UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

History of Obligations and Contract Law

2324-4-A5810135

Learning objectives

History of the law of obligations and contracts is an advanced course in the history of law which aims to train students in historical-legal research. The training objectives to be achieved: competence on the course contents; ability to analyze and interpret legal texts; ability to carry out written research on legal history.

Contents

1. From the civil code of 1865 to the fourth book of obligations of the new civil code of 1942. Itineraries of contractual justice. Economic disproportion of performance and termination of the contract. Usurious contract and protection techniques. Contingency and termination due to excessive burdensomeness. Unfair clauses in membership contracts and remedies.
2. Workshop: the case of the forgetful man from Collegno.
3. Workshop: the case of Superga (civil liability for prejudice to the right to credit by third parties).
   The course is structured in two parts. The first part includes lectures on the history of the law of obligations and contracts from 1865 to 1942. The second part consists of two interactive workshops with the students.

Detailed program

The course is dedicated to topics in the history of contract law and civil liability and is divided into three modules.
Mod. 1. (General part) From the code of 1865 to the fourth book of obligations of the civil code
FROM NATURAL LAW TO THE RISE OF THE MARKET

1. The contract before the bourgeois revolutions: a look at Domat
2. The contract in Pothier's vision

3. A taboo: the rebus sic stantibus clause
4. The French Revolution, law and civil law
5. The three Cambacérès projects
   I Project 1793
   II Project 1794
   III Project 1796
   Towards the Civil Code
6. The development of the Civil Code
   The Preliminary Speech of Portalis (1801)
   The systematics
   The new property
   The contract in general
   The definition of contract
   The solo consensu rule
   Conditions of validity of contracts
   The capacity to biding contracts
   Invalid consent
   The illicit cause
   The legal force of the contract
   The role of equity
   The interpretation of the contract
7. Remedies against the inequality of obligations
   The rejection of the rebus sic stantibus clause.
   Termination of the sales contract due to unfair advantage (lésion)
   The penal clause (dommages-intérêts conventionnels)
   The lawfulness and freedom of interests in loan contract
   The silences of the Code
8. The contract in the Civil Code: conclusions
   THE EMERGENCE OF CONTRACTUAL JUSTICE BETWEEN THE END OF THE 19TH AND EARLY 20TH CENTURIES
9. Usury, excessive benefit and unfair advantage
   A new figure of duress?
   Lodovico Barassi 1899
   Lodovico Barassi 1917
   Jurisprudence: a losing battle?
   The word to the legislator
10. The problem of the inequality of obligations
    Excessively onerous performance because of change of circumstances: the jurisprudential path. 1896-1914: the Giolittian belle époque
    Italy at war
    1915-1919: between war legislation and common law
    The post-war years (1920-1940)
    The imprévision between the Supreme Court and the Council of State
11. Unfair Terms not individually negotiated
    The French experience
    The Italian doctrine
    Corporatism and economic collective agreements
    THE ITALIAN-FRENCH PROJECT: AN EXPERIMENT OF SOCIAL PRIVATE LAW
12. The first phase: civil obligations (1916-1927)
13. Une transition et non pas un saut. The idea of code in the project editors
14. Socialize, but not too much. The persistence of the dogma of the will and the absence of remedies against imprévision.
15. An assez souple formula: the art. 22, the general action for unfair advantage and the élargissement of the judge's powers
16. Less guilt and more risk: tort law.

17. Abuse of rights: art. 74
18. A reflection on the abuse of rights.
19. The second phase: the commercial obligations project (1931-1935)
20. A look at the new Italian context: the constitution of fascism
21. Filippo Vassalli intellectual jurist and legislator
22. Solidarity without democracy: Emilio Betti
    THE CONTRACT IN THE CORPORATISM ORDER
23. The law of obligations in the orbit of corporatism: Paris, July 1937
    a) The general action for unfair advantage still within the scope of the Italian-French project
    b) Revision of the contract due to excessively onerous performance because of change of circumstances
    c) The withdrawal of the Italian-French project
24. The "pendulum of history". From the single Italian-French code to Italian-German law: the broad agreements of Rome (1938) and Vienna (1939).
    The unification of civil and commercial obligations (Rome 1938)
    The revision of the contract due to excessively onerous performance (Vienna 1939)
    The reuse of the categories of the cause and of the general clause of public order (Vienna 1939)
25. Socializing in the totalitarian phase of the dictatorship: the new homo oeconomicus of the fourth book of obligations
    CONTRACTUAL JUSTICE IN THE REFORM OF THE CIVIL CODE (2016): VIOLENCE ÉCONOMIQUE, IMPRÉVISION, CONTRAT D'ADHÉSION
26. The 2016 reform and its solidarity orientation
27. Economic duress (art. 1143)
28. Imprévision (art. 1195)
29. Adhesion contract (art. 1171)14.
    Mod. 2: Case study (The case of the forgetful man from Collegno)
    Mod. 3: Case study (The case of Superga)
    "Fog rain wind silence where, six hours ago, the plane that was bringing Italy's best team back to Turin crashed". The lightning-fast start of Dino Buzzati's article, that May 4, 1949, paints a picture of a terrifying and nightmarish one: a spectral Turin still immersed in an adverse nature is the background to the "pale reddish reverberation" of the smoking and flaming ruins of the fuselage of the three-engine Fiat G212, expected in the Aeritalia field from Barcelona, which crashed into the basilica of Superga.
    The disaster, with immense repercussions not only in the sports world, but in the whole nation, already in the press rushed to document the event, unleashed the most varied reconstructive hypotheses.
    The civil case assumed, on the basis of the criminal preliminary investigation, the culpable error of the pilots, without however going so far as to define it as gross negligence. The unanswered request for compensation for damages by Torino triggered a process that went through three levels of judgment and led to a famous ruling by the Cassation in 1953. One of those famous cases, known to all, in the jurisprudential path of the recognition of the refundability of the prejudice to the right of credit by third parties. A highly debated topic not only in the Italian experience and which seventy years ago was resolved negatively. That decision did not close the debate, it did not crystallize it but rather fueled it, in the creative season of the 1960s and 1970s, to the point of inspiring the "clamorous revirement" of 1971, which involved another Meroni, the footballer Luigi, also a football ace with the Turin grenade shirt, perished in a road investment on 15 October 1967.
    Furthermore, the case of Superga is more than a simple stage in the gradual recognition of the torch-bearing protection of credit rights: a wall raised, for the moment, against this claim, but also a first opportunity for reflection in the wake of dramatic events; and it is more than a legal case punctuated by three sentences. It is also a cross-section of Italian judicial life, in which not only the respective defense panels operate, but numerous jurists of various backgrounds, called to give their opinion pro veritate. It was these opinions that opened up new perspectives already at the time and consequently attracted the attention not only of the judges, but also of the doctrine interested in the discussion.

