

**COURSE DATA****Data Subject**

Code	35219
Name	Mercantile law I
Cycle	Grade
ECTS Credits	9.0
Academic year	2022 - 2023

Study (s)

Degree	Center	Acad. year	Period
1303 - Degree in Law	Faculty of Law	2	Annual
1921 - D.D. in Business Management Administration-Law	Doubles Studies Faculty of Law - Faculty of Economics	2	Annual
1922 - D.D. in Law-Political and Public Administration Sciences	Faculty of Law	3	Annual
1923 - D.D. in Law-Criminology	Faculty of Law	2	Annual

Subject-matter

Degree	Subject-matter	Character
1303 - Degree in Law	16 - Commercial law	Obligatory
1921 - D.D. in Business Management Administration-Law	3 - Year 2 compulsory subjects	Obligatory
1922 - D.D. in Law-Political and Public Administration Sciences	4 - Year 3 compulsory subjects	Obligatory
1923 - D.D. in Law-Criminology	3 - Year 2 compulsory subjects	Obligatory

Coordination

Name	Department
GIMENO RIBES, MIGUEL	70 - Mercantile Law 'Manuel Broseta Pont'

SUMMARY



1) The subject within the context of the general study plan, associated subjects, continuity with other subjects.

1. Commercial Law I is a core subject studied over the course of one academic year that is taken during the second year of the Degree in Law. It consists of 9 ECTS credits (225 hours).
2. The two core subjects Commercial Law I (taken in the 2nd year) and Commercial Law II (taken in the 3rd year) provide the student with a **general introduction to the function, concept and regulation of Commercial institutions.**
3. In accordance with the description given in the Study Guide of the Degree in Law taught at the University of Valencia, the subject Commercial Law I is comprised of the following topics:

“The study of companies. The autonomous business-person. Company Law. Competition Law. Industrial Property. Bankruptcy Law.”

The subject Commercial Law II, in accordance with the description provided by the Study Guide of the Degree in Law taught at the University of Valencia, covers the following topics:

“Securities, The Bill of Exchange, The Cheque, The IOU. Commercial Contracts (both standard and non-standard contracts).

The topics covered in the two core subjects of the General Study Plan are complemented by three optional subjects in Commercial Law:

1. Banking, The Stock Exchange and Insurance Contracts
2. Competition Law
3. Transportation Law

2) A brief description of the subject, its content and its possible applications.

Commercial Law (Commercial Law I and II) is structured, broadly speaking, around three essential blocks or elements: business-people, the company, and the economic activity carried out by business-people via companies.

The subject **Commercial Law I** is divided into four parts and an introduction. The **introduction to Commercial Law** consists of (a) a brief history of the subject and an explanation of its relationship to other parts of the legal system (b) an examination of the constitutional framework surrounding Commercial Law in which students examine the freedom to conduct commercial activities as a right held by citizens, and the role of the intervention of public entities in the market in the context of a social economy (c) the study of the sources of Commercial Law.

The first part of the course studies the concept of business-people and businesses, and the various types of businesses that the law provides for. Particular attention is paid to commercial representation (factors, managers, agents, etc.), accounting obligations and the Commercial Registry.



The second part analyses the commercial activity of business-people through the medium of the company. This section of the course explores the legal and economic framework in which business-people and companies carry out the activity of producing, providing and distributing goods and services, and examines their economic constitution (in the treatises of the European Union, the Spanish Constitution and the Statutes of the Autonomous Communities), the configuration of a social-market economy, and Competition Law (anti-trust law and the legislation prohibiting acts of unfair competition).

This part of the course considers the legal institutions that permit companies to establish their corporate identity (trade names) and the identity of the products and services they produce or provide (trademarks and denominations of origin). It also looks at the institutions designed to protect industrial inventions and creative work (patents, utility models, industrial designs etc.).

