Doctoral Course
The Law of Services in the Italian and European Legal System

Description of the Phd Program and general goals
The Phd Program entitled “The Law of Services in the Italian and European Legal System” finds its scientific justification in the convergence of three phenomena: a) the prevailing economic development of the provision of services compared to the supply of goods and the sale of products; b) the new forms of public service management, the privatisation of some of them and the entrustment to the private entrepreneur and, therefore, to the contractual regulation of some important lasting services, needed to guarantee the quality of life of human beings; c) the digitalisation and the tendency to services automation, through new technologies, mainly information technology and telecommunication telematics (new and soft services contracts).

The increasing importance of the services economy (compared to the economy of goods and amounting to 70% of the national economy) is reflected undoubtedly in the legal system as well, because in market economy countries during the “neo-industrial era”, the services represent, on the one hand, the new frontier of employment and, on the other hand, the future of companies that will build their competitiveness and ability to differentiate themselves from competitors through speed, originality and the quality of the services incorporated or not in the products.

From this point of view, the jurist who wants to grasp the peculiarity of the rules governing contracts and obligations relating to personal services compared to contracts relating to the provision of automated services or to goods, is interested in understanding the peculiarities of these different services, in order to highlight the diversity of contractual discipline in different cases.

This need is more important in view of the necessary creation of a single European market of services.

The aim of the Phd Program is not to train the students in relation to the legal profiles that pertain to the production of services and advances tertiary sector, with an interdisciplinary approach both at national and European/international level.

In addition, the Doctorate “The Law of services in the Italian and European Legal System” is an international doctorate in which the students will attend a mandatory training period abroad, for a minimum of 3 months and a maximum of 18 months, at one of the affiliated foreign universities (Universities of Cordoba, Jaén, Castilla-La Mancha), and/or at several other foreign Universities/Research Centres.

The study and research program that the Phd students will carry out abroad, will be agreed between the assigned tutor by the teaching staff of the “Parthenope” University
and the assigned tutor by the foreign University; this will ensures the coherence of the training with the specific selected area of law for the final thesis and, at same time, the interdisciplinary approach. Seminars will also be organized in collaboration with partner teachers of foreign University and will be established at the “Parthenope” University or among recognised locations. Under the agreement signed with the above mentioned Universities, Phd students will have the possibility to join the double degree.

The Phd students that will follow the industrial path (as employees of the affiliated companies) will carry out their study and research activities both at the company and at the University. The experience gained in the company will allow them to acquire working skills and practical knowledge that will provide a useful research base for the thesis. The interdisciplinary preparation offered by the Phd in the service sector can at the same time, allow the PhD student, already introduced in a company, to reach a high preparation level both in the specific sector of the company activity and within similar ones.

In addition to the legal acquisition education, the Phd includes mandatory lessons for the improvement of the English language as well as some additional but optional lessons for further enhancement of English and to improve the knowledge of French and Spanish languages; the lessons will be co-organized with the language professors of the Department.

The Phd program also offers to the students the possibility to receive a specific computer training for the use of digital programs and legal database platforms offered by the University.

Areas of study
The multidisciplinary approach of the doctorate is guaranteed by the training in the juridical areas of study, that in particular refer to the following scientific-disciplinary sectors IUS 01, IUS 04, IUS 08, IUS 09, IUS 12, IUS 13, IUS 14, IUS 17, IUS 20.

From the point of view of the Private Law, the increasing addition of services into production leads to a continuous revision of the study of new problems arising from the development of the most innovative activities acting as support to an industrially developed economy (so called advanced tertiary).

Under the context of basic training on the private law of services, the main characteristics concerning the performance obligation to do and their difficulties will be analysed also in relation to other categories of obligations.

First of all, the preliminary question is the definition of “service” and the peculiarities it impresses on the elements of the contract, especially on the object, but also on the effects and contractual remedies related to the consequences of its application.

Also the subject of analysis will be every kind of typical and atypical contract in which the main and qualifying performance, is to do something; the peculiarities of these contracts with regard to the exact fulfilment, the guarantees and the liability in case of
contractual breach; the different forms of protection of the “weak party”, the different forms that service providers may take and their specific rules; other sources of performance obligations and the possible liability of the service provider, also towards third parties unrelated to the contract.

