
COMMERCIAL LAW AND CORPORATIONS I

IE University

Professor: **CAROLINA FERNANDEZ BUSTILLO**

PREREQUISITES

SUBJECT DESCRIPTION

Based on a concept and understanding of commercial or business law that will be set at the beginning of the course (and that will be useful for the study of Commercial Law & Corporations II), this course will analyze the different legal institutions that serve firms in their business activities. The place of commercial law within legal systems and a brief reference to its historical roots would also be analyzed in the introduction to the course.

Part I of the course will be devoted to a basic understanding of how law is created and functions in the business context and the existing tools to make firms to abide legal rules and the devices for law enforcement.

Part II of the course will analyze the conditions and implications of starting a business firm, considering how law helps and/or deters entrepreneurial activities. Afterwards it looks at basic legal implications of business transactions, trying to shape the legal regime of business firms, from contracts entered into by business firms to business torts (including products liability). It then examines agency and other legal tools that allow businesspersons to be assisted by other people when conducting their business.

In Part III of the course, the legal implications of requirements of starting a firm will lead way to the examination of legal instruments, institutions and rules that firms use in their activities. Copyright, trademarks, patents and other forms of Intellectual Property Rights (IPRs) will be studied, as formulas firms use to protect innovative and other valuable business assets. While introducing the most relevant IP sectors, the course will help students discover what a corporate IP Portfolio looks like. In addition, Unfair Competition Law will be discussed.

Part IV of the course will look at one of the legal areas that govern business actions and decisions in the marketplace: Competition Law, which sets rules for firms' strategies that may distort competition and harm their customers, their rivals or market's interest.

OBJECTIVES AND SKILLS

This course aims at providing students an overall and in-depth view of the legal rules of business firms and commercial activities. It will provide a detailed understanding of the relevant legal features that underlie firms' organization and business transactions. Although there may be singularities of that features, rules and institutions that vary in each jurisdiction, the course will look at several legal systems as a way of grasping their commonalities and stressing how functional and economic reasons inspire the configuration and functioning of most of them. In its origins business and trade law was thought as an international legal system governing cross-border market transactions and that feature still validly influences it.

Students will become familiar with the institutions and rules of commercial law. They are expected to learn the basic features of legal rules and institutions of business law and to be able to argue and discuss cases in this legal area. It will also cultivate students' abilities to apply theoretical knowledge in problem solution in practice and in elaborating legal documents (contracts, reports, etc.) and to give arguments in legal role-plays. Overall, the aim is to make students experts in understanding the functional role of legal rules and institutions, by looking at the underlying forces that shape them and enforce them, no matter what jurisdiction they may be operating in.

Transversal Competences (instrumental, personal and practical): Analytical capabilities and ability to synthesize. Oral and written communication capability. Information management skills. Decision-making skill. Group working. Autonomous learning. Knowledge application into practice.

Learning outcomes and specific competences: Knowledge and understanding of most-common commercial and business law institutions. Capability to detect and solve legal problems involved in business organization and trade activities. Comprehension of values and interests underlying different legal rules in the business context. Use of institutions and rules as a relevant tool for entrepreneurial and business activities.

METHODOLOGY

Commercial Law & Corporations I has been designed together with Commercial Law & Corporations II to provide a strong background on legal rules and institutions involved in business and commercial practice worldwide. Through both courses, students would be able to go through the most salient features of business and commercial practice worldwide.

Being a legal discipline, Commercial Law & Corporations I will predominantly look at the legal content of each institution analyzed (looking at examples from many legal systems and jurisdictions), however a search for the functional motivation and justification of institutions and rules will also be common throughout the course. An interdisciplinary approach will be followed in trying to ascertain the reasons for the institutions being how they are.

Teaching Commercial Law & Corporations I will follow a lecture-seminar format, although interactive discussion with students will be promoted. Cases will be used to illustrate the theory underlying rules and institutions.

Students must read all the materials assigned to each session, which will be related to the topic that will be analysed. (Attention!: you are expected to keep reading until you understand the materials, bear in mind that they have been selected as to provide you with several hints and some keys that will help your participation in the class and your understanding of the issues).

