



<b>Course number</b>	<b>RMJ126</b>				
Course title	<b>Comparative Contract &amp; Commercial Law</b>				
Credit points	<b>3 ECTS</b>				
Total hours	<b>24</b>				
Contact hours	<b>24</b>				
Independent studies	<b>As needed</b>				
Course level	<b>Masters</b>				
Prerequisites					
Category	Mandatory	<b>X</b>	Restricted elective	<b>X</b>	<b>Free elective</b>

#### **COURSE RESPONSIBLE**

<i>Name</i>	<i>Academic degree</i>	<i>Academic position</i>
Carlos Llorente	LL.M (Hons), PhD (Hons)	Professor of Law

#### **COURSE TEACHERS**

<i>Name</i>	<i>Academic degree</i>	<i>Academic position</i>
Carlos Llorente	LL.M (Hons), PhD (Hons)	Professor of Law

#### **COURSE ABSTRACT**

This course focuses on the analysis of commercial transactions, mainly contracts, from an international and comparative law perspective (see below Course Plan-Main Subjects). It is not based on the legal rules applicable to commercial contracts in one specific jurisdiction (domestic law), as this is more appropriate of nationally-oriented LLB studies, but on the principle that learning the law is not just about learning legal rules but also, and more importantly, about learning to think as a lawyer. Consequently, this is a course with a strong methodological component where students, in addition to having the chance to work with legal rules (mostly at a supranational level: EU, Int'l Conventions), will be given ample opportunities to learn about the legal problem-solving method at an international level.

From this perspective, this course is intensively more practical than theoretical as students will have to read, analyse and discuss, first individually and later in the classroom, a number of problems and court cases representative of conflictive situations arising in the field of international commercial transactions (see below Course Plan-Sessions). Students will be provided with materials uploaded in the course intranet (more details on Course Plan-Sessions below) and will also receive recommendations on suggested readings and supplementary materials (see below Course Plan-Sessions and Course Literature)

### **GRADING CRITERIA**

<i>Criteria</i>	<i>Weighting</i>
Final Take-Home Exam	80%
Class Debates: Participation	20%

### **COURSE REQUIREMENTS**

Students are encouraged to participate in class and do the pre-reading.

### **COURSE PLAN – MAIN SUBJECTS**

<i>No.</i>	<i>Main subjects</i>	<i>Planned hours</i>
1	International Commercial Law: Problems & Sources. A Comparative Law approach to Private International Law	6
2	International sale of Goods: CISG + INCOTERMS 2010	4
3	International Carriage of Goods	4
4	Letters of Credit and Miscellanea	2
5	Specific Contractual issues from a Comparative and Private International Law Perspective	8

**COURSE PLAN – SESSIONS**

<i>Session</i>	<i>Session subjects and readings</i>	<i>Lecture/ Seminar</i>
1	<p><b>Introduction. A Private International Law (PIL) and Comparative Law Perspective of Commercial Transactions. The Usinor case.</b></p> <p>Students will have to read the Usinor case in advance of this session. A copy of this decision is available from the following link: <a href="http://www.cisg.law.pace.edu/cases/020328u1.html">http://www.cisg.law.pace.edu/cases/020328u1.html</a>. There is also a link in the course portals.</p> <p>In class we will brief and discuss this case. A short guide on how to brief a case is uploaded in the course intranet (Briefing a case Short 2020).</p>	S
2	<p><b>PIL problems in international commercial transactions (Int’l Jurisdiction and Applicable Law). The EU perspective. Regulations Brussels I Bis (RBIBis) and Regulation Rome I (RRI) and international Commercial Contracts. In particular, the Role of Article 7.1 of RBI Bis. Problem 1.</b></p> <p>Problem 1 and both Regulations are uploaded in the course intra- net. Students will have to read the Problem in advance of this session and be ready to discuss it. Students shall have a copy of the Regulations with them in class.</p> <p>For a common law (very practical) approach to RBIBis see “Handy Client Guide to Jurisdiction under Recast Brussels Regulation”, by Herbert Smith Freehills, which is uploaded in the course intranet.</p> <p>See also, Franciso J. Garcimartín, “The Rome I Regulation: Much ado about nothing?” for a short but interesting analysis of this Regulation as successor to the Rome Convention.</p> <p>Copies of both articles are uploaded in the course website, along with other materials.</p>	L/S
3	<p><b>A Comparative Law Perspective of Int’l Jurisdiction in Contract Law: The Bremen case</b></p> <p>A copy of the Bremen case is uploaded in the course intranet. For a better readable version, students may also find this decision in the following link: <a href="https://supreme.justia.com/cases/federal/us/407/1/">https://supreme.justia.com/cases/federal/us/407/1/</a></p> <p>As further reading on The Bremen’s significance see Jacco Bom- hoff, “Back to The Bremen (1972): Forum Selection and Worldmaking”. A copy of this article is uploaded in the course intranet.</p>	S

