

3.13 Module 29 Commercial Law

3.13.1 Headline information about the module

Module title	Commercial Law
Module NFQ level (only if an NFQ level can be demonstrated)	8
Module number/reference	Module 29
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	3
Semester (semester1/semester2 if applicable)	Semester 1 or Semester 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	5
List the teaching and learning modes	Full Time, Part Time,
Entry requirements (statement of knowledge, skill and competence)	Successful completion of Stages 1 and 2 of the programme
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	One Semester, 12 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	2
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort (much of the remainder of this table must also be presented in the programme schedule—take care to ensure consistency)										
Effort while in contact with staff										
Classroom and demonstration		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
24	1:60						101			125
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution							100	100%		

3.13.2 Module aims and objectives

The module aims to provide the learner with a holistic overview of the core elements of Commercial Law in Ireland, including a knowledge of the historical development and present context of commercial law. The module also develops within the learner an understanding of core commercial law principles across a range of areas, including consumer protection, agency and competition law. The module enables learners to critically analyse the legal basis of certain commercial transactions, both domestically and internationally, and to critically analyse the law for the purpose of providing solutions to factual scenarios.

3.13.3 Minimum intended module learning outcomes

On successful completion of this module, learners will be able to:

- (i) Analyse and discuss the significance of Commercial Law in a business context;
- (ii) Evaluate the importance of consumer law and competition law;
- (iii) Apply the principles of commercial law to solve factual legal scenarios;
- (iv) Critically evaluate the significance and effectiveness of regulatory frameworks;
- (v) Critically analyse the divergent methods of enforcement;
- (vi) Engage in advanced research and analysis of commercial law.

3.13.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

Commercial Law is an important area of practice and academic focus in Ireland with relevance not only to the legal system but also to other disciplines, including business. The module encompasses both the common law and statutory legal framework, including the range of remedies and legal fora relevant to each.

This module serves to directly underpin programme learning outcomes 1, 2, 3, 4, 5, 6.

3.13.5 Information provided to learners about the module

Learners will receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

Additionally, this material will be made available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

3.13.6 Module content, organisation and structure

Commercial Law is an elective module that is delivered over a 12 week period with two hours of direct contact for full time and part time learners per week. Learning outcomes are articulated using the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014)* and for *Generic Higher Education and Training (July 2014)*.

The topics covered in this module are:

- Partnerships
- Agency
- Sale of Goods and Supply of Services
- State Commerce
- Carriage of Goods
- Hire Purchase Insurance
- Banking, Payment Mechanisms and Securities
- Consumer Protection
- International Trade
- Intellectual Property
- Competition
- Regulated Industries
- Arbitration

3.13.7 Module teaching and learning (including formative assessment) strategy

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Commercial Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical commercial law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

3.13.8 Work-based learning and practice-placement

Commercial Law is a class-based module and does not require work-based learning and practice placement.

3.13.9 E-learning

Moodle is used to disseminate notes, advice, and online resources to support the learners. Moodle can be accessed in the learner's home, various open labs on campus and in the library. The learners are also given access to Lynda.com as a resource for reference.

3.13.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module. The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

3.13.11 Reading lists and other information resources

Primary Reading:

White, F. (2012) *Commercial Law*. Dublin: Thomson Round Hall.

Forde, M. (2005) *Commercial Law*. London: Bloomsbury Professional

Secondary Reading:

Clarke M.A. (2017) *Commercial Law*. Oxford: Oxford University Press.

Baskind E., Osborne G., & Roach L., (2016). *Commercial Law*. Oxford: Oxford University Press.

Ryder, N., Griffiths, M., and Singh, L. (2012) *Commercial Law Policy and Principles*
Cambridge: Cambridge University Press.

White, F. (2011) *Commercial and Economic Law in Ireland*. Netherlands: Kluwer

Ebers, M., Janssen, A., & Meyer, O. (2009) *European Perspectives on Producers' Liability*.
Germany: Sellier European Law Publisher

Griffin, P. (2002) *European Commercial Law*. London: Bloomsbury Professional

3.13.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

3.13.13 Module summative assessment strategy

The module is assessed through a written examination worth 100%. The examination consists of an equal choice of both essay and problem style questions. Essay style questions place emphasis on the learners' demonstrating their understanding of the fundamental principles of employment law, thereby assessing all learning outcomes. Problem style questions enable learners to apply principles of employment law to a factual scenario, thereby assessing all learning outcomes but with a particular emphasis on learning outcomes iii and vi.

