

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

<b>Code</b>	43172
<b>Name</b>	Commercial companies
<b>Cycle</b>	Master's degree
<b>ECTS Credits</b>	8.0
<b>Academic year</b>	2024 - 2025

**Study (s)**

<b>Degree</b>	<b>Center</b>	<b>Acad. Period year</b>
2128 - Master's Degree in Corporate Law. Trade, Labour and Tax Consultancy	Faculty of Law	1 First term

**Subject-matter**

<b>Degree</b>	<b>Subject-matter</b>	<b>Character</b>
2128 - Master's Degree in Corporate Law. Trade, Labour and Tax Consultancy	3 - Commercial companies	Obligatory

**Coordination**

<b>Name</b>	<b>Department</b>
HERNANDO CEBRIA, LUIS	70 - Mercantile Law 'Manuel Broseta Pont'
SALDAÑA VILLOLDO, BENJAMIN	70 - Mercantile Law 'Manuel Broseta Pont'

**SUMMARY**

The aim of this subject is to deepen the knowledge of commercial companies, as owners of companies, in their structure, legal regime and operation. The subject also deals with business accounting and its fundamental concepts, as well as the tax regime of legal persons and corporate crimes.

The aim is to ensure that the student masters the organization, legal regime and operation of legal persons as owners of companies and especially commercial companies, as well as the taxation applicable to them and criminal conducts in the field of commercial companies.



## PREVIOUS KNOWLEDGE

### Relationship to other subjects of the same degree

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

### Other requirements

In addition to the general knowledge of the degree or degree of origin, in the previous subjects of the Master's degree, the student will have already delved into the different dimensions of the enterprise as an organizational structure, and of its main regulatory frameworks from the different legal sectors. Also, studied in the previous subject the enterprise's activity towards the outside and its simpler internal structure, such as its ownership by natural person, in this new subject it goes into the regime of commercial companies and in the imputation of responsibility for their activity in the market.

## COMPETENCES (RD 1393/2007) // LEARNING OUTCOMES (RD 822/2021)

### 2128 - Master's Degree in Corporate Law. Trade, Labour and Tax Consultancy

- Students should communicate conclusions and underlying knowledge clearly and unambiguously to both specialized and non-specialized audiences.
- Students should demonstrate self-directed learning skills for continued academic growth.
- Ser capaces de obtener y de seleccionar la información y las fuentes relevantes para la resolución de problemas, elaboración de estrategias y asesoramiento a clientes.
- Conocer y usar con fluidez las categorías, prescripciones y procedimientos relevantes para cada caso y sus antecedentes y soluciones más significativas.
- Elaborar y manejar los escritos, informes y procedimientos de actuación más idóneos para los problemas suscitados.
- Adquirir los instrumentos para poder planificar, ordenar y encauzar actividades de manera que se eviten en lo posible los imprevistos, se prevean y minimicen los eventuales problemas y se anticipen sus soluciones.
- Contemplar en conjunto y tener en cuenta los distintos aspectos y las implicaciones en los distintos aspectos de las decisiones y opciones adoptadas, sabiendo elegir o aconsejar las más convenientes dentro de la ética, la legalidad y los valores de la convivencia social.
- Identificar agrupaciones de personas y sus estructuras jurídicas, órganos, facultades, formas de actuación y requisitos de las sociedades y otras entidades jurídicas que desarrollan actividad empresarial. Modificación y transformación de sociedades y de grupos societarios, nacionales y transnacionales.
- Saber identificar los requerimientos de prestación y organización determinantes para el asesoramiento jurídico empresarial.



## **LEARNING OUTCOMES (RD 1393/2007) // NO CONTENT (RD 822/2021)**

This is the third concentric circle in the teaching-learning process, in which each student incorporates new problems based on those already resolved in the previous ones. This third compulsory subject basically incorporates the ownership of the enterprise by more than one physical person, going into depth on the modalities and rules that govern the legal entity, as a legal fiction for the grouping of people.

