Curriculum

1. Contract Law, Dispute Resolution & Psychology (6 credits)
2. Anatomy of Corporate Law (6 credits)
3. Insolvency Law & Corporate Finance
4. Problems of Market Regulation
5. Law and Behavioral Economics
6. Public and Private Enforcement
7. Financial Law: Governance & Behavior
8. Social Corporate Responsibility

7.1 Contract Law, Dispute Resolution and Psychology

Coordinators: Prof. R.J Tittes, Prof R. Ronay

General description
This course addresses the principles of contract law and the psychological dimensions of contract negotiations. It is a course in which the legal perspective and the behavioral perspective are intertwined.

The course does not deal with the specifics of national laws of contract; instead it focuses on the universal themes of contract law. This more abstract approach provides you with a broader understanding and prepares you for a future in which you will exchange thoughts with colleagues from other national jurisdictions.

The topics analyzed in the contractual component of the course include, but are not limited to: a) the notion of contract; b) formation of contract; c) validity of contracts; d) interpretation and contents; e) supervening events in the life of contract; f) remedies for non-performance; g) third-party consequences.

The component on contract negotiations will provide you with an experiential, simulation-based introduction to the theory and practice of negotiation and help you understand how your personal background, values, feelings and personal style affect your performance as a negotiator.

The topics to be discussed in the behavioral classes on negotiations will be: a) value distribution in single-issue, two-party negotiations; b) value creation in multi-issue, two-party negotiations; c) psychological factors in dispute resolution; introduction to counseling: the lawyer-client relationship.

Evaluation methods
Written exams, participation

Course materials
Selected journal and practitioner articles will also be assigned for individual sessions.

7.2 The Anatomy of Corporate Law

Coordinators: Prof J Winter, Mr M Schouten, Mr K de Roo

General description
This course addresses the economics of corporate law with a focus on the role that corporate constituencies play in the running of the corporation, as well as on the relations amongst them.

Rather than focusing on the analysis of specific legal systems, this course pays particular attention to the issue of the economic rationale behind different legal approaches to the organization of business corporations in contemporary societies. One of its main targets is to examine whether and how different institutional and economic settings justify tailored legal approaches to the regulation of business corporations.

The topics analysed in the course include, but are not limited to: a) the economics of shareholder behaviour; b) collective action problems and the rationale of the separation of ownership and control in business corporations; c) the duties of the directors of the corporation; e) the relationships between corporations and third parties; f) economic rationales for group structures and joint ventures; and g) behavioural aspects of corporate decision making.

Evaluation methods
Written exam (50%), presentation (40%), and paper (10%)

Course materials
- The Anatomy of Corporate Law (OUP 2017).
- Other reading materials distributed by the course coordinator.

7.3 Insolvency Law & Corporate Finance

Coordinators: Dr R.J. de Weijs, J. de Vries

General description
Lawyers increasingly have to deal with financial information. Without a thorough understanding of financial information, they can often still do their job, but they do not really understand what the larger project they are involved in means for their clients and third parties. So they end up only executing instructions from their clients, without providing them with proper advice.

This course starts with basic corporate finance: the interpretation and analysis of a company’s balance sheet and the profit and loss statement, and how they interrelate. It also includes company valuation methods, such as Discounted Cash Flow.

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The second part of the course provides a working knowledge of the interrelation of basic corporate finance and law, for example how the concepts of equity and debt translate into legal concepts for shareholders and creditors, and what the litmus test of insolvency has to say about these concepts. Students will learn about how corporate finance concepts such as solvency ratios, liquidity and leverage relate to legal rules on directors’ liability. Also, a critical analysis will be provided of the assumptions underlying the traditional debtor-creditor relationship, and whether these assumptions still hold in the light of the great variety of creditors, ranging from professional hedge funds to unsecured trade creditors and tort victims. Additionally, we will discuss more sophisticated methods of finance such as a Leveraged Buy-Outs. These will be discussed in the light of the law's struggle to provide a suitable framework for leveraged forms of finance. Furthermore, different forms of shareholder finance will be discussed, including financing by way of secured loans and guarantees instead of equity.

Goals
After completing the course, students will have developed the following capacities:

• Students will understand the working of a balance sheet and its relation to a profit and loss statement.
• Students will be able to perform a basic company valuation.
• Students will have an understanding and working knowledge of basic corporate finance concepts such as debt vs equity, tax benefits related to debt, leverage ratios, basic risk allocation and net present value tests.
• Students will be able to apply private law rules from different jurisdictions regarding the ranking of creditors (unsecured, secured and preferred) to different corporate finance cases.
• Students will understand the different methods of debt finance and be able to reflect on them.
• Students will be able to evaluate different rules for shareholder finance and the liberty of stakeholders to determine the capital structure of a firm. Students will also be capable of evaluating current finance practices against the background of basic corporate law principles of limited liability.
• Students will be able to assess the implications of different capital structures on the risk profile of a company and how this creates different incentives for management and shareholders.

