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# **CONTRACT LAW**

Instructor: Inmaculada Herbosa Martínez

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## **CONTENTS**

The course deals with Spanish Law of contract. The aim of this course is to provide an overview of the core concerns of Contract Law, namely formation of contract, formalities of contract, and problems in performance and breach of contract. The second part of the course deals with the contributions of some Directives on protection of consumers to the development and structure of Spanish Contract Law.

## **TOPICS**

### **PART I**

**I.- INTRODUCTION: THE SPANISH CIVIL CODE. THE SCOPE OF CONTRACT LAW.**

**II.- CONCEPT AND ELEMENTS OF A CONTRACT**

1. Consent
2. Object
3. Cause

**III.- ELEMENTS INVALIDATING CONSENT**

1. Error
2. Deceit or misrepresentation
3. Violence (duress)
4. Intimidation

**IV.- THE FORMATION OF A CONTRACT**

1. Offer and invitation to treat
2. Acceptance
3. Advertisements, display of goods for sale, time-tables and vending machines

**V.- THE INTERPRETATION OF A CONTRACT**

**VI.- NULLITY OF A CONTRACT**

**VII.- PERFORMANCE AND DISCHARGE OF THE CONTRACT**

**VIII.- BREACH OF CONTRACT**

**PART. II.**

**I.- LAW 23/2003, ON CONSUMER GOODS AND ASSOCIATED GUARANTEES**

**II.- LAW 22/1994, ON LIABILITY DEFECTIVE PRODUCTS**

**III.-LAW 47/2002, ON PROTECTION OF CONSUMERS IN RESPECT OF DISTANCE CONTRACTS**

**IV.-LAW 7/1998, ON GENERAL TERMS IN CONSUMER CONTRACTS**

**BIBLIOGRAPHY**

[http://europa.eu.int/comm/consumers/cons\\_int/safe\\_shop/index\\_en.htm](http://europa.eu.int/comm/consumers/cons_int/safe_shop/index_en.htm)  
[http://europa.eu.int/comm/consumers/cons\\_safe/prod\\_safe/index\\_en.htm](http://europa.eu.int/comm/consumers/cons_safe/prod_safe/index_en.htm)  
[http://europa.eu.int/comm/internal\\_market/contractlaw/overview\\_en.htm](http://europa.eu.int/comm/internal_market/contractlaw/overview_en.htm)

## **EUROPEAN UNION LAW**

Instructor: José Ramón Canedo Arrillaga

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### **METODOLOGY**

Consists on the exposition of the different topics by the lecturer and the students work in the class solving problems of private international law and cases

### **EVALUATION**

- Written exam

### **TOPICS**

#### **I. THE DEVELOPMENT OF EUROPEAN INTEGRATION**

1. The First Steps in the History of the Present European Integration Process
2. The EEC and Euratom Treaties
3. 1966–86: From the Luxembourg Accords to the Single European Act
  - a. Crisis: The Luxemborg Accords
  - b. Community Enlargement in the 1970s and 1980s
  - c. Political Co-operation
  - d. Developments in the Budgetary and Monetary Spheres
4. The Single European Act
5. The Birth of the European Union: The Maastricht Treaty
  - a. Title I: The Common Provisions
  - b. Titles II–IV: Changes to the Community Treaties
  - c. The Two Intergovernmental Pillars  
Pillar 2, Title V: Common Foreign and Security Policy (CFSP)  
Pillar 3, Title VI: Justice and Home Affairs (JHA)
  - d. Enlargement of the Community after the TEU
6. From Maastricht to Amsterdam
7. The Treaty of Amsterdam
  - a. The Common Provisions
  - b. The Community Pillar
  - c. Pillar 2, Title V: The Common Foreign and Security Policy (CFSP)
  - d. Pillar 3, Title VI: Police and Judicial Co-operation in Criminal Matters (PJCC)
  - e. Title VII: Closer Co-operation
  - f. Title VIII: Final Provisions
8. From Amsterdam to Nice
9. The Nice Treaty
10. The European Convention and the IGC 2004
  - a. The Common Provisions
  - b. Pillar 2: The CFSP
  - c. Pillar 3: PJCC
  - d. Title VII on Enhanced Co-operation
  - e. The Community Pillar

11. Conclusion

**II. THE EUROPEAN UNION**

1. The European Communities and European Union Legal Basis
2. The Membership: Admission, Exit and Suspension of Rights.
3. The Aims of the European Union
4. The EC Competences System
  - a. Competence and Limited Powers, Implied Powers and Article 308 EC
  - b. Pre-emption, Loyalty, Subsidiarity and Proportionality Principles
  - c. Distribution of Competences between EC and its Member States
5. Closer Cooperation

**III. THE INSTITUTIONS**

1. General Ideas
2. The Commission
  - a. The College of Commissioners: Appointment and Removal
  - b. The College of Commissioners: Composition
  - c. The College of Commissioners: Decision-making
  - d. The Presidency of the Commission
  - e. The Commission Bureaucracy
  - f. The Powers of the Commission
  - g. The Role of the Commission: Conclusion
3. The Council
  - a. Composition of the Council
  - b. The Presidency of the Council
  - c. The Committee of Permanent Representatives
  - d. The Council Secretariat
  - e. The Powers of the Council
  - f. The Role of the Council: Conclusion
4. The European Council
  - a. Composition
  - b. Rationale
  - c. Role
  - d. The Role of the European Council: Conclusion
5. The European Parliament
  - a. Composition and Functioning
  - b. The Parliament's Decision-making Role
  - c. The Parliament's Supervisory Role
  - d. The Parliament as a Litigant
6. The European Court of Justice and the Court of First Instance
  - a. Introduction
  - b. Composition and Structure of the Court of Justice
  - c. The Court of First Instance
  - d. The Role of the Advocate General
  - e. Basic Features of the Main Remedies (special attention to Preliminary Reference)
7. The Court of Auditors
8. Other Community Institutions
  - a. The Economic and Social Committee

- b. The Committee of the Regions
- c. The European Ombudsman
- d. Agencies

9. Conclusion

**IV. THE ECJ ACTIVITY**

A. Enforcement Actions against Member States

- 1. The Function and Operation of the Infringement Procedure
  - (a) Functions of the Procedure
  - (b) Operation of the Procedure
  - (c) Sharpening the Enforcement Procedure: The Pecuniary Penalty
- 2. The Commission's Discretion
- 3. The Reasoned Opinion
- 4. Types of Breach by Member States of Community Law
- 5. State Defences in Enforcement Proceedings

