International Business Law: Finance & Behavior (LLM)

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1. Introduction; summary

The legal Master's (LLM) programme in International Business Law: Finance and Behavior (IBL:FB) focuses specifically on financial and corporate law. This LLM programme distinguishes itself by a multidisciplinary approach: economic and behavioral perspectives are an integral part of the entire curriculum. The actual functioning of legal rules is at its core.

With a maximum group size of 30 to 40 ambitious students, this intensive programme is taught entirely in English. We aim to achieve an equal balance between Dutch and international students, who must have completed a bachelor in law or a law track within a multidisciplinary bachelor. For students with the requisite Dutch law bachelor level qualifications the programme will provide access to the regulated legal professions (attorney, judge, public prosecutor) in the Netherlands. It will prepare all graduates for a career in corporate law or in the world of finance in a broader sense.

The multidisciplinary approach of the International Business law: Finance and Behavior LLM programme is based on courses taught jointly by lawyers and researchers from the VU Faculties of Economics and Behavioral Sciences. Because the LLM focuses on the functioning of the law, professional practitioners – in particular from regulators, banks, insurers and pension funds – will also be involved. These parties will contribute relevant case studies, problems and solutions to the programme, and provide guest lectures.

This LLM programme and the multidisciplinary and professional alliances that underpin its curriculum form part of a broader context. It is intended for students taking their first LLM degree. In addition the VU also aims to offer a related one-year executive LLM programme. Finally, bringing together academic researchers and legal practitioners will create a network for academic debate and scientific
research. Developing this dimension further is an explicit ambition behind the programme.

These various aspects of the programme are discussed more at length in the remainder of this document. The subjects offered are set out in the timetable below and in the detailed course description (curriculum) at the end.

### Timetable

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2. **Reasons for establishing a multidisciplinary financial and corporate law LLM; four developments**

Universities in the Netherlands currently do not offer a financial and corporate law LLM programme with a multidisciplinary approach. This programme has been developed in response to the following developments.

*Changing views on legal scholarship*  
Research in the field of corporate law has traditionally focused on the law as such. This involves doctrinally oriented discussions, a focus on the system, consistency, interpretation of the law, and so on. Whereas research in criminal law, for example, has long involved debates on the law's effectiveness (just consider a branch of science such as criminology), the functioning of corporate law was seldom studied from a more empirical perspective.

This has changed over the course of the past decade. There is now an increasing awareness that corporate law (just as private law in general, for that matter) should be studied from the perspective of its social function. This necessitates a multidisciplinary approach: in conducting research into the operation of corporate law, legal practitioners must seek collaboration with empirically-oriented academic disciplines. The emergent field of financial law is now also a factor that cannot be ignored. This relatively new area, which has less doctrinal ballast, has always had a clearer focus on effectiveness both due to its inherent objectives and because of its pronounced orientation on economics.
Changing view on human motives; marginal utility of rules
A multidisciplinary approach is crucial in the field of financial and corporate law. In designing the rule of law, concepts like \textit{homo economicus} and rational calculation have long been key. The assumption was that people are aware of their own interests and act based on those interests. Establishing rules with sufficient positive stimuli or negative sanctions would result in the desired behavior. In this approach, the power of law is virtually limitless. In various fields of science, however, another view on human motives is now emerging. People have broader, largely intrinsic and not strictly rational motives for their actions. Behavioral economics is an emerging academic discipline that is based on this premise.

The implications for the legal domain are profound. For example, psychology describes the phenomenon of regulatory crowding out: intensive, detailed regulation can supplant people’s intrinsic, durable motives to act ethically. At a given point, the effect of regulation is lost and it can even have a negative impact. Research shows that the culture in an organization is a much stronger determinant of behavior than law in certain areas. Legal experts will have to conduct joint studies with behavioral scientists to establish the boundaries of effective regulation – and to identify the interaction with corporate culture.

The law is not enough; need for morality
The financial crisis is another development that gives us cause to reconsider the efficacy of the law. There were rules in place, but they did not prevent system failure. In hindsight, participants in the market have not given their own actions sufficient ethical thought.

If we hope to improve this situation, then we must go beyond considerations of the legality of specific behaviors. We must also pass a moral judgment on these activities. This has to do with factors such as the societal and political context, economic implications, et cetera. Lawyers must amass some of this contextual awareness during their studies. Furthermore, they must hone their ethical awareness in keeping with the rigors of their profession.

