

Master's in *Law, Markets & Behavior*

1. Introduction; summary

A new law Master's is being launched on 1 September 2015: Law, Markets & Behavior. This Master's programme is a 50-50 joint venture between the Faculties of Law at VU Amsterdam and the University of Amsterdam. It focuses specifically on financial and corporate law. This Master's is defined by its multidisciplinary approach: economic and behavioural perspectives are an integral part of the entire curriculum. The functioning of legislation and regulations are at its very core.

The programme is taught in English. Teaching is intensive, with a maximum group size of 25 to 30 ambitious students. Our goal is to strike an equal balance between Dutch and international students. The programme will provide access to professions in the judiciary (lawyer, judge), but it will also prepare students for a career in corporate law or in the world of finance in a broader sense.

To ensure the programme's multidisciplinary nature, teaching will be provided by researchers from the UvA and VU Amsterdam Faculties of Economics and of Behavioral Sciences. The Master's focuses on the functioning of the law, so there will be involvement of professional practice, in particular with regulators, banks, insurers and pension funds. These parties will provide input for the curriculum and representatives will provide guest lectures.¹

The Master's programme and the alliances to be forged in the framework of the curriculum are part of a broader context. The present Master's is intended for students taking their first Master's degree. The two universities aim to offer an executive Master's in two years' time. Furthermore, bringing together academic researchers and legal practitioners will create an ideal network for scientific debate and research. Developing this inherent potential is an explicit component of the overarching ambition behind the programme.

A number of aspects of the new Master's programme are explained in greater detail below.

2. Reasons for establishing a multidisciplinary financial and corporate law Master's; four developments

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

¹ This prospectus has been prepared following an initial exchange of ideas with these parties at VU Amsterdam on 8 January 2015 (and drawing on the content of e-mail correspondence following this session).

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 *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 Master's; career prospects; prospective students

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

The programme will provide formal access to professions in the judiciary (lawyer, judge), but it will also prepare students for a career in corporate law or in the world of finance in a broader sense.

English is the ideal language of instruction for this Master's programme because of the programme's multidisciplinary structure, (reading materials will be in English), and this will also make 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 behavioral can join the programme provided they have had some 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. It is to be expected moreover 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 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 Master's 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, Master's 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 the international students who are unlikely to remain in 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 Master's programme. More of the essence is the general observation that every jurisdiction has tools in place for the interpretation of agreements. This Master's 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 their home jurisdiction. However, 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 8.

5. The role of the curatorial panel

The curatorial panel has a key role to play in this Master's programme. In those subjects dealing with the operation of financial and corporate law, market practitioners are clearly vital partners. The curatorial panel will be made up of representatives from regulators, banks, insurers and pension funds.

The panel will meet twice a year. However, the exchange of ideas will be an on-going process that is not limited to these formal convocations. The programme board will be at the panel's disposal throughout the year for comments or suggestions. The curatorial panel'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 Master's programme. The curatorial panel's input will be indispensable in making this a reality.

This applies to all levels of the curriculum; the members of the curatorial panel 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 Master's 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 curatorial panel 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 curatorial panel will communicate to their own organizations how important it is to provide guest lectures or to be otherwise involved in the Master's programme and the research being conducted.

Provide input on the research agenda; co-creation between science and professional practice

Education at the Master's 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 manuals 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 curatorial panel will therefore be involved not only in shaping the teaching curriculum, but also in defining a research agenda. We will expressly invite panel 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 panel. In these cases, the panel members will be asked to reflect on these queries.

Experience with other Master's programmes in which guest lecturers are intensively involved shows that the guest lectures regularly result in valuable cross-pollination 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 Master's in Law, Markets & 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 curatorial panel. The development of this executive programme will therefore be put on the panel's agenda at some point in the not-too-distant future.

7. Joint venture between VU Amsterdam and the University of Amsterdam

This Master's programme is a 50-50 joint venture between VU Amsterdam and the University of Amsterdam. The decision to develop the programme together was primarily based on the fact that the two law faculties are complementary with regards to their individual strengths. The Faculty of Law at the University of Amsterdam places a greater emphasis on financial law, while the corporate law curriculum at VU Amsterdam is more highly developed. The links to the other academic disciplines will most likely take shape as follows: the UvA law faculty will seek collaboration with that institution's economists, while the VU Amsterdam law faculty will naturally gravitate toward the behavioral scientists conducting research there.