B. Review of Legality

- 1. The Range of Reviewable Acts
- 2. Article 230 (ex Article 173): Standing for Privileged Applicants
- 3. Article 230(4) (ex Article 173(4) ): A Critical Analysis of the General Standing Rules for Non-privileged Applicants
  - (a) Challenges to Decisions Addressed to Another Person
  - (b) Challenges to Regulations: The Traditional Approach
  - (c) Challenges to Regulations and Decisions: The More Modern Jurisprudence, The Significance of Codorniu
- 4. The Grounds of Review
  - (a) Lack of Competence
  - (b) Infringement of an Essential Procedural Requirement
  - (c) Infringement of the Treaty or of any Rule of Law Relating to its Application
  - (d) Misuse of Powers
- 5. Article 232 (ex Article 175): Failure to Act
  - (a) The Range of Reviewable Omissions
  - (b) The Procedure
  - (c) Standing
- 6. Article 241 (ex Article 184): The Plea of Illegality
  - (a) The Range of Acts which Can be Challenged
  - (b) The Forum in which Article 241 can be Used
  - (c) The Types of Proceedings in which Article 241 (ex Article 184) can be raised
  - (d) The Parties who are Allowed to Use Article 241 (ex Article 184)
- 7. The Consequences of Illegality and Invalidity

C. Preliminary rulings

- 1. Justification and types of preliminary ruling procedure
- 2. Some aspects those different types have in common
- 3. Interpretation and validity: The Provisions which can be Referred
- 3. Interpretation and validity: The Courts or Tribunals to which Article 234 (ex Article 177) Applies
- 4. The Effects of the ECJ Judgements

#### IV. SOURCES OF THE EUROPEAN UNION LEGAL ORDER

##### A. EC Legal Order

1. Primary Sources
2. Secondary Sources
  - (a) Regulations
  - (b) Directives
  - (c) Decisions
  - (d) Recommendations and Opinions
  - (e) Sui Generis Acts
  - (f) International Agreements

##### B. CFSP and PJCC Sources

#### V. THE RELATIONSHIP BETWEEN THE COMMUNITY LEGAL ORDER AND THE NATIONAL LEGAL ORDERS: DIRECT EFFECT AND SUPREMACY

1. The Conditions for Direct Effect
2. The Direct Effect of Treaty Provisions
3. The Legal Effects of Regulations and Decisions
4. The Legal Effects of International Agreements in EC Law
5. The Legal Effects of Directives
  - a. Direct Effect and the Vertical/Horizontal Distinction
  - b. Expanding Vertical Direct Effect: A Broad Concept of the State
  - (c) 'Indirect Effect': Development of the Principle of Interpretation
  - (d) 'Incidental' Horizontal Effects
6. Supremacy of Community Law

#### VI. THE PRINCIPLE OF STATE LIABILITY FOR BREACH OF EC LAW

1. The Origins of the Principle of State Liability
2. Conditions for Liability under Francovich
3. Brasserie du Pêcheur/Factortame III: Clarifying the Basis of the Principle of State Liability
4. Clarifying the Conditions for State Liability in Brasserie du Pêcheur/Factortame III
5. The Basic Principle of National Procedural Autonomy
6. The Requirements Imposed by Community Law: Proportionality, Adequacy, Effectiveness and Equivalence of National Responses

#### **BIBLIOGRAPHY**

- Cini, Michelle, *European Union politics*, 2003. 341.50/Eu 7
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- Mangas Martín, Araceli; Liñán Nogueras, Diego, *Instituciones y derecho de la Unión Europea*, 2002, 3rd Edition.
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- Warleigh, Alex, *European Union. The Basics*. 2004. 341.502/W 23 a

# **FROM BIOTECHNOLOGY TO BIOETHICS**

Instructor: Aitziber Emaldi Ciri3n

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## **CONTENTS**

We shall study biomedical topics from the legal, scientific and ethical point of view. The subjects are really fashion these days as the matter has a great importance in all the countries and expressly in the European Union's projects.

## **TOPICS**

### **THEORETICAL LESSONS**

#### **I. INTRODUCTION**

#### **II. THE HUMAN GENOME PROJECT:**

1. Human genome project's backgrounds. 2. Human genome diversity project

#### **III. THE SPANISH LEGAL DEVELOPMENT IN BIOMEDICINE:**

1. Regulations on Biomedical subjects. 2. National, Community and International regulations. 3. The Convention on Human Rights and Biomedicine of the Council of Europe.

#### **IV. PRIVACY AND GENETIC INFORMATION:**

1. Privacy and genetic data. 2. Basic principles of data protection. 3. The subject and the family. 4. The right to know and the right not to know. 5. The protection of subjects in respect of their personal data. 6. Technical and organisational security measures to guarantee informatic freedom.

#### **V. GENETIC INFORMATION AND CONTRACTUAL RELATIONS:**

1. Types of contract affected by genetic information. 2. Conflicts. 3. Regulation

#### **VI. GENETIC INFORMATION AND PERSONAL INSURANCE:**

1. Genetic risk: the reality. 2. The duty to declare genetic risks. 3. Regulation

#### **VII. GENETIC COUNSELLING**

1. Concept and relevant aspects. 2. Advice on undergoing certain tests. 3. Genetic predictive tests and diagnoses. 4. Communication and evaluation of the genetic predictive tests. 5. Decisions taken on the basis of genetic counselling

#### **VIII. ASSISTED REPRODUCTION TECHNIQUES**

1. Legal and ethical aspects in assisted reproductive techniques. 2. Types of ART. 4. Gametes cryopreservation. 5. Payment of gametes. 6. Embryo research.



## **IX. EUGENICS**

1. Medical eugenics. 2. Eugenic abortion. 3. Comparative law on eugenics

## **X. SEX SELECTION**

1. Introduction. 2. Sex selection: Positive law considerations. 3. Positive law regulation: a personal appraisal.

## **XI. TRASPLANTS**

1. New challenges for organ trasplantation. 2. Regulation on trasplantation. 3. Xenotrasplantation. 4. Legal, ethical and scientific problems.

## **XII. GENETIC MANIPULATION**

1. Introduction. 2. Different types. 3. Genetic manipulation offences in Spain's new Penal Code. 4. Biomedicine Convention

## **XIII. CLONING**

1. Scientific developments in cloning. 2. Types of cloning. 3. Ethical and legal problems. 4. Regulation

## **XIV. STEM CELLS**

1. Introduction about the scientific developments in stem cells. 2. Stem cell research. 3. The lack of a legal concensus in the European Framework. 4. Current legal evaluation: the need for a minimal harmonisation. 5. Report from the Advisory committee on Ethics of Scientif and technical research

## **XV. EUTHANASIA**

1. Regulations of Spanish civil law to safeguard the aunomy of patients at the end of their life. 2. Types of euthanasia. 3. Regulation. 4. Testament.

## **Practical Lessons**

1. Privacy and the proteccion of medical information
2. Genetic discrimination
3. New reproductive techniques
4. Medical liability
5. Sterilization
6. Trasplant
7. Cloning
8. Stem cells
9. Euthanasia
10. Biotechnology

## **METODOLOGY**

After lecturer has exposed the different topics the students work in the class solving ethical and juridical problems of Biomedical Law and cases.