The market needs lawyers with a broad-based education
The foregoing dovetails closely with the market’s need for lawyers with a broad-based education. In 2014, the chairpersons of several major law firms called for ‘T-shaped lawyers’; legal experts with in-depth knowledge of the law (the upright in the T) combined with more general knowledge and skills (the beam in the T). “Knowledge of the law alone is no longer enough to solve complex problems. (…) A judge must have a sense of the social impact of his or her rulings. And a corporate lawyer must be aware of the financial implications of breach of contract. It is essential that they have basic knowledge of the fields of psychology, sociology, political science and economics.”

Law faculties should take such calls seriously, especially when they come from the future employers of their students.
3. **Objective of the LLM; career prospects; prospective students**

The objective of the LLM programme is to train excellent lawyers who have broad knowledge of the economic and behavioral context of financial and corporate law.

Provided students already meet the pre-requirements at BA level, this LLM programme will provide formal access to the regulated legal professions (attorney, judge, public prosecutor) in the Netherlands. It will prepare all graduates for a career in corporate law or in the world of finance in a broader sense.

English is the obvious language of instruction for this LLM programme not only given its multidisciplinary structure, (reading materials will be in English), but especially because this makes the programme accessible for international students. Questions of economics and behavior are not restricted by national borders. The aim is to strike an equal balance between Dutch and international students.

Students of economics and (other) behavioral sciences can join the programme provided they have had sufficient prior legal training. These students will be subject to two additional admission requirements: their prior education must clearly demonstrate an affinity with the law, and they must have excellent academic results in their own field. In any event it is to be expected that the range of prior education profiles will be quite varied in view of the large proportion of international students to be admitted to the programme.

4. **Curriculum principles**

In designing the curriculum, we have considered the following.

*Substantive orientation; a focus on financial and corporate law from a broad base*

Financial and corporate law form the locus of the programme. The majority of subjects therefore focus on these fields, though there are exceptions. The courses on Contract Law (and Tort Law) and Public and Private Enforcement are somewhat more general in nature. These are basic subjects that largely serve as the basis for financial and corporate law, so students must be thoroughly versed in them. This is especially important in view of the programme’s broad perspective.

*Backbone of legal subjects, taught at the level of principles*

In its essence, this LLM is a programme in law. Its multidisciplinary approach in no way detracts from this foundation. The backbone of the programme therefore consists primarily of legal subjects, specifically: Corporate Law, Contract Law, Tort Law, Insolvency Law and Financial Law.
We teach these courses at a more abstract level than ‘the usual’ positive law subjects. Generally, LLM courses in law focus intently on the precise content of legal rules. That would be a less likely choice in this programme, however, if only because of those international students who choose employment outside the Netherlands after graduation: they will derive no benefit from a detailed knowledge of Dutch positive law.

Instead, we teach law based on principles: all of the subjects in the curriculum feature core themes that may be in detail be different from jurisdiction to jurisdiction, but that may be readily compared from a more abstract perspective. An example: under Dutch law the ‘Haviltex-criterion’ is key to the interpretation of contracts and other forms of binding agreements. The body of jurisprudence on this topic is extensive. But this jurisprudence is not particularly relevant for this LLM programme. More essential is the general observation that every jurisdiction has tools in place for the interpretation of agreements. Hence the programme emphasizes the core principles of these various tools.

This principles-based approach provides a clear benefit to international students, in that they will be able to use their newly acquired knowledge in other jurisdictions as well. Dutch students will also benefit, because they will be able to move more easily in international legal circles due to their understanding of the precepts that apply in different jurisdictions.

The economic and behavioral perspective, both in the legal subjects as well as in discipline-specific subjects
The economic and behavioral perspective is then added to the legal basis in two ways.

Firstly, these perspectives are woven into the subjects mentioned. A substantial proportion of the lecturers in each subject will not be given by a legal expert, but by an economist, a psychologist or an ethicist. For example, the course on Insolvency Law will include a series of lectures on balance sheet interpretation and analysis, given by an economist. The course on Contract Law will include a series of lectures on the psychology of negotiation, given by a psychologist. The other subjects will feature similar cross-disciplinary integration.

In addition to the aforementioned financial and corporate law subjects, there are two additional subjects – the introductory and concluding subjects – that are not based on a specific area of law, but that are more reflective in nature. The introductory course covers the multidisciplinary approach to financial and corporate law, while the concluding course focuses on ethics.

The detailed curriculum is shown in Section 7.
5. The role of the advisory board

The advisory board has a key role in this LLM programme. In those subjects dealing with the operation of financial and corporate law, market practitioners are clearly vital partners. The advisory board will be made up of representatives from regulators, banks, insurers and pension funds.

