



**Foundations of Private Law  
Spring 2023  
Professor Felipe Jiménez**

**Schedule**

Seminar meetings: Thursday, 2:00 PM

Seminar location: Room 213

**Contact Details**

Office: Room 423

Email: [fjimenez@law.usc.edu](mailto:fjimenez@law.usc.edu)

Office hours: By appointment

Assistant: LaKisha Coleman, [lcoleman@law.usc.edu](mailto:lcoleman@law.usc.edu), Room 405

**Course Description**

This seminar will explore the foundations of private law, with a particular focus on the law of contracts. We will engage with the work of legal theorists, political philosophers, and legal economists. Instead of talking about specific cases and doctrines, we will talk about the purpose and moral foundations of private law as an institutional practice. Why is it a good idea to have property rights? Why is the state justified in enforcing private transactions between individuals? What is the relationship between the market and legal institutions? Does contract law enforce promissory duties? What is the relationship between private law and justice? These are the types of questions we will be asking and trying to respond.

During each session, we will discuss a set of assigned readings (we will be reading a lot!). You will be expected to post short reaction notes before each session and to engage in substantive discussion during the session.

The main component of the evaluation is the final paper. All topics in private law theory and all perspectives (whether economic, doctrinal, philosophical, critical, comparative, historical, etc.) are acceptable. During the semester, you should meet with me to discuss your topic, paper structure, and bibliography.

**Prerequisite(s), co-requisite(s), or recommended preparation:**

None.

**Required Materials (e.g., textbooks or other)**

None. All materials will be provided by me.

**Learning Objectives**

Students who attend the seminar throughout the semester and satisfactorily complete the assignments required in the section below, will be able to:

- Formulate theoretical claims about private law generally, and contract law specifically.
- Analyze and evaluate theoretical claims on private law generally, and contract law specifically.
- Interpret and respond to published academic work on contemporary private law theory.
- Elaborate their own views about the theoretical issues discussed in private law theory.

**Description and Assessment of Assignments**

Grading for this seminar will depend on three components:

- Reaction notes (15%).
- Seminar discussion (15%).
- Final paper (70%).

The two first components are pass/fail. For every week, you will need to post a one-to two-paragraph reaction note about any specific issue(s) raised by, discussed in, or connected to that week's readings, no later than midnight of the day before our session. **Please post on the Discussion Board in Blackboard.** However, during the semester every student will get two "passes." All you need to do is let me know by Thursday midnight that you will not be submitting a note for our Friday meeting.

You will also be expected to participate in seminar discussions every week.

As long as you send the notes and actively participate in seminar discussions, you will be considered to pass and therefore will get the full percentage of the grading for reaction notes and seminar discussion.

### **Participation**

See above.

### **Grading Breakdown**

See above.

### **Course-specific Policies**

You are expected to engage in substantive discussion respectfully and as would be expected in a professional environment.

Regular and punctual attendance is expected.

The classes of March 23<sup>rd</sup> and April 21<sup>st</sup> will be held on Zoom.

**Seminar Schedule (readings will be available [here](#)).**

<b>Week</b>	<b>Date</b>	<b>Topic</b>	<b>Readings</b>
1	01/12	Rival Moral Perspectives	1. Jonathan Wolff, Introduction to Moral Philosophy, selections
2	01/19	The Private Law / Public Law Distinction	1. Robert Hale, Coercion and Distribution in a Supposedly Non-Coercive State 2. John H. Merryman, The Public-Private Law Distinction in European and American Law 3. Hanoch Dagan and Ben Zipursky, The Distinction between Private Law and Public Law
3	01/26	Instrumentalism and Formalism	1. Louis Kaplow and Steve Shavell, Fairness versus Welfare 2. Ernest Weinrib, The Idea of Private Law 3. Rebecca Stone, Economic Analysis of Contract Law from the Internal Point of View
4	02/02	Law and Economics	1. Ronald Coase, The Problem of Social Cost 2. Harold Demsetz, Towards a Theory of Property Rights 3. Richard Craswell, Two Economic Theories of Enforcing Promises
5	02/09	The Critique of Law and Economics	1. Benjamin Zipursky, Pragmatic Conceptualism 2. Elizabeth Anderson, Beyond Homo Economicus 3. Martha Nussbaum, Flawed Foundations 4. Liam Murphy, The Practice of Promise and Contract
<p><i>02/16: Class will not be held (I will be travelling). We will have a make-up class for discussing our last set of readings on Friday, April 21<sup>st</sup>.</i></p>			

