UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

SYLLABUS DEL CORSO

Storia del Diritto delle Obbligazioni e dei Contratti

2526-4-A5810135

Learning objectives

Applied knowledge and understanding
Students will acquire knowledge and understanding of the historical-legal method, applied to legislative, doctrinal, and jurisprudential sources, as well as other sources (political, economic, and literary), useful for reconstructing the legal phenomenon within a broader and more complete framework. They will also be able to identify the main issues in contract law and civil liability law from the late nineteenth century to the first half of the twentieth century, and critically analyze the processes that led to the drafting of the current Civil Code.
Autonomy of judgment
The course will provide students with the foundation for understanding the historical evolution of the principles of contract law and civil liability, with the aim of generating independent judgment regarding the solutions proposed by legislators, legal scholars, and case law.
Communication skills
Students will develop communication skills in the presentation and discussion of legal issues, based on logical-legal reasoning, rigor in conceptual language, and the ability to use interpretative tools in analyzing the problems studied.
Learning ability
Students will be able to conduct independent in-depth research using normative, doctrinal, and jurisprudential sources, and critically analyze legal thought, integrating historical knowledge with that of current law.

Contents

The course traces the history of contract law and civil liability law in Italy from the liberal era to Fascism, and therefore from the late nineteenth to the early twentieth century. It focuses on Italian legal history, but also draws on a comparative perspective, open to other experiences (Europe and the USA). The course alternates lectures and laboratories, which, in addition to the essential historical context, address specific themes and issues, starting with case law or archival documents that chronicle the genesis of the 1942 Civil Code.
Given that the first nineteenth-century European civil codes based the law of obligations and contracts on

individualistic foundations and freedom of contract, the late nineteenth century in Italy, too, was characterized by the denunciation of the social flaws of the Civil Code and the Commercial Code. Contractual justice, an idea previously buried in the majestic folds of the codes, returned to the forefront. Private individuals were no longer (totally) free: the boundaries between public and private were shifting, judicial review of the content of contracts was called for, and available remedies and techniques were debated. In particular, the course will focus on the application of the Civil Code and reconstruct the case law on contractual justice (excessive benefit and unfair advantage in loan contract and penalty clause; excessively onerous performance because of change of circumstances; unfair terms in consumer contracts); breach of contract and contractual liability; contract interpretation. Furthermore, several jurisprudential paths will be reconstructed in the field of civil liability for tort, with case studies on the civil liability of parents, judges, and doctors, for third-party damage to credit (the Superga case), for violation of privacy, and for climate and nuclear damage. The final two sections of the course address the reforms of the Civil and Commercial Codes, including through archival documents: the genesis of the PFI (Italian-French Draft Code of Obligations and Contracts, 1927) and the 1942 Civil Code, with particular reference to Book III on Property, Book IV on Obligations, and Book V on Labor. In this way, students will have the opportunity to move from the workshop of jurisprudential doctrine and practice to the "construction site of the code," according to the expression coined by Minister of Justice Dino Grandi, a key figure in the final phase of codification (1939-1942). This approach uses firsthand documents from Filippo Vassalli's personal archive, held in the Historical Archives of the University of Milan-Bicocca. The great Romanist and civil lawyer (1885-1955) is the guiding thread throughout the course: lawyer, professor, and legislator, he was a true "jurist of three worlds," working during the Liberal era, Fascism, and the first decade of the Republic. Under his guidance, the preparatory work for the code will be explored in depth, and the delicate relationship between jurists and politics under the fascist dictatorship will also be explored. In this way, during the course, students will have the opportunity to experience a wide range of legal issues: doctrine, judiciary, legal reform, and the politics of legal codes.
The course is intended for students who wish to work with doctrinal texts, case law, and archival documents relating to contract law and tort law, through practical exercises in understanding and interpreting the materials. For this reason, attendance is highly recommended.

Detailed program

Part One. The Contract Between the Two Codes

1. The subject of the early nineteenth century: the model of proprietary individualism
2. The “paradigm” of the Civil Code (1804): the delicate balance between freedom of contract and remedies against exploitation of the other party
3. Literature as a mirror of society: Balzac and the paradoxes of nineteenth-century private law
4. The Civil Code of 1865 and the invention of the abstract subject
5. The civil law-commercial law dualism
6. Freedom of contract in the first Italian civil lawyers
7. From the myth of the Codex to the discovery of Italy.
8. The invention of the social (1): another liberalism
9. The invention of the social (2): contractual freedom from myth to problem
10. Social changes and the role of the judge in Italy
11. The application of the code: innovations of the early twentieth century. The emergence of contractual justice
    11.1 Remedies against economic disproportion of benefits. Loans and usurious interest
    11.2 Penalty clause
    11.3 “ Call the Jew to the Court!” The Aporias of the “Trial Scene” of Shakespeare’s “The Merchant of Venice”
    11.4 Excessive burden arising
    11.5 Commercial contracts and unfair terms
12. Breach of contract and contractual liability
13. Interpretation of the contract