As far as Public and Constitutional Law are concerned, the regulation of general interest services and the management of innovation in the public sector are a significant area of the analysis in the field of public law, due to the multiple consequences that the choices of direction in these areas underline on issues such as territorial decentralisation, the application of the principle of horizontal subsidiarity, the reform of the relationship between citizens and public administration, the search for new management models in areas previously characterized by a wide use of the provision, e-government. Of great interest is the evolution of different management forms of essential services, the protection of the civil and social rights of the citizen-user, the liability regime concerning the new management models.

With regard to Commercial Law, the increased importance of services in the business activity has clearly emerged in the new legislation: in regards to Company law, by way of example, the 2003 reform, and exactly with the purpose of enabling companies with share capital to acquire amounts that are sometimes significant, has exempted, albeit with appropriate precautions, the limited liability company application of the prohibition to allocate the performance of works and services to capital and has introduced the new figure of participatory financial instruments in the joint-stock company; on the enterprise accounting side, the attention of the legislator to the imputation in budget of the leasing seems emblematic; finally, with regard to company contract law, an important fields of study are both banking and financial services, most recently reformed by implementation of the so called Mifid II Directive, and the recent constitution of contractual figures concerning the services provision and not only for the production of goods.

With regard to Tax Law, the analysis related to the taxation of the e-commerce provision services is really important. This subject has long been studied by the European Commission: in the Communication COM(1998) 374 of 17th June 1988 it was already established that all online transactions were to be treated as services providing for VAT purposes, apart from the activity to which they relate; moreover was established that the place of taxation of those services should coincide with that in which the goods or services supplied were consumed, apart from the place of origin. This approach, in addition to cause immediate concrete tangible effects (just consider that, the Italian Financial Administration, precisely on the basis of the position of the European Commission, has denied to the press releases sent in electronic form – qualified as services provision – the application of the preferential rate of 4 per cent provided in favour of the corresponding transfer of dispatches on paper: cfr. Resolution no. 127E of 7 August 2001) inspired the subsequent Directive 2002/38/EC, concerning the
regulation of VAT on electronically supplied services, implemented in the Italian legal system by Legislative Decree no. 273 of 2003. This directive has also deeply affected the territoriality criteria for the supply services in VAT.

With regards to European Union law, the liberalisation of services, one of the essential elements of the internal market, pursued through the rules contained in the EC Treaty (now TFEU) on freedom to provide services and freedom of establishment. The Lisbon European Council in 2000 reaffirmed that the European Union should become the most competitive and dynamic knowledge-based economy in the world. An important milestone was the adoption of Directive 2006/123/EC, so called Bolkestain Directive, which codified the case-law principles and provided for the simplification of the procedures requested for the exercise of freedom of establishment and freedom to provide services. In the context of the liberalisation of services, a large area is covered by the regulation on services of general economic interest, the way in which they are financed and compliance by the Member States with the obligations arising in this field in accordance with the European competition law. The market digitalisation, and the appearance of new economic models, such as the sharing economy and new ways of offering services through digital platforms, also requires the search for common rules both at European and International level.

The study of the topics described above from a history and philosophy of law perspective is important too, specially through the juridical and social-economic evolution and the analysis of the current conception of law in its complexity, as a part of a much wider social-economic context than the mere positive law can demonstrate. The doctorate, in fact, also proposes to carry out an analysis of the profiles of criminal law as well as a comparison of institutes, rules and techniques belonging to different legal systems.

**General topics of research**
1) service undertakings;
2) contracts for the provision of services;
3) consumers/users’ protection;
4) services of general economic interest (content and limits of so-called universal services);
5) digitisation and information society services;
6) health and logistics law;
7) tourism law;
8) media and telecommunications law;
9) sports law and related contracts;
10) taxation of services;
11) environment and energy services;
12) European legislation on freedom to provide services and freedom of establishment and international service contracts;
Plan of the training offer

The Phd student will have to acquire a training of a minimum 60 CFU (240 hours) + 2 CFU (8 hours) for English training, by attending courses and seminars/conferences organized by the Phd teacher staff.

