

Global Law Program

Fundação Getúlio Vargas

DIREITO GV

Syllabus

Regular courses - 2 months courses
Spring Semester 2014

Global Law Program - Fundação Getulio Vargas

Course: Introduction to Brazilian Legal System

Professor: Nara Taga and Flavio Rubinstein

Workload: 30 hours

Credits: 2

Overview:

The main object of this course is to introduce foreign students to the Brazilian Legal system. After a brief overview of the main features of the 1988 Constitution, the course will focus in our system of constitutional review, especially on the role of the Supreme Court. The course will certainly have a comparative perspective, to help students understand the peculiarities of the Brazilian system vis-à-vis their own constitutional systems. The subpart of the *Introduction to Brazilian Legal System* discipline provides an overview of the basic concepts underlying Brazilian tax law. Subjects covered in this introductory course include the assignment of federal and subnational taxes, the main principles and rules of individual and corporate taxation and the tax law treatment of inbound and outbound transactions and investments. Special emphasis is placed on selected issues of Brazilian taxation with an international impact.

The course aims to develop on student's knowledge on the various sources and core concepts of Brazilian tax law, as well as critical analytical skills on the structure of the Brazilian tax system and its policy implications, with a special emphasis on inbound and outbound transactions and investments.

References:

- ✓ Afonso, José Roberto; Barroso, Rafael, *BRAZILIAN TAX AFFAIRS* (Latin American and Caribbean Law and Economics Association Annual Papers, 2007) (transcript available at: <http://www.escholarship.org/uc/item/1rf7690j>).
- ✓ Rubinstein, Flavio, *Brazil*, in *TAX ASPECTS OF FISCAL FEDERALISM: A COMPARATIVE ANALYSIS*, (Claudio Sacchetto and Gianluigi Bizzoli, ed.), Amsterdam: IBFD, (forthcoming; an electronic draft will be circulated by the professor).
- ✓ Afonso, José Roberto; Rezende, Fernando, *THE BRAZILIAN FEDERATION: FACTS, CHALLENGES AND PROSPECTS* (Stanford University Center for Research on Economic Development and Policy Reform, Working Paper 149, 2002) (transcript available at: <http://www.stanford.edu/group/siepr/cgi-bin/siepr/?q=system/files/shared/pubs/papers/pdf/credpr149.pdf>).
- ✓ McLure, Charles E, *The Brazilian Tax Assignment Problem: Ends, Means and Constraints*, in *A REFORMA FISCAL NO BRASIL*, São Paulo: Fundação Instituto de Pesquisas Econômicas, 45-71 (1993).
- ✓ Schoueri, Luís Eduardo, *National Report: Brazil*, in *THE EU AND THIRD COUNTRIES: DIRECT TAXATION* (Michael Lang; Pasquale Pistone, ed.), Viena: Linde, 639-681 (2007).



- ✓ CONTRIBUTION TO THE HISTORY OF TAX TREATIES: THE BRAZILIAN EXPERIENCE (2008) (transcript available at: <http://www2.wu-wien.ac.at/taxlaw/events/Conferencepapers/Rust2008/NRRust2008BrazilSchoueri.pdf>).
- ✓ Souza, Celina, Brazil's Tax System: The Dilemmas of Policy Reform (Fondation canadienne pour les Amériques Working Paper FPP-05-02, 2002) (transcript available at: http://www.focal.ca/pdf/brazil_tax.pdf)
- ✓ Ter-Minassian, Teresa, *Brazil, in* FISCAL FEDERALISM IN THEORY AND PRACTICE (Teresa Ter-Minassian ed.), Washington: International Monetary Fund, 438-456 (1997).
- ✓ World Bank, BRAZIL: ISSUES IN FISCAL FEDERALISM (Report No. 22523-BR, 2002) (transcript available at: <http://siteresources.worldbank.org/BRAZILINPOREXTN/Resources/3817166-1185895645304/4044168-1186403960425/51IssuesFiscalFederalism.pdf>).

Global Law Program - Fundação Getúlio Vargas

Course: Banking Regulation

Professor: Bruno Salama

Workload: 30 hours

Credits: 2

Overview:

The course sheds light on economic, political and historical aspects that underlie the laws, regulations and institutions of banking regulation.

The course discusses the political, legal and economic dimensions of financial regulation. It starts out by describing the subprime bubble that set the financial crisis of 2007–2008 in motion. The rest of the course is a description of political, legal and economic topics that – while being themselves of specific interest – shed light on the most pressing theoretical questions raised by the crisis.