It addresses its operating requirements and demands, its responsibilities and those of its organs, its tax obligations and the criminal conduct in which it may eventually incur. This subject closes what could be called the Theory or General Part of Business Law, except for the Bankruptcy Law addressed in the following subject, so that at this point, students should already know and handle with ease all the requirements and be able to exercise the basic options to form a company and organize its activity.

For this reason, the three subjects are assessed by means of comprehensive tests that cover the content of all three, thereby reflecting that, as a business advisor, none of the knowledge and skills acquired in this four-month period can be ignored in their application to reality. For this reason, the assessment system and the skills assessed with it are detailed.

## **DESCRIPTION OF CONTENTS**

**1. Constitution and bylaws of commercial companies, organs, shares and participations**

**2. Challenging corporate agreements**

**3. Tax liability of directors**

**4. Criminal liability and legal entities**

**5. Amendment of bylaws, transformations, mergers and divisions, dissolution and liquidation**

**6. International dimension of companies**

**7. Company taxation framework**

**8. Criminal behavior in commercial companies****WORKLOAD**

ACTIVITY	Hours	% To be attended
Theory classes	56,00	100
Development of group work	30,00	0
Preparation of evaluation activities	70,00	0
<b>TOTAL</b>	<b>156,00</b>	

**TEACHING METHODOLOGY****Training tasks of the teaching-learning process prior to classroom interaction**

First of all, the teaching methodology must be suitable for focusing, from the beginning, on the problem to be addressed, presenting its different facets, which will be developed by each discipline involved. To do so, in each subject, the teachers who begin it must explain the problematic cores that are going to be addressed in it, as well as - in the case of legal subjects - the values and normative purposes pursued by the legal system when regulating and trying to resolve said problems. A teaching-learning process of Law that, under the guise of mere legal technique, avoids the treatment of the inspiring values of the legal system, the social needs that it must resolve and the criteria on which it bases the solutions it adopts is inconceivable. Therefore, from the very beginning, the teacher has the role of revealing and explaining these dimensions in advance. In a word, what operational pedagogy sums up as “presentation of the subject matter” and of the values that shape and explain it.

Secondly, in relation to the above, due to the theoretical-practical content of most of the subjects, and due to the legal knowledge that the Master's students already have, master lectures that place them within the framework of the legal system, already known to them, are not advisable. For this reason – as described in each subject – only a minimal part of the weekly class hours can be called theoretical. Its content, however, cannot be limited to an abstract presentation of the legal system, but to highlighting and presenting its relevant norms and its application criteria for the problems to be addressed. Therefore, it must focus on establishing certain key legal categories or institutions for the resolution of the problems addressed in that subject; at the same time it can serve as a reminder to the students or as an introduction to those who were trained in legal systems other than the Spanish one. The bulk of classroom teaching, however, is covered by the discussion of materials and the resolution of cases and assumptions previously provided to the student. Hence, the teaching methodology has as a central aspect the selection by the teacher of the most suitable materials for the preparation of the debates and the selection and resolution of the most representative problems, without prejudice to the fact that, on occasions, part of the learning consists of the students themselves having to make this selection, but limited by the teachers from among the huge variety of resources and sources available.





Thirdly, to prepare these debates and confrontations of problems, teamwork by the students also becomes a training tool, allowing them to consolidate transversal competences of the degree and assume a work dynamic that they will surely find in their later activities. The distribution and assignment of tasks among the group members, the contribution of each member, their debate and discussion within the group, their coupling to different groups throughout the Master's and the conjunction of all this for their orderly presentation or their joint treatment to solve the problems are skills that are sought to be developed throughout their stage as Master's students.

Fourthly, and transversally to all the subjects - in addition to the specific complementary ones - they must also reinforce their capacity for the use of new technologies, so that both in the offer and selection of materials and in their use and presentation of the results achieved, the use of instruments such as the virtual classroom, the management of databases, electronic consultations, the presentation of panels or slides, etc. is encouraged.