Active participation in class, case presentations and group assignments is a precondition for the success of the course. Students are expected to take part in the class discussions and encouraged to raise questions, doubts and reflections in each of the issues covered in class (there is little certainty in many of the topics, and alternative valid opinions and perspectives are possible).

There will be one mid-term exam and a final exam to assess students' knowledge comprehension of the theoretical and practical issues studied during the course.

| Teaching methodology | Weighting | Estimated time a student should dedicate to prepare for and participate in |
|-----------------------------|------------------|---|
| Lectures | 39.33 % | 59 hours |
| Discussions | 25.33 % | 38 hours |
| Exercises | 0.0 % | 0 hours |
| Group work | 35.33 % | 53 hours |
| Other individual studying | 0.0 % | 0 hours |
| TOTAL | 100.0 % | 150 hours |

PROGRAM

PART I. INTRODUCTION TO COMMERCIAL & BUSINESS LAW

SESSION 1

Introduction to the course. Legal systems and the place of commercial law within them. Sources of commercial law. Lex mercatoria.

SESSION 2

Architecture of legal system: Rules and institutions supporting business and trade.

SESSIONS 3 - 4

Legal intervention & Enforcement. Compliance and commercial law. Specialized courts. Arbitration.
(i)

T.N.: International Commercial Dispute Resolution: The Challenge of the Twenty-First Century

SESSIONS 5 - 6

Case Study

PART II. STARTING A BUSINESS: LEGAL IMPLICATIONS

SESSION 7

Doing Business and the law. Legal requirements. The legal infrastructure of the entrepreneurial process. Business risks and resource organization: legal assessment. Starting a Business. Starting a business in different jurisdictions.

SESSION 8

Business firms in trade (I): risks & liabilities. Commercial contracts. International commerce and negotiable instruments.

T.N.: Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nehayan v Kent [2018] EWHC 333 (Comm)

T.N.: Towards a general notion of good faith in english contract law

SESSION 9

Business firms in trade (II): risks & liabilities. Standard terms of contract. Consumers

T.N.: Yam Seng Ltd

SESSION 10

LEGROB JEAN MONNET MODULE SESSION: Risk and liabilities of using AI in business

W.P.: Liability for emerging digital technologies

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SESSION 11

Agency. Delegation, Authority, Control and Liability. Agent's duty of care and duty of Loyalty. Divergences and Conflicts of Interest. Business transfers. Transfers of ownership. Liabilities

SESSION 12

MIDTERM EXAM

&NBSP;PART III. INTELLECTUAL PROPERTY, TRADEMARKS, PATENTS & OTHER IP RIGHTS

SESSION 13

Introduction to Intellectual Property.

Protection of Creations of Mind. Basic Tools for protecting ideas. Three main areas of protection: Copyright, Trademarks and Patents, Other IP Rights: Industrial Designs (including protection of fashion) Geographical Indications.

Territorial nature of IPRs. Overview of registration bodies: EU and International.

The value of IP assets – Creating a corporate IP Portfolio.

IP and artificial intelligence

SESSION 14

Copyright basics. How does copyright relate to business?

National copyright rules, Rules at the EU level, EU Copyright reform (2019), International Copyright law (Berne Convention for the Protection of Literary and Artistic Works)

Traditional knowledge

Case-study: entertainment industry

SESSIONS 15 - 16

Patents basics. Application/registration requirements. National legislation, Patent protection in the EU (Unitary patent)

SESSION 17

Trademarks, Designs and Geographical indications.

Building your business identity on the market. Types of trademarks Distinctiveness of trademarks. Trademark registration and the registration process. Priority. Licensing and other Transactions. Likelihood of Confusion. Trademark Dilution. Protection of un-registered trademarks.

SESSION 18

Trade Secrets.

What are trade secrets and how are they different to IPRs. Corporate preference for trade secret.

SESSIONS 19 - 20

Unfair Competition & Advertising Law.