## **EVALUATION**

- Exam (80% of the final qualification)
- Works developed by the student and supervised by the lecturer (10% of the final mark)
- Participation in class (10% of the final mark)

## **BIBLIOGRAPHY**

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- PENNINGS, Guido, "Age and assisted reproduction", Med Law, Núm. 14, 1995, pp. 531-541.
- PRETORIUS, D., "Rights to gametes, zigotes and embryos in storage", Med Law, Núm. 12, 1993, pp. 607-616.

## **NATIONAL AND INTERNATIONAL DOCUMENTS**

### **National legislation**

#### **1. España**

Ley 35/1988, de 22 de Noviembre, sobre Técnicas de Reproducción Asistida.

Real Decreto 412/1996, de 1 de marzo, por el que se establecen los protocolos obligatorios de estudio de los donantes y usuarios relacionados con las técnicas de reproducción humana asistida y se regula la creación y organización del Registro Nacional de Donantes de Gametos y Preembriones con fines de reproducción humana.

Real Decreto 413/1996, de 1 de marzo, por el que se establecen los requisitos técnicos y funcionales precisos para la autorización y homologación de los centros y servicios sanitarios relacionados con las técnicas de reproducción humana asistida.

Ley 42/1988, de 28 de Diciembre, de donación y utilización de embriones y fetos humanos o de sus células, tejidos u órganos.

Ley 15/1994, de 3 de Junio, por la que se establece el régimen jurídico de la utilización confinada, liberación voluntaria y comercialización de organismos modificados genéticamente, a fin de prevenir los riesgos para la salud humana y para el medio ambiente.

Ley 31/1995, de 8 de Noviembre, de Prevención de Riesgos Laborales.

Ley Orgánica 10/1995, de 23 de Noviembre, por la que se reforma el Código Penal.

Referencias a otras disposiciones.

### **FOREIGN LEGISLATION**

#### **República Federal Alemana**

Ley, de 13 de Diciembre de 1990, sobre Protección de Embriones (Gesetz zum Schutz von Embryonen. Embryonenschutzgesetz - ESchG).

#### **Austria**

Ley Federal, de 12 de Julio de 1994, por la que se regulan las actividades con organismos modificados por técnicas genéticas, la liberación y la puesta en circulación de organismos modificados genéticamente por medio de técnicas genéticas y la aplicación del análisis genético y la terapia génica en el ser humano y se modifica la Ley de Responsabilidad por Productos (Bundesgesetz, mit dem Arbeiten mit gentechnisch veränderten Organismen, das Freisetzen und Inverkehrbringen von gentechnisch veränderten Organismen und die Anwendung von Genanalyse und Gentherapie am Menschen geregelt werden [Gentechnikgesetz - GTG] und das Produkthaftungsgesetz geändert wird).

#### **Brasil**

Ley nº 8.974 de 5 de enero de 1995, por la que se regulan los incisos II y V del apartado 1º del artículo 225 de la Constitución Federal, se establecen normas para la utilización de las técnicas de ingeniería genética y liberación en el medio ambiente de organismos genéticamente modificados, se autoriza al poder ejecutivo para crear, en el ámbito de la Presidencia de la República, una Comisión Técnica Nacional de Bioseguridad y se establecen otras previsiones (Lei nº 8.974, de 05 de janeiro de 1995. Regulamenta os incisos II e V do § 1º do art. 225 da Constituição Federal, estabelece normas para o uso das técnicas de engenharia genética e liberação no meio ambiente de organismos geneticamente modificados, autoriza o Poder Executivo a criar, no âmbito da Presidência da República, a Comissão Técnica Nacional de Biossegurança, e da outras providências).

#### **República Popular China**

Ley de 27 de Octubre de 1994, sobre asistencia sanitaria materno infantil.

#### **Estados Unidos de América**

Ley de 4 de enero de 1995, de modificación del título 35 del Código de los Estados Unidos relativo a las patentes sobre procesos biotecnológicos [Bill to amend title 35, United States Code, with respect to patents on biotechnological processes].

#### **Francia**

Ley nº 94-653, de 29 de Julio de 1994, relativa al respeto del cuerpo humano (Loi nº 94-653 relative au respect du corps humain).

Ley nº 94-654, de 29 de Julio de 1994, relativa a la donación y utilización de elementos y productos del cuerpo humano y a la asistencia médica en la reproducción y en el diagnóstico prenatal (Loi nº 94-654 relative au don et à l'utilisation des éléments et produits du corps humain, à l'assistance médicale à la procréation et au diagnostic prénatal).

Ley nº 94 - 548, de 1 de Julio de 1994, relativa al tratamiento de donaciones nominativas que tengan como finalidad la investigación en el ámbito de la salud ,y que modifica la Ley nº78 -17 de 6 de enero de 1978, relativa a la informática, a los ficheros y las libertades (Loi nº 94 - 548 du 1er juillet 1994 relative au traitement de données nominatives ayant pour fin la recherche dans le domaine de la santé et modifiant la loi nº. 78 - 17 du janvier 1978 relative à l'informatique, aux fichiers et aux libertés).

#### **Holanda.**

Ley 596, de 8 de noviembre de 1993, de complemento del Código de Enjuiciamiento Penal, con disposiciones relativas al análisis del DNA en las causas penales.

Decreto 522, de 4 de julio de 1994, que comprende reglas más precisas en cuanto al ejercicio de los artículos 151a, 195a, 195b y 195d del Código de Enjuiciamiento Penal (Decreto relativo a la investigación del DNA).

#### **India**

Ley nº 57, de 20 de Septiembre de 1994, sobre técnicas de diagnóstico prenatal (regulación y prevención de su utilización abusiva) (The Prenatal Diagnostic Techniques [Regulation and Prevention of Misuse] Act).

#### **Noruega**

Ley nº 56, de 5 de Agosto de 1994, sobre las aplicaciones biotecnológicas en la medicina.

#### **Reino Unido**

Ley de 1 de Noviembre de 1990, de fertilización humana y embriología (Human Fertilisation and Embryology Act).

Ley, de 3 de noviembre de 1994, de Justicia Penal y Orden Público , (Criminal Justice and Public Order Act. 1994).

Circular del Ministerio del Interior 16/95, de 31 de Marzo de 1995, sobre el Banco Nacional de Datos de ADN .

#### **Suecia**

Ley nº 114 de 14 de marzo de 1991, relativa a la utilización de determinadas técnicas genéticas en el marco de los exámenes generales de salud.

Ley nº 115 de 14 de marzo de 1991, relativa a las medidas con fines de investigación o de tratamiento en relación con los embriones.

#### **Suiza**

Artículo 24 de la Constitución.

