

Contracts

Master in L&M 3E 2023/2024

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Class Schedule	14:00-18:00

Introduction

Contracts are, obviously, a fundamental part of any legal system and an essential tool for economic activity in general. Due to the nature of the Master's in which the course is taught, the course covers several aspects of private and public law contracts, including several aspects of contract law which assume an international dimension (namely, the application of the Convention on International Sale of Goods – CISG) and European law.

Goals

The main objective of the course “Contracts” is to introduce core concepts and develop fundamental legal skills regarding the regime of contracts, mostly from an international and European perspective.

The lessons will be lectured aiming to achieve in-depth treatment of cutting-edge issues in a pragmatic perspective, combining both “legal” and “economic” reasoning and stimulating research, analysis, critique, and argumentation capabilities, making the discipline suitable to a broad range of attendants, such as Law students, managers, economists, compliance officers, and anyone interested in the field. In the final part of the course, an advanced practical workshop on contracts will also take place.

Methods

Classes will be lectured aiming to achieve in-depth treatment of cutting-edge issues in a pragmatic perspective, combining both “legal” and “economic” reasoning and stimulating research, analysis, critique, and argumentation capabilities, making the discipline suitable to a broad range of attendants, such as Law students, managers, economists, compliance officers, and anyone interested in the field. In the final part of the course, an advanced practical workshop on contracts will also take place.

Course Contents

PART I – INTRODUCTION: THE MANY FACES OF CONTRACTS

1. Contract and the public-private law divide
2. Contract and international trade law and contract and European Union law: first approach

PART II – PRIVATE CONTRACTS

1. The structure and general principles of the Law of Obligations and Contracts
2. Formation of the contract. Unfair Contract Terms
3. Consumer Protection Law
4. Liability for breach of contract
5. Change in circumstances, *force majeure* and other disruptions of contract
6. The United Nations Convention on Contracts for the International Sale of Goods of Vienna, 1980 (CISG)

PART III – PUBLIC PROCUREMENT AND PUBLIC CONTRACTS

SECTION A) PUBLIC PROCUREMENT

1. The structure and general principles of European Law on Public Procurement and Public Contracts. Subjective and objective coverage of Public Procurement rules. Foreign investment regime and supra-national dispute resolution
2. Public Procurement as a System: values, interests, models, principles, governance and control. Sustainability and public procurement; social and labour rules and public procurement. Integrity concerns and risks in public procurement. Conflicts of interest
3. The economic agents who can participate in award procedures
4. The award procedures

SECTION B) PUBLIC CONTRACTS

5. Life of the contract (I): in general. Main concepts. Contract Management and Contract Performance. Special powers of public contracting authorities. Unlawfulness and its consequences
6. Life of the contract (II): balance, dynamics and termination of the contract. Risk, unforeseen circumstances, *force majeure* and the balance of the contract. *Fait du prince*. The pandemic and the war: effects in public contracts. Modifications to existing contracts

PART IV – ADVANCED PRACTICAL WORKSHOP ON CONTRACTS

Assessment

Students will be evaluated based on:

- a) A written exam – 24 hours take-home exam (50%);
- b) Their participation in class and written assignments (50%);

References

a) General

- COSTA E SILVA, PAULA (Ed.), *CISG, Brasil e Portugal*, Coimbra: Almedina, 2021.
- JANSEN, NILS / ZIMMERMANN, REINHARD, *Commentaries on European Contract Laws*, Oxford, OUP, 2018.
- KADNER GRAZIANO, THOMAS, *Comparative contract law : cases, materials and exercises*, translations of materials by Christopher Booth, Eleanor Merrett, Rachel Harrison, 2nd ed., Cheltenham: Edward Elgar, 2019.
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- MENEZES CORDEIRO, ANTÓNIO, com colaboração de A. BARRETO MENEZES CORDEIRO, *Tratado de Direito civil*, vols. VI, 3rd ed., Coimbra: Almedina, 2019; VII (2010, reprint 2018); XI (2018) e XII (2018).
- MENEZES CORDEIRO, ANTÓNIO (Ed.), *Código Civil Comentado, II – Das obrigações em geral*, Coimbra: Almedina, 2021.
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- SOARES PEREIRA, RUI, "Force majeure, *imprévision* and change in circumstances under Portuguese law", *Revista da Faculdade de Direito da Universidade de Lisboa*, LVIII, (2), 2017, pp. 213 ss.
- SOVERAL MARTINS, ALEXANDRE, *Compra e Venda Internacional de Mercadorias: a CISG*, Coimbra: Almedina, 2021.

b) Public Procurement and Contracts

- ARROWSMITH, SUE, *The Law of Public and Utilities Procurement. Regulation in the EU and UK*, Vol. 1, London: Sweet and Maxwell, 2014, and Vol. 2, 2018.
- AUDIT, MATHIS/SCHILL, S. W. (Eds.), *Transnational Law of Public Contracts*, Bruxelles: Bruylant, 2016.
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- CARANTA, ROBERTO/TRYBUS, MARTIN/EDELSTAM, GUNILLA, *EU Public Contract Law: Public Procurement and Beyond*, Bruxelles: Bruylant, 2014.
- CUNHA RODRIGUES, NUNO, *A contratação pública como instrumento de política económica*, Coimbra: Almedina, 2013.

- ESTORNINHO, MARIA JOÃO, *Curso de Direito dos Contratos Públicos. Por uma contratação pública sustentável*, Coimbra: Almedina, 2012.
- FOLLIOT-LALLIOT, LAURENCE/TORRICELLI, SIMONE (Coords.), *Contrôles et contentieux des contrats publics/Oversight and Challenges of public contracts*, Bruxelles, 2018.
- GEORGOPOULOS, ARIS/HOEKMAN, BERNARD/MAVROIDIS, PETROS, *The Internationalization of Government Procurement Regulation*, Oxford: Oxford University Press, 2017.
- MARTINS, LICÍNIO LOPES, *Empreitada de Obras Públicas*, Coimbra: Almedina, 2014.
- NOUGUELLOU, ROZEN/STELKENS, ULRICH (Eds.), *Droit comparé des contrats publics/Comparative law on public contracts*, Bruxelles: Bruylant, 2010.
- PIGA, GUSTAVO/TREUMER, STEEN (Eds.), *The Applied Law and Economics of Public Procurement*, London/New York: Routledge, 2013.
- RACCA, GABRIELLA M./YUKINS, CHRISTOPHER (Eds.), *Integrity and Efficiency in Sustainable Public Contracts*, Bruxelles: Bruylant, 2015.
- RAIMUNDO, MIGUEL ASSIS, *Direito dos Contratos Públicos*, vol. 1 – *Introdução. Regime de formação*, and vol. 2 – *Regime substantivo*, Lisboa: AAFDL, 2022.
- ID., *A formação dos contratos públicos. Uma concorrência ajustada ao interesse público*, Lisboa: AAFDL, 2013.
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- ID., "Aiming at the market you want": a critical analysis of the duties on division into lots under Directive 2014/24/EU", *Public Procurement Law Review*, (4), 2018, pp. 167-187.
- ID., "Damages in Public Procurement Law: A Right or a Privilege? Some Thoughts After the Fosen-Linjen Saga", *European Procurement & Public Private Partnership Law Review*, 14, (4), 2019, pp. 255-261.
- SÁNCHEZ-GRAELLS, ALBERT, *Public Procurement and the EU competition rules*, 2.^a ed., Oxford-Portland, Oregon: Hart Publishing, 2015.