### **Training tasks of the teaching-learning process in the classroom interaction process**

In coherence with the approach of the Study Plan, the teaching methodology must be aimed at placing them in conditions so that they themselves discover and progress in the solution of the problems posed. To this end, it is essential to imbue them with rigor in reasoning, clarity in the separation of different aspects, so that they do not make logical leaps or "prejudices" about the content or interpretation of the relevant regulations, and, ultimately, so that they are capable of reaching and offering their own solution through adequate technical-legal reasoning and values and principles. In an environment as changing as the regulatory framework of the company and its activity, "learned" solutions can be of little value, and emphasis must be placed on their ability to extract for themselves, at any given time, from each current regulatory framework and in the face of each specific problem posed, the most advisable solutions.

Therefore, classroom debate on the materials and problems previously provided by the teacher and worked on by the students becomes the core of the teaching-learning process, although, obviously, it contributes little without the fulfillment of the previous tasks outlined. The role of the teacher in these debates must be that of true moderator, and not that of a mere spectator who attends the presentation of positions or opinions by the students. He must strive to focus on the different aspects of the debate and to organize it; to refine the reasoning that they present, either to extract all their conclusions from them, or to show that they do not lead to acceptable solutions within the framework of the order; to highlight the consequences that they did not notice of the solutions they propose; and, finally, to recapitulate and close the debate with acceptable collective conclusions, avoiding leaving open questions that could convey the impression that "everything is debatable." Although it is true that the rules are sometimes susceptible to different interpretations, the legal system is a framework of binding precepts, with clear limits on what is not admissible.

Finally, without falling into the case method, which does not correspond to our legal system, which is codified and has very developed and precise normative bodies for the different legal areas, the discussion of problems cannot ignore, where appropriate, the jurisprudential background and the solutions given by advisory bodies, so the debate and the solutions in the classroom must address the whole legal phenomenon, integrating, together with the rules, legal experience, the external effects of said rules and their impact on the specific situation in which the legal system must be applied and for which the specialized professional is asked for advice. Therefore, the complementarity of the various legal aspects of a problem cannot be ignored by focusing on one main aspect and without knowing the consequences that it may have in other dimensions, when, in reality, practically all the decisions and options of a company must take into account these various legal aspects and their consequences. Therefore, the problems themselves and, above all, their treatment and solutions, must be built on the basis of this



plurality of aspects, imbuing students with the need for comprehensive advice that does not neglect any of them.

MD1 – Training tasks of the teaching-learning process prior to classroom interaction.

MD2 – Training tasks of the teaching-learning process in the classroom interaction process.

MD3 – Eminently practical methodology, using a computer room where the applications to be treated are downloaded and completed.

## EVALUATION

SE1 - Attendance at classes is an essential requirement for being assessed, and a minimum of 80% of sessions must be attended. Below this minimum, and unless there are justified reasons, the student will not be assessed and will be recorded in the minutes as not present.

SE2 - Joint assessment, through two tests, consisting of the preparation of a report and the public defence of it and a case, assumption or opinion to be resolved in the classroom. The grade may be unique for the three subjects or differentiated depending on the treatment given in the report and in the case to each of them. To pass the subjects, it will be necessary to obtain a minimum of a pass in each of the tests and with respect to the content of each of them. The joint grade resulting from both tests may be weighted with those obtained by the students in the common and specific activities carried out during the semester.

Joint assessment, through two tests, consisting of the preparation of a report and the public defence of it and a case, assumption or opinion to be resolved in the classroom.



The tests will consist of the following:

A) Report and public defense before a Court on "Legal actions during the first year of activity of a company that we have established"

1) It must necessarily address the following minimum content:

- Chosen legal form
- Implications of the economic regime of the interested parties
- Legal formulas for initial financing of the activity
- Internal agreements, pacts or statutes
- Legal regime of occupation of the premises and use of the facilities
- Intangible property
- Enumeration of necessary procedures, registrations, permits and authorizations
- Compliance with tax duties during the first year of activity

The complexity and variety of the legal problems raised and their solutions will be assessed.