The assessed work breakdown can be seen in the table below.

No.	Description	MIMLOs	Weighting
1	Exam	i, ii,iii,iv,v, vi	100%

3.13.14 Sample assessment materials

Sample Examination

Answer any three of the following questions.

All questions carry equal marks.

Question 1

"A distinctive albeit not unique feature of insurance is that the relationship between insurers and their assured is one of the utmost good faith, or *uberrimae fides*..." Forde, Commercial Law (3rd edition).

In light of the above statement, discuss the requirements imposed on an insured party by the doctrine of utmost good faith (sometimes referred to as *uberrimae fidei*). In doing so, discuss the consequences that flow from a failure to observe the duty of utmost good faith.

Sample Answer 1

Students should begin with the relevant statutory provisions, including section 18(1) of the Marine Insurance Act 1906 which provides:

“must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.”

Also, section 17 of the Marine Insurance Act 1906 provides:

“A contract of marine insurance is a contract based on utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.”

Some aspects of section 20 of the Marine Insurance Act 1906 may also be relevant.

*The leading case is the Supreme Court decision in *Chariot Inns v Assicurazioni Generali Spa* [1981] 1 IR 199 where Kenny J stated “Any misstatement in the answers given, when they relate to a material matter affecting the insurance, entitles the insurance company to avoid the policy and to repudiate liability if the event insured against happens. But the correct answering of any questions asked is not the entire obligation of the person seeking insurance: he is bound, in addition, to disclose to the insurance company every matter which is material to the risk against which he is seeking indemnity. What is to be regarded as material to the risk against which the insurance is sought? It is not what the person seeking insurance regards as material, nor is it what the insurance company regards as material. It is a matter or circumstance which would reasonably influence the judgment of a prudent insurer in deciding whether he would take the risk, and, if so, in determining the premium which he would demand.*

The standard by which materiality is to be determined is objective and not subjective. In the last resort the matter has to be determined by the court: the parties to the litigation may call experts in insurance matters as witnesses to give evidence of what they would have regarded as material, but the question of materiality is not to be determined by such witnesses.”

*Also Supreme Court decision in *Aro Road and Land Vehicles Ltd v Insurance Corporation of Ireland* [1986] IR 403 per Henchy J: “Generally speaking, contracts of insurance are contracts *uberrime fidei*, which means that utmost good faith must be shown by the person seeking the insurance. Not alone must that person answer to the best of his knowledge any question put to him in a proposal form, but, even when there is no proposal form, he is bound to divulge all matters within his knowledge which a reasonable and prudent insurer would consider*

material in deciding whether to underwrite the risk or to underwrite it on special terms.”

In Pan Atlantic Insurance Co. Ltd v Pine Top Insurance Co. Ltd [1994] 3 All ER 581 the House of Lords adopted an “inducement” test that sits alongside the traditional “prudent insurer” test for materiality. Per Lord Mustill:

“... there is to be implied in the [Marine Insurance Act 1906] a qualification that a material misrepresentation will not entitle the underwriter to avoid the policy unless the misrepresentation induced the making of the contract, using ‘induced’ in the sense in which it is used in the general law of contract.”

The doctrine is applied within reason. Later cases highlight that doctrine does not extend to what the insured does not know (i.e. Keating v New Ireland Insurance Company [1990] 2 I.R. 383 and Coleman v New Ireland Assurance plc [2009] IEHC 273).

Question 2

Bill Reilly runs a company named Coffee Rules. The company has recently developed several innovations.

The company has developed a new technique for harvesting coffee beans. The beans are harvested by using new technology which rapidly shakes the stem of the plant. The fallen beans are then collected by the machine at ground level. This process has not been used to date in the industry. Bill wants to ensure that it is protected, if possible, as it drastically improves the volume of coffee beans that can be harvested at any time.

Ronan Jones works for Coffee Rules. Ronan is also a part time artist. While at home in his studio one day, Ronan created an attractive shape that resembles the silhouette of a coffee cup. Bill has seen this and is very impressed and asked Ronan whether he could use the design as a trademark.

Bill has recently submitted an application to register Ronan’s design as a trademark, however he has been notified that a competitor has objected to the registration of the trademark on the grounds that the trademark is one that is prohibited from registration. Bill has asked you for advice as to the procedure for registering a trademark, the grounds for objecting to a trademark and the defences available in infringement proceedings.

Advise Bill on each of the legal issues arising in respect of each of these innovations.

