracts are the most relevant legal instrument worldwide and are concluded on a daily basis in the global markets. Legal practitioners willing to excel in the professional arena must therefore develop specific skills in this field. The course will offer first a comparative approach to contract law (Part 1), particularly from the perspective of the most relevant differences between the Anglo-American legal system (“common law”) and the civil law system, which are still the two most important legal systems in the world, both in general terms and, particularly in relation to contracts. A good part of the course, then, will focus on these (sometimes apparent) differences (Topic 4). Before the course reaches this point, though, we will need to acquire first some understanding on how legal comparison works (Topic 1), accompanied by a basic learning of the Anglo-American legal system (Topic 2). The course will also touch upon the European, US and global initiatives in the harmonization and unification of contract law (DCFR, PECL, etc.), which are a superb model to learn how comparative law functions in this field (Topic 3). On the second stage of the course (Part 2), we will offer a distinctively Private International Law (PIL) approach to contracts. We will review the most relevant issues pertaining to jurisdiction in this particular field (Topic 1) and learn how to determine the law applicable to international contracts (“choice of law”) (Topic 2). With this purpose in mind, we will analyze the most relevant legal instruments in force here, basically EU and international ones. Needless to say, a professional perspective will heavily influence our approach to both topics in this course. In the end, the course goal is no other than the student (future lawyer) working with international contracts feels comfortable with and knowledgeable about this topic. This course will provide students with tools to develop such skills.

## II. COMPETENCES TO BE DEVELOPED

<b>Generic Competences</b>
<b>Instrumental</b>
Knowledge of a second language (English)
<b>Specific competences of the subject</b>
<b>Conceptual</b>
Gaining a broad overview of the different systems of contract law, particularly from the civil law and common law perspective

Understanding the legal implications of international contracts, both from a general and particular dimension
Procedural
Familiarizing with the comparative law method
Professional
Properly appraising an international contract considering the choice of law and jurisdiction

### III. TOPIC AREAS AND CONTENT

<b>Part 1: COMPARATIVE CONTRACT LAW</b>
<b>Topic 1: Introduction to Comparative Law</b>
Comparative law: Concept. Classes. Goals. Method.
<b>Topic 2: Legal families. An Introduction to the Anglo-American Legal System</b>
Legal systems around the world. Civil law. Common Law. Mixed jurisdictions. Basic elements of the Anglo-American Legal system.
<b>Topic 3: Unification of Contract Law in Europe, US and globally</b>
Developments. Different approaches. Principles of European Contract Law. Draft Common Frame of Reference. UNIDROIT Principles on international commercial contracts. The role of the new Lex Mercatoria.
<b>Topic 4: Comparative contract law: Selected Issues</b>
Notion of contract. Types of contracts. Formation of contracts: offer and acceptance; cause and consideration; good faith. Terms of contracts. Effects of contracts: performance and damages; non-performance; third-party consequences
<b>Part 2: INTERNATIONAL CONTRACTS</b>
<b>Topic 1: Jurisdiction</b>
Dispute resolution methods: an overview. Jurisdiction. Sources. Brussels I Bis Regulation. Exclusive

jurisdiction. Prorogation of jurisdiction. Defendant's domicile. Special jurisdiction. Jurisdiction rules in specific international instruments. Spanish law.

## Topic 2: Applicable Law

The law applicable to international contracts. Sources. Rome I Regulation: scope of application; rules of application; party autonomy; law applicable in the absence of choice; law applicable to specific contracts; mandatory provisions; law applicable to specific legal issues. Other European Union rules. Special legal instruments regulating international contracts.

## IV. BIBLIOGRAPHY AND RESOURCES

### Basic Bibliography

#### Text books

- M. Bogdan, Concise Introduction to EU Private International Law, Europa Law Publishing, Groningen, 3<sup>rd</sup> edition, 2015
- F. Ferrari and S. Leible (eds.), Rome I Regulation: The Law Applicable to Contractual Obligations in Europe, Sellier, München 2010
- Study Group on a European Civil Code and Research Group on EC Private Law (Acquis Group), Draft Common Frame of Reference (DCFR). Outline edition, Sellier, München 2009
- Study Group on a European Civil Code and Research Group on EC Private Law (Acquis Group), Draft Common Frame of Reference (DCFR). Full edition, Sellier, München 2009
- Toni M. Fine, An Introduction to the Anglo-American Legal System, Thomson-Aranzadi, Cizur Menor 2007
- E. dell'Aquila and L. dell'Aquila, Introducción a la comparación jurídica, PPU, Barcelona 2007
- M. Reimann and R. Zimmermann, The Oxford Handbook of Comparative Law, OUP Oxford (16 Nov 2006)
- O. Lando, C. Prüm and R. Zimmermann, Principles of European Contract Law, Part III, Kluwer, The Hague 2003
- O. Lando and H. Beale, Principles of European Contract Law. Parts I and II, Kluwer, The Hague 2000
- H. Beale, A. Hartkamp, H. Kötz and D. Tallon (eds.), Cases, Materials and Text on Contract Law,

