

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

Code	35220
Name	Mercantile law II
Cycle	Grade
ECTS Credits	7.5
Academic year	2018 - 2019

Study (s)

Degree	Center	Acad. year	Period
1303 - Degree in Law	Faculty of Law	3	Annual
1921 - D.D. in Business Management Administration-Law	Doubles Studies Faculty of Law - Faculty of Economics	3	First term
1922 - D.D. in Law-Political and Public Administration Sciences	Faculty of Law	4	Annual
1923 - D.D. in Law-Criminology	Faculty of Law	3	Annual

Subject-matter

Degree	Subject-matter	Character
1303 - Degree in Law	16 - Commercial law	Obligatory
1921 - D.D. in Business Management Administration-Law	4 - Year 3 compulsory subjects	Obligatory
1922 - D.D. in Law-Political and Public Administration Sciences	5 - Year 4 compulsory subjects	Obligatory
1923 - D.D. in Law-Criminology	4 - Year 3 compulsory subjects	Obligatory

Coordination

Name	Department
LOIS CABALLE, ANA ISABEL	70 - Mercantile Law 'Manuel Broseta Pont'

SUMMARY



Commercial Law II is a core module taught over one academic year as part of the third year of the Degree in Law. The module has a credit weighting of 7, 5 credits (divided into 3 credits in the 5th semester and 4.5 credits in the 6th semester in accordance with the General Study Plan).

Commercial Law is the part of the legal system that regulates businesses (encompassing both individuals and companies) and their activity in the market. In the Study Plan of the Law Degree the subject is divided into two parts, each of which has the following content:

1. «Commercial Law I»: in their second year students analyse the legal status of business people and the rules which govern their activities (such as their book-keeping obligations and those regarding the Commercial Register), the Law of Corporations, Competition Law and the Law of Industrial Property, as well as the institutions designed to remedy crisis (Insolvency Law).
2. «Commercial Law II»: in their third year students embark on an in-depth study of the legal instruments commonly used in commerce: bills of exchange and commercial contracts.

According to the description of the subject in the Study Plan «Commercial Law II» centres on the study of the «General concepts of negotiable instruments and the principal instruments of commercial exchange: promissory notes, cheques and bills of exchange» as well as «Commercial Contracts». Following this, if Commercial Law can be said to be structured around three central elements (the business-person, the business, and the economic activity carried out by business-people in the market), the subject «Commercial Law II» is concerned with the analysis of the legal instruments employed in the service of this business activity.

After an initial explanation of the economic function, the historical evolution and the essential characteristics of negotiable instruments, the first part of the course will guide the students through an exhaustive analysis of the regulation of promissory notes, cheques and bills of exchange.

The second part of the course concentrates on the special characteristics of commercial contracts and the specific legal framework applied to various types of commercial contract: sales contracts, transport contracts, business deposit contracts, finance contracts and loans guaranteed by securities.

The final part of the course examines financial markets, and will study the legal status of the main subjects active in the banking market, the insurance trade and the stock market as well as the law that regulates trading in each of these markets.

The study of commercial contracts in the Law Degree is complemented by the inclusion of two optional modules in the General Study Plan: «Banking, the Stock Market and Insurance » and «The Law of Transportation».

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 General Study Plan for the Degree in Law does not require students to have passed any specific law modules in order to take Commercial Law II. However, both the content and the objectives of the course assume that the student has a sound understanding of the General Theory of Obligations and Contracts («Civil Law II», taught in the second year of the Law Degree) and has successfully completed «Commercial Law I».

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 II” is designed so that the student acquires the following basic abilities:

- Understand the legal consequences of issuing securities, particularly the differences between the assignment of credit and the circulation of a right incorporated in a deed or bond.
- Have a profound understanding of the regulation of bills of exchange, cheques and promissory notes and be able to complete any of these instruments correctly from a given set of circumstances
- Comprehend the principal problems, challenges and legal tendencies, apparent from the study of case law, in the regulation of commercial contracts.
- Understand the regulation of commercial contracts and be able to solve practical problems related to them, particularly those related to: the sale of goods, the sale of businesses, transport, custody, distribution contracts and finance and guarantees.



- Obtain a basic understanding of the organization of financial markets and the regulation of subjects, markets and legal transactions within those markets.
- Comprehend the principal parts of a contract and be able to redact the basic parts of any of the contracts analysed during the course.