References:

- ✓ <http://en.wikipedia.org/wiki/Capitalism>;
- ✓ <http://www.law.harvard.edu/programs/about/pifs/symposia/brazil/rio-2012-final-report.pdf>
- ✓ http://en.wikipedia.org/wiki/Free_banking
- ✓ Canuto, Law & Macro
- ✓ http://en.wikipedia.org/wiki/Hegemonic_stability_theory

Global Law Program - Fundação Getúlio Vargas

Course: Digital Democracy

Professor: Monica Guise

Workload: 30 hours

Credits: 2

Overview:

The course explores themes related to the digital environment and the exercise of democracy, aiming to better understand the concept of digital democracy. Does the internet affect government and government policies? E-government. How can digital technologies contribute to the deficit in political participation we see in contemporary democracies? Business models based on public open data. Big data and open government. Transparency. Access to information. Data protection. Virtual participation in legislative procedures. Civil Rights Framework for the Internet. Copyright Law Reform.

References:

- ✓ ARMSTRONG, Charles. Emergent Democracy. In. LATHROP, Daniel (org.). Open Government: Collaboration, Transparency and Participation in Practice. California: O'Reilly Media, 2011. P. 169-178
- ✓ BOOTH, David R. Peer Participation and Software. Massachusetts: The MIT Press, 2010.
- ✓ HALONEN, Antti. Being Open About Data: Analysis of the UK open policies and applicability of open data. (Disponível online). Ch. 3. "Freedom-of-information continuum".
- ✓ NEWSOM, Gavin. Citizenville: How to take the town square digital and reinvent government. New York: The Penguin Press, 2013.
- ✓ NOVECK, Beth. The Single Point of Failure. In. LATHROP, Daniel (org.). Open Government: Collaboration, Transparency and Participation in Practice. California: O'Reilly Media, 2011. P. 51 – 72.
- ✓ SHIRKY, Clay. Here Comes Everybody. New York: The Penguin Press, 2008. Ch. 1-2.
- ✓ SCHULER, Douglas. Online Deliberation and Civil Intelligence. In. LATHROP, Daniel (org.). Open Government: Collaboration, Transparency and Participation in Practice. California: O'Reilly Media, 2011. P. 93-106
- ✓ TAUBERER, Joshua. Open Government Data. (Disponível Online) Ch. 1-2.
- ✓ BENKLER, Yochai. The Penguin and the Leviathan: How Cooperation triumphs over self-interest. New York: Crown Business, 2011.
- ✓ GOMES, Wilson. Participação Política Online: Questões e Hipóteses de Trabalho. In. MAIA, Rousiley. GOMES, Wilson. Internet e Participação Política no Brasil. Porto Alegre: Sulina, 2011. P. 19-45.
- ✓ Zuckerman and McLaughlin, Introduction to Internet Architecture and Institutions (2003). Available online.

Course: Deals: Commercial Transactions in Brazil

Professor: Mariana Pargendler

Workload: 30 hours

Credits: 2

Overview:

This course addresses value creation by business lawyers by examining how private parties structure their business transactions in Brazil. It will focus, in particular, on the extent to which deal structures that are prevalent in the United States can travel well, or require adjusting, to this particular context. The first part of the course will explore barriers to contracting, such as risk and uncertainty, information problems, contract enforceability, and the Brazilian legal and economic environments, as well as the tools available to overcome those barriers. The second part of the course will examine how the patterns of corporate ownership and control prevailing in the region shape the style and structure of business deals. Throughout the course, we will apply these concepts to a series of transactions that reflect the changing economic landscape in Brazil.

References:

- ✓ BHAGAT, Sanjai; KLASA, Sandy; LITOV, Lubomir P. The Use of Escrow Contracts in Acquisition Agreements (working paper, 2013), available at <http://ssrn.com/abstract=2271394>.
- ✓ DYCK, Alexander; ZINGALES, Luigi. Private Benefits of Control: An International Comparison. *The Journal of Finance*, v. 59, 2004, p. 537-600.
- ✓ DAMMANN, Jens; HANSMANN, Henry. Globalizing Commercial Litigation. *Cornell Law Review*, v. 94, n.1, 2008, p. 31-39.
- ✓ FARNSWORTH, E. Allen. A Common Lawyer's View of His Civilian Colleagues. *Louisiana Law Review*, v. 57, 1996, p. 227-237.
- ✓ GILSON, Ronald J. Value Creation by Business Lawyers: Legal Skills and Asset Pricing. *Yale Law Journal*, v. 94, 1984, p. 239-313.
- ✓ GORGA, Érica. Corporate Control & Governance after a Decade from "Novo Mercado": Changes in Ownership Structures and Shareholder Power in Brazil. *Indiana Law Review* (forthcoming).
- ✓ GORGA, Érica; HALBERSTAM, Michael. Litigation Discovery and Corporate Governance: The Missing Story About the "Genius of American Corporate Law", *Emory Law Journal* (forthcoming) (selected pages).
- ✓ HILL, Claire; KING, Christopher. How do German Contracts Do as Much with Fewer Words?. *Chicago-Kent Law Review*, v. 79, 2004, p. 889-926.
- ✓ KHANNA, Tarun; YAFEH, Yishai. Business Groups in Emerging Markets: Paragons or Parasites?. *Journal of Economic Literature*, v. 45, n. 2, 2007, p. 331-372.
- ✓ KRAIEM, Rubén. Leaving Money on the Table: Contract Practice in a Low-Trust Environment. *Columbia Journal of Transnational Law*, v. 42, 2003-2004, p. 715-752.
- ✓ LERNER, Josh; SCHOAR, Antoinette. Does Legal Enforcement Affect Financial Transactions? The Contractual Channel in Private Equity. *The Quarterly Journal of Economics*, v. 120, n. 1, 2005, p. 223-246.

