

## Curricular Unit

Master in L&M 3E 2023/2024

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## Introduction

Commercial companies are the leading actors of economic life. The aim of this course is to deepen knowledge in Corporate Law, focusing on the organization of commercial companies, namely the company's liability, as well as its directors' liability.

## Goals

This course deals with the corporate law major issues and themes. It is divided into two large blocks: the first deals with basic concepts regarding corporations and liability; and the second is dedicated to the foundations of corporate law. Starting with the basic structure of a commercial company, several issues, as the corporate bodies, the corporate financing, the status of the shareholders, delicate issues of corporate liability will be dealt, namely undercapitalization, mingling of assets and liability of corporate groups.

## Methods

Classes will be lectured aiming to achieve in-depth treatment of cutting-edge issues in a pragmatic perspective, combining both "legal" and "economic" reasoning and stimulating research, analysis, critique, and argumentation capabilities, making the discipline suitable to a broad range of attendants. To this extent, despite centered on the Portuguese legal framework, the themes will be dealt in a comparative manner, bearing in mind, namely US and German Law.

This course uses the flipped classroom design. Hence, students will be required to prepare before class, namely through reading of selected materials. Since the course has a practical nature – with sound theoretical background - aanalysis of case law will play a pivotal role. US Case law will be a primary source, to assess its reasoning in the light of Portuguese law.

## Course Contents

### I. Basic concepts

#### 1.1. Liability.

##### 1.1.1.. The basic legal framework of liability:

- *Mora debitoris*
- Breach of contract
- *Mora creditoris*

#### 2. Corporation

##### 2.1. US Corporate law *versus* Portuguese Corporate Law

##### 2.2. The purpose of a corporation

##### 2.3. The concept of separate legal personality

###### 2.3.1. The corporate veil

###### 2.3.2. Piercing the corporate veil – an introduction

### 3. Corporations and liability

#### 3.1. Limited liability and corporate veil

## II. Foundations of corporate law

### 1. Corporate forms

### 2. Corporate capital

### 3. Corporate financing

### 4. Directors' duties, fiduciary principle and business judgement rule

### 5. Shareholders

### 6. Stakeholders

### 7. Corporate groups

### 8. Specific situations of liability

#### 8.1. Undercapitalization

#### 8.2. Mingling of assets

#### 8.3. Circumventing legal or contractual provisions

#### 8.4. Corporate groups and liability

## Assessment

Students will be evaluated based on:

- a) A written assignment to be delivered following the unit's last lecture (50%)
- b) Their participation in class (50%)

## References

- Abreu, Jorge Coutinho de – Curso de Direito Comercial, 7th ed., Coimbra, Almedina, 2021.
- Abreu, Jorge Coutinho de – Responsabilidade civil dos administradores de sociedades 2.ª ed., Coimbra, Almedina, 2010.
- Alves, Hugo Ramos – Sobre a desconsideração da personalidade jurídica nas sociedades comerciais, Lisboa, AAFDL; 2023.
- Antunes, José Engrácia – Os grupos de sociedades, 2.ª ed., Coimbra, Almedina, 2002.
- Blumberg, Philip I. – The multinational challenge to corporation law – The search for a new corporate personality, New York, Oxford University Press, 1993.
- Cordeiro, António Menezes – Direito das sociedades, Vol. I (5th ed, 2022) and Vol. II (2nd ed.), Coimbra, Almedina.
- Cunha, Paulo Olavo – Direito das sociedades comerciais, 7.ª ed., Coimbra, Almedina, 2019.
- Easterbrook, Frank; Fischel, Daniel – The economic structure of corporate law, Cambridge, Harvard University Press, 1991.
- Hansmann, Henry; Kraakman, Reinier et Alii – The anatomy of corporate law – A comparative and functional approach, 3rd edition, Oxford, Oxford University Press, 2017.
- Labareda, João; Fernandes, Carvalho – A situação dos accionistas perante dívidas da sociedade anónima no direito português, in *Direito das Sociedades em Revista* 2 (2010) pp. 11-74.
- Oliveira, Ana Perestrelo de – Lições e casos de Direito das Sociedades, Lisboa, AAFDL, 2023.
- Ramos, Maria Elisabete – Direito das sociedades, Coimbra, Almedina, 2022.
- Santo, João Espírito – O sistema “societário” inglês, in *Direito das Sociedades em Revista* 7 (2015), pp. 111-131.
- Santo, João Espírito – O sistema “societário” norte-americano, in *Direito das Sociedades em Revista* 7 (2015), pp. 153-181.

For specific references the student should contact the lecturer.