Commercial Practice

Academic Year: (2021 / 2022) **Review date: 09-06-2021**

Department assigned to the subject: Private Law Department

Coordinating teacher: LASTIRI SANTIAGO, MONICA

Type: Compulsory ECTS Credits : 4.0

Year : 1 Semester : 1

OBJECTIVES

Basic responsibility:

Be qualified to understand the basic knowledge or opportunity to be innovative in the development and/or application of ideas, commonly found in an investigation context.

Students must be able to apply the acquired knowledge and the solving of problems in new environments or not common within a wider range (or be multidisciplinary) related to their area of study. (CB7)

Students must be able to integrate their knowledge and face the complexity of formulating opinions based on certain information which, whether incomplete or limited, includes reflections on social and ethical responsibility related to the application of their knowledge and opinions. (CB8)

Students must be able to communicate their conclusions, knowledge and analysis supporting the same, to an audience, whether expertise or not, in a clear and unambiguous way. (CB9)

Students must have a learning ability which allows them to continue studying in a self-directed or autonomous way. (CB10)

General responsibility (CG Nº):

Students shall be able to:

CG1. Recognize the importance of team work and show adaptation and integration capacity to different work groups, keeping fluent relations and communications, respecting other¿s ideas and solutions with an attitude of support and tolerance, sharing responsibilities and know how to give and receive instructions.

CG2. Accept the need of a constant self-learning and continuous training as a mechanism to easily adapt to judicial, technological and organization innovations.

CG3. Value the handiness in being able to select the professional itinerary that copes best to their personal circumstance, considering self employment as a feasible possibility of professional inclusion.

CG4. Ability to search, organize and plan professional projects which allow for growth whether personal or within the company they work for.

CG5. Value hard and well done work when planning, organizing and carrying-out all activities, showing initiative, creativity and sense responsibility, keeping interest during the whole process, and feel personally satisfied with the results.

CG6. Recognize the importance to establish a fluent communication within the professional legal activity in order to reach personal goals as well as the company¿s.

CG7. Evaluate personal and collective progress, identifying positive and negative things, and argue and provide alternatives to improve process and results.

CG8. Show a high sense of personal responsibility and code of ethics when exercising professionally, and knowing the effect of an inadequate management of personal conflicts.

CG9. Apply all acquired knowledge and have the capacity to solve problems.

CG10. Integrate knowledge, make judgment, communicate conclusions and the know-how and reasoning to support the same, to specialized and non-specialized audiences in a clear manner and without ambiguities.

Know the main mercantile and civil institutions, in particular contract and corporate regimes, without prejudice to acquire a more detailed knowledge of specialized credits in Corporate Law. Have the ability to choose the proper tools and procedures, whether in legal proceedings or extrajudicial, in order to have the best defense of the client¿s interests from a corporate or civil process. Know how to evaluate the risks in order to choose the best strategy of the client¿s rights. Know how to write corporate or civil documents, as well as the writs for each type of procedure.

Know commercial or civil courts, their functioning as well as other mercantile conflict resolution systems.

DESCRIPTION OF CONTENTS: PROGRAMME

1. Commercial and corporate legal advice: the lawyer and commercial practice. Legal advice on operations and their formalization.

1.1. Introduction to the company¿s commercial practice. Different ways of acquiring a business (purchase-sale of shares and assets, among others).

1.2. Letters of intent (LOI) within the purchase-sale operations. What are they and what are they for? Solve a case study.

1.3. Concept of Due Diligence (legal audit) and its importance in the purchase-sale agreement. Seller¿s responsibility. Solve a case study.

1.4. Share¿s purchase-sale agreement. Solve a case study.

1.5. Continue case study of a purchase sale agreement. Contract between shareholders. Solve a case study.

1.6. Formalize a purchase sale operation: signature, closing, post closing. Most relevant aspects. Solve a case study.

2. Specialized Commercial Courts.

2.1. Theory and practical issues on applying public or private antitrust trade practices.

2.2. Applying public or private antitrust trade practices. Solve a case study.

2.3. Theory and practical issues on Bankruptcy Law.

2.4. Bankruptcy judges. Solve a case study.

3. Corporate practice.

3.1. Choosing the type of corporation and its regulations according to partner¿s interests. By-laws and parallel shareholder¿s agreements.

3.2. Proceeding to constitute a company: physical and electronic constitution. Solve a case study.

3.3. Governing bodies ¿ how they work. The Secretary to the Shareholder¿s Meeting. Handling of corporate books. Solve a case study.

3.4. Administrator¿s duties and responsibilities. Solve a case study.

3.5. Modification of by-laws. Solve a case study.

3.6. Dissolution of a company. Solve a case study.

4. National and international commercial arbitration.

4.1. Introduction to arbitration. Arbitration agreement: drafting of an agreement, forms and pathologies. Types of arbitration. Sources of arbitration and general principles.

4.2. Arbitration of controversies, and applicable law by arbitrators.

4.3. Peculiarities of arbitration proceedings: jurisdiction, procedural authentication, nomination of recusal arbitrators, financial cover. Case study.

4.4. Arbitration procedure: procedural calendar, bifurcation of the procedure, precautionary measures and responsibility.

