



Universitat de Lleida

## DEGREE CURRICULUM

# COMMERCIAL LAW II

Coordination: PUYALTO FRANCO, MARIA JOSÉ

Academic year 2020-21

Subject's general information

<b>Subject name</b>	COMMERCIAL LAW II			
<b>Code</b>	101822			
<b>Semester</b>	2nd Q(SEMESTER) CONTINUED EVALUATION			
<b>Typology</b>	<b>Degree</b>	<b>Course</b>	<b>Character</b>	<b>Modality</b>
	Bachelor's Degree in Law	3	COMPULSORY	Attendance-based
	Double bachelor's degree: Degree in Law and Degree in Business Administration and Management	4	COMPULSORY	Attendance-based
<b>Course number of credits (ECTS)</b>	7.5			
<b>Type of activity, credits, and groups</b>	<b>Activity type</b>	PRAULA		TEORIA
	<b>Number of credits</b>	3		4.5
	<b>Number of groups</b>	3		2
<b>Coordination</b>	PUYALTO FRANCO, MARIA JOSÉ			
<b>Department</b>	PRIVATE LAW			
<b>Teaching load distribution between lectures and independent student work</b>	40% presencial 60% no presencial			
<b>Important information on data processing</b>	Consult <a href="#">this link</a> for more information.			
<b>Language</b>	Idioma Percentatge d'ús Anglès 0.0 Català 40.0 Castellà 60.0			
<b>Distribution of credits</b>	Dra. Maria José Puyalto Franco 4'5 ECTS GG Sr. José Luis Gomez Gusí 3 ECTS GM			

Teaching staff	E-mail addresses	Credits taught by teacher	Office and hour of attention
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## Subject's extra information

This Commercial Law II course is structured into four sections. The first part, the legal status of commercial contracts which deals with the study of the specialties of contractual commercial law as well as the system of major commercial contracts. In the second part, after the introductory lesson that explains the economic role of securities, we will comprehensively analyse the legal status of the bill of exchange, promissory note and check. The third part of the program deals with the heading economic crisis situations in commercial traffic in bankruptcy law. Finally, it addresses the study of the major institutions of shipping law.

## Learning objectives

- (1) Localitzar i utilitzar la legislació, doctrina i jurisprudència relacionada amb els diferents temes (continguts)
- (2) Identificar i diferenciar la funció econòmica dels diversos contractes qualificables com mercantils
- (3) Assessorar sobre el contracte més adequat per articular els interessos i necessitats dels empresaris
- (4) Redactar contractes mercantils
- (5) Identificar les característiques principals dels diferents títols valors

## Competences

### University of Lleida strategic competences

- Master Information and Communication Technologies.

### Degree-specific competences

- Show knowledge of the present legal system

## Goals

- Locate and use legislation, doctrine and jurisprudence on various topics
- Advise about the contract the best articulates the interests and needs of employers

- Ability to redact legal documents of a different nature

## Goals

- Write commercial contracts

- Ability to create and structure rules

## Goals

- Write commercial contracts

- Ability to negotiate and conciliate

- Show knowledge of the characteristics, conceptual schedules, institutions and procedures of the judicial system

## Goals

- Fill out bills of exchange, checks and promissory notes
- Recognize the characteristics and function of the bankruptcy proceeding
- Identify the main characteristics of various securities
- Identify and differentiate the economic role of the various contracts that qualify as commercial

## **Degree-transversal competences**

- Ability to work in a team (Interaction ability)
- Ability to pursue permanent autonomous learning and adapt to the new circumstances (Systemic ability)
- Ability to follow initiative, be creative and lead (Systemic ability)

## **Subject contents**

### Subject contents

#### **FIRST PART: Obligations and commercial contracts**

#### **SUBJECT I: THE OBLIGATIONS OF MERCHANTABILITY.**

I. INTRODUCTION. - II.COMMERCIAL SOURCES OF OBLIGATIONS. - III. LIMITATION OF COMMERCIAL LIABILITY. -IV. CLASSIFICATION OF CONTRACTS. - V. CONTRACTS WITH CONDITIONS: V.1.Introduction. - V.2. General provisions of the LCGC. - V.3. Non-incorporation and annulment of certain conditions. - V.4. Registry of the general conditions of the contract. - V.5. Collective actions for injunctions, withdrawal and general declaratory conditions. - V.6. Publication of judgments. - V.7.Information on general conditions.