The third part of Commercial Law I concentrates on Company Law, and in particular the legal form that companies generally assume (such as the public limited company and the company with limited responsibility), as well as other forms that they can adopt such as cooperatives and public companies.

The fourth and final part of Mercantil I examines the legal solutions to the economic crises that companies frequently face, and gives special attention to bankruptcy proceedings.

PREVIOUS KNOWLEDGE

Relationship to other subjects of the same degree

There are no specified enrollment restrictions with other subjects of the curriculum.

Other requirements

The Study Plan for the Degree in Law does not establish any requirements in order to take Commercial Law I, however, its study should follow on from the courses on The General Theory of Law, Constitutional Law, The Institutions of the European Union, and the essential elements of Civil Law. It is also advisable that students taking this course are familiar with the General Theory of Legal Obligations and Contracts and the General Part of Administrative Law.

OUTCOMES

1303 - Degree in Law

- Know the content and application of each of the branches of the legal system.
- Understand the legal system as unitary and have an interdisciplinary perspective of legal problems.
- Be able to apply constitutional principles and values, the respect for human rights, with special attention to equality between men and women, sustainability and the culture of peace as working tools in the interpretation of the legal system.



- Be able to use legal sources (legal, jurisprudential and doctrinal).
- Be able to read and interpret legal texts.
- Be able to communicate correctly both orally and in writing in the field of law.
- Be able to analyse legal problems and synthesise their approach and resolution.
- Develop critical awareness for the analysis of the legal system and develop the legal dialectic.
- Be able to use information and communication technology to obtain and select legal information.
- Have negotiation and conciliation skills.
- Be able to create and structure regulations.

LEARNING OUTCOMES

The subject Commercial Law I has been designed so that students **achieve the following educational goals:**

- To know and use correctly the terminology employed in Commercial Law I
- To understand and use correctly the basic concepts of the topics that comprise Commercial Law I
- To understand the historical evolution of Commercial Law
- To know and to be able to apply the system of legal sources of Commercial Law
- To understand the basic aspects of the economic framework outlined in the Constitution
- To understand the basic aspects of the legal statute of the business person
- To understand the basic aspects of Competition Law (both the protection of Competition in the market and the legislation prohibiting acts of unfair competition) and Industrial Property Law
- To understand and be able to apply the law relating to partnership contracts, particularly in relation to limited companies
- Know the basic aspects of bankruptcy/insolvency law

DESCRIPTION OF CONTENTS

1. HISTORICAL CONFORMATION OF BUSINESS LAW. CONCEPT AND SOURCES. ECO-NOMIC CONSTITUTION.

1. Business law as a historic category. Its concept and current content.
2. Economic constitution. European Union.
3. The sources of Business Law.
4. Specialized courts. Business Law courts.



2. THE BUSINESSPERSON AND THE COMPANY. THE LEGAL STATUS OF THE BUSINESSPERSON.

1. Concept and types of businesspersons. Its features. The concept of businessperson (natural person) in the Commercial Code. A critical approach.
2. The legal status of the businessperson.
 - 2.1. Bookkeeping duties.
 - 2.2. Commercial Registry.
 - 2.3. Dependent and independent workers in relation to the businessperson.
 - 2.4. Tort liability of the businessperson.
 - 2.5. Corporate social responsibility (CSR).
3. The concept of undertaking as an organisation and its legal features.

3. COMPETITION LAW

1. Antitrust. Freedom of competition.
2. Legal systems for the protection of free competition. European Union Competition legislation.
3. Spanish competition law.
4. Unfair competition law.
 - 4.1. The General clause and its scope of application.
 - 4.2. Unfair competition conducts.
 - 4.3. Commercial conducts addressed to consumers and customers.
 - 4.4. Claims.
5. Advertisement law.