#### **Referencias a otras disposiciones.**

#### **INTERNATIONAL DOCUMENTS**

##### **Naciones Unidas (ONU)**

Convenio de 5 de junio de 1992, sobre diversidad Biológica, de Rio de Janeiro (Convention on Biological Diversity).

## UNESCO

Declaración Universal, de 26 de febrero de 1994, de los Derechos Humanos de las Generaciones Futuras (The Universal Declaration of the Human Rights of Future Generations).

Comité internacional de Bioética, Anteproyecto de Declaración Universal de 4 de marzo de 1996, sobre el Genoma Humano y los Derechos Humanos (Preliminary Draft of a Declaration on the Human Genome and Human Rights).

Consejo de Europa

Proyecto de Convenio, de 26 de septiembre de 1996, *para la Protección de los Derechos Humanos y de la Dignidad del ser Humano con respecto a las Aplicaciones de la Biología y de la Medicina: Convenio sobre los Derechos Humanos y la Biomedicina*, (Draft Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine).

Recomendación 934 (1982), *relativa a la ingeniería genética* (Recommendation on genetic engineering).

Recomendación 16 (1984), *relativa a la notificación de trabajos en los que se utilice ácido desoxirribonucleico recombinante (ADN)* (Recommendation concerning notification of work involving recombinant deoxyribonucleic acid -DNA).

Recomendación 1.046 (1986), *relativa a la utilización de embriones y fetos humanos con fines diagnósticos, terapéuticos, científicos, industriales y comerciales* (Recommendation on the use of human embryos and foetuses for diagnostic, therapeutic, scientific, industrial and commercial purposes).

Recomendación 1.100 (1989), *sobre la utilización de embriones y fetos humanos en la investigación científica* (Recommendation on the use of human embryos and foetuses in scientific research).

Recomendación 13 (1990), *sobre cribado genético prenatal, diagnóstico genético prenatal y sobre el consejo genético conexo* (Recommendation on prenatal genetic screening, prenatal genetic diagnosis and associated genetic counselling).

Recomendación 1 (1992), *sobre la utilización del análisis del ácido desoxirribonucleico (ADN) dentro del marco de la administración de la justicia penal* (Recommendation on the use of analysis of deoxyribonucleic acid [DNA] within the framework of the criminal justice system).

Recomendación 3 (1992), *sobre pruebas genéticas y de cribado con fines sanitarios* (Recommendation on genetic testing and screening for health care purposes).

Recomendación 1.213 (1993), *relativa al desarrollo de la Biotecnología y a las consecuencias para la agricultura* (Recommendation on developments in Biotechnology and the consequences for agriculture).

Recomendación 1.240 (1994), *relativa a la protección y patentabilidad de los productos de origen humano* (Recommendation on the protection and patentability of material of human origin).

Recomendación 11(1994), *sobre el cribado como instrumento de medicina preventiva* (Recommendation screening as a tool of preventive medicine).

Union Europea

Propuesta de Directiva del Parlamento Europeo y del Consejo, de 13 de diciembre de 1995, *relativa a la protección jurídica de las invenciones biotecnológicas*.

Directiva del Consejo 90/219/CEE, de 23 de abril de 1990, *relativa a la utilización confinada de microorganismos modificados genéticamente*.

Directiva de la Comisión 94/51/CE, de 7 de noviembre de 1994, *por la que se adapta al progreso técnico la Directiva 90/219/CEE del Consejo relativa a la utilización confinada de microorganismos modificados genéticamente.*

Directiva del Consejo 90/220/CEE, de 23 de abril de 1990, *sobre la liberación intencional en el medio ambiente de organismos modificados genéticamente.*

Directiva de la Comisión 94/15/CE, de 15 de abril de 1994, *por la que se adapta al progreso técnico por primera vez la Directiva 90/220/CEE del Consejo sobre la liberación intencional en el medio ambiente de organismos modificados genéticamente.*

Directiva del Consejo 90/679/CEE, de 26 de noviembre de 1990, *sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo.*

Directiva del Consejo 93/88/CEE, de 12 de octubre de 1993, *por la que se modifica la Directiva 90/679 sobre la protección de los trabajadores contra los riesgos relacionados con la exposición a agentes biológicos durante el trabajo.*

Resolución del Parlamento Europeo, de 16 de marzo de 1989, *sobre los problemas éticos y jurídicos de la manipulación genética.*

Resolución del Parlamento Europeo, de 16 de marzo de 1989, *sobre la fecundación artificial "in vivo" e "in vitro".*

#### ETHICAL DOCUMENTS

Dinamarca. Consejo Danés de Ética

Comentario, de 1993, *sobre la ley del Ministerio de trabajo de prohibición de uso de pruebas genéticas en las pensiones y los seguros*

Recomendaciones, de 1993, *sobre cribado genético*

Recomendaciones, de 1994, *sobre la patentabilidad de los genes humanos*

Francia. Comité Consultivo Nacional de Ética para las Ciencias de la Vida y de la Salud

Dictamen, de 15 de diciembre de 1989, *sobre la difusión de las técnicas de identificación mediante el análisis del ADN*

Dictamen, de 2 de diciembre de 1991, *sobre la no comercialización del genoma humano*

Dictamen, de 30 de octubre de 1995, *sobre genética y medicina: de la predicción a la prevención*

Italia. Comité Nacional de Bioética

Dictamen, de 15 de febrero de 1991, *sobre la terapia génica*

Dictamen, de 18 de julio de 1992, *sobre el diagnóstico prenatal*

Dictamen, de 19 de noviembre de 1993, *sobre la patentabilidad de los organismos vivos*

Dictamen, de 18 de marzo de 1994, *sobre el Proyecto Genoma Humano*

Portugal. Consejo Nacional de Ética para las Ciencias de la Vida

# AN INTRODUCTION TO THE U.S. LEGAL SYSTEM

Instructor: Toni M. Fine

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## CONTENTS

This course is designed for students and professors at the University of Bilbao Faculty of Law. The course will be taught via webcam, at a schedule to be arranged by Professor Maria Canedo Arrillaga.

The course will introduce participants to the U.S. legal system, and will cover the following topics. The schedule is flexible and may change depending on how fast we move through the material. Time permitting, we will examine a series of recent lead Supreme Court cases at the end. Participants should propose other topics of interest.

## METHODOLOGY

Participants are expected to be prepared for class by reading the assigned materials in advance. Class sessions will be most interesting when students participate in class with comments and questions.