Sample Answer 2

There are two issues in this question. First, the new harvesting system can be patented under the Patents Acts of 1992 to 2006. Essentially a patent grants the owner a monopoly right in respect of an invention, enabling him to exploit the invention for a number of years to the exclusion of other people. Section 9(1) of the 1992 Act, as amended by the 1996 Act provides that the following inventions are patentable:

“(1) An invention, in all fields of technology shall be patentable under this Part if it is susceptible of industrial application, is new and involves an inventive step.”

Section 9(2) specifically excludes certain matters from patentability. It provides: "Any of the following in particular shall not be regarded as an invention within the meaning of subsection (1):

- (a) a discovery, a scientific theory or a mathematical method,*
- (b) an aesthetic creation,*
- (c) a scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer,*
- (d) the presentation of information."*

The definition of a patentable invention, as can be seen above, has four components: (i) an invention, (ii) susceptible to industrial application, (iii) novelty and (iv) an inventive step. Students should discuss each of these four requirements.

The second issue is the logo devised by Ronan Jones. He appears to have devised this on his own time and in a personal capacity. Accordingly, the company should purchase the copyright in the logo from Ronan Jones and register it as a trade mark.

The procedure for applying to register a trademark is as follows: Applications for registration are lodged in writing on a standard form to the controller and must include:

- a document indicating that registration of a trade mark is sought and containing the name and address of the person requesting registration;*
- a document containing a representation of the mark the registration of which is sought;*
- a document in which the goods or services in respect of which the mark is to be registered are stated.#*

The controller may refuse or accept, or seek clarification, or accept subject to conditions, the application.

The types of trademark that may not be registered include:

- Marks devoid of any distinctive character,*
- Marks which consist exclusively of signs or indications that may be used in a trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods, or of rendering a service, or other characteristics of goods or services,*
- Marks which consist exclusively of signs or indications that may be used customary in the current language,*
- A sign which consist exclusively of a shape that results from the nature of the goods themselves,*
- Marks contrary to public policy, order or morality, or marks that are likely to deceive the public,*
- Marks similar or identical to those already in existence and that are likely to cause confusion on the part of the public.*

The defences to infringement proceedings include the following: to show that there is use of another registered trade mark in relation to goods or services for which that other trade mark was registered, and “(a) the use by a person of his own name or address, (b) the use of indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service or other characteristics of goods or services; or (c) the use of the trade mark where it is necessary to indicate the intended purpose of a product or service, in particular, as accessories or spare parts, provided that such use is in accordance with honest practices in industrial and commercial matters.”

Question 3

Anna Jones is a receptionist at Grimes College. She is seated in the main building. Above her head is a large sign bearing the college’s logo which reads “inquiries and admissions.”

In October this year, a student named Laura Ryan (fictitious), completed an application form for a course at Grimes College and placed the application form into an envelope, along with payment for the course and gave it to Anna Jones, who lost the envelope.

In November, Laura Ryan noticed that roadworks were being carried out on the street outside the main gate which was closed. She went inside to ask Anna Jones who told her, mistakenly, to use Gate B. Gate B has not been used in many years as it is a dangerous exit onto a main road. Mistakenly, Anna failed to mention that in fact Gate C was open and for use on the night in question. Gate C opens on to a smaller road and is a safe exit. While exiting the college via Gate B, Laura crashed her car.

Finally, while working late one night a huge leak emerged from the ceiling. Fearing that extensive damage could be caused to the campus, Anna switched off the electricity to the entire college. As a result of this, the floodlights on campus extinguished. Bob Reilly was walking back to dormitory later that night and slipped and injured his foot. He blames the lack of lighting for his fall.

Grimes College is concerned whether it might be liable for the actions of Anna. Advise Grimes College.

Sample Answer 3

Students should identify that this is a question that concerns the issue of agency. If agency is established, Grimes College will be liable for the actions of its agent.

Students should identify the three forms of authority: actual authority, ostensible authority and customary authority (also known as “usual authority”).

*With reference to the lost payment, it is likely owing to the doctrine of ostensible authority that a contract subsists between the college and Laura. (Students should refer to *Kett v Shannon* and *English* [1987] ILRM 364 and *Hely-Hutchinson v Brayhead* [1967] 1 QB 549).*

With reference to the advise on use of the gate, it is also likely that any agency can be made out here on the basis of ostensible authority.

