

DISCIPLINA: <b>LAW AND ECONOMICS OF CONTRACTS</b>	CÓDIGO:
PROFESSOR: <b>MARIA JOSÉ SCHMIDT-KESSEN</b>	CARGA HORÁRIA: <b>30h</b>
<b>EMENTA</b> 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	
<b>OBJETIVOS GERAIS</b> 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.	
<b>OBJETIVOS ESPECÍFICOS</b> 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.	
<b>METODOLOGIA</b> The teaching method would consist of a mix of lectures, problem based learning and an in-class discussion of student papers. The <i>Problem based learning</i> (PBL), another teaching method approached in the discipline, consists of students taking turns in being 'discussion leaders' in class, preparing the relevant materials in advance, presenting it shortly and guiding the class through a set of questions prepared by the tutor. This teaching method aims to develop not only the ability to prepare for class, but also to organize discussions and to gain confidence in speaking in front of group of peers. The maximum number of students in a PBL group should be, however, around 12 or 13. The student papers would consist of students picking one court case, a rule, regulation or customary practice in the field of contract law of their own jurisdiction and evaluate it critically with the methods of law and economics. The students will have to present their paper during the last sessions of the course and will receive written comments from another assigned student.	
<b>PROGRAMA</b> <b>Part I: Introduction to Law and Economics (4 x 1,5 h)</b> I.a. Rational Choice and Equilibrium Analysis	

- I.b. What is Efficiency?
- I.c. Game Theory
- I.d. Behavioural Law and Economics

**Part II: Law and Economics of Contracts (6 x 1,5 h)**

- II.a. Contract Formation
- II.b. Contract Interpretation
- II.c. Contract breach and enforcement

**Part III: Specific Forms of Contract (4 x 1,5 h)**

- III. a. Types of Commercial Contracts
  - III.a.i. Relational Contracts (long-term contracts, e.g. distribution contracts)
  - III.a.ii. Consumer Contracts (unfair terms, behavioural L&E)
- III.b. Non-commercial (?) Contracts
  - III.b.i. Marriage Contracts
  - IV.b.ii. Surrogacy Contracts

**Part IV: Student Paper Presentations (5 x 1,5 h)**

**Part V: Examination MC/problem set? (1,5 h)**

**CRITÉRIOS DE AVALIAÇÃO**

Course participants will be required to produce an academic paper analysing a contract issue of their choice from a law and economics perspective. We will then go together through a mock process that mirrors the evaluation of professional academic work: each participant will shortly present her/his paper; a peer from the class will comment on it, and then a group discussion shall be fomented

- Class participation: 10% (problem based learning and commentary on fellow student's paper)
- Student paper (3000 words): 45%

Final examination (in-class, possibly multiple choice or problem set): 45%

**BIBLIOGRAFIA OBRIGATÓRIA**

**Books:**

Cooter and Ulen (2011), *Law and Economics*, 6th ed., Boston: Pearson, Chapters 1, 2, 8 and 9.  
 Miceli, Thomas (2008), *The Economic Approach to Law*, 2nd ed., Stanford: Stanford University Press, Chapters 1, 4, 5.  
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**Journal Articles:**

Bakos et al. (2009), "Does Anyone Read the Fine Print?: Testing a Law and Economics Approach to Standard Form Contracts", available at [ssrn.com](http://ssrn.com).  
 Posner (2005), "The Law and Economics of Contract Interpretation", 83 Texas Law Review 1581  
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 Ayres & Gertner (1989), "Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules", 87 Yale Law Journal 87

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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)

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

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