## TOPICS

<b>Topic</b>	<b>Reading</b>
Introduction to the Course	
Introduction to Case Law	Fine, pages 61 – 67 <i>United States v. Morrison</i> , and notes and questions
The Constitution of the United States Structural Overview Governmental Structures and Shared Powers Amendments: Individual Rights and Freedoms and Structural Modifications	Constitution of the United States Fine, pages 15 – 36 Review <i>Morrison</i> , and notes and questions
Judicial Systems of the United States Federal Courts -- Article III of the U.S. Constitution -- Federal Court Structure -- Choosing a Court State Court Systems	Review Article III, Constitution of the U.S. Fine, pages 37 – 48
U.S. Sources of Law	Fine, pages 49 - 53
An Introduction to U.S. Legal Research	Fine, pages 54-56; 59-60
U.S. Citation Convention	Fine, pages 57-59
Common Law Development and Use of Precedent	Fine, pages 61 – 74 Case sequence (to be distributed)
Dispute Resolution Processes in the United States	Fine, pages 75 – 101
The Interoffice Memorandum of Law	Fine, pages 125 – 126

## **BIBLIOGRAPHY**

The primary text for this course is Toni M. Fine, *An Introduction to the Anglo-American Legal System* (Aranzadi 2007). The text will be supplemented with cases and other relevant materials.

<http://www.transnational.deusto.es/uslaw>



# **LAW OF INTERNATIONAL TRADE**

Instructor: Marta Casado Abarquero

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## **CONTENTS**

For many years, the conflict rules have been the only method to regulate international private relations, including commercial ones. That has caused high degrees of dissatisfaction amongst international operators and has caused the birth of the Law of International Trade.

The Law of International Trade constitutes a reaction against the traditional method in the regulation of international commercial relations, in other words, a reaction against the traditional conflict rules.

The aim of this course is to explain the contents and main features of the Law of International Trade which constitutes a specialized uniform transnational commercial law, i.e., a method of regulating international commercial relations in the same way all over the world. Thus, the International Law of Trade is a branch of law aiming for potential universal applicability.

## **METODOLOGY**

Lectures and practical exercises.

## **EVALUATION**

Written exam or optative oral exam which will include short conceptual questions and questions needing essay-type answers. There may also be practical exercises.

## **TOPICS**

### **Introduction.**

1. The insufficiency of conflict rules for the regulation of commercial international relations.
2. The rebirth of the *Lex Mercatoria* and the Law of International Trade (New Law Merchant).
3. Private International Law (conflict rules) and the Law of International Trade

### **PART ONE**

#### ***CONTENTS AND SOURCES OF THE LAW OF INTERNATIONAL TRADE***

1. Contents and characteristics of the Law of International Trade.
  - I. Contents of the Law of International Trade.
  - II. Main characteristics.
    1. Universality: exclusion of European Law.
    2. Search for a uniform regulation: exclusion of conflict rules.
    3. Private character of the Law of international trade: exclusion of public law regulating international trade.
  - III. Composition and structure of the Law of International Trade.
2. Sources of the Law of International Trade.
  - I. Formal heterogeneity of the Law of International Trade and diversity of its origins.
  - II. Contribution of the operators of international trade (*lex mercatoria*).
    1. Compilations of usages and practices.

2. Usages and practices observed by the parties in their relations.
3. Typified contracts.
- III. International arbitration and development of the Law of International Trade.
- IV. Contribution of States and interstate organizations.
  1. Treaties and Conventions.
  2. Model Laws.
  3. UNCITRAL Guides.
- 3. General principles of law applicable to commercial international relations.**
  - I. Principles from International Law, principles recognized by national systems and principles integrating the *lex mercatoria*.
  - II. Principles integrating the *lex mercatoria* and Art. 38 of the Statute of the International Court of Justice.
  - III. UNIDROIT Principles on International Commercial Contracts, Rome, 1995 / 2000.

PART TWO

**THE INTERNATIONAL SALE OF GOODS:  
THE VIENNA CONVENTION (CISG, 1980) AND OTHER INTERNATIONAL  
REGULATIONS**

**4. General.**

- I. Background.
- II. General observations on the Convention
  1. The incomplete character of CISG
  2. The effect of the will of parties on the contract.
  3. The influence of anglosaxon legal conceptions upon the Convention
- III. The coexistence of the Convention with other international texts

**5. Contents and applicability of CISG.**

- I. The contents of the Convention: excluded matters.
- II. Scope of the Convention.
  1. Sales regulated by the Convention.
  2. Sales excluded from the Convention.
  3. Sales which include additional obligations.
    - A) Supply of goods to be manufactured.
    - B) Contracts not confined to the supply of goods.
- III. The power of the parties to choose the applicability of the Convention.

**6. Interpretation and integration of the Convention.**

- I. Interpretation of the Convention.
  1. The need for uniformity in the interpretation of an international text.
  2. The principle of good faith in the interpretation of the Convention.
- II. Matters not expressly settled in the Convention.
  1. Use of analogy.
  2. Use of principles on which the Convention is based.
  3. Use of UNIDROIT Principles for the interpretation of CISG.
  4. Use of an internal legal system .

**7. Formation of the contract**

- I. Proposal of an offer.
  1. The need for an adequate formulation of the offer.
    - A) Indication of intent to be bound.
    - B) Definiteness of the offer and determination of price.
  2. The reception of the offer as requisite for its effectiveness
- II. Inefficacy of the offer: prior withdrawal, revocability until acceptance and extinction.

III. Acceptance of the offer.

1. Communication of the express or tacit acceptance.
2. The need for acceptance of the offer.
  - A) Acceptance of all the contents of the offer.
  - B) Acceptance with modifications: formulation of a counter-offer.
3. Time limit for the acceptance of the offer.

**8. Perfection of contract**

- I. The effect of acceptance: conclusion of contract.
- II. Inclusion in the contract of general dealing conditions.
- III. Interchange of forms (*Battle of Forms*).
- IV. Time and place of perfection of contract.

**9. Exclusion of precontractual responsibility.**

**10. Questions related to the contract**

- I. Form and proof of the contract.
- II. Interpretation of the contract.
  1. The principle of good faith and its scope within the CISG
  2. Statements made by the parties.
  3. Merger clauses.
- III. Matters not expressly settled in the contract.  
Practices observed by the parties.  
Customs and usages agreed upon by the parties.  
International normative usages.
- IV. Modification and extinction of the contract.

**11. Obligations of the parties**

- I. Obligations of the vendor.
  1. Delivery of goods in accordance with the contract.
    - A) Material conformity of the goods.
    - B) Legal conformity of the goods.
    - C) Time and place for the delivery of the goods.
  2. Handing over of the documents relating to the goods.
- II. Obligations of the buyer.
  1. Inspection of the goods.

Inspection of the goods in origin or after transportation.

Time limit for the inspection of the goods.

- C) Need of notification to the vendor about lack of conformity with the goods
- D) The two years' time limit for the notification to the vendor about the lack of conformity with the goods.
2. Taking delivery of the goods.
3. Payment of price.

**12. Passing of risk**

- I. Inadequacy of internal systems for the regulation of passing of risk in international sales.
- II. Passing of risk in the INCOTERMS 2000 ICC.
  1. General purposes of the *Incoterms*.
  2. The division of the *Incoterms* in groups.
  3. *Incoterms* 2000.
    - A) EXW, ex works.
    - B) FCA, free carrier.
    - C) FAS, free alongside ship.

