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## INTRODUCTION

**Brief description:** This course is designed to provide students with an overview of securities regulation and connected corporate governance topics from a comparative perspective, mainly highlighting the differences (and notable similarities) between the US and European systems. The material is organized around a series of topics that will introduce students to those issues that they are most likely to encounter in transnational business law settings in major national and international law firms, investment banks and corporations. In addition to substantive legal rules, the course considers various policy issues and theoretical questions raised by the comparisons.

- **Titulación:** International Business Law Program, Grado en Derecho, Grado en Relaciones Internacionales
- **Módulo/Materia:** Optatividad, derecho internacional de los negocios
- **ECTS:** 3
- **Course, semester:** Tercer curso, segundo semestre
- **Character:** Optativa
- **Professor:** Patrick O'Malley
- **Idioma:** inglés
- **Schedule and Location:** The course will be held in an intensive format for two weeks from February 5 to 16 from 3:30 to 6:30 pm every day. Check WebUntis timetable for more classroom details.

Please note that the schedule is subject to changes due to reasons beyond our control.

## COMPETENCIAS

De acuerdo con la **Memoria del Grado en Derecho**, las competencias que los estudiantes deben llegar a dominar asociadas a las asignaturas Optativas vinculadas al Internacional Business Law Program del que forma parte esta asignatura son las siguientes:

### Competencias básicas

CB1 - Que los estudiantes hayan demostrado poseer y comprender conocimientos en un área de estudio que parte de la base de la educación secundaria general, y se suele encontrar a un nivel que, si bien se apoya en libros de texto avanzados, incluye también algunos aspectos que implican conocimientos procedentes de la vanguardia de su campo de estudio.

CB2 - Que los estudiantes sepan aplicar sus conocimientos a su trabajo o vocación de una forma profesional y posean las competencias que suelen demostrarse por medio de la elaboración y defensa de argumentos y la resolución de problemas dentro de su área de estudio.

CB3 - Que los estudiantes tengan la capacidad de reunir e interpretar datos relevantes (normalmente dentro de su área de estudio) para emitir juicios que incluyan una reflexión sobre temas relevantes de índole social, científica o ética.

CB4 - Que los estudiantes puedan transmitir información, ideas, problemas y soluciones a un público tanto especializado como no especializado.



CB5 - Que los estudiantes hayan desarrollado aquellas habilidades de aprendizaje necesarias para emprender estudios posteriores con un alto grado de autonomía

### Competencias generales

CG1 - Poseer un conocimiento general de la disciplina y la metodología jurídicas que permita el ejercicio de actividades de carácter profesional en el ámbito del Derecho o la adquisición de los títulos complementarios exigidos por la ley para determinadas actividades profesionales.

CG2 - Expresar y transmitir adecuadamente ideas complejas que permitan comunicar, de manera oral y escrita, soluciones fundadas en Derecho a un público especializado o no.

CG3 - Localizar y gestionar correctamente las fuentes jurídicas, tanto legales, jurisprudenciales y doctrinales.

### Competencias específicas

CEE3 Conocer los principios teóricos generales del comercio nacional e internacional de forma que se lleguen a comprender los mecanismos jurídicos y económicos que intervienen en el comercio internacional.

## Syllabus

Topics
<p><b>Major current legal/ethical issues – COMPLIANCE &amp; SECURITIES LAW: The Global Campaign against bribery and Corporate corruption:</b></p> <ul style="list-style-type: none"><li>• Definition and negatives effects of corruption on socio-economic development</li><li>• The US FCPA 1977 (Foreign Corrupt Practices Act)</li><li>• The OECD Convention 1997</li><li>• The UK Bribery Act 2010, French law (recent <i>Loi Sapin II</i>), etc.</li><li>• United Nations Convention against Corruption (UNCAC) – 2003, follows up on 1996 United Nations Declaration against Corruption and Bribery in International Commercial Transactions</li><li>• Commercial and trade sanctions regimes: ethical problems to comply for many businesses internationally</li></ul>
<p><b>Securities Regulation</b></p> <ul style="list-style-type: none"><li>• Systemic overview of the US-style disclosure-based securities regulation regime: philosophy &amp; underlying principles</li><li>• Disclosure Standards in the US under the US securities laws</li><li>• Disclosure standards in Europe (Prospectus Directive, etc.)</li></ul>



### Legislative securities law responses to corporate governance scandals

- The US Sarbanes-Oxley Act of 2002
- NYSE, NASDAQ & European Corp Governance Codes
- The European Union directives (The Lamfalussy procedure and directives, The Financial Services Action Plan)
- International Corporate Governance Efforts (OECD principles)

### Litigation & private enforcement efforts of securities laws

- US-style securities class actions

### Securities-related corporate governance risks: Insider trading / Insider dealing, a comparative approach

- US (SEC/DOJ) approach: investigations, cases, investigations, bounties
- EU approach: old & new Market Abuse Directive, Market Abuse Regulation, etc.