#### **SUBJECT II: COMMERCIAL SALES**

I. INTRODUCTION. - II. CONCEPT. - III. ISSUES RAISED BY THE CONCEPT. - IV. ELEMENTS. - V. CONTENT OF THE CONTRACT. - VI. SPECIAL TRANSACTIONS. - VII. SUPPLY CONTRACT. - VIII. ESTIMATE CONTRACT. - IX. PURCHASE OF THE COMPANY.

## **SUBJECT III. GROUND TRANSPORTATION**

I. INTRODUCTION TO THE CONCEPT OF TRANSPORTATION AND ITS BASIC LEGISLATION. - II. CLASSES OF LAND TRANSPORT. - III. CONCEPT OF GROUND TRANSPORTATION COMMERCIAL CONTRACT. - IV. ELEMENTS OF THE CONTRACT. - V. ADMINISTRATIVE AND COMMERCIAL DOCUMENTS: V.1.

Declaration note. - V.2. Consignment note. - VI. CONTENTS OF THE TRANSPORTATION CONTRACT. - VII. LIABILITY OF THE CARRIER OR CARRIERS IN THE TRANSPORTATION OF THINGS.

## **SUBJECT IV: CONTRACTS AND AGENCY COMMISSION.**

COMMISSION AGREEMENT: I.1. Concept. - I.2. Modes of management. - I.3. The right to refuse the commission. - I.4. Contents of the commission contract. - I.5. Termination of employment. - I.6. Specific kinds of commissions. - II. AGENCY CONTRACT I.1. Concept. - II.2. Analogies and differences with the concepts of representative and mediator individuals. - II.3. Analogies and differences with the commercial commission contract. - II.4. Content of the contract. - II.5. Termination of contract. - II.6. Jurisdiction. - II.7. Limitation of actions.

## **SUBJECT V: OTHER BUSINESS PARTNERSHIP AGREEMENTS.**

I. INTEGRATION CONTRACT. II. OTHER BUSINESS PARTNERSHIP AGREEMENTS: Leasing, factoring, engineering, catering, commercial concession, franchise, brokerage, advertising contracts.

## **SUBJECT VI: COMMERCIAL CREDIT, LOAN AND DEPOSIT.**

I. CREDIT: Concept, content and classes. II. - LOAN: Concept, content and classes. - III. DEPOSIT: concept, content and classes. - IV. SPECIAL COMMERCIAL DEPOSITS.

## **SUBJECT VII: INSURANCE CONTRACT**

I. PRIVATE INSURANCE MANAGEMENT. - III. INSURANCE CONTRACT IN THE ACS: II.1. Concept. - II.2. Scope of the LCS. - II.3. General terms. - II.4. Specific case of invalidity. - II.5. Conclusion of the contract. - II.6. Finalizing the contract. - II.7. Duty of risk statement. - II.8. Prescriptive communications on the risk of aggravation. - II.9. Contractual changes by varying risks. - II.10. Content of the contract. - II.11. Kinds of insurance.

## **Subject VIII: BANK CONTRACTS**

I. INTRODUCTION. - II. CLASSIFICATION OF BANKING OPERATIONS AND THE BANKING CONCEPT OF THE CONTRACT. - III. OBJECT OF THE BANK CONTRACT. - IV. CHARACTERISTICS OF BANK CONTRACTS. - V. OPENING OF CREDIT. - VI. BANK LENDING. - VII. BANK DISCOUNT. - VIII. IRREGULAR DEPOSITS. - IX. MEDIATION AND CUSTODY OPERATIONS. - X. OTHER CONTRACTS AND BANKING SERVICES.

## **SUBJECT IX: CONTRACTS OF GUARANTEE**

I. INTRODUCTION: I.1. Guarantee contracts in the Civil Code: a) Deposit b) pledge c) mortgage, and d) antichresis. - I.2. The real rights of guarantee in the Catalan legislation: a) lien; b) pledge; c) The mortgage; e) The antichresis. - II. APPLICATION TO COMMERCIAL CONTRACTS.

## **SECOND PART: Securities**

### **SUBJECT X: GENERAL THEORY ON SECURITIES**

I. HISTORICAL ORIGIN AND EVOLUTION. - II. GENERAL THEORY ON SECURITIES. - III. CLASSIFICATION. - IV. BILL OF EXCHANGE: Concept, emission and form, money orders, place of payment, amount, signatures, security of the drawer, breach of agreement on incomplete bills, expansion of the document, acceptance, endorsement, maturity and payment.

