

Master in Legal Sciences	
<b>Foundations of Business Contract Law</b>	<b>Term: 2</b>
	<b>ECTS Credits: 5</b>
	<b>Language: English</b>
<b>Prof. Fernando Gómez Pomar / Prof. José Ramón Salelles Climent</b>	
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Course description
<p>This course aims to provide conceptual tools to understand business contracts and their underlying strategies.</p> <p>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.</p> <p>The second part of the course is devoted to contracting in business contexts. A list of topics includes, but is not limited to: corporate restructuring, mergers, and acquisitions; principal-agent problems; and the impact on competition of distribution agreements.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. Providing a toolkit for understanding Spanish Contract Law as well as the Principles of European Contract Law.</li> <li>2. Promoting an analytical approach to legal issues from different perspectives, including law and economics and comparative law.</li> </ol>

Prerequisites
<p>A basic background on Spanish Contract Law is strongly recommended.</p> <p>Suggested readings:</p> <ul style="list-style-type: none"> <li>• Luis Díez-Picazo (2007), <i>Fundamentos del Derecho civil patrimonial. Las relaciones obligatorias</i>, Vol. II., 6th ed., Civitas, Madrid.</li> <li>• Fernando Pantaleón Prieto (1989), "Resolución por incumplimiento e indemnización", <i>Anuario de Derecho civil</i>, vol. 42, no. 4, pp. 1143-1168.</li> <li>• Fernando Pantaleón Prieto (1991) "El sistema de responsabilidad contractual (Materiales para un debate)", <i>Anuario de Derecho civil</i>, vol. 44, no 3, pp. 1019-1092.</li> <li>• Fernando Pantaleón Prieto (1993), "Las nuevas bases de la responsabilidad contractual", <i>Anuario de Derecho civil</i>, pp. 1719-1745.</li> </ul>

### 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 and US case law, legal scholarship in Spanish and English, and some hypothetical to illustrate different issues.

### Syllabus

<b>1<sup>st</sup> session</b>	Contractual completeness and its relevance <b>Activity:</b> Exercise 1
<b>2<sup>nd</sup> session</b>	Contract formation. Writing requirement and other legal formalities. Silence as acceptance
<b>3<sup>rd</sup> session</b>	Conclusion of a contract. Void contracts, restitution, and illegal cause
<b>4<sup>th</sup> session</b>	Asymmetric information and duties to disclose <b>Activity:</b> Exercise 2
<b>5<sup>th</sup> session</b>	Standard form contracts and consumer protection
<b>6<sup>th</sup> session</b>	Letters of intent and precontractual liability <b>Activity:</b> Exercises 3 and 4
<b>7<sup>th</sup> session</b>	Breach of contract in Spanish Contract Law
<b>8<sup>th</sup> session</b>	Remedies for breach of contract in Spanish 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
<b>11<sup>th</sup> session</b>	Corporate restructuring, mergers, and acquisitions (M&A)
<b>12<sup>th</sup> session</b>	Representations and warranties in M&A <b>Activity:</b> Exercise 6
<b>13<sup>th</sup> session</b>	Principal-Agent relationship in business contexts
<b>14<sup>th</sup> session</b>	Distribution agreements and antitrust law <b>Activity:</b> Exercise 7
<b>15<sup>th</sup> session</b>	Joint ventures <b>Activity:</b> Exercise 8

### 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) Representations and warranties in M&A
- 7) Distribution agreements
- 8) Joint ventures

### Grading

Grading will be based on an essay dealing with some of the issues discussed during the lectures.

### Readings and materials

Ángel CARRASCO PERERA (1989), "Comentario al art. 1101", in Manuel ALBALADEJO (dir.), *Comentarios al Código civil y a las compilaciones forales*, Vol. XV, no. 1, Edersa, Madrid.

Ángel CARRASCO PERERA (1989), "Comentario al artículo 1102", in Manuel ALBALADEJO (dir.), *Comentarios al Código civil y las Compilaciones forales*, Vol. XV, no. 1, Edersa, Madrid.

Ángel CARRASCO PERERA (2010), "Manifestaciones y garantías y responsabilidad por incumplimiento", in Ángel CARRASCO PERERA and José María ÁLVAREZ ARJONA (editors), *Adquisiciones de empresas*, 3<sup>rd</sup> ed., Aranzadi, Cizur Menor, pp. 285-357.

Robert D. COOTER and Thomas ULEN (2007), *Law and Economics*, 5<sup>th</sup> ed., Addison Wesley Longman of Reading, Massachusetts.

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

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

Nieves FENOY PICÓN (2006), *El sistema de protección del comprador*, Colegio de Registradores y Mercantiles de España, Madrid.

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.

Carlos GORRIZ (2007), *Distribución selectiva y comercio paralelo*, Thomson-Civitas,

Madrid.

Fernando MARTÍNEZ SANZ, Montiano MONTEAGUDO y Felipe PALAU (2000), *Comentario a la Ley sobre contrato de agencia*, Civitas, Madrid.

Jorge MIQUEL RODRÍGUEZ (1998), *La sociedad conjunta*, Civitas, Madrid.

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

Antonio Manuel MORALES MORENO (1991), "Comentario al art. 1270" and "Comentario al art. 1486", in *Comentarios al Código civil*, Ministerio de Justicia, Vol. II.

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

Fernando PANTALEÓN PRIETO (1989), "Resolución por incumplimiento e indemnización", *Anuario de Derecho civil*, vol. 42, no. 4, pp. 1143-1168.

Fernando PANTALEÓN PRIETO (1991) "El sistema de responsabilidad contractual (Materiales para un debate)", *Anuario de Derecho civil*, vol. 44, no 3, pp. 1019-1092.

Fernando PANTALEÓN PRIETO (1993), "Las nuevas bases de la responsabilidad contractual", *Anuario de Derecho civil*, pp. 1719-1745.

José Cándido PAZ-ARES RODRÍGUEZ and María Isabel SÁEZ LACAVE (2002), "Los contratos pendientes de ejecución en la fusión", *Revista de derecho mercantil*, no 247, pp. 45-70.

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

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

#### **Further readings:**

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.

José María DE LA CUESTA RUTE (2001), *Contratos mercantiles*, Bosch, Barcelona.

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.

Gregory N. MANKIW (2008), *Principles of Economics*, 5<sup>th</sup> ed., South-Western College

Pub, Mason.

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

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

Robert S. PINDYCK and Daniel L. RUBINFELD (2008), *Microeconomics*, 7<sup>th</sup> ed., Prentice-Hall Series in Economics.

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

Richard A. POSNER (2007), *Economic Analysis of Law*, 7th ed., Aspen Publishers, New York.

Juan Ignacio RUIZ PERIS (2000), *Los tratos preliminares en el contrato de franquicia*, Aranzadi, Pamplona.

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

G. H. TREITEL (2007), *The Law of Contract*, 12th ed., Sweet & Maxwell / Stevens & Sons, London.

Luis Antonio San Pedro VELASCO (coord.) (2005), *Derecho europeo de la competencia*, Lex Nova, Valladolid.

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/>