4.5. Writs of the parties, sue, allegations, etc.

4.6. Arbitration evidence. Cross examination of witnesses and experts.

4.7. Annulment of ruling and warrant of execution. Other possible remedies on the ruling.

4.8. Request for execution of foreign judgments.

LEARNING ACTIVITIES AND METHODOLOGY

Training activities:

Considering that students have acquired a solid education in theory during their schooling as well as within the base unit, during the specialty credits they may do without the traditional on-site class, and going to more case studies, which will be provided with specific information for easier referral and solution. This will allow the students to solve real problems in the different areas of specialization, since it will always be necessary to go back to the theory content, as the solving of cases has to have a meticulous study of each discipline by the students in order to surpass the different courses within the evaluation criteria.

Teaching methodology:

For each course student will receive a summary of case studies to be solved as scheduled. Each lesson will have specific reading material (doctrinal documents, case-law or administrative resolutions); without prejudice that the professor will provide an introduction of the theory at the beginning of each session in order to find the basic problems and put them within the unit¿s content in each of the cases.

ASSESSMENT SYSTEM

EVALUATION SYSTEM

Part of the grade will be solving of the case studies, report writing and participation in seminars,

Students will also be graded on their capacity in the handling of the documentation, solving and applying the correct and efficient answers to all type of situations and the ability to solve not regulated cases and the writing of the corresponding writs.

Participation in the debates, seminars, or in-house classes, as well as the paper work whether individually or in group will also be considered for grading.

1) Continuous evaluation: 60%
2) Tests (40%)

All this in accordance with current regulations.

If the continuous evaluation system is not followed, which requires attendance at 90% of the sessions, the final grade in both ordinary and extraordinary sessions will be obtained on 60% of the final exam.

% end-of-term-examination:	40
% of continuous assessment (assigments, laboratory, practicals…):	60

BASIC BIBLIOGRAPHY

- A. MENÉNDEZ y A. ROJO Lecciones de Derecho Mercantil, Civitas.
- A. ROJO y E. BELTRÁN (dir.), Comentarios a la Ley de Sociedades de Capital (Tomos I y II), Civitas.
- ARANZÁBAL, Gonzalo; PUIGDELLIVOL, Cristina; CLAPERS, Sonia La compraventa de empresas: distintas fases de ejecución. 2009 Anuario mercantil para abogados. Los casos más relevantes en 2008 de los grandes despachos. , La Ley, 2009
- Aguayo Juan Las manifestaciones y garantías en el Derecho de contratos español, Madrid, 2011
- Aguayo Juan Las manifestaciones y garantías en el Derecho de contratos español, Madrid, 2011
- BINDER, Peter. International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions., Sweet & Maxwell, 2010, 3rd edition. , 2010
- CASADO VALDERRÁBANO, José Ramón La obligación de saneamiento por vicios o defectos en la cosa vendida en las operaciones de adquisiciones de empresas. Comentario al Laudo de 24 de diciembre de 2010., Madrid, 2010
- ECHÁNOVE ORBEA, Joaquín La Reclamación al vendedor tras la compra de empresa. 2010 Anuario mercantil para abogados. Los casos más relevantes en 2009 de los grandes despachos., La ley, 2009
- ECHÁNOVE ORBEA, Joaquín La Reclamación al vendedor tras la compra de empresa. 2010 Anuario mercantil para abogados. Los casos más relevantes en 2009 de los grandes despachos., La ley, 2010
- Folguera J., Massaguer J y otros Comentarios a la LDC, Thomson Civitas, 2012
- García Cruces, J.A. Tratado de derecho de la Competencia y de la Publicidad, Tirant Lo Blanch, 2014
- Jorge Feliu Los pactos parasociales en las sociedades de capital no cotizada, Marcial Pons, 2012
- MORALES BARCELÓ, JUDITH pactos parasociales vs estatutos sociales: eficacia jurídica e impugnación de acuerdos sociales por su infracción, Revista de Derecho de Sociedades núm. 42/2014, Aranzadi.
- Perales Viscasillas Pilar La Reforma de la Ley de Arbitraje (Ley 11/2011, de 20 de mayo), Revista de arbitraje e inversiones, 2011
- Perales Viscasillas, Pilar Convenio arbitral tipo elaborado por la comisión para estudio del arbitraje societario del club español del arbitraje., Revisa de derecho de sociedades, 2013
- ROJO, A. Y BELTRÁN M Comentario de la Ley Concursal, (2 vols.), Thomson Civitas, 2014
- SÁNCHEZ CALERO, F./ SÁNCHEZ-CALERO GUILARTE Instituciones de Derecho Mercantil,, Aranzadi.
- ÁLVAREZ ARJONA, José María; CARRASCO PERERA, Ángel (Directores) Régimen jurídico de adquisición de empresas, Aranzadi, 2013
- null VV.AA., Derecho de la Competencia, Civitas, 2013
- null VV.AA., Tratado Judicial de la Insolvencia, Aranzadi, 2012

ADDITIONAL BIBLIOGRAPHY

- FERNÁNDEZ DEL POZO, L Aproximación a la categoría de operaciones sobre activos esenciales cuya decisión es competencia exclusiva de la Junta [arts. 160 f) y 511 bis LSC, La Ley Mercantil, Febrero de 2012
- Paz Ares Cándido La cuestión de la validez de los pactos parasociales, Madrid, 2011
- RECALDE CASTELLS, A. en JUSTE MENCÍA, J ¿Comentario de la reforma del régimen de las sociedades de capital en materia de gobierno corporativo (Ley 31/2014)¿,, Thomson Reuters, 2015
- ÁLVAREZ-ROYO VILLANOVA, S. y SÁNCHEZ SANTIAGO, J La nueva competencia de la junta general sobre activos esenciales: a vueltas con el artículo 160 f) LSC, Diario la Ley Nº 8546, 25 de mayo de 2015., 2015