Furthermore, the two universities have bundled their strengths in a broader context to promote Amsterdam as a leading city of research and science where students can benefit from world-class academics while enjoying the best of what this European capital has to offer. It therefore makes sense to harmonize the promotion of this Master's programme with the institutions' PR activities as we progress from strength to strength.

8. Curriculum

- 8.1 Law, Behavior and the Functioning of Markets (6 credits)
- 8.2 Anatomy of Corporate Law (6 credits)
- 8.3 Insolvency Law & Corporate Finance (6 credits)
- 8.4 Contract Law and Dispute Resolution (6 credits)
- 8.5 Law and Behavioral Economics (6 credits)
- 8.6 Tort Law and Competition Law (6 credits)
- 8.7 Financial Law (6 credits)
- 8.8 Lawyers' Ethics (6 credits)

8.1 Contract Law, Dispute Resolution and Psychology

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.

8.2 The Anatomy of Corporate Law

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 analyzed in the course include, but are not limited to: a) the economics of shareholder behavior; b) collective action problems and the rationale of the separation of ownership and control in business corporations; c) the team production framework of corporate law; d) the duties of the directors of the corporation; e) the role of executive compensation on director's performance f) the law and economics of debt governance; g) the position of employees within the corporate structure; h) the relationships between corporations and third parties.

8.3 Insolvency Law & Corporate Finance

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.

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.

8.4 Law, Behavior and the Functioning of Markets

General description

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?

8.5 Law and Behavioral Economics

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.

8.6 Tort Law, Competition Law & Law and Economics

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 have 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.

8.7 Financial Law: Market Regulation & Behavior

General description

The course is organized around the following four clusters of financial phenomena:

- Funding: acquiring finance, indirectly through intermediation by commercial banks, or directly by issuing securities on primary markets (e.g. ‘going public’ through an IPO, an initial public offering of shares);
- Investment: the provision of funding by institutional and other investors (e.g. pension funds investing in alternative assets, such as private equity funds, which themselves invest directly in companies);
- Infrastructures and Services: the institutions and activities supporting financial transactions and positions (e.g. stock exchanges, derivatives exchanges, and central clearing of transactions effected on such exchanges);
- Risk Transfer: risk and risk management, in particular through derivatives, financial collateral and synthetic finance (e.g. the use of credit default swaps to ‘insure’ against default).

Financial Law takes an integrated approach to financial phenomena, combining the study of relevant EU regulatory regimes with the analysis of private-law techniques. The latter have often evolved into market practice (‘de facto harmonization’, or even a *lex mercatoria*), as exemplified by the extensive use of standard documentation by financial market participants. Where useful, we will examine the ongoing European harmonization of private law.

Goals

The course aims to provide students with a thorough understanding of the interlocking fields of private law and financial regulation from a European perspective. Having followed the course, students will be able to navigate the

complex area of financial regulation. They will be able to analyze and evaluate the application of contractual and other private-law techniques in problems arising in finance, taking account of the interaction between private and regulatory law.

8.8 Lawyers' Ethics: Professional Ethics vs Ethics of the Marketplace

General description

The last two decades have seen a wide range of (financial) fraud and other violations of rules and ethics by a variety of corporations, most notoriously Enron and Lehman Brothers.

These kinds of professional failings and misconduct do not belong to the past. At present, newspapers regularly report on moral and professional failures in the corporate sector, including among organizations whose very task is to exercise (financial) control over corporations, such as auditing firms.

In response to all this, the question of how best to secure moral rectitude within the corporate sector is currently a broadly discussed topic in public and scholarly debates. It is this question that this course seeks to explore by taking up an interdisciplinary approach, that is, by combining insights from law, professional and corporate ethics, social psychology, and social and political philosophy.

The course is based on two premises. Firstly, that it makes sense to locate a moral agency at the very least in the *individual* human agents within corporations and other relevant public institutions, rather than exclusively in the corporation or institution as such. Secondly, that professional and corporate misconduct are problems that cannot be exclusively explained by the choices of misguided, uninformed or simply immoral individuals. Instead, a full explanation must also include the influence that the social and political context has on the functioning of individuals in corporations.

The course thus assumes that, if we are to come to grips with the corporate sector's moral integrity, we need to focus both on the individual apples and on the barrel. Consequently, the following three interrelated aspects constitute the core of the course:

- a) an introduction to professional ethics and professional responsibility in the corporate sector and relevant public institutions;
- b) an analysis of the main social-psychological obstacles to 'doing the right thing' within the corporate sector;
- c) an analysis of the interrelation between individual professional conduct and the social and political context in which corporations function.

Evaluation methods

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

Course materials

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