- D) FOB, free on board.
- E) CFR, cost and freight.
- F) CIF, cost, insurance and freight,
- G) CPT, carriage paid to.
- H) CIP, carriage and insurance paid to,
- I) DAF, delivered at frontier.
- J) DES, delivered ex ship.
- K) DEQ, delivered ex quay.
- L) DDU, delivered duty unpaid.
- LL) DDP, delivered duty paid.

III. Passing of risk in CISG.

- 1. Passing of risk in sales with delivery of the goods at a particular place.
- 2. Passing of risk when the goods are handed over to the first carrier.
- 3. Passing of risk in sales during transit.

**13. Breach and cancellation of the contract**

I. Breach of the contract.

1. Fundamental breach.

- A) Fundamental breach produced
- B) Fundamental foreseeable breach and anticipatory cancellation of the

contract

2. Cancellation of the contract for fundamental breach by the vendor.

- A) Cancellation for lack of conformity of the goods
- B) Cancellation for lack of delivery of the goods
- C) Cancellation during successive deliveries of goods.

3. Fundamental breach by the buyer and cancellation of the contract.

II. Effects derived from the cancellation of the contract.

1. General effects.

2. Especial effect of cancellation: the obligation of preservation of the goods.

**14. Breach and maintenance of the contract**

I. Breach and initiatives of the parties for the maintenance of the contract.

- 1. The vendor's possibility of repairing defective goods.
- 2. Concession of additional time limit to fulfil obligations.
- 3. Foreseeable breach and suspension of performance.

II. Breach of the contract and right to compel performance.

1. Remedies available to the buyer.

- A) Substitution of unsatisfactory goods
- B) Repair of the goods
- C) Reduction in price.

2. Remedies available to the vendor.

**15. Breach of the contract and financial consequences.**

I. Breach and indemnification for damages.

- 1. Duty of reduction of damages (mitigation)
- 2. Amount of indemnification for cancellation of contract.
  - A) Indemnification in case of a replacement sale.
  - B) The current price of the goods for measuring damages.
- 3. Exoneration of the duty to indemnify.
  - A) Acts of God.
  - B) Third party's breach

C) The breach by one of the parties as a consequence of the conduct of other party.

II. Breach of the contract and interest due.

**16. Other international texts related to the international sale of goods**

I. The UN Convention on Prescription, 1974.

1. Background and general guidelines.
2. The initial version of 1974 and the text modified by the Protocol of 1980.
3. Scope.
5. Prescriptive time limit: computation, modification and limits.
6. Prescriptive expiration.

II.. Countertrade

1. Contracts of sale and of barter
2. Types of countertrade transactions and barter.
3. The UNCITRAL Guide 1992.

**PART THREE**

LONG TERM CONTRACTS.

17. Construction and collaboration contracts.

I. **Construction contracts.**

1. **UNCITRAL Guide on drawing up international contracts for large industrial works.**

2. UN Guidelines for contracting for industrial projects in developing countries.

3. Forms of the contract:

A) FIDIC (Federation Internationale des Ingenieurs-Conseils) Conditions of Contract

B) ENAA (Engineering Advancement Association of Japan)

C) UNIDO (UN Industrial Development Organisation)

D) World Bank Standard Bidding Documents for the Procurement of Works

II. Collaboration contracts.

1. UN Guide on drawing up international contracts on industrial cooperation.

2. UN Guide for drawing up international contracts between parties associated for the purpose of executing a specific project

3. UN Guidelines for the acquisition of foreign technology in developing countries.

4. UN Guide on the establishment of industrial join-venture agreements in developing countries.

**PART FOUR**

FINANCE OF EXPORTS

**18. Bills of exchange**

I. Payment on open account

II. Payment by bills of exchange

1. Nature of the bill of exchange

2. Foreign bills

III. The UN Convention on International Bills of Exchange and International Promissory Notes (1988)

1. The claused bill

2. The documentary bill

3. Avalised bills

4. Bills drawn in a set

5. Negotiation of bills by exporter

6. Proceedings on bills of exchange

**19. Payment orders and collection arrangements.**

- I. Payment orders and international transferences of credit.
  1. Simple and documentary payment orders.
  2. UNCITRAL Model Law on international transferences of credit: Guide for the transfer of funds.
- II. Collection of commercial paper: ICC Uniform Rules for Collections (1995).
  1. Purpose and legal nature.
  2. Simple and documentary remittances.
  3. Bankers' liabilities.
  4. Presentation of the documents for payment or acceptance.

**20. Letters of credit**

- I. Characteristics of the letter of credit
- II. Uniform Customs and Practice for Documentary Credits: Application of the UCP
- III. The stages of a letter of credit transaction
- IV. The two fundamental principles
- V. The autonomy of the letter of credit
- VI. The documents tendered to the bank: The doctrine of strict compliance
  1. Time for examination
    2. Discrepancy of the documents
  3. Provisions relating to the documents in the UCP: the transport documents
- VII. Kinds of letters of credit
- VIII. Fraud affecting letters of credit: Evidence of fraud

**21. Factoring, forfaiting, financial leasing and other forms of merchant finance**

- I. Factoring
  1. The essence of international factoring
  2. Direct and indirect factoring
  3. Legal forms of factoring
  4. Disclosed and undisclosed factoring
  5. UNIDROIT Convention on International Factoring
- II. Forfaiting
  1. The essence of forfaiting
  2. Avalised bills of exchange and bank guarantees as security for the forfaiter
  3. Primary and secondary forfaiting transactions
- III. Leasing
  1. The essence of the financial leasing transaction
  2. UNIDROIT Convention on International Financial Leasing

**PART FIVE**

**GUARANTEES IN INTERNATIONAL TRADE**

**22. Suretyships (accessory guarantees).**

- I. General refusal of suretyships in international trade.
- II. Uniform Rules on Contract Guarantees (RUGC) ICC, 1978: Guarantees regulated by the RUGC.
- III. Uniform Rules on Contract Bonds (RUCB) ICC, 1994.

**23. Independent or abstract guarantees (first demand guarantees or bank-guarantees)**

- I. Adjustment of the independent guarantees to the needs of international relations.
- II. ICC Rules on First Demand Guarantees (RUGD, 1992).
  1. General guidelines
  2. Characteristics of guarantees.

3. Independent guarantees in the RUGD.
  - A) Content of the letter of guarantee.
  - B) Duration of guarantee.
  - C) The rule *extend or pay*.
4. Claim for the payment of guarantee.
- III. The UN Convention on Independent Guarantees and *Stand by Letters of Credit* (New York, 1995).
- IV. Fraud in the claim of payment of guaranty: preventive measures.

