



## International contracting (RRII)

- **Description:** This course deals with the massive amounts of contracting carried out in the international arena. The various national and international legal sources of contracting are dealt with (both from the Anglo-American Common Law and EU French Civil Law systems), as well as the basic problems of applicable law and competent jurisdiction. We will also cover the general categories of contract law and the main contracting players. The course will be practical and pragmatic for one's work in the international arena in the future. The subject does not require prior knowledge of Law, and is presented with sufficient detail for students of International Relations.

- **Character:** Mandatory (Obligatoria)

- **Number of ECTS credits:** 6

- **Course and semester:** Third Year, first semester.

- **Teaching Language:** English

- **Title:** Degree in International Relations, School of Law

- **Módulo y Materia:**

Módulo III: Derecho Privado. Materia: Obligaciones y contratos.

- **Professor:** Prof. Dr. Patrick O'Malley.

- **Schedule and locaton:** GROUP A- Usually, Wednesday, 15:30 h. - 17:00 h (Room 10 of the Amigos Building) and GROUP B - Thursday, 12:00 - 13:30 h. (Room M4 of the Amigos Building). An additional two-hour "master class" magisterial lecture will be held for both groups combined every Wednesday from 10:00 to 12:00 in Room 16 in Amigos. Any changes to the schedule will be notified via announcement and will appear on the main RRII /Derecho calendar on WebUntis.

## COMPETENCIAS



COURSE BASIC / SPECIFIC COMPETENCIES

CB2	That students know how to apply their knowledge to their work or vocation in a professional way and possess the skills that are usually demonstrated through the elaboration and defense of arguments, as well as the resolution of problems within their area of study.
CB3	That students have the ability to gather and interpret relevant data (usually within their area of study) to make judgments that include a thoughtful reflection on key issues of a social, scientific or ethical nature.
CB4	That students can transmit information, ideas, problems and solutions to both specialized and non-specialized audiences.
CB5	That students develop those learning skills necessary to undertake further studies, with a high degree of independence.
CG01	To analyze, evaluate and reason through the different international situations in light of the knowledge acquired regarding contracting.
CG02	To negotiate, mediate, persuade and communicate/express oneself confidently in the field of international relations.
CG03	To be able to draft and interpret legal texts, especially in the field of public international law.
CG05	Know how to orally express oneself in a correctly/properly and adequately as regards international issues.



CE02	Analyze the nature and characteristics of relations between international actors and particularly between Nation States/national governments.
CE03	Know and understand the main elements that influence and help define foreign policy of the States/national governments.
CE09	Understand the structure, competencies and functioning of international institutions and organizations.
CE23	Analyze political, legal, socio-cultural, economic and technological environments as a major influence on industrial and business activity in any given country in the world.

The objectives to be achieved include:

- Knowledge of the basics of international contractual agreements- especially focusing on the differences and similarities between contracts in the Common Law world (US, UK, Commonwealth, etc.) and the Civil Law world (Europe, Latin America, East Asia, etc.).

o To know and understand the basic contractual figures of the international private commercial trade system (although public procurement will be considered as well), understanding its economic and legal logic, and how through them the private exchanges of goods and services globally are made.

o To understand the key problems concerning the question of applicable law, the competent jurisdiction/courts, in accordance with the various normative/legal sources, as well as the forms of conflict resolution.

- Skills and attitudes

o Understanding the economic reasons driving commercial legal institutions, and design of the most appropriate contracting form for each type of business or consumer needs.

o Understanding the impact of new technologies on global contracting.

o Understanding the greater focus in the past few years on ethical and human rights issues in global contracting (through an introduction to the world of business and government "compliance" efforts).

- Learning outcomes



- o Drawing up commercial contracts.
- o Determining the regulatory source applicable to the contractual relationship.

## Didactic/training activities

- 1) Theoretical classes: these classes will explain the fundamental rules of international contracting, whilst considering selected relevant cases concerning contracting.
- 2) Practical classes: in these, students will be able to pose questions concerning the various course modules, and practical cases will be discussed, interesting documentation or web pages will be considered, as well as news items that touch upon international contracting issues, etc.

All the classes assume, and indeed require, that the student has read and understood in advance the topic that will be treated on any given day in the live class. Indeed, class participation is a key component of the final grade. Day-to-day topics & reading assignments will be posted on ADI or announced well in advance.

There will also be a research paper assignment due in early November, focusing on an aspect or topic of international contracting that will be chosen by the student and approved by the professor. This will be worth approximately 20% of the final grade.

Near the end of the course, the practical classes will have a "competition" format involving a number of teams: the topic will be the negotiation of an IJV (international joint venture) agreement. The instructor will ask questions and observe the negotiations, assigning points for the quality of the work. That score will be taken into account as part of the overall student participation grade (which totals 30%).