2) Among other problems whose complexity and variety will be assessed, there are:

- International issues
- Criminal issues
- Competition law
- Business volume and financial viability

3) The maximum length will be 50 pages.

English: text, admitting as annexes only the documents prepared by the student, but not forms or general models not completed for the case.

4) The works in which plagiarism is detected cannot be defended and will be graded with zero, without prejudice to the responsibilities that may be required.

5) The defense will consist of an oral presentation, with a maximum of 15 minutes, before a Panel of three professors with teaching in the first three subjects of the Master, who may ask or debate with the student on issues raised by their opinion.



The first call will be around the month of January, and the second call, in the months of March-April. The work will be sent electronically to the Master's Directorate at least one week before the dates set by the Committee for each call.

B) Case, assumption or opinion to be resolved in the classroom, proposed by the coordinator of subject 1.3, with the materials provided by the student, in printed format: Up to 4 points.

The statement may be submitted separately or integrated into the corresponding report for the remaining subjects of the compulsory module. They will complete it in class before the coordinating professor, who together with the rest of the teachers of the subject, will determine their grade, up to a maximum of 8 points, with a minimum of 5 required to pass the test. The other 2 points of the grade may be obtained, where appropriate, by continuous assessment through the complementary activities proposed by the professors and developed throughout the class period.

The case or report will cover content from the different disciplines, and professors from each of the subjects covered will participate in its assessment, their evaluation being weighted according to their relevance in the overall case or report.

C) The joint grade resulting from both tests may be weighted with those obtained by the students in the common and specific activities developed during the first four-month period.

With this system of assessment of the first three subjects, the acquisition of multiple competences is checked and assessed. On the one hand, of course, there are the specific subjects of these subjects, but also several basic and transversal subjects, such as CB6, CB8 and CB9, among the basic subjects, and CT9 and CT10, among the transversal subjects. The experience of the previous editions, in all of which this system and these assessment tests were developed, allows us to affirm that the student is placed in the position of a legal advisor who has to address and resolve, advising those who requested his expertise, the best legal options to start the activity in question.

## REFERENCES

### Basic

- o FERNÁNDEZ ROZAS, J.C. y otros, Derecho de los negocios internacionales, Madrid, Iustel, última edición.
- o VICENT CHULIÁ, F., Introducción al Derecho mercantil, Valencia, Tirant lo Blanch, última edición.
- o ÁLVAREZ GARCÍA, F.J. / GONZÁLEZ CUSSAC, J.L. (Dir.): Comentarios a la reforma penal de 2010, Valencia, Tirant lo Blanch, última edición.
- o MARTÍN QUERALT / LOZANO SERRANO / POVEDA BLANCO: Derecho Tributario, Ed. Thomson-Aranzadi, Pamplona, última edición.
- o MARTÍNEZ-BUJÁN PÉREZ, C.: Derecho penal económico y de la empresa. Parte general, Tirant





lo Blanch, última edición.

o MARTÍNEZ-BUJÁN PÉREZ, C.: Derecho penal económico y de la empresa. Parte especial, Tirant lo Blanch, última edición.

### Additional

- Bibliografía complementaria o de referencia: Dados los increscentes cambios normativos, se facilitará al inicio de cada materia.

Lecturas: artículos y monografías que tratan específicamente alguno de los aspectos incluidos en el tema. Su lectura permitirá al alumno tener una visión mucho más amplia y rica de los contenidos de la materia expuestos en clase o abordados en la bibliografía básica. Tienen por objeto completar la información de los textos de la bibliografía básica, ampliando los aspectos más relevantes y ofreciendo, al mismo tiempo, una visión actualizada de los temas en la medida en que los mismos lo requieran.

Casos prácticos: proporcionan al estudiante la posibilidad de ejercitar su capacidad de análisis y decisión sobre situaciones reales que pueda plantear el material facilitado, aplicando los conocimientos teóricos que haya adquirido.

Resoluciones judiciales o de órganos administrativos: reflejan los criterios con los que los Tribunales o la Administración aplican la normativa jurídica.