The final incident is also likely based on an agency relationship. It would appear to be an agency based on necessity. The factors that must be established for such an agency are:

- *That the agent could not get instructions from the principal,*
- *The agent must have acted in the principal's interests and bona fide,*
- *The agent's actions must be reasonable,*
- *There was necessity or urgency.*

Question 4

"Payment by the physical delivery of money (ie coins and bank notes) from payer to payee can be both expensive and risky. This has led to the development of various payment mechanisms and payment systems..." Paget's Law of Banking (14th edition).

In light of the above statement, analyse the merits of the primary means of payment in commercial transactions.

Sample Answer 4

Students should identify the primary payment methods of cash in advance and trading on an open account. The limitations of these methods are that only the buyer is satisfied with the open account method, but the seller is happy with payment in advance. In that sense these two methods are not going to satisfy one of the parties. Students are then expected to identify the possibility of payment by bills of exchange and letters of credit and the fact that these two methods provide a means of reconciling the payment preferences of buyer and seller.

Question 5

"An appeal from a decision of an expert tribunal is not exactly like appeal from a decision of a trial court. Presumably if Parliament entrusts a certain matter to a tribunal and not (initially at least) to the courts, it is because the tribunal enjoys some advantage the judges do not. For that reason alone, review of the decision of a tribunal should often be on a standard more deferential than correctness..." Canada (Director of Investigation and Research) v. Southam Inc. (1997) 1 SCR 748, per Iacobucci J.

Critically evaluate the remedies available in Irish law in respect of incorrect or flawed decisions taken by regulatory bodies.

Sample Answer 5

Students should analyse the difference between an appeal and judicial review. The difference between an appeal and judicial review was addressed by Charleton J in Manorcastle Limited v Commission for Aviation Regulation [2008] IEHC 386 in which he stated:

“One particularly noteworthy aspect of the appeals process is the fact that if the High Court considers that the appeal should be allowed, the respondent is automatically obliged to grant a licence. The ordinary position in judicial review is that when the High Court finds a decision to be erroneous, the matter is returned to the original decision-maker for re-consideration.”

Also, an appeal generally concerns merits-based arguments. In other words, an appeal usually involves arguments that the particular decision was incorrect. By contrast, judicial review usually refers to the process by which the decision was arrived at.

*Some decisions of the courts also suggest that the very fact that an Act provides for an appeal to the courts suggests that the appeal must have a wider ambit than the traditional judicial review grounds. See for example *Dunne v. Minister for Fisheries* [1984] I.R. 230 where it was stated that:*

“... the Oireachtas must have intended that the Court's jurisdiction on an appeal should be wider than its powers when exercising its inherent [judicial review] jurisdiction at common law.”

Also, while the courts may intervene to quash a decision on judicial review or overturn it on appeal, a question is always present as to the extent to which the courts should interfere in the decisions of regulatory bodies. After, all where a body is established to “deal with” certain matters, it is implicit in the legislation that the legislature intended to remove these issues from the courts. The degree to which a court will give a regulatory body (or any public decision maker) judicial space is a phenomenon known as “deference” or “curial deference.”

Students might also comment on the inconsistency in the legislature in providing only for appeals from some regulatory decisions.

*Students might also note the failure on the part of the legislature (often) to provide for the appropriate standard of appeal: e.g. *de novo* appeal or appeal on point of law. In that regard, students might refer to *M & J Gleeson v Competition Authority* [1999] 1 ILRM 401 and *Orange Ltd v. Director of Telecoms (No. 2)* [2000] 4 IR 159.*

Question 6

John McBride is the CEO of Alcatel DAC. Alcatel DAC trades with countries all over the globe. It sells highly innovative products to sophisticated technology companies. Regularly, highly technical disputes arise as to whether the goods supplied conform to the contract. This often requires engineering expertise to fully appreciate the complaint. John has found that these disputes are not satisfactorily resolved through the courts as he feels that judges and lawyers do not grasp the technological aspects of the case.

In addition, in the course of these disputes Alcatel suffers enormous global reputational damage and pays enormous fees in travel expenses as it sends teams of engineers away to attend court cases for weeks at a time.

Advise John as to how arbitration might be a more suitable means of dispute resolution for Alcatel.

Sample Answer 6

Arbitration may be suitable for Alcatel DAC as arbitrators may be selected by the parties to the dispute and they may choose engineers to be arbitrators if necessary. This will assist as he feels that the judges do not understand the case.

Arbitration may also be held in private, thereby avoiding the reputational damage. Finally, Alcatel might be able to select a more appropriate (i.e. domestic) forum for the resolution of these disputes which will cut down on the costs of sending witnesses abroad.