4. INTANGIBLE PROPERTY RIGHTS

1. The sources and industrial property protection systems. The international tools for protection and the protection in the European Union.
2. The protection of inventions. Patents and utility models.
3. The protection of industrial designs.
4. Trade secrets.
5. Distinctive signs. Their role and types.
6. Trademarks.
 - 6.1. General notions
 - 6.2. Grounds for refusal and invalidity
7. Trade names.
8. Claims and procedural rules for the protection of distinctive signs.
9. Designation of origin and domain name on the internet.



5. COMPANY LAW. COMMERCIAL COMPANIES. THE GENERAL THEORY OF COMPANY LAW. PARTNERSHIPS.

1. Company Law. History and evolution.
2. The legal concept of company.
3. Company agreement.
4. Classification of commercial companies: partnerships (general partnership and limited partnership) and companies limited by shares (public limited liability company, private limited liability company and partnership limited by shares).
5. The company and similar entities: pro-indiviso ownership, silent partnership.
6. Civil partnership and commercial companies.
7. Requirements for the incorporation of commercial companies.
8. The legal personality of companies. Meaning and limits.
9. Legal status of partnerships (general partnership and limited partnership).

6. CORPORATIONS (I). INCORPORATION. SHARE CAPITAL AND EQUITY. CONTRIBUTIONS TO THE SHARE CAPITAL

1. Incorporation of Public Limited liability companies (SA) and Private limited liability companies (SRL). Single-member company. Incorporation proceedings. Deed of incorporation and articles of association. Company name, registered office, and nationality.
2. Nullity of public and private limited liability companies.
3. Legal status of the company at the formation phase: pre-company and irregular company.
4. Share capital and equity. Concept and uses of the share capital. Differences between share capital, equity, and own funds. Guiding principles of the share capital. Reserve funds.
5. Contributions to the share capital in Public and Private Limited liability companies. Ancillary obligations.

7. CORPORATIONS (II). SHARES. SHAREHOLDERS RIGHTS

1. Shares as part of the share capital: nominal value, book value, market value and issuance value.
2. Shares as a bundle of rights. Types of shares.
3. Types of shares of Public Limited liability companies according to their issuance: paper and electronic shares.
4. Transfer of shares of Public Limited liability companies. Restrictions to free transmissibility.
5. Shares of Private limited liability companies.
6. Transfer of shares of Private limited liability companies.
7. Contracts over the company's shares. Own shares.
8. Co-ownership and claims over the shares.



8. CORPORATIONS (III). BODIES OF THE CORPORATIONS. THE GENERAL MEETING

1. Notion of social body and the system of bodies in companies limited by shares.
2. The general meeting.
 - 2.1. Notion, classes, and powers.
 - 2.2. Requirements for the convening, constitution and holding.
 - 2.3. The minutes.
 - 2.4. Certification and public deed of the general meeting resolutions.
 - 2.5. Challenging the resolutions of the general meeting.
 - 2.6. Litigation and disputes among shareholders under arbitration.

9. CORPORATIONS (IV). THE MANAGEMENT BODY

1. Concept and powers.
2. Structure.
3. Scope and power of representation.
4. Appointment and removal.
5. Compensation.
6. Duties.
7. Liability. Claims for damages to the company and to shareholders and creditors.
8. Legal status of the board of directors. Delegation of powers: executive commissions and managing directors.

10. CORPORATIONS (V). ANNUAL FINANCIAL REPORT. AMENDMENT OF THE ARTICLES OF ASSOCIATION. STRUCTURAL CHANGES. DISSOLUTION, LIQUIDATION AND TERMINATION

1. Annual financial report.
2. Amendment of the articles of incorporation.
 - 2.1. General rules.
 - 2.2. Capital increase.
 - 2.3. Capital reduction.
 - 2.4. Simultaneous reduction and capital increase.
3. Withdrawal and exclusion of shareholders.
4. Structural changes.
 - 4.1. The conversion of companies.
 - 4.2. Merger of companies.
 - 4.3. The division of companies.
 - 4.4. The global assignment of assets and liabilities.
 - 4.5. The transfer of the registered office.
5. Winding up, liquidation and extinction of companies limited by shares.