Verification and improvement of the English language - 2 CFU (8 hours), mandatory minimum.
The Phd students will have the opportunity to attend optional additional hours of lectures/seminars for the improvement of the French and Spanish languages, as well as English.

General training on the law of services in the main areas covered by the doctoral course - 25 CFU (100 hours lesson)

Private Law area (academic referent Prof. Lourdes Fernandez del Moral Dominguez)
8 CFU (32 hours)
Concept of service. Services providers: legal status and characteristics. Private autonomy and services. Performance obligation: characteristics and discipline. Application limits of the discipline to be applied the other categories of obligations Exact fulfilment of the performance obligation and liability. The creditor protection as regards the performance obligations. Contracts (typical and atypical) for the provision of services. The service provider liability towards third parties unrelated to the contract. Other sources of obligations with the provision of services. Contracts between professionals and consumers. Consumer protection. The relations between enterprises with different contractual power. Selected private and services case law.

Public/Constitutional law area (academic referent Prof. Anna Papa)
5 CFU (20 hours)
Economic constitution, multilevel governance and fundamental rights protection, shared competence between State and regions, relations between constitutional bodies and multilevel governance. The sources in contemporary democracy. The public services. The protection of the civil and social rights of the citizen-user, the regime of liabilities arising from the new management models. The system of liabilities deriving from the new management models. Selected public/constitutional and services case law.

Commercial Law area (academic referent Prof. Renato Santagata)
4 CFU (20 hours)
Service companies: peculiarities and reasons of the common special statutes and disciplines (e.g. banking, insurance, financial companies, transport and logistics). New horizons of the enterprise and the non-entrepreneurs crisis (new code of the enterprise crisis and the insolvency; over indebtedness procedures). Unfair competition and unfair commercial practices: origin and development of the rules.

**Tax Law area** (academic referent Prof. Loredana Carpentieri)
4 CFU (16 hours)
Financial resources for the functioning of public services: the role of taxation. The environmental taxation, market impact and sustainable development. Territoriality and VAT: Disposal of assets and provision of services. Provision of services through electronic instruments and taxation. Selected tax and services case law.

**European Union Law area** (academic referent Prof. Cristina Schepisi)
4 CFU (16 hours)
The free movement of services and the freedom of establishment in the European Union, the Services Directive. The free movement of professionals. Services of general economic interest and European competition law rules. The financing of services of general economic interest and State aid. The multi-level protection of rights related to the provision of services and freedom of economic initiative. Selected Services EU law topics.

**Specialized training in service law and innovation**
20 CFU (80 hours of lectures and seminars in a multidisciplinary approach)

**Topics**
Information society services
Electronic communications
Circulation of personal and non-personal data
Big data, digitization and personal data protection
Digital platforms
Digitisation and start-up
Digitisation and public services
Artificial intelligence, algorithms and robotics
Digital Technology and Finance (Fintech)
The taxation of innovative and technological services. The web tax
Tourism and online packages
E-commerce
Sharing economy
New media
Unfair commercial practices, illegal online content and cyberbullying
The Phd student will must achieve the remaining 14 compulsory minimum training CFU’s through participation in seminars, conferences on current issues from time to time identified and planned (Private Law, Commercial Law, Public/Constitutional Law, European/International Law, Tax Law, Criminal Law, Philosophy of Law).

Participation in conferences/seminars (even in excess of the 62 mandatory minimum CFU) both at the administrative headquarters of the Doctorate and at other Italian or foreign universities/research centres, is however an integral part of the training of the student, especially when is related to specific profiles of his personal research aimed at writing the thesis.

Starting from the second year, Phd students are required to carry out a period of training, study and research abroad of at least 3 months at the offices of the affiliated Universities and/or other Universities and Research Centres abroad. In the periods in which the Phd student carries out his activity abroad will be considered – for the calculation of the total CFUs – also the CFUs acquired through the participation in courses/ seminars organized by the host university.

The third year is mainly dedicated to the research and writing of the thesis.