Types of unfair competition conducts. General principle of Unfair Competition. Deceit. Causing confusion (passing-off) and slavish copying. Parasitic use of reputation. Imitation. Trade secret and know-how protection. Claims and remedies. Overview of public regulation of Advertising. Self-regulation and Codes of Practice. False and misleading advertising. Discrediting and Comparative Advertising.

PART IV. MARKET RULES FOR BUSINESS. COMPETITION LAW.

SESSION 21

LEGROB JEAN MONNET MODULE SESSION: Artificial Intelligence and Antitrust

R.A.: Artificial Intelligence and Antitrust: When computers inhibit competition

*Co-funded by the Erasmus+ Programme- Jean Monnet Activities -of the European Union

SESSIONS 22 - 23

Introduction to Competition Law

Overview of market regulation. Antitrust and competition Law Systems. Sources, foundations and Aims of Competition Law. Enforcement and implementation of Competition Law. Economic tools of Competition Law. Modern tools of competition enforcement: leniency and settlement. Substantive provisions.

SESSIONS 24 - 25

Horizontal and vertical agreements

Undertakings in Competition Law: horizontal and vertical agreements. Restrictive agreements and other collusive practices. Exemptions.

SESSION 26

Abuse of dominant position/Monopolization

SESSIONS 27 - 28

Mergers: Merger Review. Institutions and proceedings. Substantive tests in merger control. Remedies.

SESSION 29

State aid and State restraints to competition.

State restraints to competition and state aid. Competition and public procurement. EU law on State aid.

SESSION 30

Final Exam.

BIBLIOGRAPHY

There is not a single textbook for this course. Materials are provided on-line for preparation of each session. You must read items listed under the 'reading' section for each session in the syllabus. A special effort has been made to thin the amount of materials provided. Additional readings details, if required and the session's presentations will be posted on the Internet (through campus online).

RECOMMENDED BOOKS:

Title: Commercial Law

Author: Goode, Roy

Publisher/Edition/Year: Penguin/ 4th Edition / 2010

ISBN: 9780141030227

Medium: Print

Title: Competition Law

Author: Wish, Richard and Bailey, David

Publisher/Edition/Year: Oxford University Press/ 7th Edition / 2012

ISBN: 9780199586554

Medium: Print

Title: Business Organization and Finance, Legal and Economic Principles

Authors: Klein, William A., John C. Coffee & Frank Partnoy

Publisher/Edition/Year: 11th Ed. 2010, F. Press (West) Wesbury-NY

Medium: Print

Title: European Union Law

Author: Barnard, Catherine and Peers, Steve

Publisher/Edition/Year: Oxford University Press/ 2014

ISBN: 9780199686117

Medium: Print

Title: EU Competition Law

Author: Jones, Alison and Sufrin, Brenda

Publisher/Edition/Year: Oxford University Press/ 5th Edition / 2014

ISBN: 9780199660322

Medium: Print

[IE library permalink](#)

EVALUATION CRITERIA

GENERAL OBSERVATIONS

Evaluation will be partially based on a student's participation in the class. Therefore, active participation in lessons, student discussions, student exercises and presentations, and student group presentations is mandatory.

Each student has four attempts over two consecutive academic years to pass this course. Attendance at 70% of the classes is compulsory and an absence of more than 30% will result in a grade of 0.0 for the subject. In addition, students not fulfilling the attendance requirement will automatically lose two attempts to pass the course and will thus only have two last attempts to do so during the following academic year.

Your final course grade will be determined as follows:

- A. Class participation 25%
- B. Practical exercises and assignments 25%
- C. Midterm exam 15%
- D. Final exam 35%
- TOTAL 100%

CLASS PARTICIPATION

Three main criteria will be used in reaching judgment about your class participation:

Depth and Quality of Contribution: The most important dimension of participation concerns what it is that you are saying. A high quality comment reveals depth of insight, rigorous use of case evidence, consistency of argument, and realism.

Moving Your Peers' Understanding Forward: Great ideas can be lost through poor presentation. A high quality presentation of ideas must consider the relevance and timing of comments, and the flow and content of the ensuing class discussion. It demands comments that are concise and clear, and that are conveyed with a spirit of involvement in the discussion at hand.

