

Faculty of Law



PUBL2380 Seminar on public and private contract law

[30h] 9 credits

Teacher(s): Pierre Nihoul, Denis Philippe
Language: French
Level: Second cycle

Aims

The overall objective of this course is to study the different incidences where public and private law meet in a contractual context, either through contractual collaboration mechanisms between private companies and public powers, or through an appeal by public powers and entities against contractual private-law mechanisms, or through the application of public-law rules to private-law contracts.

The course reflects the developments in legal practice over the past twenty years, which has been marked by interaction between the public and private worlds. It also has an interdisciplinary dimension and allows law students reaching the end of their studies to deal with the type of compartmentalised thinking often caused by the division of courses into homogeneous subjects.

The borders between public law and private law are neither intangible nor impenetrable; they can not only really be defended for historic reasons. This mix of public and private rules is a result of growing interventionism on the part of the public powers in economic and social life and thus of the need to guarantee a certain managerial efficiency when providing services to a user or a citizen; from a different point of view, it also stems from the transfer of the implementation of public politics to private persons, which requires more or less extensive control by the public sector of the transferred activity.

Content and teaching methods

One of the methods proposed consists in creating and drafting contracts or contractual clauses and then negotiating them with a view to arriving at a common text for both parties. A prior in-depth study of the legal context (including the prescriptive, legal precedents and doctrinal aspects) would need to be carried out in this context.

In both cases, each subject proposed is dealt with in groups of two students, each of whom represents one of the parties in the negotiations: on the one hand the public powers and on the other the private operator. Three steps seem necessary to structure the course and the workload: first, in-depth legal research on a chosen theme with a view to establishing a plan and the theoretical framework of the final paper to be submitted, then the conception and drafting of contractual clauses and finally negotiation of the said clauses in order to arrive at a common text for the group.

The other method consists in first analysing the subject in a theoretical way and then applying the theory to a practical situation by carrying out steps with the public powers and private operators concerned.

Other information (prerequisite, evaluation (assessment methods), course materials recommended readings, ...)

Each student is graded on this course. The grade depends on the work done during the year, active participation in assignments and discussion groups, the quality of the oral presentation and the written paper submitted.

During the first part of the course, some classes are devoted to lectures on a subject closely related to the theme of the course. The specialist lecturer may be a member of the Faculty, or a guest speaker from outside the establishment.

Other credits in programs

DROI23 Troisième licence en droit (9 credits)