

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

<b>Code</b>	36769
<b>Name</b>	Commercial regulation of business activity
<b>Cycle</b>	Grade
<b>ECTS Credits</b>	7.5
<b>Academic year</b>	2023 - 2024

**Study (s)**

<b>Degree</b>	<b>Center</b>	<b>Acad. year</b>	<b>Period</b>
1933 - D.D. in Law-Economics 2022	Doubles Studies Faculty of Law - Faculty of Economics	3	First term

**Subject-matter**

<b>Degree</b>	<b>Subject-matter</b>	<b>Character</b>
1933 - D.D. in Law-Economics 2022	3 - Asignaturas de tercer curso	Obligatory

**Coordination**

<b>Name</b>	<b>Department</b>
O'FLYNN BRIGHT, ANDREW JOHN	70 - Mercantile Law 'Manuel Broseta Pont'

**SUMMARY**

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

1. The Regulation of Businesses by Commercial Law is a core subject studied over the course of one academic year that is taken during the third year of the Degree in Law. It consists of 7.5 ECTS credits (187.5 hours).

1. In accordance with the description given in the Study Guide of the Joint Degree in Law and Business Studies taught at the University of Valencia, the subject The Regulation of Businesses by Commercial Law is comprised of the following topics



## PREVIOUS KNOWLEDGE

### Relationship to other subjects of the same degree

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

### Other requirements

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

The Study Plan for the Joint Degree in Law and Economics does not establish any requirements in order to take the Regulation of Businesses by Commercial Law, 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

### LEARNING OUTCOMES

The subject has been designed so that students achieve the following educational goals:

- To know and use correctly the terminology employed by the Law
- To understand and correctly use the basic concepts of the topics that comprise the subject
- 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 businessperson
- To understand the basic aspects of Competition Law 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. THE HISTORICAL CONFORMATION OF BUSINESS LAW. CONCEPT AND SOURCES. ECONOMIC CONSTITUTION.**

1. Business law as a historic category. Its concept and current content.
2. Economic constitution. The 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 businesspeople. Their characteristics. The concept of a businessperson (natural person) in the Commercial Code. A critical evaluation of the concept.
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 an undertaking as an organization and its legal features.

## **3. THE LAW OF IMMATERIAL OBJECTS AND COMPETITION LAW**

1. The regulation of the market: competition law and the law of unfair competition.
2. Sources and systems to protect industrial property rights.
3. The protection of inventions. Patents and utility models.
4. The protection of industrial designs.
5. Trade secrets
6. Distinctive signs. Functions and classes.
7. Trademarks

## **4. COMPANY LAW. COMMERCIAL COMPANIES. THE GENERAL THEORY OF COMPANY LAW. LAW PARTNERSHIPS.**

1. Company Law. History and evolution.
2. The legal concept of the company.
3. The 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 partnerships and commercial companies.
7. Requirements for the incorporation of commercial companies.
8. The legal personality of companies. Meaning and limits.
9. The legal status of partnerships (the general partnership and limited partnerships).



## **5. CORPORATIONS (I). SHARE CAPITAL AND EQUITY. CONTRIBUTIONS TO 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.

## **6. CORPORATIONS (II). THE RIGHTS OF SHAREHOLDERS**

1. Shares as part of the share capital: nominal value, book value, market value and issuance value.
2. Shares as a collection 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. The ownership of its own shares by a company.
8. Co-ownership and claims over shares.

## **7. CORPORATIONS (III). THE ORGANS OF CORPORATIONS. THE GENERAL MEETING.**

1. Notion of social organ and the system of organs 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 the public deed of the resolutions of the general meeting.
  - 2.5. Challenging the resolutions of the general meeting.
  - 2.6. Litigation and disputes among shareholders under arbitration.

## **8. CORPORATIONS (IV). ORGANS OF MANAGEMENT**

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.

## **9. CORPORATIONS (V). THE ANNUAL FINANCIAL REPORT. AMENDMENT OF THE ARTICLES OF ASSOCIATION.**

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.

## **10. STRUCTURAL MODIFICATIONS. DISSOLUTION, LIQUIDATION AND EXTINCTION**

1. Structural modifications.
  - 1.1. The conversion of companies.
  - 1.2. Merger of companies.
  - 1.3. The division of companies.
  - 1.4. The global assignment of assets and liabilities.
  - 1.5. The transfer of the registered office.
2. Winding up, liquidation and extinction of companies limited by shares.

## **11. SPECIAL COMPANIES AND TYPES OF MUTUAL OWNERSHIP**

1. Companies with public investment, special types of limited companies and professional corporations
2. Economic interest groups and joint ventures.
3. Groups of companies
4. Cooperatives
5. Labour companies
6. Mutual guarantee companies

## **12. INSOLVENCY LAW (I). FIRST AND SECOND SECTIONS**

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



**13. 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.

**14. INSOLVENCY LAW (III). FIFTH AND SIXTH SECTIONS. PREINSOLVENCY. PROCEDURAL RULES.**

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

**WORKLOAD**

ACTIVITY	Hours	% To be attended
Theoretical and practical classes	75,00	100
Attendance at events and external activities	7,50	0
Study and independent work	75,00	0
Resolution of case studies	30,00	0
<b>TOTAL</b>	<b>187,50</b>	

**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 that 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 special 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, analyzing 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 of these will be subject to evaluation. The lecturer may also program, 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

The final grade will be calculated by adding two different blocks/parts: on the one hand, the ongoing assessment and participation 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 will have to pass the final test to pass the course. In the event of failing the test, the final grade put in the record shall be determined by the weighted addition of the ongoing assessment and the mark in the theory-practice test, which cannot be higher than 4,5 (fail).

The final evaluation may take the form of an oral or written test at the lecturer's discretion. The type of test designated must 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 an oral evaluation, the lecturer has to indicate in the annex whether students may use legal documents when taking the exam. The lecturer will announce this within at least 5 working days, through the Aula Virtual, together with information concerning the location of the exam, its time, the date and its maximum duration, as well as the order in which each student shall be examined.

Regardless of the exam type specified (oral or written), the lecturer reserves the right to change the exam type when a different day has to be appointed due to overlapping exams, in accordance 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 and the mark obtained by the student in the continuous evaluation. Regarding the second sitting, the mark for the continuous evaluation block will be maintained.

Continuous evaluation activities (guided activities and complementary activities) can't be replicated for the second sitting.



Despite having, fully or partially, participated in the continuous assessment, if the student does not show up to take the final exam, 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 recorded.

The final grade will be formed by the addition of the following two elements:

1. Final theory and practice test with legal materials: 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 that correspond to this 30% of the final grade in the annex to the syllabus. These might be both guided activities and complementary activities. At least one complementary activity has to be planned for the course. Complementary activities shall amount to a maximum of 7.5 hours during the course.

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

2.2.- Complementary activities: between 10 – 20% at 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 own choice providing that these have been authorized by their group lecturer.
- Complementary activities may consist of participation in workshops, conferences, seminars, etc.

## REFERENCES

### Basic

- Referencias Básicas:
  - 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.
  - EMBED 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.