### Corporate financing via securities issuances: Public offerings of shares (IPOS, etc.)

Definitions

The IPO process

Market listings in the US

Comparison with European system

**International Corporate Practice Point:** Key clauses in international corporate/securities deals: contracts, opinions etc. (an introduction to purpose and language)

**International Securities Practice Point: Legal Due Diligence:** the key to successful international securities and corporate transactions- an introduction to IPO, VC, M&A and Joint venture due diligence processes

### Potential other securities/corporate governance issues

[1] To be done at the end of the course.

#### EDUCATIONAL ACTIVITIES

**The Distribution of the student's workload measured in hours is the following:**

Theory in-class periods: 15



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Practical in-class periods: 15

Preparing for class/research/case solving: 15

Personal study (personal notes and notebooks): 30

The course's objective is to foster an understanding of the issues and challenges related to securities law and governance. More specifically, the course will draw out the multiple relationships that exist between a firm's strategic objectives, ownership structure and governance model. It will present United States and pan-EU applicable securities/corporate governance laws, rules, directives and practices, as well as a more detailed look at country-specific laws and regulations. Occasionally, other areas such as Asia and Latin America may be considered. As well, in order to prepare students taking the course for future professional challenges representing European or US multinationals, international investment banks and funds, and in start-up companies worldwide, reference will be made to key differences between general European standards and those that have developed in the US.

The course will build on this foundational overview of structures and functions by examining the legal aspects of securities transactions, operations and governance, including the various legal duties and rules that regulate various actors and the mechanisms used to enforce those rules. We will also examine larger legal environments that indirectly regulate the conduct of certain corporate actors by encouraging or discouraging particular conduct.

The purpose of the course is to enable students to develop:

- an analytical eye towards the relationship between corporate and securities law and firms' strategic objectives, ownership structure and legal governance model, and how that affects the management decision-making process; and
- an understanding of how choices relating to corporate legal governance and applicable securities laws and regulations bear an impact on international business transactions, their practices and the overall financial performance of firms, as well as the public policy considerations and goals underpinning current corporate and securities regulatory systems.

Students are required to be active participants in class lectures. Every student is asked to arrive at a lecture having reviewed and analysed any assigned course material beforehand so as to ensure active participation.

## **ASSESSMENT**

### **CONVOCATORIA ORDINARIA**

#### **I. REACTION PAPERS**

In order to give participants the opportunity to actively deal with and consider current issues of international securities law, class requirements include preparing two reaction papers (each of about three-pages in length). One will be due after the second week of classes, whilst the other will be due on the day of the final exam about a week after classes end. More information will be forthcoming on the connected readings and expectations concerning them. All together will be worth 20% of the final grade.

#### **II. FINAL GRADE**



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The final grade for the course will be based 60% on the results of a final closed-book written exam (a mix of multiple choice and true/false questions) and, 20% on the reaction papers. Active participation in class will be worth 20%. For those sick or confined for other valid reasons, the final exam will instead be oral and online.

More information about the form of exam will be provided in class.

## CONVOCATORIA EXTRAORDINARIA

**June Re-sit/Make-up exam for Securities Regulation:** For those who do not pass the course in the spring, your entire grade will depend on your retaking the exam in June. You will not have to redo the reaction papers.

## OFFICE HOURS

Prof. O'Malley will be available to meet to answer questions upon prior appointment in his office (despacho 1661 in the Ismael Sanchez Bella / Library Building) during the two weeks of in-person classes. To set up a meeting with him, please write him at pomalley@unav.es.

## BIBLIOGRAPHY

Additional materials will be provided both before and during the live, in-person classes. Please see referenced reading in the attached Word doc syllabus.

- We will also be making extensive use of a number of prospectuses, especially that of MODERNA, INC. Nov. 2018 IPO on NASDAQ, prospectus/offering circular: <https://www.sec.gov/Archives/edgar/data/1682852/000119312518323562/d577473ds1.htm>

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