Hart Publishing, Oxford 2002

- K. Zweigert and H. Kötz, An Introduction to Comparative Law, Claredon Press, 3<sup>rd</sup> edition, Oxford 1998

#### Chapters of books

- C. Llorente Gómez de Segura, “Enseñanza de la comparación de sistemas jurídicos” in: AAVV, Enseñar Derecho en el Siglo XXI. Una Guía Práctica sobre el Grado en Derecho, Thomson Reuters-Aranzadi, Cizur Menor 2009, p. 285 ff.

- A.T. von Mehren and P.L. Murray, “Comparative Perspectives on American Contract Law”, in: A.T. von Mehren and P.L. Murray, Law in the United States, 2<sup>nd</sup> edition, Cambridge University Press, Cambridge 2007, p. 71 ff.

- E. Allan Farnsworth, “Comparative Contract Law” in: M. Reimann and R. Zimmermann, The Oxford Handbook of Comparative Law, OUP Oxford (16 Nov 2006), p. 899 ff.

- M. Reimann, “Comparative Law and Private International Law” in M. Reimann and R. Zimmermann, The Oxford Handbook of Comparative Law, OUP Oxford (16 Nov 2006), p. 1363 ff.

#### Articles

- B. Fauvarque-Cosson, The rise of Comparative Law: A Challenge for Legal Education in Europe, Walter van Gerven Lectures (7), Europa Law Publishing, Groningen 2007

- O. Lando, “The European Principles in an Integrated World”, (2005) I European Review of Contract Law, No. 1, p. 3 ff.

#### Websites

<http://europa.eu>

<http://eur-lex.europa.eu>

<http://curia.europa.eu>

<http://www.unidroit.org>

<http://www.uncitral.org>

<http://www.supremecourt.gov>

[http://frontpage.cbs.dk/law/commission\\_on\\_european\\_contract\\_law](http://frontpage.cbs.dk/law/commission_on_european_contract_law)

<http://www.accademiagiurprivatistieuropei.it>

<http://www.sgecc.net>

<http://eu-consumer-law.org>  
<http://www.law-net.eu>  
<http://www.common-core.org>  
<http://www.secola.org>  
<http://www.mpipriv.de>  
<http://www.cisg.law.pace.edu>

#### Notes

Students will need to take class notes when applicable

#### Other materials

### V. TEACHING METHODOLOGY

#### Contact hours methodology: Activities

Classes will include a combination of lectures, practical classes (case-method and/or problem-oriented), debates and presentations by students. Students are expected to attend the sessions duly prepared. Attendance to class will be measured towards the final course grade in the manner explained below.

#### Independent study methodology: Activities

Out of the classroom, students will be expected to read the materials assigned by the Professor and prepare the cases and/or problems that will be debated in class. The Professor will provide students with information and instructions regarding to how read and prepare those materials and/or activities to be developed in class.

Students are expected to prepare two (2) practical exercises to be handed in and discussed in class. One exercise will deal with the part related to comparative contract law and the second one with international contracts. These exercises will be measured towards the final course grade in the manner explained below.

### VI. SUMMARY OF STUDENT WORK HOURS

SUMMARY OF STUDENT WORK HOURS			
Activity	Number of contact hours	Number of independent study hours	Total number of hours
Lecture	25	25	50
Practical class	10	12	22
Debate	8	10,5	18,5
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam	1	20	21
Evaluation: exam review	1		1
Others			
<b>ECTS Credits:</b>	<b>45</b>	<b>67,5</b>	<b>112,5</b>

## VII. GRADE EVALUATION AND CRITERIA

Evaluation Activities	Competences	Indicators	Evaluation Weighting
Cases	All competences will be evaluated	Identification of problems and proposal of solutions related to the comparison of contract rules and to international contracts	30%
Individual work			
Work in collaboration			
Debate	All competences will be evaluated	Communication skills	10%
Class presentation			
Evaluation: one minute paper			
Evaluation ClassTest			
Other			
Evaluation: Exam	All competences will be evaluated	Understanding of essential concepts of the course	60%

Grades
<p>- The final course grade (100%) will be made up of:</p> <p>a) 60% will be credited to a final exam, which will be made up of a combination of theoretical and practical questions addressing the generic and specific competences. The exam will last 1 hour.</p> <p>b) 30% will come out of the two exercises the students will have to prepare in writing (15% each)</p> <p>c) 10% will come out of the student active and meaningful participation in class, particularly on debates and class presentations</p> <p>- Students taking the extraordinary exam will be graded (100%) on the basis of the exam</p>