<b>6</b>	02/23	Private Law Formalism	<ol style="list-style-type: none"> <li>1. Ernest Weinrib, Legal Formalism: On the Immanent Rationality of Law</li> <li>2. Felipe Jiménez, Two Questions for Private Law Theory</li> </ol>
<b>7</b>	03/02	Contracts: Normative Foundations	<ol style="list-style-type: none"> <li>1. Charles Fried, Contract as Promise, short selection</li> <li>2. Seana Shiffrin, The Divergence of Contract and Promise</li> <li>3. Richard Craswell, Contract Law, Default Rules, and the Philosophy of Promising</li> </ol>
<b>8</b>	03/09	The Structure of Contractual Obligation	<ol style="list-style-type: none"> <li>1. Steve Shavell, Why Breach of Contract May Not be Immoral</li> <li>2. Daniel Markovits and Alan Schwartz, The Myth of Efficient Breach</li> <li>3. Seana Shiffrin, Must I Mean What You Think I Should Have Said</li> </ol>
<b>9</b>	03/23 <b>(Zoom)</b>	Contract Interpretation	<ol style="list-style-type: none"> <li>1. Mark Gergen - A Defense of Judicial Reconstruction of Contracts</li> <li>2. Robert Scott and Allan Schwartz, Contract Interpretation Redux.</li> </ol>
<b>10</b>	03/30	Private Law Adjudication	<ol style="list-style-type: none"> <li>1. Richard Posner, Pragmatic Adjudication</li> <li>2. Aditi Bagchi, Contract as Procedural Justice</li> <li>3. Felipe Jiménez, Private Law Legalism</li> </ol>
<b>11</b>	04/06	Private Law and the Market	<ol style="list-style-type: none"> <li>1. Liam Murphy and Thomas Nagel, The Myth of Ownership</li> <li>2. Nathan Oman, The Dignity of Commerce</li> <li>3. Grewal and Purdy, Law and Neoliberalism</li> </ol>

12	04/13	Private Law and Social Justice	<ol style="list-style-type: none"> <li>1. Anthony Kronman, Contract law and Distributive Justice</li> <li>2. Arthur Ripstein, The Division of Responsibility and the Law of Torts</li> <li>3. Patricia Williams, The Alchemy of Race and Rights</li> </ol>
13	04/20	Contemporary Issues: Arbitration	<ol style="list-style-type: none"> <li>1. Myriam Gilles, The Day Doctrine Died</li> <li>2. J. Maria Glover, Beyond Unconscionability</li> <li>3. John Gardner, The Twilight of Legality</li> </ol>
14	04/21, 2:00 PM (Zoom)	Contemporary Issues: The Law of Work	<ol style="list-style-type: none"> <li>1. Aditi Bagchi, The Myth of Equality in the Employment Relation</li> <li>2. Elizabeth Anderson, Private Government</li> </ol>

### Statement on Academic Conduct and Support Systems

#### Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” [policy.usc.edu/scampus-part-b](http://policy.usc.edu/scampus-part-b). Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

#### Support Systems:

##### *Student Support Generally*

JD students may contact the law school’s Student Support Office in Room 104 or [studentsupport@law.usc.edu](mailto:studentsupport@law.usc.edu) regarding any academic or personal issues; other law students should contact the Graduate and International Programs Office in Room

105 or [llm@law.usc.edu](mailto:llm@law.usc.edu). All USC students and families may obtain assistance from USC's office of Student Support and Advocacy, [studentaffairs.usc.edu/ssa](http://studentaffairs.usc.edu/ssa) or (213) 821-4710, in resolving a range of complex personal, financial, and academic complex issues.