Frequency: Frequency refers to the attainment of a threshold quantity of contributions that is sufficient for making a reliable assessment of comment quality. You should be attempting to get into the debate on a regular basis.

As a consequence of the above, please note that absences will have an impact on your class participation grade

In sum, participation in the course is mandatory. Much of the course will involve discussions among class participants in order to build a better understanding of the issues in question.

WARNING: In order to pass the Commercial Law & Corporations I course you need to obtain at least a grade of 4 out of 10 in each of the categories:

- Class participation
- Assignments
- Exams (combination of midterm and final)

GRADING IN EXTRAORDINARY EXAM PERIOD

RETAKE EXAM RETAKE EXAM

If a student's course grade is below 5.0, the student is required to take the retake exam to pass the course. The maximum grade that students can obtain in the retake exam period is 8.0.

A student who has missed over 30% of the class meetings will not be allowed to take the retake exam, but will only have two attempts left to pass the course during the following academic year.

Students who are in third or fourth call should contact the teacher during the first two weeks of the course. The final course grade in the third call will be determined with a midterm and a final exam. Alternatively, at the beginning of the course students may opt to attend classes, in which case the evaluation criteria for the first call as set forth above will apply. If a student's course grade in this third call is below 5.0, the student is required to take the retake exam to pass the course. The maximum grade that students can obtain in the retake exam period is 8.0.

| Criteria | Percentage | Comments |
|-------------------------------------|-------------------|-------------------------|
| Class Participation | 25 % | |
| practical exercises and assignments | 25 % | Quizzes and assignments |
| Intermediate Tests | 15 % | |
| Final Exam | 35 % | |

PROFESSOR BIO

Professor: **CAROLINA FERNANDEZ BUSTILLO**

E-mail: cfb@faculty.ie.edu

Carolina Fernández Bustillo, Abogado, EU Law & Competition
LLM in Business Law, Universidad Pompeu Fabra.
International Studies Advanced Certificate, Washington University.
European Legal Studies, College of Europe.
Law School, Universidad de Navarra.

OTHER INFORMATION

Office hours upon request. Contact details: cfb@faculty.ie.edu

CODE OF CONDUCT IN CLASS

1. **Be on time:** : Students arriving more than 5 minutes late will be marked as “Absent”.

Only students that notify in advance in writing that they will be late for a specific session may be granted an exception (at the discretion of the professor).

2. **If applicable, bring your name card and strictly follow the seating chart.** It helps faculty members and fellow students learn your names.

3. **Do not leave the room during the lecture:** Students are not allowed to leave the room during lectures. If a student leaves the room during lectures, he/she will not be allowed to re-enter and, therefore, will be marked as “Absent”.

Only students that notify that they have a special reason to leave the session early will be granted an exception (at the discretion of the professor).

4. **Do not engage in side conversation.** As a sign of respect toward the person presenting the lecture (the teacher as well as fellow students), side conversations are not allowed. If you have a question, raise your hand and ask it. If you do not want to ask it during the lecture, feel free to approach your teacher after class.

If a student is disrupting the flow of the lecture, he/she will be asked to leave the classroom and, consequently, will be marked as “Absent”.

5. **Use your laptop for course-related purposes only.** The use of laptops during lectures must be authorized by the professor. The use of Social Media or accessing any type of content not related to the lecture is penalized. The student will be asked to leave the room and, consequently, will be marked as “Absent”.

6. **No cellular phones:** IE University implements a “Phone-free Classroom” policy and, therefore, the use of phones, tablets, etc. is forbidden inside the classroom. Failing to abide by this rule entails expulsion from the room and will be counted as one absence.

7. **Escalation policy: 1/3/5.** Items 4, 5, and 6 above entail expulsion from the classroom and the consequent marking of the student as “Absent.” IE University implements an “escalation policy”: The first time a student is asked to leave the room for disciplinary reasons (as per items 4, 5, and 6 above), the student will incur one absence, the second time it will count as three absences, and from the third time onward, any expulsion from the classroom due to disciplinary issues will entail 5 absences.