Prerequisites

Teaching methods

Lectures and workshops.

Assessment methods

The program is identical for attending and non-attending students, except for different ways of assesment methods dictated by class attendance:
a) oral exmination on the general part of the program
b) class test for those who choose to attend the two workshops; alternatively: oral test on the topics of the workshops.
c) written test with oral discussion for those who choose to write a paper on a topic of their choice. Alternatively: oral examination on topics chosen by the students from those indicated in the programme.

Textbooks and Reading Materials

Starting from the **exam session of November 29, 2023**, as required by the new regulations, program distinctions are no longer made between attending and non-attending students, except in the methods of verifying learning in relation to the possible attendance of the classroom workshops.
The exam consists of an oral discussion on the topics covered in the following texts/workshops:

1. G. CHIODI, Il contratto tra i due codici (1865-1942), Milano 2023: also available online in the elearning page of the course
2. Workshop: the case of the forgetful man from Collegno. Workshop: the case of Superga (civil liability for prejudice to the right to credit by third parties), or alternatively:
   G. CHIODI, Il caso di Superga rivisitato: un primo focus sui pareri pro veritate (da Andrioli a Vassalli), in Storia Metodo Cultura nella scienza giuridica, 2023, pp. 99-137, also available online in the elearning page of the course
3. a paper written by the student on a freely chosen topic communicated in advance to the professor, or, alternatively, one chosen from the following essays:
   G. CHIODI, Regolare la rappresentanza: sulle tracce di una «decisa e importante» novità del Progetto italo-francese, in La volonté, Italie-France allers-retours, Toulouse, 2022, pp. 110-139, also available online in the elearning page of the course
   G. CHIODI, La cantante lirica e la radio. Il caso Rosetta Pampanini-Eiar (1938-1940), Filippo Vassalli e i diritti degli artisti esecutori in Italia, in LawArt, 3 (2022), pp. 71-117, also available online in the elearning page of the course
   G. CHIODI, Interpretazione dei contratti e poteri del giudice: riletture del codice civile in Francia e in Italia tra Otto e Novecento, in L'interpretazione tra legge e contratto. Dialogando con Aurelio Gentili, Bari 2019, pp. 51-86, also available online in the elearning page of the course.
   Only for the exam session of November 29, 2023 the following exam texts, previously indicated in Syllabus 2324, are still considered valid, unless students prefer to opt for the new preparation method:
4. G. CHIODI, Clausole generali e abuso della libertà contrattuale. Esperienze del primo Novecento, in D/Q, 2018/2, pp. 87-104 (on line nel sito della rivista Diritto e questioni pubbliche)
5. G. CHIODI, Interpretazione dei contratti e poteri del giudice: riletture del codice civile in Francia e in Italia tra Otto e Novecento, in L'interpretazione tra legge e contratto. Dialogando con Aurelio Gentili, Bari 2019, pp. 51-86.
6. G. CHIODI, Un esperimento di diritto privato sociale. Il progetto italo-francese e la sua parabola dall'età liberale al fascismo, in Bürgerliches Recht im nachbürgerlichen Zeitalter, Frankfurt am Main 2022, pp. 3-44.

7. G. CHIODI, Costruire una nuova legalità: il diritto delle obbligazioni nel dibattito degli anni Trenta, in Birocchi I., Chiodi, G, Grondona, M. (eds.), La costruzione della “legalità” fascista negli anni Trenta, Roma, RomaTrePress, 2020, pp. 201-260
   All the essays indicated can also be downloaded online on the History of Law of Obligations e-learning site (2324).

Sustainable Development Goals

QUALITY EDUCATION