

DISCIPLINA: LAW AND ECONOMICS OF CONTRACTS	CÓDIGO: GRDDIRELE0185
PROFESSOR: MARIA JOSÉ SCHMIDT-KESSEN	CARGA HORÁRIA: 30h
EMENTA A. Introduction to law and economics and the tools from microeconomics B. Different stages of the 'life' of a contract C. Analysis of particular types of contracts D. Discussion of academic papers	
OBJETIVOS GERAIS Following Justice Oliver Wendell Holmes' vision, this course explores contract law through the analytical lens of microeconomics. The course has four parts. The first part of the course consists of a general introduction to the discipline of law and economics, and addresses some of the important concepts and analytical tools from microeconomics (efficiency, rational choice, equilibrium analysis, game theory and the behavioural/empirical turn). In the second part of the course, we will turn to the field of contracts in particular. We will analyse different stages of the 'life' of a contract, from its formation until its enforcement, discussing in particular different types of contract remedies for breach. The third part is dedicated to particular types of contracts, as for example distribution and consumer contracts. The fourth and final part of the course will consist of the discussion of academic papers written by the course participants.	
OBJETIVOS ESPECÍFICOS In terms of substance, students should be familiar by the end of the course with the basics of law and economics and be able to apply insights from economics to examine a legal rule in the field of contract law. In terms of skills, students should gain confidence and improve their presentation skills in the course of preparing their assigned PBL sessions and when presenting their student papers. Furthermore, students should gain more confidence and improve their legal writing skills, both by writing their student papers and commenting on their peers' papers. The exercise of providing each other with comments, should also further the students capacities to give constructive feedback to their peers.	
BIBLIOGRAFIA OBRIGATÓRIA <u>Books:</u> Cooter and Ulen (2011), <i>Law and Economics</i> , 6th ed., Boston: Pearson, Chapters 1, 2, 8 and 9. Miceli, Thomas (2008), <i>The Economic Approach to Law</i> , 2nd ed., Stanford: Stanford University Press, Chapters 1, 4, 5. Williamson (1985), <i>The Economic Institutions of Capitalism – Firms, Markets, Relational Contracting</i> , New York: MacMillan, Chapter 1: Transaction Cost Economics <u>Journal Articles:</u> Bakos et al. (2009), "Does Anyone Read the Fine Print?: Testing a Law and Economics Approach to Standard Form Contracts", available at ssrn.com . Posner (2005), "The Law and Economics of Contract Interpretation", 83 Texas Law Review 1581 Posner (2003), "Economic Analysis of Contract Law after Three Decades: Success or Failure?", 112 Yale Law Journal 829 Korobkin & Ulen (2000), "Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics", 88 California Law Review 1051 Eisenberg (1995), "The Limits of Cognition and the Limits of Contract", 47 Stanford Law Review 211	

Bernstein (1992), "Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry", 21 *Journal of Legal Studies* 115.

Ayres & Gertner (1989), "Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules", 87 *Yale Law Journal* 87

Friedmann (1989), "The Efficient Breach Fallacy", *Journal of Legal Studies*, Vol. 18, No. 1, 1-24

Rea (1984), "Efficiency Implications of Penalties and Liquidated Damages", 13 *Journal of Legal Studies* 147

Ulen (1984), "The Efficiency of Specific Performance: Toward a Unified Theory of Contract Remedies", *Michigan Law Review*, Vol. 83, No. 2, 341-403

Shavell (1980), "Damage Measures for Breach of Contract". *Bell Journal of Economics* 11, 466–490.

Kronman (1978), "Mistake, Disclosure, Information, and the Law of Contracts," 7 *Journal of Legal Studies* 1, available at <http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=11599&context=journal_articles>

Epstein (1975), "Unconscionability: A Critical Reappraisal", *The Journal of Law & Economics*, Vol. 18, No. 2, 293-315

Barton (1972). "The Economic Basis of Damages for Breach of Contract". *Journal of Legal Studies* 1, 277–304.

Macaulay (1963), "Non-Contractual Relations in Business: A Preliminary Study", 28 *AM. SOC. REV* 55

Coase (1960). "The Problem of Social Cost". *Journal of Law and Economics* 3, 1–44.

Wendell Holmes (1897), "The Path of the Law", 10 *Harvard Law Review* 457

BIBLIOGRAFIA COMPLEMENTAR

Books:

Micklitz et al. (2010), *Cases, Materials and Text on Consumer Law*, Oxford: Hart (EUI Signature LAW ECwk9 MIC)

Beale et al. (2008), *Contract Cases & Materials*, 5th ed. Oxford: OUP

Hermalin, Katz, Craswell (2007), *Contract Law*, in Polinsky and Shavell (eds.), *Handbook on Law and Economics*, available at <<http://www.sciencedirect.com/science/handbooks/15740730>>

Shavell, (2004), *Foundations of Economic Analysis of Law*, Cambridge, Mass.: Belknap Press of Harvard University Press, in particular Chapter 3

Dixit (2007), *Lawlessness and Economics: Alternative Modes of Governance*, Princeton: Princeton University Press (EUI Signature LIB 301.51 DIX)

Posner (2007), *Economic Analysis of Law*, 7th ed, New York, NY : Wolters Kluwer Law & Business : Aspen Publishers (EUI Signature LAW BGa9 POS)

Friedman (2000) *Law's order: What Economics Has To Do With Law and Why It Matters*, Princeton: Princeton University Press (EUI Signature LIB 330.1 FRI)

Dau-Schmidt & Ulen (1998), *Law and Economics Anthology*, Anderson

Baird, Gertner and Picker (1994), *Game Theory and the Law*, Cambridge, Mass.: Harvard University Press (EUI Signature LIB 519.3 BAI)

Journal Articles:

Scott and Traiantis (2006), "Anticipating Litigation in Contract Design", 115 *Yale Law Journal* 814

Bar-Gill & Ben-Shahar (2004), "The Law of Duress and the Economics of Credible Threats", 33 *Journal of Legal Studies* 391

Macneil (1987), "Relational Contract Theory as Sociology", 143 *Journal of Institutional and Theoretical Economics* 272

Macneil (1982), “Efficient Breach of Contract: Circles in the Sky” 68 Virginia Law Review 947

Schwartz (1979), “The Case for Specific Performance”, 89 Yale Law Journal 271

Kronman (1978), “Specific Performance”, 45 U Chicago Law Review 351

Posner & Rosenfield (1977), “Impossibility and Related Doctrines in Contract Law: An Economic Analysis”, 6 Journal of Legal Studies 83

Manne (1965). “Mergers and the Market for Corporate Control”. Journal of Political Economy 73, 110–120.