### **SUBJECT XI: BILL OF EXCHANGE (continued)**

I. ACTION FOR FAILURE OF ACCEPTANCE AND FOR FAILURE TO PAY. - II. STOCK EXCHANGE. - III. Causal action. - IV. ACTION OF UNJUST ENRICHMENT. - V. OTHER ACTIONS. - VI. EXECUTABLE SUM AMOUNT BY BILL OF EXCHANGE. - VII. EXEMPTIONS FROM THE EXERCISE OF SHARES. - VIII. SPECIAL PROCEDURE FOR EXERCISE OF SHARE EXCHANGE. - IX. PRESCRIPTION.

### **SUBJECT XII: PROMISSORY NOTE AND CHECK**

I. THE PROMISSORY NOTE: I.1. INTRODUCTION: I.2. Current concept of the promissory note. - I.3. Formal requirements. - I.4. Obligation of the signatory. - I.5. Promissory notes from the hearing over time. - II. CHECK: II.1. Concept. - II.2. Formal requirements. - II.3. Lack of formal requirements. - II.4. Optional clauses. - II.5. Obligations of the drawee and drawer in relation to the provision of funds and effects of its absence. - II.6. Inability to accept the check. - II.7. Modes of order of payment. - II.8. Diversity of amounts on the check. - II.9. Incapable signatures, forged signatures, signatures of imaginary people and signatures without power. - II.10. Check completed contrary to the agreements. - II.11. Transmission of the check. - II.12. Titleholder, purchaser in good faith. - II.13. Opposition exceptions based on personal relationships. - II.14. The guarantee. - II.15. Payment of the check. - II.16. Extra payment and actions that can be exercised. - II.17. Loss, theft or destruction of the check. - II.18. False or forged check. - II.19. Prescription. - II.20. Or non-working holidays and working days, for presentation purposes and protest.

## **PART THREE: Insolvency**

### **Subject XIII: INTRODUCTION, REPORTING AND MANAGEMENT OF THE COMPETITION**

I. INTRODUCTION: I.1. Background. - I.2. The case of Banco de Barcelona and the Law of suspension of payments of 1922. - I.3. The case of Barcelona Traction, Light and Power Company Limited as the great Spanish experience in bankruptcy law. - I.4. Situation immediately after the promulgation of the new law. - I.5. Legal references to the bankruptcy proceedings previously in force in the new standard. - I.6. Pending bankruptcy proceedings. - II. STATEMENT OF THE CONCURRENCE: II.1. Budgets. - II.2. Declaration procedure. - III. BANKRUPTCY ADMINISTRATION: III.1. Appointment of administrators. - III.2. Legal status of administrators.

### **SUBJECT XIV: EFFECTS OF THE DECLARATION OF CONCURRENCE, BANKRUPTCY ADMINISTRATION REPORT, DETERMINATION OF THE ACTIVE AND PASSIVE ASSETS AND PHASES OF THE CONCURRENCE AGREEMENT.**

EFFECTS OF THE DECLARATION OF THE CONCURRENCE. - II. BANKRUPTCY ADMINISTRATION REPORT AND DETERMINATION OF THE PASSIVE AND ACTIVE ASSETS. - III. PHASES OF THE AGREEMENT: Common and the settlement. - IV. QUALIFICATION, CONCLUSION, REOPENING. - V. PROCEDURAL RULES,

## **PART FOUR: Shipping law**

### **SUBJECT XV: MARITIME TRADE**

I. INTRODUCTION. - II.THE SHIP. - III. PERSONS INVOLVED IN MARITIME TRADE: III.1. Shipowners andshipping. - III.2. Captains and masters of vessels. - III.3. Officers and crewof the ship. - III.4. Surcharge.

### **SUBJECT XVI: MARITIME TRADE (continued)**

CONTENTS: I. MARITIME TRADE SPECIAL CONTRACTS: I.1. Affreightmentcontract. - I.2. Bottomry contract or loan for maritime risk. - I.3. Marineinsurance. - II. RISK, INJURY AND ACCIDENTS IN MARITIME TRADE: II.1.Breakdowns. - II.2. Forced arrivals. - II.3. Collisions. - Shipwrecks II.4. -III. JUSTIFICATION AND SETTLEMENT OF DAMAGE: III.1. Common provisions. -III.2.Liquidation of major damages. - III.3. Liquidation of simple damages.

