

FICHA TÉCNICA DE LA ASIGNATURA

Datos de la asignatura	
Nombre completo	Comparative Contract Law and International Contracts
Código	E000007874
Título	Grado en Derecho por la Universidad Pontificia Comillas
Impartido en	Grado en Administración y Dirección de Empresas y Grado en Derecho (E-3 16) [Quinto Curso] Grado en Derecho y Grado en Relaciones Internacionales (E-5) [Quinto Curso] Grado en Derecho (E-1) [Tercer Curso]
Nivel	Reglada Grado Europeo
Cuatrimestre	Semestral
Créditos	3,0 ECTS
Carácter	Optativa (Grado)
Departamento / Área	Área de Derecho Civil Departamento de Derecho Privado
Responsable	Prof. Dr. D. Diego Agulló Agulló (Coordinador de la asignatura)

Datos del profesorado	
Profesor	
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Profesor	
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DATOS ESPECÍFICOS DE LA ASIGNATURA

Contextualización de la asignatura
<p>Aportación al perfil profesional de la titulación</p> <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 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)</p>



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.

Competencias - Objetivos

Competencias

GENERALES

CGI07	Conocimiento de una segunda lengua	
	RA1	Dentro de un contexto jurídico, comprende el discurso oral y escrito y se comunica de forma oral y escrita en inglés de acuerdo con las competencias fijadas por el Marco de referencia Europeo para las Lenguas para los niveles B2/C1
CGS12	Capacidad de adaptación a nuevas situaciones	
	RA1	Se incorpora a la vida universitaria y se habitúa a la falta de seguimiento continuo de sus actividades.

ESPECÍFICAS

CEA02	Conocimiento de los principales rasgos del sistema jurídico incluyendo cierta familiaridad con sus instituciones y procedimientos	
	RA1	Disfruta de una perspectiva amplia de los diferentes sistemas de Derecho contractual, y, en particular, de los sistemas de Derecho continental y de ¿Common Law¿
CED01	Situar el Derecho y las relaciones jurídicas en un contexto globalizado	
	RA1	Toma conciencia de las interacciones cada vez más frecuentes con ordenamientos jurídicos extranjeros, los problemas que plantea determinar el ámbito jurisdiccional de los Estados y la ley aplicable a cada elemento de la relación internacional
	RA2	Conoce la interacción del ordenamiento jurídico (en particular, del Derecho civil y, en concreto, del contractual) con otros sistemas extranjeros e identifica las consecuencias prácticas que produce
	RA3	Aprecia la diversidad de los sistemas jurídicos y, al considerarlos una fuente de riqueza, valora positivamente el respeto a la adecuada localización de las relaciones jurídicas internacionales y las ventajas e inconvenientes que la globalización, también legislativa, produce en las relaciones jurídicas
CED04	Identificar los elementos de un problema jurídico, planteando alternativas para su solución	



	RA1	Diferencia y deslinda los aspectos clave de un problema jurídico-civil, planteando alternativas jurídicamente fundadas para su solución y sintetizando adecuadamente los distintos argumentos
	RA2	Detecta la presencia del elemento extranjero en la relación y, por tanto, el carácter internacional de la misma
	RA3	Diferencia y deslinda los problemas relativos a la determinación del foro, la afirmación de la competencia de los tribunales españoles y la conveniencia o no de seguir un proceso ante dichos tribunales, incluyendo los problemas procesales que se vayan presentando
	RA4	Identifica los problemas que se presentan en la determinación de la ley aplicable (calificación, reenvío, armonización, cuestión previa, orden público...) y plantea alternativas jurídicamente fundadas para su solución
CEP10		Capacidad de entender textos especializados en inglés
	RA1	Comprende textos jurídicos internacionales de carácter contractual en inglés

BLOQUES TEMÁTICOS Y CONTENIDOS

Contenidos – Bloques Temáticos

Part 1: COMPARATIVE CONTRACT LAW

Topic 1: Introduction to Comparative Law

Comparative law: Concept. Classes. Goals. Method.

Topic 2: Legal families. An Introduction to the Anglo-American Legal System

Legal systems around the world. Civil law. Common Law. Mixed jurisdictions. Basic elements of the Anglo-American Legal system.

Topic 3: Unification of Contract Law in Europe, US and globally

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.

Topic 4: Comparative contract law: Selected Issues

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

Part 2: INTERNATIONAL CONTRACTS

Topic 1: Jurisdiction

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.

BIBLIOGRAFÍA Y RECURSOS

Bibliografía Básica

Basic Bibliography

Textbooks

- J. Smits, *Contract Law: A Comparative Introduction*, Elgar, Cheltenham, 3rd edition, 2021.
- A.L. Calvo Caravaca, J. Carrascosa González, *European Private International Law*, Comares, Granada, 1st edition, 2022.
- M. Bogdan, *Concise Introduction to EU Private International Law*, Europa Law Publishing, Groningen, 4th edition, 2019.
- 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*, Clarendon Press, 3rd 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*, 2nd 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>

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<http://www.supremecourt.gov>

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<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>

METODOLOGÍA DOCENTE

Aspectos metodológicos generales de la asignatura

Metodología Presencial: Actividades

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.



Metodología No presencial: Actividades

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.

RESUMEN HORAS DE TRABAJO DEL ALUMNO

HORAS PRESENCIALES	
Lección Magistral	Resolución de casos prácticos
25.00	5.00
HORAS NO PRESENCIALES	
Estudio y relación de las lecciones magistrales	Preparación de la resolución de los casos prácticos y trabajos dirigidos
35.00	10.00
CRÉDITOS ECTS: 3,0 (75,00 horas)	

EVALUACIÓN Y CRITERIOS DE CALIFICACIÓN

Actividades de evaluación	Criterios de evaluación	Peso
Evaluation: Exam All competences will be evaluated	Understanding of essential concepts of the course	60
Cases (40%) All competences will be evaluated	Cases: Identification of problems and proposal of solutions related to the comparison of contract rules and to international contracts.	40 %

Calificaciones

- The final course grade (100%) will be made up of:

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.

b) **40%** will come out of **the two exercises** the students will have to prepare in writing (20% each).

- **Students taking the extraordinary exam will be graded (100%) on the basis of the exam.**



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2022 - 2023

En cumplimiento de la normativa vigente en materia de **protección de datos de carácter personal**, le informamos y recordamos que puede consultar los aspectos relativos a privacidad y protección de datos que ha aceptado en su matrícula entrando en esta web y pulsando "descargar"

<https://servicios.upcomillas.es/sedelectronica/inicio.aspx?csv=02E4557CAA66F4A81663AD10CED66792>