*Student Counseling Services (SCS) – (213) 740-7711 – 24/7 on call*

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. [engemannshc.usc.edu/counseling](http://engemannshc.usc.edu/counseling)

*National Suicide Prevention Lifeline – 1 (800) 273-8255*

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. [www.suicidepreventionlifeline.org](http://www.suicidepreventionlifeline.org)

*Relationship and Sexual Violence Prevention Services (RSVP) – (213) 740-4900 – 24/7 on call*

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. [engemannshc.usc.edu/rsvp](http://engemannshc.usc.edu/rsvp)

*Sexual Assault Resource Center*

For more information about how to get help or to help a survivor, as well as rights, reporting options, and additional resources, visit the website: [sarc.usc.edu](http://sarc.usc.edu)

*Office of Equity and Diversity (OED)/Title IX Compliance – (213) 740-5086*

Works with faculty, staff, visitors, applicants, and students around issues of protected class. [equity.usc.edu](http://equity.usc.edu)

*Bias Assessment Response and Support*

Incidents of bias, hate crimes, and microaggressions need to be reported, to allow for appropriate investigation and response. [studentaffairs.usc.edu/bias-assessment-response-support](http://studentaffairs.usc.edu/bias-assessment-response-support)

*Diversity at USC*

Information on events, programs and training, USC's Diversity Task Force (which has representatives from each school), opportunities for participation, and various resources for students. [diversity.usc.edu](http://diversity.usc.edu)

**Safety and Emergencies:**

USC Department of Public Safety – UPC: (213) 740-4321 – HSC: (323) 442-1000 – available 24/7

In charge of the overall safety of the USC community; contact to report a crime or situation of danger. Also, the website [emergency.usc.edu](http://emergency.usc.edu) provides safety information and other updates, including explaining how academic instruction will be continued if an officially declared emergency makes travel to campus infeasible.

**Disability Services and Programs:**

The process for requesting and using an accommodation is fully described in a letter distributed at the beginning of each year by the law school's Student Support Office. The process of obtaining an accommodation can take several weeks, so it is advisable to begin as early in the semester as possible. Requests should be made to USC's Office of Disability Services and Programs (DSP) at [dsp.usc.edu](http://dsp.usc.edu). Once an approval letter has been obtained from DSP, the student should fill out the law school's Disability Accommodations Request (DAR) form, available in Room 104, and should submit that form and the DSP approval letter to the Student Support Office. Students should not discuss their accommodations with faculty or submit the DSP approval letter to faculty. The law school maintains a policy of anonymity regarding students receiving disability accommodations. No one handling accommodations reveals, either to faculty or to other students, which students have a documented disability.

**Help with Basic Needs**

<https://studentbasicneeds.usc.edu/>

<https://studentbasicneeds.usc.edu/resources/covid-19/>

*If you are experiencing food insecurity*

<https://studentbasicneeds.usc.edu/resources/food-insecurity/>

*If you are experiencing housing insecurity*

<https://studentbasicneeds.usc.edu/resources/housing-insecurity/>

*If you are experiencing financial insecurity*

<https://studentbasicneeds.usc.edu/resources/financial-insecurity/>

*If you need help procuring technology to perform coursework remotely*

<https://studentbasicneeds.usc.edu/resources/technology-assistance/>

We realize attending classes online and performing coursework remotely requires access to technology that not all students may possess. If you need resources to successfully participate in your classes, such as a laptop or internet hotspot, you may be eligible for the University's equipment rental program. To apply, please fill out the form (see link above) and our Student Basic Needs team will partner with you to evaluate your options.