# Teaching Intellectual Property Law with the Contract as a Starting-Point

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# Two Perspectives of the Law

A) The law enables business constructions and strategies

Keyword: Construction

- IP strategies, concerning trademarks, brands, patents, licenses etc.
- These can be governed and managed through contracts
- Interface & interaction with business strategy

B) The law restricts business constructions and strategies

Keywords: Identify, prevent & solve problems

- What is possible to do?
- Proactive measures
- Risk reduction
- Choice of law?
- Mandatory law versus non-compulsory law
  - Example: competition law
  - To some extent, this can be managed through contracts too

# The Agreement – a Tool for Transactions and Relations

1. Transactions
- Facilitation
- Create foreseeability and transparancy
2. Relations
- Make them visible and concrete

The agreement defines and structures the communicative game and sets the internal game rules.

The agreement clarifies the outcome of the communicative game in each individual case.

The agreement facilitates & enables a certain business model

# Contracts and the Connection to the Law

- Purpose – business strategy connection
- Regulate rights and obligations of the different parties
- Risk distribution
- Secrecy – will be impacted e.g. by laws on trade secrets
- Right to improvements/results – will be impacted e.g. by competition law
- Money
- Cost or investment?

# Deconstructive Skills

- *Key words: analyze & understand*
- Which are the underlying interests for the licensor and licensee?
  - What does the licensor want to achieve with the license agreement?
  - What does the licensee want to achieve with the license agreement?
  - How to handle e.g. control issues?
- How is the internal business case built up?
  - E.g.  may set the limit for total royalty payments
- Which factors must be taken into consideration?

# Reconstructive Skills

- *Key words: do & know*
- Design a license agreement considering the business strategy and business reality
  - The underlying interests
  - The internal business case
  - Design a license agreement considering the legal framework
  - Possible constructions and limitations

# Communicative Skills

- *Key words: do & communicate*
- Package and present the license agreement
- Negotiation & argumentation
  - Prioritization
  - What is negotiable and what is not?
- Different roles and social skills
  - Being a judge or representing a party
- Language skills

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