<i>Session</i>	<i>Session subjects and readings</i>	<i>Lecture/ Seminar</i>
4	<p><b>Rights and obligations of Seller and Buyer in the CISG. Ground Issues. Problem 2</b></p> <p>A copy of Problem 2 and of the CISG are uploaded in the course intranet. Students will have to read the Problem in advance of this session and be ready to discuss it. Students are expected to have a copy of the CISG with them in class.</p> <p>For readings on the CISG, see additional materials on the course website and below Course Literature.</p>	L/S
5	<p><b>A Comparative Law Perspective of Applicable Law (Conflict of Laws). “Commercial” Torts. The Prestige case saga.</b></p> <p>Students will have to read, and be prepared to discuss in class, the four (4) decisions in The Prestige case. Read them in chronological order.</p>	S
6	<p><b>Sale of goods and INCOTERMS. Problem 3</b></p> <p>A copy of Problem 3 is uploaded in the course intranet. Students will have to read the Problem in advance of this session and be ready to discuss it. The students will find materials on the INCO- TERMS also in the course intranet</p>	L/S
7	<p><b>A Comparative Law Perspective of Contracts. The Transfield Shipping case</b></p> <p>Students will find a copy of the House of Lords decision on The Transfield Shipping case in the course intranet. Please read it and be ready to discuss it in class.</p>	S
8	<p><b>Carriage of goods by road and sea. Problem 4</b></p> <p>A copy of Problem 4 is uploaded in the course intranet. Students will have to read the Problem in advance of this session and be ready to discuss it. Both The Hague Visby Rules and the CMR are necessary for the class discussion of this Problem. They are also uploaded in the course intranet.</p> <p>For readings on the CMR, see below Course Literature</p>	L/S
9	<p><b>A Comparative Law Perspective on Int’l Commercial Law Conventions and Int’l Jurisdiction. The BAT Case</b></p> <p>A copy of the decision of the UK Supreme Court on this case is uploaded in the course intranet. Students must read this decision in advance and be ready to discuss it in class</p>	S

<i>Session</i>	<i>Session subjects and readings</i>	<i>Lecture/ Seminar</i>
10	<p><b>Letters of Credit, Guarantees and Miscellaneous Issues in International Commercial Law. Problem 5.</b></p> <p>A copy of Problem 5 is uploaded in the course intranet. Students will have to read the Problem in advance of this session and be ready to discuss it. Students will be responsible for identifying the legal materials needed for the preparation of this Problem. Some of them are mentioned in the Problem description and are uploaded in the course intranet.</p>	L/S
11	<p><b>A Comparative Law Perspective of Contractual (?) Interpretation. The America's Cup case.</b></p> <p>Students will have to read, and be prepared to discuss them in class, the two decisions issued successively on this case. They are available in the course intranet. Read them in chronological order. First, the July 29th, 2008 decision (Appellate Division of the Supreme Court of New York) and second the April 2nd, 2009 decision (New York Court of Appeals).</p>	S
12	<p><b>A Comparative Law Perspective of Damages and Penalties. Foreign decisions enforcement and Punitive Damages.</b></p> <p>Students will have to read, and be ready to discuss them in class, two decisions. One in the Vergiette v. Samara case and another in the Exxon Valdez case. Both decisions are uploaded in the course intranet.</p>	S

## **COURSE LEARNING OUTCOMES**

This course has the following main learning outcomes:

### **Knowledge:**

1. Students will acquire a good working knowledge of selected and sophisticated topics in the fields of legal comparison,
2. Students will acquire a good working knowledge of selected and sophisticated topics in private international law
3. Students will acquire a good working knowledge of selected and sophisticated topics in international commercial law

### **Skills:**

4. Students will develop analytical and empirical skills in a legal context and will reinforce their communication and negotiation skills.
5. Students will develop analytical and empirical skills to be applicable to cross-border commercial transactions and disputes.

