



UNIVERSITÀ  
DEGLI STUDI DI MILANO-BICOCCA

## COURSE SYLLABUS

### Storia del Diritto delle Obligazioni e dei Contratti

1819-4-A5810135

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#### Learning objectives

To achieve skill and mastery of the subject

#### Contents

1. Freedom of Contract in Italy from the Codes to European Contract Law. 2. Torts of minor children and parental civil liability. Civil liability of Judges.

3. The Italian-French Project of Obligations and Contracts (1927) and the reform of French contract law (2016).

In 19th century Civil Law Codification, Law of Obligations and Contracts is based on the freedom of contract. The late 18th revolutions do not undermine the fundamentals of the Law of Contracts: contract will is not affected by the effects of the legislative reforms. Instead, the Civil Law dogmas, the freedom to contract and the intangibility of the agreements are undermined by the late 19th century social economical changes and the First World War. At the end of the XIX century they begin to underline defects and lacks both in the Italian Civil Code and the Commercial Code. Moreover, after the World War I, legislation out of the Code grows significantly and some new special laws deal with trade and contract relations. The codes are charged with granting too much freedom to the parties to a contract: contracts have a social function and the parties can not negotiate freely, as judges and political authorities can question the contractual clauses. In 1918 they suggest to frame an Italian-French Obligations and Contract Code, in order to attempt to harmonize the European Civil Law. The draft of this code absorbs some reforming demands but it is severely criticized too and does not come into effect. In the following 1930's Italian jurists try to achieve a balance between

- contract autonomy and state control and to draft a new Civil Code.
2. Torts of minor children and parental civil liability. Civil liability of Judges.
  3. The Italian-French Project of Obligations and Contracts (1927) and the reform of French contract law (2016).

## **Detailed program**

In 19th century Civil Law Codification, Law of Obligations and Contracts is based on the freedom of contract. The late 18th revolutions do not undermine the fundamentals of the Law of Contracts: contract will is not affected by the effects of the legislative reforms. Instead, the Civil Law dogmas, the freedom to contract and the intangibility of the agreements are undermined by the late 19th century social economical changes and the First World War. At the end of the XIX century they begin to underline defects and lacks both in the Italian Civil Code and the Commercial Code. Moreover, after the World War I, legislation out of the Code grows significantly and some new special laws deal with trade and contract relations. The codes are charged with granting too much freedom to the parties to a contract: contracts have a social function and the parties can not negotiate freely, as judges and political authorities can question the contractual clauses. In 1918 they suggest to frame an Italian-French Obligations and Contract Code, in order to attempt to harmonize the European Civil Law. The draft of this code absorbs some reforming demands but it is severely criticized too and does not come into effect. In the following 1930's Italian jurists try to achieve a balance between contract autonomy and state control and to draft a new Civil Code.

## **Prerequisites**

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## **Teaching methods**

Lessons

## **Assessment methods**

Attending students:

Oral examination. Written papers made during the course will be evaluated.

Not attending students:

Oral examination.

## **Textbooks and Reading Materials**

Attending students:

1. Lectures notes will be available at the e-learning page of the course 2018.  
SCHOOL OF LAW PLATFORM

Please for further information always look at the page of the course on the platform of the School of Law.

Not attending students:

1. G. CHIODI, Inadempimento, responsabilità contrattuale e rischio d'impresa nel primo Novecento, in *Contratto e impresa*, 4-5/ 2015 (disponibile online, nel sito della rivista *Contratto e impresa*)
  2. G. CHIODI, «Innovare senza distruggere»: il progetto italo-francese di codice delle obbligazioni e dei contratti (1927), in *Il progetto italo francese delle obbligazioni (1927). Un modello di armonizzazione nell'epoca della ricodificazione*, a cura di G. Alpa e G. Chiodi, Giuffrè Editore, Milano 2007, pp. 43-146
  3. G. CHIODI, *La responsabilità civile del padre e della madre per il fatto illecito dei figli minori: casi dell'Ottocento e del primo Novecento*, 2017
  4. G. CHIODI, *La responsabilità civile del giudice tra Otto e Novecento*, in *La responsabilità del giudice. Prospettive storiche e attuali*, 2017
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