- ✓ MUSACCHIO, Aldo; LAZZARINI, Sergio G. Leviathan in Business: Varieties of State Capitalism and their Implications for Economic Performance. Harvard Business School Working Paper (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2070942.
- ✓ PARGENDLER, Mariana. State Ownership and Corporate Governance. Fordham Law Review, v. 80, n. 2917, 2012, p. 2918-2924 and 2932-2942.
- ✓ PARGENDLER, Mariana; MUSACCHIO, Aldo; LAZZARINI, Sérgio G.. In Strange Company: The Puzzle of Private Investment in State-Controlled Firms. Harvard Business Scholl BGIE Unit Working Paper No. 13-071, July, 2013, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2217627.
- ✓ PERKINS, Susan; MORCK, Randall; YEUNG, Bernard. Innocents Abroad: The Hazards of International Joint Ventures with Pyramidal Group Firms. NBER Working Paper No. 13914, April, 2008, available at <http://www.nber.org/papers/w13914.pdf>.
- ✓ SCOTT, Robert E.; TRIANTIS, George G. Anticipating Litigation in Contract Design. Yale Law Journal, v. 115, 2006, p. 814-879.
- ✓ TREBILCOCK, Michael; LENG, Jing. The Role of Formal Contract Law and Enforcement in Economic Development. Virginia Law Review, v. 92, 2006, p. 1517-1580 (skip pp. 1554-1572).

Global Law Program Fundação Getúlio Vargas DIREITO GV

Syllabus

Visiting Professor – Short Term Courses Spring Semester 2014

Global Law Program – **Visiting Professor**

Course: International Law of Development

Professor: Paolo Galizzi

Workload: 15 hours

Credits: 1

Overview:

Promoting development and poverty eradication are among the objectives at the top of the international agenda for the 21st century. The crucial role that development plays in promoting peace and security has been recognized, inter alia, by the United Nations in the landmark Millennium Declaration, which set out the new international agenda for the 21st century. The Declaration reaffirms the international community's commitment to fundamental values essential to international relations: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. The Declaration identifies key objectives to translate these values into concrete actions and affirms, inter alia, that development and poverty eradication are necessary to contribute to the creation of a peaceful and secure world environment. Promoting development and poverty eradication are central goals for many leading international organizations. For example, the World Trade Organization's (currently stalled) round of negotiations on further trade liberalization is concentrating on the adoption of measures to increase and share more equitably the (alleged) benefits of free trade for developing countries (Doha Development Round). The World Bank, one of the leading international economic organizations, is fully devoted to creating a "world free of poverty".

During this course, we will examine the international legal rules and policies, the activities of States, international organizations and other entities aimed at promoting development and poverty eradication. The course will critically assess existing theories, rules and policies on development and will require students' participation.

We will begin with an examination of the main theories and concept(s) of development. We will be asking ourselves, inter alia, what is development? How do we measure development? What kind of development should the international community promote? Is there a right to development?

We will then continue with a discussion of the international legal rules designed to promote development by analyzing the activities of the principal international organizations working in this field: the United Nations; the World Bank Group and the World Trade Organization. Finally, the course will conclude with an evaluation of existing rules and policies, their weaknesses and strengths and suggest possible improvements to the existing instruments that could further enhance the promotion of development and poverty eradication.

Global Law Program – **Visiting Professor**

Course: Secured Transactions in Transnational Perspective

Professor: Michael Schilling

Workload: 15 hours

Credits: 1

Overview:

The course is set against the background of the globalization of the flows of goods, services and capital and the internationalization of business practices. Whereas contract law is a well-researched and widely taught topic in this context, the implications of personal property law and secured transactions are often neglected. This course aims to close this gap.