Evaluation methods
Written in-class exam.

Course Materials
Detailed information about reading materials and the topics to be dealt with in class will be available on Blackboard.

7.4 Problems of Market Regulation

Coordinator: Prof. G. Davies

General description

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One of the major developments of the past three decades has been the increasing financialization of the global economy. This phenomenon has exhibited the full range of regulatory mechanisms, from deregulation, self-regulation, regulation by public/private partnerships, domestic regulation by state actors, and cross-border cooperation within transnational regulatory networks. To start to understand the regulatory challenges of bringing some stability to the “global financial markets,” in this introductory course we will step back and think and read more generally about markets, law, norms and behavior.

Some of the topics we will consider are: How do we understand markets: as a phenomenon apart from social and ethical constraints, or as embedded in social relationships and norms? What kinds of ‘market failures’ have traditional economic theories used to justify regulation? Are these the only failures that could be or should be used to justify regulation? What regulatory theories and approaches have been used to address the problems of the global financial crisis to date? How could more comprehensive thinking about social norms, about human psychology, about how to produce cultural change within organizations, and about the social embedded nature of markets improve regulation and outcomes in global financial markets?

*Evaluation methods*
Written exam (60%), paper (20%), presentation (10%) and participation (10%)

*Course materials*
Other reading materials distributed by the course coordinator.

### 7.5 Law and Behavioral Economics

**Coordinator:** Dr J.J. van der Weele

**General description**
Over the last few decades, behavioral economics has become one of the main new research areas in economics. By testing predictions of traditional economics and merging them with insights from psychology, behavioral economics yields more accurate models of human decision-making. Insights from this vibrant new field are relevant for policy makers in many fields of inquiry, including the formation and implementation of legal rules.

This course provides an introduction to behavioral economics, and shows the relevance of an appropriate model of human decision-making for the analysis of legal rules. To provide an appropriate benchmark, the course first introduces the basic building blocks of economic decision theory. We discuss the tenets of rationality underlying the theory of utility maximization under uncertainty and rational information processing. We discuss applications to the economics of crime and bargaining.

We then discuss deviations from rationality, including such phenomena as the endowment effect and loss aversion, and we discuss improved models of decision-making such as prospect theory. We analyze the importance of such models for the
design of regulation, with a specific emphasis on the effectiveness of deterrence and the possibilities of ‘benevolent paternalism’ or ‘nudging’.

The last component of the course deals with strategic interactions between individuals, and provides an introduction to game theory and the analysis of social dilemmas. We use simple games to investigate the origins of social order and the interactions between formal law enforcement mechanisms and informal social norms. We explore how such norms can strengthen or weaken legal enforcement depending on the social context.

Goals
After completing the course, students will have developed the following capacities:

- Students will have an understanding of economic decision theory, and will be able to define the components of rationality and Bayesian updating.
- Students will be able to formulate the main tenets and implications of the economic theory of deterrence.
- Students will know how different biases affect decision-making under certain conditions and in negotiations, and will be able to elucidate the main behavioral theories of decision-making when facing risk.
- Students will understand the basic concepts of game theory, such as the Nash equilibrium, and will be able to use these concepts to analyze social dilemma problems.

Evaluation methods
On the basis of a written exam and in-class exercises.

Course materials
Detailed information about reading materials and the topics to be dealt with in class will be available on Blackboard.

7.6 Public and Private Enforcement

Coordinator: Prof. L.J. Smeehuijen

General description
In Europe, law enforcement has traditionally been regarded as a public task. The State’s monopoly on prosecution and punishment is part of the fabric of our constitutional state. To ensure that public authorities charged with law enforcement are independent and unbiased, their conduct is subject to judicial review. By contrast, private law does not typically charge citizens with the task of enforcing the law. Within the limits of private law, citizens are entitled to enforce their own rights for their own benefit, not for the benefit of the general public. Furthermore, the remedies granted to private individuals are typically focused on compensation and/or restitution, not punishment and/or deterrence.

However, in some areas of the law there appears to be a renewed interest in the notion of ‘private enforcement’. Rather than ask what needs to be done to provide individual justice to the civil claimant, some prefer to focus on what needs to be done...
to deter wrongful and/or illegal conduct, even in the context of private law disputes. In this view, private law remedies can contribute generally to the ‘enforcement’ of legal standards. This raises important and interesting questions regarding the coexistence of – and potential overlap between – public and private enforcement models.

This course will address these questions by examining existing public and private enforcement models in their historical, political, economic and legal context. The perspectives applied are those of public enforcers and of private actors. After a general and historical introduction of key aspects and assumptions underlying these enforcement models, we will use competition law enforcement as a ‘test case’ to identify the synergies and potential frictions between the two models.