## **PART SIX**

### *TRANSPORTATION OF EXPORTS*

#### **24. Carriage of goods by sea**

- I. The carriage of goods in export transactions
  1. Unimodal and multimodal transport
    2. Traditional methods of transport and container transport
- II. The contract of carriage by sea
  1. Carriage covered by bill of lading or charterparty
  2. Conclusion of the contract of carriage by sea
- III. The bill of lading
  1. Nature of the bill of lading:
    - A) The bill of lading as a receipt
    - B) The bill of lading as evidence of the contract of carriage
    - C) The bill of lading as a document of title
  2. Types of bills of lading

#### IV. Liability of the carrier

#### **25. Carriage of goods by air**

- I. History of the statutory scheme
- II. Damage during "carriage by air"
- III. Basic system of liability – an overview
- IV. Carrier's defences
- V. Applicability of the various regimes.
  1. The original Warsaw Convention
  2. The amended Convention
  3. The non-Convention rules
- VI. Carriage governed by the original Warsaw Convention
  1. Document of carriage
  2. Basic liability
  3. Special rights of consignor and consignee
  4. Procedure in the event of a claim
- VII. Carriage governed by the amended Warsaw Convention:
  1. Document of carriage
  2. Basic liability
  3. Special rights of consignor and consignee
  4. Procedure in the event of a claim
- IX. Non-Convention carriage: IATA carriage

#### **26. Carriage of goods by land**

- I. Carriage by rail
  1. Scope of application
  2. Making the contract
  3. Liability

- II. Carriage by road – CMR
  - 1. Scope of application
  - 2. The consignment note
  - 3. Liability of the carrier
  - 4. Time limits
  - 5. Nullity of stipulations contrary to the Convention

#### PART SEVEN

#### SETTLEMENT OF DIFFERENCES IN COMMERCIAL INTERNATIONAL RELATIONS

##### **27. Conciliation of differences.**

- I. The Uncitral Conciliation Rules, 1981.
- II. ICC Conciliation Rules, 1998.

##### **28. International commercial arbitration.**

- I. The New York Convention (1958) and the Geneva Convention (1961): guidelines.
- II. The UNCITRAL Model Law on international trade arbitration.
- III. The conditions of arbitral proceedings.

The possibility of submission of the difference to arbitration.

The will of the parties.

The content and the arbitral agreement.

#### IV. Arbitration proceedings.

- 1. The New York Convention (1958) and the Geneva Convention (1961).

The UNCITRAL Guide on the organization of arbitral proceedings.

Permanent arbitral Courts: the ICC arbitral court and the International Arbitral Court of London.

- 4. General guidelines of arbitration proceedings in permanent arbitral courts.

#### VI. Recognition and execution of international awards.

- 1. Denial of recognition in the New York Convention.
- 2. Causes of nullity of final arbitral award in the Geneva Convention.

#### **BIBLIOGRAFY**

D'ARCY, MURRAY, CLEAVE "SCHMITHOFF'S Export Trade: the Law and Practice of International Trade", London, Sweet & Maxwell, 2000, Tenth Edition

CRACKNELL & SELLMAN "Law of International Trade", London, Old Bailey Press, 2003, Fourth Edition

HONNOLD "Uniform Law for International Sales", The Hague, Kluwer Law International, 1999, Third Edition.

WATSON "Finance of International Trade", London, The Institute of Bankers, 1986, Third Edition.

GUTTERIDGE & MEGRAH "The Law of Bankers' Commercial Credits", London, Europa Publications, 1984, Seventh Edition

VENTRIS "Bankers' Documentary Credits", London, London Press Ltd, 1983, Second Edition.

BERTRAMS "Bank Guarantees in International Trade", The Hague / Paris, ICC Publishing, Kluwer Law International, 1996, Second Edition.

WIGGERS "International Commercial Law: Source Materials", The Hague, Kluwer Law International, 2001



## **POLITICAL DIMENSION OF THE EUROPEAN UNION**

Instructor: José Ramón Canedo Arrillaga

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### **METODOLOGY**

Consists on the exposition of the different topics by the lecturer and the students work in the class solving problems of private international law and cases

### **EVALUATION**

- Written exam

### **TOPICS**

#### **THE POLITICAL MEANING OF THE EUROPEAN INTEGRATION PROCESS**

- 1.- From the Schuman Plan...
- 2.- to the Treaty of the European Union.
- 3.- To the European Constitution

#### **THE POLITICAL DIMENSION OF THE EUROPEAN COMMUNITIES**

- 1.- The first steps: from the economical citizenship...
- 2.- to the citizenship of the Union
- 3.- The policies for the citizens (employment and social policy; consumers; public health; culture and tourism; education; education, training and youth policies).

#### **THE POLITICAL DIMENSION OF THE EU FOREIGN POLICY**

- 1.- From the European Political Cooperation ...
- 2.- to the European Foreign and Security Policy (EFSP)
- 3.- The new European Security and Defence Policy (ESDP)

#### **THE AREA OF FREEDOM, SECURITY AND JUSTICE**

- 1.- Historical evolution
- 2.- Policies for the nationals of third countries (asylum, immigration, visas...) Title IV EC Treaty (arts. 61-69).
- 3.- Judicial cooperation in civil, commercial, matrimonial and consumer matters
- 4.- Police and Judicial cooperation in criminal matters Title VI EU Treaty (arts. 29-42).

#### **FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION**

- 1.- The lack of a catalogue for the European Union
- 2.- The protection of fundamental rights accorded by the European Court of Justice
- 3.- The path towards a formulation: the Maastricht and the Amsterdam Treaties
- 4.- The relationship between the EU and the Council of Europe
- 5.- The Charter of Fundamental Rights

# PRIVATE INTERNATIONAL LAW

Instructor: María Pilar Canedo Arrillaga.

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## CONTENTS

Explanation of the main ways of solving the problems related to the private social relations with a foreign element.

## METODOLOGY

Consists on the exposition of the different topics by the lecturer and the students work in the class solving problems of private international law and cases

## EVALUATION

- Exam (80% of the final qualification)
- Works developed by the student and supervised by the lecturer and participation in class (20% of the final mark)

## TOPICS

### FIRST PART: INTRODUCTION TO PRIVATE INTERNATIONAL LAW

#### FIRST CHAPTER: CONCEPT AND SCOPE OF PRIVATE INTERNATIONAL LAW

- I. Concept of Private International Law. Privatist conception and other theories.
  - II. Characteristics of Private International Law and its main consequences.
    - A. Main Characteristics
      1. Autonomy
      2. Exclusiveness
      3. Relativity
    - B. Main Problems related to the characteristics
      1. Problems related to legal certainty
      2. Forum shopping
      3. Failing judgements. (*Solution claudicans*)
    - C. Partial solution to the problems
      1. Related to State authorities.
      2. Related to the parties in the social relation
  - III. The denomination "Private International Law" versus "Conflict of Laws"
  - IV. Subject Matter of Private International Law.
    - A. A Private relation and what does it mean. (Horizontal relation versus vertical relation).
    - B. An International relation and what does it mean: A foreign element, its importance and different roles.
      1. Roles of the foreign element.
        - Identification role of the foreign element.
- Different theories:

Subjective,  
objective,  
juridical,  
the genuin foreign element,  
the international effect

The relative private international situation.