The board will meet twice a year. However, the exchange of ideas will be an ongoing process that is not limited to these formal convocations. The programme board will be at the board’s disposal throughout the year for comments or suggestions. The advisory board’s duties are as follows.

Providing input on the curriculum
As mentioned, a large portion of the essential developments in the field of financial and corporate law is taking place in professional practice. We need to forge a direct link between these developments and the LLM programme. The advisory board’s input will be indispensable in making this a reality.

This applies to all levels of the curriculum; the members of the advisory board will be asked to provide input both on the types of subjects to be included in the curriculum, as well as on the specific issues that should be addressed.

A core ambition in this regard is that this LLM programme, more so than other law programmes, will be the subject of continual innovation. The initial curriculum is expected to change substantially through the years.

Guest lectures
Guest lectures are an important means for achieving interaction with professional practice. Guest lectures serve multiple purposes. The student will learn what is going on in professional practice, resulting in a more thorough understanding of the theory, and the student will become acquainted with the major players in his or her future professional field.

Our aim is to collaborate with guest lecturers in a substantial proportion of subjects. A combined lecture is a likely structure, whereby a university lecturer provides the introduction followed by a guest speaker who relates his or her experiences from the professional field. It is also conceivable that members of the advisory board will not limit themselves to a single guest lecture, but that they might work together with a university lecturer on a series of multiple lectures, thus developing their own ‘learning line’.

The programme board hopes that the members of the advisory board will communicate to their own organizations how important it is to provide guest lectures or to be otherwise involved in the LLM programme and the research being conducted.
Provide input on the research agenda; co-creation between science and professional practice

Education at the LLM level and research are closely linked. This is based on the principle that researchers share their latest insights with their students.

The academic approach to jurisprudence has traditionally been a rather solitary pursuit. This cloistered approach is very common in the field of black-letter-law. Legal practitioners write handbooks and articles and they annotate rulings, thus having a major influence on the debate. Where the law, economics and behavior intersect, however, professional practice and not legal-academic writing is leading, for this is where the innovative initiatives are taken.

If science is to be socially relevant in this area, then it must have a direct link to these developments. Researchers must then systematically describe them, measure their effects, determine their replicability in other contexts, et cetera. This is how researchers can become partners in a process of co-creation between science and professional practice.

The advisory board will therefore be involved not only in shaping the teaching curriculum, but also in defining a research agenda. We will expressly invite board members to share their thoughts in this area. There may also be times when students in the programme pose questions that may be ideally addressed by members of the board. In these cases, the board members will be asked to reflect on these queries.

Experience with other LLM programmes in which guest lecturers are intensively involved shows that the guest lectures regularly result in valuable cross-fertilization between professional practice and research. This happens more or less automatically, because the university lecturer and the guest lecturer work together to prepare the lectures.

6. Plans for the future; developing an executive Master’s

The LLM in Finance and Behavior is currently being developed specifically for students of law who are embarking on their first advanced degree. In general, they do not yet have any relevant work experience.

Exploratory market research has revealed a need among legal professionals for a multidisciplinary financial and corporate law Master’s programme. This is only logical in view of the broad perspective that today’s lawyers need. Our intention is to develop such a programme within two years.

It is to be expected that some of the professionals who might be interested in this programme are currently employed by members of the advisory board. The development of this executive programme will therefore be put on the board’s agenda at some point in the not-too-distant future.

1. Contract Law and Psychology of Negotiations (6 EC)
2. Anatomy of Corporate Law (6 EC)
3. International Arbitration (6 EC)
4. Problems of Market Regulation (6 EC)
5. Law and Behavioral Economics (6 EC)
6. Public and Private Enforcement (6 EC)
7. Financial Law: Governance & Behavior (6 EC)
8. Corporate Social Responsibility (6 EC)
9. Thesis (12 EC)

7.1. Contract Law and Psychology of Negotiations

Coordinator: Prof. J. Rutgers

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 a broader understanding and prepares the student for a future in which he has to exchange thoughts with colleagues from other jurisdictions.

The topics analyzed in the contractual part of the course include but are not limited to:

- The notion of contract;
- Formation of contract;
- Validity of contracts;
- Interpretation and contents;
- Supervening events in the life of contract;
- Remedies for non-performance;
- Third party consequences.

The part 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:

- Value distribution in single-issue, two-party negotiations;
• Value creation in multi-issue, two-party negotiations;
• Psychological factors in dispute resolution;
• Introduction to counselling: the lawyer-client Relationships.