### **Competencies:**

6. Students will learn to incorporate into their professional competencies a problem-solving methodology applicable to legal issues in a globalized contract law by understanding, and practicing with, the "know-select-apply" trilogy.

*By completing the study course and successfully passing examination, the student will be able to:*

<i>Learning outcomes</i>	<i>Evaluation criteria</i>		
	<i>(40-69%)</i>	<i>(70-89%)</i>	<i>(90-100%)</i>
<i>Knowledge</i>	The student has acquired only basic knowledge of the course subject. The student lacks understanding of some of the core issues of the course subject.	Overall, the student's knowledge complies with the expectations. However, there are issues that the student does not fully understand.	The student has demonstrated in-depth knowledge and understanding of the issues related to the course subject.
<i>Skills</i>	The student has demonstrated only basic level of skills.	The student has demonstrated good skills.	The student has demonstrated excellent skills.
<i>Competencies</i>	The student can apply the knowledge only at a basic level. The student struggles with assessment and evaluation of legal issues. The student can identify the relevant legal norms. However, the student cannot correctly apply them.	The student can apply the knowledge at a reasonably good level. However, the student does not have the necessary level to be able to fully apply the acquired knowledge independently. The student has some problems to correctly apply the legal norms.	The student is able to apply the knowledge independently and correctly. The student can assess and evaluate legal issues, identify the relevant legal norms, and correctly apply them.

*Please analyse the contribution of defined grading criteria to learning outcomes. Number of grading criteria and learning outcomes should correspond to previously defined one.*

<i>Grading criteria</i>	<i>Learning outcomes</i>					
	<b>1.</b>	<b>2.</b>	<b>3.</b>	<b>4.</b>	<b>5.</b>	<b>6.</b>
Class Debates: Participation	X	X	X	X	X	X
Final Take-Home Exam				X	X	X

## **COURSE LITERATURE**

### *Compulsory literature*

<b>No.</b>	<b><i>Author, year, title, publisher</i></b>
1	Title: Concise Introduction to EU Private International Law Author: Michael Bogdan/Marta Perdegás Publisher / Edition / Year: Europa Law Publishing, 4th edition 2019 ISBN /ISSN: 9789089522085 Medium: Print
2	Title: Conflict of Laws: A Comparative Approach Author: Gilles Cuniberti Publisher / Edition / Year: Edward Elgar, 2017 ISBN/ISSN: 978 1 78536 595 9 Medium: Print
3	Title: The Brussels I Regulation Recast Author: Andrew Dickinson and Eva Lein Publisher / Edition / Year: Oxford University Press, 2015 ISBN / ISSN: 978-0-19-871428-6 Medium: Print
4	Title: Rome I Regulation: The Law Applicable to Contractual Obligations in Europe Author: Franco Ferrari and Stefan Leible (eds.) Publisher / Edition / Year: Sellier, 1st edition, 2010 ISBN / ISSN: 978-3-86653-115-4 Medium: Print
5	Title: International Commercial Transactions Author: Jan Ramberg Publisher / Edition / Year: Norstedts Juridik/ICC, 4th edition, 2011 ISBN / ISSN: 978-91-39-01566-6 Medium: Print
6	Title: The UN Convention on the Contracts for the International Sales of Goods Authors: Clayton P. Gillette and Steven D. Walt Publisher / Edition / Year: Cambridge University Press, 2nd edition, 2009 ISBN / ISSN: 978-1107149625 Medium: Print/EBook
7	Title: CMR. Contracts for the International Carriage of Goods by Road Authors: Andrew Messent and David A. Glass Publisher / Edition / Year: Informa Law from Routledge, 4th edition, 2017 ISBN / ISSN: 978-1138849372 Medium: Print/EBook

8	Title: Introduction to Comparative Law Author: Zweigert, Konrad/ Kötz, Heinz Publisher/Edition/Year: Clarendon Press, Oxford, 3rd Edition, 1998 ISBN/ISSN: 0198268602 Medium: Print
9	Title: Contract Law, A Comparative Introduction Author: Smits, Jan M. Publisher/Edition/Year: Edward Elgar Publishing, 2nd Edition, 2017 ISBN/ISSN: 9781785368769 Medium: Print
10	Title: Dalhuisen on Transnational and Comparative Commercial, Financial and Trade Law Publisher/Edition/Year: Hart Publishing, 6th Edition, 2016 ISBN/ISSN: 9781509907021 Author: Dalhuisen, Jan H Medium: Print
11	Check regularly the course intranet!