Part Two. Civil Liability for Tort: Cases and Problems of the Early Twentieth Century

1. Parental civil liability
2. Judicial Civil liability
3. Medical civil liability
4. Civil liability in case of interference with contract: 75 years after Superga
5. Civil liability for violating private life
6. Civil liability and climate change litigation

Part Three. An Experiment in Private Social Law: The Italian-French Project (PFI)

1. The first phase: civil obligations (1916-1927)
2. “A transition and not a failure . ” The idea of code in the project's editors
3. Socialize, but not too much. The persistence of the dogma of will and the lack of remedies against " imprévision ."
4. A formula “ assez souple ”: art. 22, the general action for excessive benefit and unfair advantage and the “ élargissement ” of the judge's powers
5. Less guilt and more risk: civil liability.
6. Abuse of rights: Article 74
7. The emergence of representation
8. The second phase: the commercial bonds project (1931-1935)

Part Four. Between Law and Politics: The Civil Code Construction Site

1. The Keepers of the Seals of Fascism
2. Filippo Vassalli, jurist of three worlds
3. Contract law in the orbit of corporatism: Paris, July 1937
   a) The general action for excessive benefit and unfair advantage still within the scope of the Italian-French project
   b) Revision of the contract due to change of circumstances
   c) The withdrawal of the Italian-French project
4. The "pendulum of history". From the single Italian-French code to Italian-German law: the committees of Rome (1938) and Vienna (1939).
5. Property in the third book of the civil code.
6. Socializing in the totalitarian phase of dictatorship: the new “homo oeconomicus ” of the fourth book of obligations.
7. The joint stock company: 20 years of projects (1922-1942).

Prerequisites

None

Teaching methods

Classes will be held in person. If necessary, some classes may be delivered online, synchronously or asynchronously, and recorded, for up to a maximum of four hours.
The course includes lectures, along with laboratories, where individual case studies (sentences) and archive materials (documents relating to the reform of the codes) will be illustrated and discussed with the direct and interactive participation of the students.

Doctrinal and jurisprudential materials, documents, essays, handouts, and interactive quizzes will be made available on the e-learning platform.

Assessment methods

Assessment is based on a single oral exam covering the entire exam program at the end of the course.
In the oral exam, students will be required to demonstrate their ability to deliver a comprehensive, critical, and informed discussion of the exam questions, placing the issues within their historical and legal context and drawing on relevant sources.
The oral exam will be valued on the following criteria: knowledge and understanding of the historical-legal method and the principles of contract law and civil liability in 19th- and 20th-century private law; the ability to critically analyze problems; independent judgment regarding the phenomena being examined; and communication skills in presenting and discussing issues, based on logical-legal reasoning, rigor in conceptual language, and the ability to use interpretative tools in analyzing the problems being studied.
Partial written exam: Students who wish to do so may complete a partial written exam at the end of the course, covering a portion of the syllabus. This exam consists of open-ended questions on the cases and materials discussed in class. The evaluation criteria for the written exam are the same as those for the oral exam. The date and syllabus for the written exam will be announced on the course's e-learning platform.

Textbooks and Reading Materials

G. CHIODI, The Contract between the Two Codes (1865-1942), Milan 2025. The text is available online free of charge on this site.
Students who have attended the workshops are exempted from the corresponding sections of the program, with the grades earned in the workshops. Alternatively, students can take the exam by bringing the sections of the book corresponding to the workshops they did not attend.
WORKSHOP ON CONTRACTUAL JUSTICE 1. Exemption: § 1. Usury and Legal Transaction
WORKSHOP ON CONTRACTUAL JUSTICE 2. Exemption: § 3. Contracts of Adhesion
WORKSHOP FILIPPO VASSALLI IN THE CIVIL CODE CONSTRUCTION SITE. Exemption: § 5. Towards the 1942 Civil Code § 6. The Construction of Book IV of Obligations
WORKSHOP ON THE CASE OF SUPERGA. Exemption: CHAPTER 7: THE SUPERGA CASE
QUIZ LAW & LITERATURE. Exemption: CHAPTER 8: Balzac and the Paradoxes of Nineteenth-Century Private Law

Sustainable Development Goals

REDUCED INEQUALITIES | CLIMATE ACTION | PEACE, JUSTICE AND STRONG INSTITUTIONS