

Creditors' Rights and Insolvency Law

Single subject and programme course

15 credits

Kredit- och obeståndsrätt

747A33

Valid from: 2010 Autumn semester

Determined by

The Quality Board at the Faculty of Arts
and Sciences

Date determined

2010-06-17

Revision date

2013-05-29

Main field of study

Commercial Law

Course level

Second cycle

Advancement level

A1N

Course offered for

- Master's Programme in Commercial and Business Law with focus on Europe
- Master Programme in Commercial and Business Law
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Entry requirements

Bachelor's Programme in Commercial or Business Law, or the equivalent
English and Swedish corresponding to the level of English and Swedish in
Swedish upper secondary education (Engelska 6 and Svenska 3)

Intended learning outcomes

On completion of the course, the student should be able to

- demonstrate advanced understanding of the meaning of the concept pairs ownership-creditors' rights, law of obligations-property law, claim-demand note, ownership share-certificate of membership and shareholders' equity-borrowed funds
- demonstrate advanced understanding of the meaning of the concepts/principles property objects/wealth, principle of specialty, surrogation, separation right, and priority right.
- demonstrate advanced knowledge of creditor's rights and the part of law that regulates transfer and pledge of single claims, contract claims and claims that have promissory notes
- demonstrate advanced knowledge of property law
- demonstrate advanced knowledge of securities law
- demonstrate advanced knowledge of insolvency law
- demonstrate basic knowledge of EU law concerning injunction to pay, European writ of execution for uncontested claims and insolvency processes
- demonstrate advanced ability to independently and constructively identify and analyse risks based on legal and/or economic perspectives, and formulate and assess action alternatives regarding a) to acquire the right to permanently use certain property b) to finance an investment in certain property or an acquisition of other utility c) to secure a credit or an accommodation d) to force performance of a claim/to avoid being forced to perform a commitment that is perceived as not binding e) reconstruction of a business operation f) other questions that fall within the scope of knowledge of this course
- demonstrate advanced ability to apply legal and economic knowledge, within the scope of knowledge of the course, to proactively secure the interest of a principal, regardless of if the principal is a party or only in another way is affected by the relevant transaction
- demonstrate ability to plan and, with adequate methods, perform a task within given frames
- demonstrate ability to orally account for and discuss the assessments made clearly as well as the knowledge and the arguments that these are based on.

Course content

The studies focus on the legal relationship between legal entities concerning the object of property obligation.

Initially, certain dichotomies and their related legal concepts are clarified, which may support clarifying fundamental legal notions of demands and the fundamental features of the legal regulation of obligation relations.

The course then covers the object of property claims; the different types of claims and how these arise (*res nullius*), the limitations of the independent demand and what decides the identity of the independent demand, how the properties of the demands can be changed without changing their identity, to what extent demands can be subject to change in ownership or grant of lien or right of use, through what types of derivative and extinctive acquisition, such as ownership, lien or right to use of an obligation may be acquired, and through what legal documents a claim can cease to exist.

In connection with the treatment of extinctive acquisition of the ownership of an obligation, and lien/right to use of the obligation, extinctive acquisition of other kinds of property is also addressed. To some extent, this is a repetition of what has been studied at the first-cycle level, but mainly this is to create the overall picture of the property law that is fundamental for the included studies of seizure, bankruptcy and reconstruction.

The subsequent part of the course covers the relationship, from a bond law perspective, between the owner of the claim (creditor) and the individual to which the claim is directed (debtor). Who may call for performance, who may be called, how and by what means should the performance be carried out, to whom may the debtor perform action to discharge liability, what objections can the debtor claim regarding the performance liability? These questions are covered both in terms of the relationship between the debtor and the first creditor and the relationship between the debtor and the creditor who has acquired the claim through a derivative/extinctive acquisition.

The course then covers legal methods through which the creditor's right of performance is strengthened, including: suretyship, bank guarantee, right to possess/repossess, title retention clause, right of retention, lien, security transfer, company mortgage, separation rights to accounting funds, timber marking, and priority rights.

Finally studied are the legal means of coercion that creditors may use when the debtor does not want/can fulfil the commitment, including payment reminders, debt collecting, injunctions to pay and judicial assistance, seizure of personal and real property (singular execution) and bankruptcy (general execution). In connection with this, the course also covers the means of coercion that an insolvent business owning debtor may use to avoid business closure, namely suspension of payment and reconstruction with or without accord.

Teaching and working methods

The teaching takes the form of lectures and seminars, where participation in all seminars is compulsory. The teaching is focused on providing the course participants good support in their work by, through independent studies, individually or in groups, translate the information that is acquired from law text and course literature into own knowledge. This work is also supported by written assignments, which should be solved independently or in groups.

Examination

The course is examined through participation in the above mentioned seminars, accomplishing of above mentioned written assignments and through written independent examination. Detailed information can be found in the study guide.

If the LiU coordinator for students with disabilities has granted a student the right to an adapted examination for a written examination in an examination hall, the student has the right to it. If the coordinator has instead recommended for the student an adapted examination or alternative form of examination, the examiner may grant this if the examiner assesses that it is possible, based on consideration of the course objectives.

Students failing an exam covering either the entire course or part of the course twice are entitled to have a new examiner appointed for the reexamination.

Students who have passed an examination may not retake it in order to improve their grades.

Grades

Three-grade scale, U, G, VG

Other information

Planning and implementation of a course must take its starting point in the wording of the syllabus. The course evaluation included in each course must therefore take up the question how well the course agrees with the syllabus.

The course is carried out in such a way that both men's and women's experience and knowledge is made visible and developed.

Department

Institutionen för ekonomisk och industriell utveckling