11. SPECIAL TYPES OF COMPANIES

1. State (partly) owned companies.
2. Special types of companies. European company. Sports public company limited by shares.
3. Professional companies.
4. Mutual Guarantee societies.
5. Economic interest groupings and Joint Ventures.
6. Groups of companies.

12. NON-PROFIT ENTITIES

1. Non-profit entities. Concept, classes, and guiding principles.
2. Employee-owned company.
3. Cooperative society.
4. Further mutualistic-based entities.

13. INSOLVENCY LAW (I). FIRST AND SECOND SECTIONS

1. Principles and characteristics of Insolvency Law.
2. Subjective and objective elements required for the insolvency.
3. Application for insolvency. Voluntary application and necessary insolvency. The declaration of insolvency.
4. The insolvency practitioner in the insolvency proceeding.
5. Consequences of the opening of the insolvency proceedings.
 - 5.1. Effects on the debtor.
 - 5.2. Effects on the creditors.
 - 5.3. Effects on contracts.

14. INSOLVENCY LAW (II). THIRD AND FOURTH SECTIONS

1. Assets.
2. Asset recovery claims.
3. Liabilities. Insolvency credits and credits against the estate.
4. Liabilities recognition and classification of credits.
5. The report of the insolvency practitioner.

15. INSOLVENCY LAW (III). FIFTH AND SIXTH SECTIONS. PRE-INSOLVENCY LAW. PROCEDURAL RULES

1. The arrangement with the creditors. Judicial approval and the effectiveness of the arrangement.
2. The winding-up proceeding (liquidation). Winding-up transaction and creditor payment.
3. The qualification of the insolvency proceeding.
4. Pre-insolvency law.
5. Procedural rules. The insolvency incident and appeals.



WORKLOAD

ACTIVITY	Hours	% To be attended
Theoretical and practical classes	90,00	100
Attendance at events and external activities	10,00	0
Development of individual work	34,00	0
Study and independent work	91,00	0
TOTAL	225,00	

TEACHING METHODOLOGY

The teaching methodology is adapted to the assessment criteria detailed in the annex attached to this study guide. It takes into account the options permitted by the general regulations and which are contained in paragraph 9 (for example, the programming of one or two complementary activities, or choosing to assess certain group or guided activities). However, in general, the methodology followed will share these basic characteristics:

1. The exposition of content. The classes will seek to encourage the active participation of the students in their own learning. The sessions will involve the discussion of hypothetical cases and problems, and the explanation of terms and concepts. They will rely to a large extent on the student having read and prepared the material contained in the set texts. The classes aim to be a series of informed dialogues, without prejudice to the faculty of the lecturer to provide detailed explanations on certain questions which may pose questions of particular complexity.

2. Practical and/or guided activities. Throughout the course the lecturer will introduce a number of activities that will consist of solving practical cases or problems, analysing and commenting on judicial judgements etc. These activities will be directly related to the material studied in class and the skills that the students are expected to acquire. They will serve to complement the explanations provided by the course lecturers and may require the student to work outside the lecture hall. These activities will obviously require the participation of the students and the lecturer will indicate which will be subject to evaluation. The lecturer may also programme, within the limits of the workload expected of the students, other activities that may serve to reinforce or revise course material

3. Complementary activities. At least one complementary activity, to be chosen by the course lecturer or proposed by the students, shall be included as part of the activities that require the compulsory attendance of the students. These may include attendance at conferences, seminars, or visits to institutions relevant to the course content.

EVALUATION

Final qualification is calculated by adding two different blocks/parts: on the one hand, the ongoing assessment and taking part in the planned activities (30% of the final grade) and, on the other hand, the final theory-practice test which represents 70% of the final grade.



Students have to pass the final test to pass the course. In the event of failing the test, the final grade in the record shall be determined through the weighted addition of ongoing assessment and the mark in the theory-practice test, which will in no way be higher than 4,5 (fail).