DESCRIPTION OF CONTENTS

1. Securities

1. - The economic functions of securities.
2. - The concept and historical evolution of securities, in particular bills of exchange.
3. - The essential elements of securities: legitimisation by possession, the explicit terms of the instrument, the autonomous nature of the instrument.
4. - The concept of securities and types of securities.
5. - The circulation of promissory notes and bills of exchange payable to named creditors, on order, or to the holder.
6. - The crisis of securities. The electronic clearing system and book entry securities.

2. Nombre de la U.T. (English): The Bill of Exchange, acceptance, endorsement and guarantees

1. - The regulation of the Bill of Exchange. Its nature and economic function
2. The formal requirements of the Bill of Exchange. Enabling clauses. The blank or incomplete bill of Exchange.
- 3.- The effects of representation in the Bill of Exchange
4. Acceptance: concept and legal requirements. The effects of both acceptance and of the lack of acceptance.
- 5.- The transmission of the bill of exchange: the legal regulation of endorsement and transfer. The effects of endorsement.
6. The guarantee provided by the Bill of Exchange, concept, function and personal elements. The effects of the guarantee.

3. Expiry, presentation and payment of the Bill of Exchange

1. - The expiry of the bill of exchange: concept and types.
2. - The regulation of the presentation for payment of the bill of exchange.
3. - Voluntary payment of the bill of exchange. The object, requirements and effects of payment.
4. - The enforcement of payment. Legal actions specific to the bill of exchange, direct and return actions.
5. - Defences against the legal actions specific to the bill of exchange.
6. - Enforced payment through other types of legal action.



4. The promissory note and the cheque

- 1.- The promissory note: Concept, economic function and formal requisites
2. - The legal position of the signatory of the promissory note.
3. - The cheque: Concept, economic function and classes.
4. - The formal and material requisites of the cheque.
5. - The legal position of the cheque issuer and the credit institution of the issuer.
6. - The presentation and payment of the cheque. The legal actions available to the holder of an unpaid cheque.
7. - The responsibility for the payment of a fake or falsified cheque.

5. General rules concerning obligations and commercial contracts

1. - The law of commercial contracts. Special features of the regulation of obligations and commercial contracts.
2. - The regulation of electronic commerce.
3. - The regulation of the general conditions of commercial contracts and unfair terms.
4. The general rules regarding the competence to enter into contracts and commercial contract law.

6. Commercial sales contracts

1. - The legal concept of a commercial sale and the distinctions between sales regulated by commercial law and civil law.
2. - The transmission of risk in commercial sales.
3. - The content of the contract. The obligations of the parties to the contract and the consequences of non-compliance.
4. - The international commercial sales contract.

7. Legal transactions affecting companies

1. - Businesses as the object of legal transactions. General problems.
2. - The sale of businesses.
3. - The leasing of businesses.
4. - The usufruct of businesses.
- 5.- Security rights over the tangible property of businesses

8. Deposit and transportation contracts

2. - The transportation of goods as an activity of businesses. The regulation of the transportation of merchandise in public and private law.
3. - The concept, nature and classes of the terrestrial transport contract.
4. - Personal and material elements of the contract. The consignment note.
5. - The content of the contract. The obligations of the parties. The responsibilities of the carrier/forwarding agent.



6.- The international transportation of goods by land.

9. Collaboration and distribution contracts

- 1.- Commercial distribution systems.
- 2.- Contracts under which a commission is payable.
- 3.- The agency contract.
- 4.- Mediation and brokerage contracts.
- 5.- The supply contract and the consignment contract
- 6.- The selective distribution contract, the exclusive distribution contract and the concession contract
- 7.- The franchise contract

10. Credit market contracts (I)

1. - The law of financial markets. Concept, organization, subjects. Supervisory authorities.
2. - The protection of clients/consumers in financial markets
- 3.- Concept and types of banking contracts
- 4.- The current account. Differences between the current account and the Business Checking Account

11. Credit market contracts (II)

- 1.- Passive banking operations: bank deposits and their classes.
2. - Active banking operations and finance.
 - A) Bank loans.
 - B) Credit facility agreements.
 - C) Discount operations.
 - D) Financial leasing.
3. - Other types of banking operation.
 - A) Payment services: bank transfers, debit cards, credit cards, and other types of payment service.
 - B) Documentary credit.
 - C) Commercial suertryship and autonomous guarantees or guarantees at first request.
 - D) The deposit and the administration of securities.
 - E) The rental of safe deposit boxes.
- 4.- Crowdfunding: legal regime and modalities.