### **SUBJECT XVII: AIR NAVIGATION**

I. INTRODUCTION. - II.AIR SHIPPING LEGAL SYSTEM : II.1 General Provisions: Sovereignty over airspace,general aviation laws and regulations for its implementation. - II.2.Administrative organization. - II.3. Aircraft: definition, classification andnationality. - II.4. Documents on board. - II.5. Registry of aircraft. - II.6.Prototypes and airworthiness certificates. - II.7. Airports and airfields. -II.8. Aeronautical easements . - II.9. Aviation personnel. - II.10. Airtraffic. - II.11. Transport contract: II.11.1. Passenger transport. - II.11.2.Transportation of goods. - II.12. Liability in case of accident. - II.13.Aviation insurance. - II.14. Levies and liens. - II.15. Accidents, rescue andassistance and findings. - II.16. Police air traffic. - II.17. Privatetransport, tourism and navigation flight schools. - II.18. Penalties.

## Methodology

GG: Clase magistral

GM: Método del caso, resolución de prácticas y conferencia de expertos.

## Evaluation

El professorat d'aquesta assignatura planteja dues possibilitats d'avaluació

### **(1) AVALUACIÓ CONTINUADA**

La qualificació final s'obté de la mitjana ponderada de les qualificacions obtingudes en cadascuna de les activitats d'avaluació (màxim 10 punts per cada activitat) segons el pes assignat a cadascuna d'elles. Totes les activitats d'avaluació són OBLIGATÒRIES, si el / la estudiant deixa de fer alguna d'elles es considerarà NO PRESENTAT en l'acta de la convocatòria que correspongui

ACTIVITAT D'AVAUACIÓ	CRITERIS	PONDERACIÓ %
Prova teòrica tipus test (TEMES 1 a 12)	50 enunciats V/F. Les respostes correctes puntuen 0,2 i las incorrectes descompten 0,1	50%
Prova pràctica consistent en la resolució d'un cas	Veure rúbrica d'avaluació	20%

ACTIVITAT D'AVALUACIÓ	CRITERIS	PONDERACIÓ %
Informes de casos (3)	Veure rúbrica d'avaluació	Cada cas pondera al 10%

**ATENCIÓ: Per superar l'assignatura és imprescindible que la prova teòrica tipus test hagi obtingut una qualificació igual o superior a cinc i que la nota resultant de la mitjana ponderada és igual o superior a cinc.**

Recuperació de la prova teòrica: L'alumne / a que hagi obtingut en la prova de tipus test o una nota inferior a 5 podrà recuperar aquesta prova en les data designada a l'efecte.

## **(2) AVALUACIÓ ALTERNATIVA**

En cas que un / a estudiant acrediti documentalment (contracte de treball o document on consti la segona o tercera matrícula de l'assignatura) la impossibilitat per complir algun dels requisits establerts per l'avaluació continuada podrà optar per la realització d'una prova única de validació de competències i coneixements que es realitzarà en les setmanes assenyalades a aquests efectes en el calendari d'avaluació del grau.

Aquestes proves consistiran en un examen tipus test de cinquanta enunciats corresponents als 12 temes del programa que l'estudiant / a ha de reconèixer com a veritables o falsos ponderada al 100%

## Bibliography

### Legal texts

It is essential to use the legal texts relating to this branch of the system. Various legal publishers publish volumes of "commercial law" normally updated in September of each year (we recommend using the latest edition).

### **Basic bibliography**

- p BORJABAD GONZALO, P. Derecho Mercantil, Vol. II. (Obligaciones y contratos mercantiles, Títulos Valores, Concurso y Derecho de la Navegación), Ed. Escuela Universitaria de Relaciones Laborales, 2006
- p M. BROSETA, Manual de Derecho Mercantil, 17ª ed. (a cargo de F. MARTINEZ SANZ), volumen II, Madrid, 2010.
- p G. J. JIMÉNEZ SÁNCHEZ (coordinador), Derecho Mercantil, volumen II, 13ª ed., Ariel, Barcelona, 2009.
- p MENÉNDEZ (director), Lecciones de Derecho Mercantil, 8ª ed. Civitas, Madrid, 2010.
- p F. SANCHEZ CALERO, Instituciones de Derecho Mercantil, Tomo II, 33ª ed., Aranzadi, Madrid, 2010.

### **Magazines**

- Anuario de la Fundación Ciutat de Lleida
- Revista de Derecho Concursal y Paraconcursal
- Revista de distribución y competencia
- Revista Española de Seguros



## **Recommended Websites**

Comisión de las Naciones unidas para el derecho mercantil internacional (CNUDMI) <http://www.uncitral.org/>

International Institute for the Unification of Private Law (UNIDROIT)

<http://www.unidroit.org/>

## **Other resources:**

<http://www.abogares.com/>

<http://jsanchezcalero.blogspot.com/>

<http://derechomercantilesana.blogspot.com/>