

Academic Year: ( 2019 / 2020 )

Review date: 07-05-2019

Department assigned to the subject: Department of Private Law

Coordinating teacher: ROBLES MARTIN-LABORDA, ANTONIO

Type: Compulsory ECTS Credits : 6.0

Year : 5 Semester : 1

## DESCRIPTION OF CONTENTS: PROGRAMME

## BLOCK 1. FOUNDATIONS AND PERSPECTIVES IN COMPANY LAW

## I. FOUNDATIONS OF COMPANY LAW

1. Why do companies (as business organizations) exist?
2. What is a company (I)? Legal personality
  - A. Approaches to legal personality
  - B. Implications of legal personality (contractual v institutional approach)
3. What is a company? (II). Legal personality, limited liability and its anomalies
  - A. Pre-incorporation transactions and veil piercing
  - B. Groups of companies
4. What is a company for?
  - A. The profit motive
  - B. The company's interest

## II. PERSPECTIVES IN COMPANY LAW

1. Company law and conflict-resolution: agency problems and governance structure
2. Company law: freedom, regulation and international mobility
  - A. The structure of company law. Contract, default rules and mandatory rules
  - B. Choice of seat in the case law of the ECJ
  - C. Regulatory competition as race-to-the-bottom or climb-to-the-top
3. Convergence and change in company law
  - A. Is company law converging?
  - B. Sources of convergence and change (I). Legal institutions and financial development
  - C. Sources of convergence and change (II). Corporate scandals and financial crisis
  - D. Sources of divergence. Ownership structure

## BLOCK 2. GOVERNANCE AND CONFLICT

## I. THE SHARE: REPRESENTATION, RIGHTS AND TRANSFER

## II. SHAREHOLDERS AND MANAGERS

1. Shareholders, directors and managers: the system's checks-and-balances
  - A. Generalities about corporate governance
  - B. The company's decision-making process
    - a. Shareholders' and directors' decision-making rights
    - b. Advanced issues in the decision-making process: division of competences, the exercise of voting (with special reference to empty voting) and information rights
  - C. Appointment and removal of company directors
2. Board structure and directors' pay
  - A. Size, structure, composition and functioning of the company board
  - B. Aligning incentives: executive (and director) pay and its issues

## III. MAJORITY AND MINORITY SHAREHOLDERS

1. Political rights: participation in decision-making and appointment of directors
2. General standards of protection: equality of treatment, company's interest and abuse
  - A. Equality of treatment and its difficulties
  - B. Squeeze-outs and protection against expropriation
3. Related-party transactions: the problem of company groups
  - 11 A. Groups and transparency: the case of pyramids

## B. Different approaches to intra-group transactions

### IV. THE COMPANY AND THIRD PARTIES (ESPECIALLY CREDITORS)

1. A general view on creditor protection in corporate law
2. Contract mechanisms and coordination mechanisms: loan/bond covenants and bondholders; syndicates and trustees
3. Transparency and disclosure mechanisms
4. Mandatory rules: the regime of company ; capital ;
  - A. The legal capital regime and its detractors
  - B. Restrictions on dividends
  - C. Treasury shares and financial assistance
5. Trading in the vicinity of insolvency and other liability rules

### BLOCK III. TRANSACTIONS WITH CORPORATE RELEVANCE

#### I. CHARTER AMENDMENTS, SHARE ISSUANCE, CAPITAL REDUCTION

1. Charter (and by-laws) amendments and share issuance: conflicts and legal strategies
2. Share repurchases (or capital decreases)

#### II. SECURITIES LAW AND PUBLIC OFFERINGS

1. An overview over EU capital market rules
2. Initial public offerings, primary market, and securities law issues
  - A. Public offering and listing: requirements, the transparency regime for capital markets and its cross-border aspects in the EU
  - B. Liability for false information: issuers and gatekeepers (auditing firms and rating agencies)
3. Trading in financial markets: dematerialized (and intermediated) securities

#### III. CONTROL TRANSACTIONS

1. Control transactions as a catalyst for conflict: underlying problems and policy choices
2. Protection of minority shareholders: mandatory bid and equitable Price
3. Manager entrenchment, anti-takeover techniques, and legal responses
4. The State;s conflict as legislator and shareholder

#### IV. MERGERS, SPIN-OFFS AND RESTRUCTURINGS

1. Structural modifications: conflict and policy options
2. Mergers: procedure and issues
  - A. The merger procedure
  - B. Issues in a merger
    - a. Merger of listed companies
    - b. Merger after LBOs and financial assistance
    - c. Simplified merger
    - d. Cross-border merger
3. Spin-offs and alternative restructuring mechanisms
  - A. Spin-offs
  - B. Alternative mechanisms of restructuring

### ASSESSMENT SYSTEM

Examen final: 40%  
Participación en clase: 20%  
Casos prácticos y trabajos escritos: 40%

Para superar la asignatura será necesario obtener en el examen final una nota igual o superior a 5/10.

<b>% end-of-term-examination:</b>	40
<b>% of continuous assessment (assignments, laboratory, practicals...):</b>	60

### BASIC BIBLIOGRAPHY

- A. Menéndez; A. Rojo Lecciones de Derecho mercantil (vol. I), Civitas, .
- AAVV Memento de Sociedades Mercantiles , Francis Lefebvre, 2011
- C. ALonso Ledesma (Dir) Derecho de sociedades, Atelier, .
- G.J. Jiménez Sánchez; A. Díaz Moreno Lecciones de Derecho mercantil , Tecnos, 2017 (20ª ed.)

- IMÉNEZ SÁNCHEZ, Guillermo (coord.) Derecho mercantil , Tecnos.
- M. Broseta; F. Martínez Sanz Manual de Derecho mercantil, Tecnos, .

#### ADDITIONAL BIBLIOGRAPHY

- R. Kraakman at al. The Anatomy of Corporate Law. A Comparative and Functional Approach Second edition, , ..