12. Insurance contracts

1. - The economic function and the prerequisites of private insurance.
2. - The concept, characteristics and classes of insurance contract.
3. - The elements of the insurance contract.
4. - The formation and documentation of the contract.
5. - Insurable interest, the indemnity principle, the sum insured.
- 6.- The obligations of the parties to the insurance contract.
7. - The determination of the indemnity, the subrogation of the insured party.
- 8.- The duration, prescription and extinction of the insurance contract.

**13. Insurance against damages and personal insurance**

- 1.- Fire, theft and transport insurance
- 2.- Insurance against loss of income/earnings, credit insurance, surety insurance
- 3.- Civil liability insurance
- 4.- Compulsory motor vehicle insurance
- 5.- Life insurance. Concept and classes
- 6.- Accident insurance. Concept and classes
- 7.- Illness and medical insurance

14. The securities market

1. - An introduction to the securities market.
2. - Codes of conduct in the securities market.
3. Investment services, with particular reference to stock exchange operations.
4. - The public acquisition of securities.
5. - The public sale of securities.

WORKLOAD

ACTIVITY	Hours	% To be attended
Theoretical and practical classes	75,00	100
Attendance at events and external activities	5,00	0
Development of group work	3,00	0
Development of individual work	8,00	0
Study and independent work	40,00	0
Readings supplementary material	5,00	0
Preparation of evaluation activities	10,00	0
Preparing lectures	20,00	0
Preparation of practical classes and problem	10,00	0
Resolution of case studies	10,00	0
Resolution of online questionnaires	1,50	0
TOTAL	187,50	

TEACHING METHODOLOGY



The teaching methodology has been adapted to suit the system of evaluation outlined in the annex to the study guide, and this allows for the options permitted by the general system described in epigraph 9 (such as, for example, the use of complementary activities, or the discretionary evaluation of class exercises or the resolution of practical cases). However, the fundamental points to be taken into consideration are the following:

1. The presentation of the content of the course. The classes will use a teaching method that focuses on the active participation of the students. The teaching sessions will be based around the discussion of cases and hypothetical problems and the exegesis of points of law, using the ideas and explanations given in the material on the required reading list, and will presuppose the prior preparation of classes by the students. The classes should be approached as a dialogue between the students and the lecturer, although the lecturer may make use of traditional lectures in order to explain points of particular complexity.

2. Applied and guided activities. Throughout the course the students will be asked to resolve practical exercises and to write commentaries on cases of interest, etc., that will be closely connected to the course content. These exercises are intended to complement the theoretical explanations provided by the lecturer, although students may be required to complete them outside of lecture hours. They are designed to be participatory exercises, and in all cases the course lecturer will indicate whether they will be subject to evaluation. At any time throughout the course the students may be asked to complete additional activities designed to reinforce the knowledge they have acquired.

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.

There won't be a midterm exam for the "Commercial Law II" course, except for double degrees when midterm exams are mandatory if prescribed by the pertinent Academic Commissions' agreements.

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

- Broseta Pont, M., Manual de Derecho Mercantil (Edición revisada por Fernando Martínez Sanz), Editorial Tecnos, tomo II.
- Sánchez Calero, F. y Sánchez-Calero Guilarte, J., Instituciones de Derecho Mercantil, Editorial Thomson-Aranzadi, tomo II.
- Vicent Chuliá, Francisco, Introducción al Derecho Mercantil, Editorial Tirant lo Blanch, tomo II.
- Menéndez, A. y otros: Lecciones de Derecho Mercantil, Editorial Thomson-Civitas, tomo II.
- Jiménez Sánchez, G. J., (coord.), Derecho Mercantil, Editorial Marcial Pons, vol. 4 a 9.

Additional

- Páginas web de autoridades supervisoras:
<http://www.bde.es>
<http://cnmv.es>
Portal del inversor CNMV
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<http://www.westlaw.es>
<http://www.tirantonline.com>
<http://www.iustel.com>
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<http://eur-lex.europa.eu/JOIndex.do>
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