The Distribution of the student's workload measured in hours is the following:	
Theory in class periods	30 hours
Practical in-class periods	30 hours
Seminars and personal tutoring	10
Evaluation	2
Personal study	80



## PROGRAMA - SYLLABUS

### MODULES

#### 1. Introduction to Comparative Contract Law

- Contract basics
- The “Nexus of Contracts”: the system of stakeholders in the contracting world, between businesses, citizens and governments
- Contracts law & its interaction with other areas of the legal system (e.g., IP, Competition, Corporate/Securities, Commercial, Compliance, bribery, CSR/ESG)

#### 2. Contract Basics: definitions, offer, acceptance, consideration, performance

#### 3. Comparative law: Common Law vs. Civil law of contracting

- General overview
- French contracts law, English contracts law, US (NY) contracts law
- The question of “Good Faith” in contracting

#### 4. International contracting standardization efforts I: International public law regarding contracting

- CISG Vienna / International Sales: Convention on Contracts for the International Sale of Goods
- UNIDROIT
- EU – Rome I and Rome II

#### 5. International contracting standardization efforts II:

##### International private efforts

- INCOTERMS
- International Chamber of Commerce (ICC) role and materials
- International dispute resolution / ADR - arbitration, etc.

#### 6. Part I: “Boilerplate” contract terms and key types of international contractual agreements (Licencing / IP, Purchase / Sales of goods, Purchases / sales of shares (securities), Agency and distribution, Confidentiality/non-disclosure, Employment, Franchise, Shareholders’,



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Guarantees, etc. and Part II: New technologies and their impact on contracting: "Smart Contracts" and Blockchain / AI (artificial intelligence) tools

7. Introduction to pre-contractual or quasi-contractual documentation: MOUs, LOIs and Term Sheets

8. The "A to Z" of International Joint Ventures (IJVs): The Who, What, When, Where and How?

9. International Contracting Practice Point: Due Diligence the key to successful international contracting transactions- an introduction to contract/commercial due diligence processes (focus on IJVs)

10. International Joint Venture – negotiations sessions I (groups to be assigned)

11. International Joint Venture – negotiations sessions II (groups to be assigned)

12. Current legal/ethical issues in International Contracting– COMPLIANCE & "Contractual Pushdown": the Global Campaign against bribery and corporate corruption (and larger connections to international human rights efforts):

- Definition and negatives effects of corruption on socio-economic development
- The US FCPA 1977 (Foreign Corrupt Practices Act), The OECD Convention 1997, The UK Bribery Act 2010, French law (Sapin II), the United Nations Convention against Corruption (UNCAC) – 2003
- Commercial and trade sanctions regimes: global public policy limits on the "freedom of contract"

## ACTIVIDADES FORMATIVAS

## GRADING / EVALUACIÓN

### Exams & Final Grade

The final grade for the course will be based approximately 50% on the results of the final written exam (a mix of multiple choice questions, short essays and a practical drafting



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exercise) and 20% on the research project explained in detail below. Additionally, approximately 30% of the grade will be based on the level of participation in class (which includes the IJV - international joint venture- negotiations exercise).

Thus, the final grade will be comprised of the follow elements:

50% = final exam

20% = research paper

30% = class participation

## Note on RESEARCH PAPER PROJECT

In order to give all students the opportunity to actively deal with and consider current issues of international contracting, class requirements include researching a specific contracting transaction or business venture (all of which should involve a contract(s)), enterprise or other business-related project, joint venture, tender offer, merger or acquisition, related development anywhere around the world (at the student's discretion). Alternatively, participants may choose one of the topics listed in the syllabus, and perform additional detailed research on that subject, illustrating specific deals or instances where it was important (e.g. contracting and corporate social responsibility, the philosophical or moral background of certain contracts, contracts and compliance/anti-corruption). The project involves researching the chosen country's (or countries') contracting laws, other business rules (as applicable), business practices and any other pertinent information about the chosen topic, and then preparing a well-written research paper.

The paper should be between 8 to 10 pages, 1.5-spaced, with Times New Roman font.

Additional information on the paper/presentation project will be provided the first day of class.

It is scheduled to be due on **Monday, 6 November 2023** (by noon) and will account for 20% of the final grade. Further information about modalities of handing in the paper will be provided later on, although it will probably involve uploading a copy to ADI and possibly handing in a paper copy.