Goals
After completing the course, students will have developed an understanding of the following:

- the general aspects of public and private enforcement models;
- the interplay between public and private enforcement models, both in terms of how private enforcement can provide a positive contribution towards enforcement of the law, and how it can having an ‘undermining effect’;
- the inherent tension between the goals of law enforcement and the fundamental principles of private law; and
- the specific application of these issues to competition law enforcement.

Participants will develop views on the key issues in this area and will be able to express their views coherently in English, both orally and in writing.

Evaluation methods
Written in-class exam.

Course materials
Detailed information about reading materials and the topics to be dealt with in class will be available on Blackboard.

7.7 Financial Law: Governance & Behavior

Coordinator: Prof. B. Joosen

This course provides for an in-depth study on the roots and causes of the financial crisis that originated in the US real estate markets in 2007 and the collapse of the systemically important investment bank Lehman Brothers in september 2008. The contagious effects of the collapse of this major US Bank to the European and Asian markets resulted in a deep financial crisis in other parts of the globe in the years 2008 and 2009 but was followed up by another significant crisis in Europe caused by the sovereign-bank doom loop. The course is built up as follows:

- Origins, causes and effects of the financial crisis of 2007/2008 and the sovereign crisis in Europe in 2011. The originate-to-distribute model of bank funding by means of securitisations, the derivatives markets and the reliance on wholesale funding by banks. The doom loop effects with respect to the dependency of states on banks, the
deterioration of bank’s balance sheets as a result of the weakening position of the sovereign and the bail out of banks in Europe to avoid systemic crisis in the financial markets. A critique on the governance and risk management of banks;

- **Regulatory responses to the financial crisis.** The Pittsburgh Agenda of the G20 adopted in 2009. The regulation of the global financial markets, development of the new capital requirements of Basel III and the introduction of an internationally harmonised framework for liquidity supervision. Towards an harmonised methodology to identify systemically important institutions and regulating such globally and domestically important banks and insurance companies. Improvement of cross-border cooperation between supervisory authorities and the creation of the European System of Financial Supervision and the Banking Union.
- **From bail out to bail in of banks.** The European recovery and resolution framework as second pillar of the Banking Union. Towards resolvable banks and improvement of the bank crisis management tools for authorities and supervisors. Stakeholder management and the analysis of the position of management and governance of banks in the context of crisis management measures.
- **Market conduct and the attitude of offerors of financial products and services towards their clients.** Regulation of product governance and product intervention by regulators to address the appropriate behaviour of banks when offering products and services. Towards a segregation of the retail and wholesale markets and improving the protection of the retail customers in respect of complex financial products and services.
- **Sustainable finance and the introduction of corporate social responsibility for the financial industry.** Setting the agenda for stimulus of the private sector to the realization of the Paris Climate Accord. Sustainable finance agenda of the European Commission and the changing views as to risk management in the context of sustainable finance contributions of the banking sector.

**Evaluation methods:** paper (20%), written exam (80%)

**Course materials**
Detailed information about reading materials and the topics to be dealt with in class will be available on Canvas.

### 7.8 Corporate Social Responsibility

**Coordinator:** Dr. A. Duare Correia

**General description**

**Coordinator:** Dr. A. Duarte Correia

The business case for sustainability indicates that increased sustainability performance is not an obstacle to profitability; it is the key for the financial viability of corporations. It is also the key for managing the exponential growth of the world population and of consumption. In this context, what are the corporation’s social responsibilities?
We will debate questions such as: which framework, mandatory or voluntary and integrated or not, is most suitable to contribute to the development and implementation of sustainability reporting? How can sustainability ratings (e.g. Dow Jones Sustainability Index) contribute to the development of corporate sustainability and responsible investment? How can large investors such as pension funds contribute to the development of corporate sustainability and responsible investment?

We will explore the underlying concepts of sustainability, materiality, stakeholder engagement, sustainability reporting, integrated reporting and responsible investment. How these topics are developing globally, with a particular focus on the European Union (EU) regulatory and voluntary developments, but also the United States and South Africa. We will look at landmark EU Directives, implications of international agreements such as the Paris agreement and the Sustainability Development Goals; the work of pioneer leading organizations such as the United Nations Global Compact, United Nations-supported Principles for Responsible Investment, Global Reporting Initiative, International Integrated Reporting Council, CDP, former Carbon Disclosure Project and the Sustainability Accounting Standards Board; the concept of shared-value and fiduciary duty; and the roles of the EU, national Governments and the investors, such as pension funds.

*Evaluation methods*

Paper (70%), presentation (20%) and participation (10%).

*Course materials*

TBA. The reading material will be distributed by the course coordinator.