7.2 The Anatomy of Corporate Law

Coordinator: prof. mr. Jaap Winter

General description
This course aims to highlight the economic logic of corporate law. Business corporations, in any jurisdiction, share five basic legal characteristics: legal personality, limited liability, transferable shares, delegated management under a board structure and investor ownership. Corporate law everywhere must provide for them. In this course, we explore the role of corporate law in minimizing agency problems – and thus, making the corporate form practicable – in the most important categories of corporate actions. We address seven categories of transactions and decisions that involve the corporation, its owners, its managers and the other parties with whom it deals. We will thus cover all of the important problems in corporate law.

The objective of the course is threefold:
1. Outline the common structure of corporate law across different jurisdictions as a response to similar legal and economic problems
2. Examine whether and how different institutional and economic settings justify tailored legal approaches to the regulation of corporations
3. Explore the implications of behavioural economics for corporate law, particularly in relation to boards and shareholders

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

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

7.3. International Arbitration

Coordinator: Mr. I.O. Ciobanasu

Course objective
The objectives of this course are to promote academic education and to encourage critical and independent thinking. Upon completion of the course, the student will be able to practice professionally in the field of arbitration. To this effect, the course discusses realistic problems so that students will be able to resolve such legal problems on a sound theoretical and pragmatic basis.
Course content
The focus of the course is on commercial arbitration. There will be some discussion of procedural aspects of international investment arbitration. Students are expected to be familiar with basic concepts of private international law.

The course focuses on a combination of practical and theoretical issues. While some elements are taught on a structured, theoretical setting (i.e. the workings of a typical international arbitration law), other components of the course are taught on the basis of practical, real-life, examples (such as drafting appropriate arbitration clauses).

Evaluation methods
Written exam and paper

Course Materials
- Redfern and Hunter on International Arbitration, Student Version.

7.4. Problems of Market Regulation

Coordinator: prof. dr. Gareth Davies

General description
The aim of this course is to examine the relevance of human behavior to the regulation of markets. Our underlying norms, susceptibility to herd behavior, desire to be accepted, and instinctive reactions to risk and to change - to name a few examples - may lead to individuals behaving in ways that undermine regulatory approaches premised on the simple, calculating,"rational" actor. Starting from classic literature on the psychological aspects of market regulation students will learn how to understand, criticize and improve traditional approaches to regulation in the light of behavioral insights. They will also learn about new approaches being taken in the light of those insights. The course will thus involve mastering theoretical insights from different disciplines, understanding their relationship to different kinds of market regulation, and presenting this in written and oral form.

Some of the issues we will cover:
- How do we understand markets: as a phenomenon apart from social and ethical constraints, or as embedded in social relationships and norms?
- How do we understand market actors, their motivations, and their responses to each other and to incentives?
- How is the idea of a 'rational actor' used?
- 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? What role do these give to behavioral insights?
• 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 markets?

Different kinds of markets will be considered - financial, goods, and services – and different kinds of regulatory mechanisms - deregulation, self-regulation, regulation by public/private partnerships, domestic regulation by state actors, and cross-border cooperation within transnational regulatory networks.

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

7.5. Law and Behavioral Economics
Coordinator: Prof. W. Sauter

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 Canvas.

### 7.6. Public and Private Enforcement

**Coordinator:** Prof. W. Sauter

**General description** Traditionally, law is taught from the perspective of a specific legal discipline. An alternative way of teaching law is focusing, not on the law as such, but on a specific societal problem. The question then is what the law has to offer in finding a solution to that problem.

This approach is taken in the course ‘Public and Private Enforcement’. Each class another professor will be talking about a topic he or she is specialized in. The problems that will be discussed are various. We will talk about Public enforcement of Competition Law, and Online Enforcements of intellectual Property Rights and private Enforcement of Competition Law for example, but also about Liability for Climate Change and about corporate accountability for human rights violations. We will visit The Netherlands Authority for Consumers
and Markets (ACM) in The Hague and The Dutch Authority for the Financial Markets (AFM).

All speakers will provide reading materials one week before class. After each class, there will be an assignment posted on Canvas consisting of a series of questions relating to: (i) the reading materials and (ii) what was told and discussed in class. Those questions will invite students to write short essays.

**Evaluation methods**
Papers: marks will be based on: (i) structure; (ii) quality of reasoning; (iii) quality of language; (iv) originality of thinking.

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

**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**
Each student writes a paper that will be graded and contributes for 20% to the course grade and additionally there is a written exam.

**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:** prof. C. Williams

**General description**
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*

The reading material will be distributed by the course coordinator.