**Foundations of European Private Law (academic year 2018 - 2019)**

**(6 CFU, 36 hours)**

**Prof. Tommaso dalla Massara**

**Purpose of the course**

The main purpose of the course is to develop the student’s ability of reasoning on significant topics in the frame of contract in European Private Law. In order to properly deal with these issues, an analysis of continuities and discontinuities in the historical progression of these matters will be necessary. This analysis shall move backwards from the last significant developments of European Private Law to the roots of the ideas stemming from Roman legal system. The specific topic of the course is the contractual money debts’ discipline: in the scenario of problems related to the contract, the money debts have always played a primary role. So, since antiquity, money – a peculiar object of the obligations of *dare* – sets a special system of rules concerning fulfilment, arising of interests, protection against devaluation and adjustment of performance in time. Moreover, peculiar rules regarding reciprocity, termination and other aspects are provided for money debts.

**Program**

Preliminary exam: Institutions of Roman Law

Classes will be structured as follows:

1) The method: analysis of juridical phenomena in a diachronic perspective.

2) The contract in general.

2.a) The contract today; attempts to elaborate a notion of contract in a European Private Law’s perspective: in particular, CESL, DCFR (and ‘Feasibility Study’), *Acquis* principles, PECL, ‘Gandolfi’s project’, Unidroit principles.

2.b) The rediscovery of ancient roots of the idea of contract: the elaboration of contract’s notion by Roman jurists. The emerging and overlap of different contract models: in particular, the synallagmatic contract, the cause, the consent, the arrival point in respect to the notion of contract reached by the jurisprudence at the end of the classic age; the overcoming of contractual typicality; the penetration of Roman model in the European juridical experience; the *contrat* in the *Code civil* of 1804; the notion of *Vertrag* in BGB; ‘contract’ and ‘consideration’ in Common Law; the discipline of the *contratto* in the *codice civile italiano* of 1865 and 1942.

3) Money debt in the frame of contract.

3.a) the structure of nominal debt (differing from value debt);

3b.) the nominalistic principle;

3.c) the regime of payment;

3.d) interests;

3.e) damages caused by devalutation;

3.f) the problem of adjustment of contractual content in the passing of time; reciprocity and termination of the contract.

Beside the traditional lesson, classes aim at stimulating student’s juridical reasoning through active participation, particularly stimulating the analysis and discussion of the cases that will be introduced.

Particularly interesting conferences or seminars will eventually time by time be recommended by the Professor.

ERASMUS students are kindly requested to contact the Professor at the beginning of the course, in order to agree the exam’s program, which will consist of a written paper about a specific topic.

**Bibliography**

Attending students’ program will be agreed together with the Professor in classes, with a clear explanation of the parts that must anyway be studied of the following book: T. dalla Massara, Obbligazioni pecuniarie. Struttura e disciplina dei debiti di valuta, Padova, 2012. Additional learning material will be uploaded on the e-learning platform.

Non-attending students must concentrate on money debts *per se* and in relationship with contractual matters: the structure of a nominal debt, the nominalistic principle, the payment, the adjustment of contract’s content, interests and damages caused by devaluation.

Book: T. dalla Massara, Obbligazioni pecuniarie. Struttura e disciplina dei debiti di valuta, Padova, 2012, shall entirely be studied.

Non-attending students of the academic year 2012-2013 shall study the book T. dalla Massara, Obbligazioni pecuniarie. Struttura e disciplina dei debiti di valuta, Padova, 2012, only as far as the pages that follow are concerned: 1-72; 93-160; 285-399; 439-480.

Non-attending students of the academic year 2012-2013 can choose between the new program and the program of their academic year:

1) C.A. Cannata, *L’inadempimento delle obbligazioni*, Padova, 2008.

2) AA. VV., *Le dottrine del contratto nella giurisprudenza romana*, a cura di A. Burdese, Padova, 2006, only as far as the pages that follow are concerned: 1 - 108 (first part); additionally, one of the essays of the second part*.*

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*A latere* will be recommended some readings of general utility that – with different formats, so as to provide the student with a critical vision – contribute to point out the historic-conceptual roots of the modern idea of contract. In particular, must be recommended:

R. Schulze, R. Zimmermann, P. Sirena, F.P. Patti, *Diritto privato europeo. Testi di riferimento*, Torino, 2017 (due to be published).

R. Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford, 1996;

A. Schiavone, *‘Ius’. L’invenzione del diritto in Occidente*, Torino, 2005;

L. Garofalo, *Giurisprudenza romana e diritto privato europeo*, Padova, 2008;

S. Mazzamuto, *Il contratto di diritto europeo*, Torino, 2017.

**Teaching material**

Teaching material will be uploaded on the e-learning platform.

**Examination’s modalities**

Objectives of the examinations

The written test’s goal is to test the program knowledge and reasoning ability as far as specific juridical matters are concerned.

The additional oral examination firstly focuses on the issues emerging from the written test, then shall test the knowledge of the remaining part of the program.

Contents and modalities of examinations

The exam shall be for oral for everyone, both attending and non-attending students. It is preceded by a short written test aimed at testing the ‘minimum’ knowledge. It will consist in four open questions. Both the written and the oral tests will concern all the program’s topics.

The final evaluation shall be expressed in thirtieth (30/30).