Final evaluation might take oral or written form depending on the lecturer's choice, and it has to be indicated in the annex to the syllabus.

- a) If the final test is a written exam, it will be a joint examination that shall be common to all groups. Students will be allowed to use legal texts. Answering space won't be limited and it shall not be a multiple-choice (quiz) test. However, time will be limited.
- b) In the case of oral evaluation, the lecturer has to indicate in the annex whether students may use legal documents for taking the exam. The lecturer will announce with at least 5 working days, through Aula Virtual, data concerning location of the exam, time, date and its maximum duration for each student and the order in which the exam will take place.

Regardless of the exam type (oral or written), it will be on the lecturer to include in the annex the possibility to change the exam type when a different day has to be appointed to solve an exams' overlapping situation in conformity with the Reglamento de evaluación y calificación de la Universitat de València.

The grade for the first sitting is formed by the result of the final test grade and the ongoing evaluation in the percentages stated above. As for the second sitting, ongoing evaluation block will be the one obtained during the year.

On-going evaluation activities (guided activities and complementary activities) can't be replicated for the second sitting whenever their nature makes it impossible to repeat a similar test that evaluates the training of the student. The lecturer will specify the latter in the annex, where complementary activities and guided activities that will take place during the course have to be detailed, too.

Despite having, fully or partially, participated in the on-going assessment, if the student does not show during the final test, the grade in the record will be NOT SAT. However, as an exception, if the student asks for it, and taking into consideration special circumstances, "FAIL" might be the grade in the record, considering only the weighed on-going assessment evaluation.

Activities that may be scored: final grade will be formed by the addition of the two following elements:

1. Final theory and practice test with legal materials support: 70% of the final grade.
2. Activities that may be scored (taking place during the lectures or outside that timeframe): 30% of the final grade.

Each lecturer has to define the activities corresponding to 30% of the final grade in the annex to the syllabus. There might be both guided activities and complementary activities. At least one activity has to be planned along the year. In any case, activities shall amount to 8 hours during the course.

2.1.- Guided activities: between 10-20% on the lecturer's discretion.



2.2.- Complementary activities: between 10 – 20% depending on the lecturer's discretion. These activities may consist of:

- Activities organised by the Department of Commercial Law for all groups.
- Activities arranged by a specific group lecturer or various course lecturers for their respective groups.
- Students may carry out complementary activities of their choice providing that these have been authorized by their group lecturer.
- Complementary activities may consist of participation in workshops, conferences, seminars, etc.

REFERENCES

Basic

- Cualquiera de los textos siguientes relacionados por orden alfabético es suficiente para atender al programa. Su consulta, coordinada con los materiales que pueda indicar o suministrar el profesor de cada Grupo, constituyen el conjunto recomendado. La referencia debe entenderse hecha a las últimas ediciones publicadas de cada una de las obras.
BROSETA PONT, M., Manual de Derecho Mercantil (Edición revisada por Fernando Martínez Sanz), Editorial Tecnos, tomos I y II.
EMBID IRUJO, J.M., (Dir.), Introducción al Derecho de Sociedades de capital. Editorial Marcial Pons.
GALLEGO, E., Derecho Mercantil, Tirant lo Blanch.
JIMÉNEZ SÁNCHEZ, G.J. (coord.), Derecho Mercantil. Editorial Marcial Pons, vol. 1, 2, 3 y 10.
MENENDEZ, A. y otros: Lecciones de Derecho Mercantil, Editorial Thomson-Civitas, tomos I y II.
SÁNCHEZ CALERO, F. y SANCHEZ CALERO GUILARTE, J., Instituciones de Derecho Mercantil. Editorial Thomson-Aranzadi, tomos I y II.
VICENT CHULIA, F., Introducción al Derecho Mercantil, Editorial Tirant lo Blanch, tomos I y II.

Son imprescindibles los textos legales correspondientes a las materias comprendidas en el programa.