The concrete relation and the concrete problem.

- Normative role of the foreign element. Legislative aspect and interpretation.

2. Accreditation of the foreign element.

3. The emergent concept of "International Public Law".

V. Contents of Private International Law.

A. Three main Sectors

1. Jurisdiction. Concept and different sources

2 Law applicable. Concept, different methods of regulation and different sources.

The true conflict, the non conflict, the false conflict.

3. Recognition and Enforcement of foreign judgements. Concept and different sources

B. Relations between the different sectors of Private International Law.

VI. Connection of Private international Law with law of nationality and with legislation relating to aliens.

VII. Interlocal Conflict of law and Private International Law.

A. Different types of non unified legal systems

B. Scope of application of Private International Law.

**SECOND CHAPTER: SOURCES OF SPANISH PRIVATE INTERNATIONAL LAW**

I. Public International Law and Private International Law.

II. Spanish Constitution.

A. Constitutional Principles

B. Substantial rules applicable to Private International Law

C. Direct reference to Private International Law

III. Supranational Law

A. International Treaties and Private International Law.

1. Procedure for the entry into effect of an International Treaty.

2. Relation between an International Treaty and an internal rule.

3. Date of entry into effect of bilateral and multilateral Treaties.

4. Scope of application of an International Treaty. Different aspects.

5. Functioning and importance of the reservations.

6. Relations between Treaties dealing with the same subjects. Vienna Convention on the Law of the Treaties. 23 May 1969.

7. Nature of International Treaties and its implication in the scope of application. (Treaties erga omnes versus inter partes).

8. Interpretation of International Treaties

9. Main International Treaties accepted by Spain in Private

International Law.

B. European Community Law as a source of Private International Law.

1. Public European Community Law

2. Private European Community Law.

Competition Law  
Title IV TEC.

- . Contents
- . Special scope of territorial application (opting out and opting in)
- . Powers of the European Court of Justice. (art. 68 TEC).  
Procedures of interpretation.

IV. Private sources of Private International Law: New Law Merchant

- A. Reasons of existence
- B. Contents and main characteristics.
- C. Legal value.
- D. Examples
  - 1. Incoterms
  - 2. Documentary credit

V. Municipal law as a source of Private International Law.

## **SECOND PART: RULES ON INTERNATIONAL JURISDICTION**

### **FIRST CHAPTER: INTRODUCTION TO THE RULES ON INTERNATIONAL JURISDICTION**

I. Concept of International Jurisdiction (difference with jurisdiction and internal jurisdiction).

II. Characteristics of International Jurisdiction.

- Previous.
- Global
- General
- Unilateral
- Main Consequences of unilaterality
- Unilateral limitation of International Jurisdiction and its reasons
- Rules of International jurisdiction in supranational rules

III. Immunity from legal proceedings

- Concept
- Subjects
- Scope of application: Absolute or relative interpretation
- Procedural aspects in spanish legal system

IV. Forum of International Jurisdiction

- Concept
- Main Types.
  - Depending on the nature.
    - personal
    - territorial
  - intention of the parties
  - forum connexitatis
  - forum legis
  - forum reciprocitatis
- Depending on the scope
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- B. Procedures
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## **PUBLIC INTERNATIONAL LAW**

Instructor: Felipe Gomez Isa

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### **CONTENTS**

To know the evolution and main features of international society and the legal order that tries to regulate it, Public International Law.

To reflect and to debate on contemporary international reality from a legal perspective.

To enhance the interest on knowledge of international affairs.

### **METHODOLOGY**

Methodology tries to find a balance between lectures from the Professor and some Visiting Professors and experts and case studies and workshops on certain areas of interest. On the other hand, given the nature of the topics analysed, we will always be influenced by the current international affairs.

### **EVALUATION**

The evaluation combines a general exam in which students have to show their basic knowledge on the different topics analysed in class with essays, workshops and active participation in the relevant activities in class.

### **TOPICS**

#### SECTION I: CONCEPT AND EVOLUTION OF INTERNATIONAL LAW

##### Chapter 1: The concept of Public International Law

The problematic character of International Law-The need of a triple approach-The legal approach: a formal definition of International Law-The metaphysical approach: the foundation of International Law-The historical and sociological perspective: International Law as conditioned by the structure and dynamics of international society

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The formation of International Law-Consolidation of International Law:-The Spanish School of International Law (XVI and XVII centuries)-The Peace of Westphalia (1648)-Classical International Law-International Law from 1815 to 1919: the Vienna Congress and the Holy Alliance of Christian Nations-International Law from 1919 to 1939: the League of Nations-Contemporary International Law: United Nations from 1945 onwards

#### SECTION II: SOURCES OF INTERNATIONAL LAW

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Chapter 4: Treaties in light of the Vienna Convention on the Law of Treaties (1969)-Definition and subjects of treaties-Conclusion of treaties-Reservations-Entry into force. Provisional application-Application of treaties-Interpretation-Treaties and third States-Amendment and modification-Invalid treaties-Termination-Suspension-Registration

##### Chapter 5: International Custom

Concept: the material element and the psychological element in the formation of customary Law (*opinio iuris*)

##### Chapter 6: General Principles of International Law



Chapter 7: Judicial Decisions

Chapter 8: Resolutions of International Organisations and *Soft-Law*

Chapter 9: Codification of International Law

Chapter 10: Other possible sources of International Law

Learned Writers-Equity-The hierarchy of the sources

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Chapter 16: Air space and Outer space

Air space-Outer space-The common heritage of mankind

Chapter 17: International Organisations

Introduction-The concept of International Organisations-Classification of IOs-Decision-making at IOs

Chapter 18: United Nations Organisation

The UN Charter-Membership-The organs of UN-General Assembly-Security Council-International Court of Justice-Secretariat-Economic and Social Council (ECOSOC)-Specialized Agencies of UN

Chapter 19: The individual before International Law: the international protection of human rights

The individual as subject of International Law-The San Francisco Conference and Human Rights-Human Rights in the UN Charter-The Universal Declaration of Human Rights (1948)-The Covenants of Human Rights (1966)-Other human rights instruments on the universal level-Human rights at regional level

Chapter 20: Peoples before International Law

Introduction-The right to self-determination of peoples

### SECTION V

#### OTHER FUNCTIONS OF INTERNATIONAL LAW

Chapter 21: Peaceful Settlement of Disputes between States

Chapter 22: The prohibition of the use of force

Chapter 23: International Cooperation

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