***CAVEAT: You should note (and understand) that a well-researched paper would include a detailed and varied bibliography (depending mainly on Wikipedia does not cut it) and proper footnotes or endnotes evidencing where you found specific material. Do not in any case ever hand in a cut-and-pasted copy of 1 or 2 sources, nor a ChatGPT or similar AI-generated paper . Among other things, this evidences disregard and disrespect for the whole rationale behind having you perform legal and business research, as well as for the professor as reader of such work product. Finally, please put your name, date, class, page numbers, etc. on your papers, as some students have not done so in the past.***

### ***Plagiarism warning (regarding research)***

*Plagiarism involves presenting as one's own work the work of another, including the copying or paraphrasing of another's work in an assignment without acknowledging such as another's work through proper referencing. This includes improper use of AI applications like ChatGPT or other technologies that can be used to fabricate a paper.*



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*Indeed, doing this primarily cheats yourself of the opportunity to learn and practice key professional skills key to your long-term/sustainable competitiveness as an international relations professional.*

*Disciplinary action will be taken against students who plagiarize. A lack of awareness of the rules regarding plagiarism will not be accepted as a justified defense. The instructor reserves the right to subject all papers submitted to scrutiny using an electronic plagiarism detection tool.*

## CONVOCATORIA ORDINARIA

- TBA in December 2023

## CONVOCATORIA EXTRAORDINARIA

- TBA in June 2024

## OFFICE HOURS

Dr. Prof. Patrick O'Malley ([pomalley@unav.es](mailto:pomalley@unav.es))

- Despacho 1661 Edificio Ismael Sánchez Bella.
- When: usually, Wednesdays from 12:15 until 14:45. In case of urgent or important matters, I suggest contacting me a couple of days in advance to set a personal appointment.

## BIBLIOGRAFÍA

Bibliography/Readings (will be augmented continuously throughout the semester)

### MODULE 2

- "AT A GLANCE GUIDE TO BASIC PRINCIPLES OF ENGLISH CONTRACT LAW", Prepared by lawyers from Allen & Overy (British global law firm): [Microsoft Word - english-contract-law.doc \(a4id.org\)](#)
- "English Contract Law - Module Study Guide", University of London, 2017: [Contract law \(london.ac.uk\)](#)
- [Official] Translation of new French Law code provisions impacting Contracts (Cartwright & Fauvarque) 2016; [http://www.textes.justice.gouv.fr/art\\_pix/THE-LAW-OF-CONTRACT-2-5-16.pdf](http://www.textes.justice.gouv.fr/art_pix/THE-LAW-OF-CONTRACT-2-5-16.pdf)
- Rowan, Solène (2017) The new French law of contract. International & Comparative Law Quarterly. ISSN 0020-5893: [http://eprints.lse.ac.uk/75815/1/Rowan\\_New%20French%20law\\_2017.pdf](http://eprints.lse.ac.uk/75815/1/Rowan_New%20French%20law_2017.pdf)
- Article, Barbara Beveridge, "Legal English - How it developed and why it is not appropriate for international commercial contracts": [Microsoft Word - Barbara Beveridge.rtf \(tradulex.com\)](#)





HELPFUL REFERENCE TEXTBOOK: Contract Law: An Introduction to the English Law of Contract for the Civil Lawyer, John Cartwright, 3d ed., Hart Publishing [Find it at the Library \(2nd.edition\)](#)

### MODULE 3

- Case "Carlill v Carbolic Smoke Ball Company (England, 1892-93)
- Case Yam Seng Pte Limited v ITC (England 2013)
- Case Flynn & Anor v. Breccia & Anor, 2017 IECA 74 : <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/9e17a954405384d4802580df003157c7?OpenDocument>
- Article, Giuditta Cordero Moss, "International Contracts between Common Law and Civil Law: Is Non-state Law to Be Preferred? The Difficulty of Interpreting Legal Standards Such as Good Faith"
- Distribution Agreement - Eldor Spinal Needle (Israel)
- Kluwer Arbitration Blog - UNIDROIT rules bridge globally 2018
- UNIDROIT Contracting principles 2016-e TEXT
- UNIDROIT case 2001- Unilex case no. 2
- Incoterms 2020
- UN – CISG Vienna Convention -- e-book UNICTRAL 2010
- Case LUCY v ZEHMER - VA -1954
- Case HOFFMAN v. RED OWL STORES, INC. WI (1965)
- Boilerplate Contract Clauses in global financial contracts -- FBD
- IATA 2012 NY new master used aircraft purchase-agreement
- Contract-GE\_Oil\_Gas\_DrillingSystems\_General\_Terms\_of\_Purchase.pdf
- CORPORATE SURVIVAL GUIDE (LONDON), INTERNATIONAL JOINT VENTURES (2010) - FBD LLP
- Article-International Joint Ventures – DW Tremaine Law Firm - Stewart
- Article -Schwalb - The Wahaha International Joint Venture as Pedagogy (IJVs) 2008

### *Course slides*

- Introductory set of course slides
- Short slides on "Principles of contracts interpretation"
- Short slides on Canadian "comma case"
- Slides on International Joint Ventures



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- Slides on Corruption / bribery & trade sanctions in international contracting