It focuses on the nature and characteristics of rights in personal property in Common law (England and Wales, United States) and Civil law (Germany, France) as well as at transnational level. It will cover the transfer of title in chattels, debt receivables and investment securities; the creation and transfer of security interests and the legal nature of modern funding techniques. In this context we will analyse at Articles 8 and 9 of the Uniform Commercial Code and the EU Settlement Finality and Financial Collateral Directives. We shall also consider Article 2A UCC (on equipment leases), the UNIDROIT Convention on International Financial Leasing, the UNIDROIT Convention on International Factoring, the UNIDROIT Convention on International Interests in Mobile Equipment, and the UN Convention on the Assignment of Receivables in International Trade, as well as the proprietary aspects covered by the Draft Common Frame of Reference. As far as industry practices are concerned, we shall discuss the financial industry's Swap and Repo Master Agreements and their use and status especially in the area of the netting of exposures.

Global Law Program – **Visiting Professor**

Course: EU and Brazilian Competition Law and Economics

Professor: Heba Shahein

Workload: 15 hours

Credits: 1

Overview:

The aim of the module is to introduce the GLP students to EU and Brazilian competition rules policy. Another objective of the module is to understand the variety of fundamental goals of competition law and how these goals influence the approach to specific issues in the EU and Brazil.

The module examines the fundamental principles of the Brazilian Competition Policy System (BCPS) and EU Competition Law and Economics in a comparative perspective. The module analyses the fundamental provisions of EU and Brazil competition law in particular vertical and horizontal agreements; abuses of market power and the EC Merger Regulation. It is case-law focused. The module examines how both (Brazil and the EU) legal systems deal with the above-mentioned competition law issues.

Having successfully completed the module, students will be able to demonstrate a critical knowledge of substantive issues in Brazilian and EU competition law and economics with particular focus on: vertical and horizontal agreements; abuse of dominant position; and merger control law and policy.

Knowledge of Brazil and EU enforcement and substantive approaches is helpful when dealing with competition laws for various reasons: (1) both Brazil and EU competition law have an expansive extraterritorial reach, so that clients may have to consider these competition law regimes regardless of where the transaction takes place; (2) The EU and Brazil have an important trade relationship. The EU is today the main trade and investment partner for Brazil, ahead of China and the US. Brazil is the most important market for the EU in Latin America and a key country in Mercosur(3) In 1996, the Protocolo de Defensa de la Competencia del Mercosur (Protocol on the Protection of Competition in the Mercosur) was signed in Fortaleza. The Protocol established a regional competition policy in Mercosur; applicable when the anticompetitive behaviour had an impact on the intra-block trade. The rules this course covers will help with the analysis there too (4) even where there is no direct legal transplant from either the EU, the discussion about the fundamental goals of competition law is likely to be helpful in making a case under a foreign competition law.

Finally the course aims to promote interaction among academic scholars in law, Brazilian policymakers and enforcement officials and practitioners and the students. I suggest inviting on my course any of the following: Professor Elizabeth Farina at the University of Sao Paulo, and the Head of the Department of Economics. She was the President of the Brazilian Council for Economic Defence (CADE) (2004 to 2008); or The former acting president of CADE, Olavo Chinaglia, now a Partner at Veirano Advogados and who is also a staff member in Sao Paulo University; or Fernando Furlan, Managing partner at Furlan Associados Consultoria and who was the Chairman of CADE (2011-2012). I know the three of the above mentioned prominent name and it will be great to invite one or the three of them in the course. In addition, I know current staff in CADE and the Brazilian Finance Ministry that deal with competition that I could also invite. One of whom is on secondment for a year from the Portuguese Competition Authority and so knows both legal systems.

Global Law Program – Visiting Professor 2013

Course: Human Rights and Corporations

Professor: George Critchlow

Workload: 15 hours

Credits: 1

Overview:

In this course, we will examine questions relating to human rights and corporate accountability. We will look at corporate relations with third parties (e.g. governments, unions, press, and military); the influence of commercial, legal, and ethical considerations; the capacity of corporations to improve human rights and alleviate social problems; and how other actors (governments, non-governmental organizations, and the international community) can affect corporate behavior. We will look closely at examples of human rights violation in Africa and South America

It is important to understand at the outset that a human rights law class, perhaps more than most law courses, is by nature a class about moral philosophy, political science, cultural anthropology, religion, history, law, and commerce. There is no global sovereign empowered to legislate and enforce international norms in the way that individual sovereign states do. Instead, international human rights law, including the law that applies to corporations, evolves through treaties and the observance of customary norms. This consensus process naturally brings differing national, legal, moral, religious, and cultural traditions into play. It is not possible to understand the theory and practice of human rights law without paying attention to these matters

Of course, it is not possible to cover all important human rights issues and concerns in an intensive, five-day course. We will read about and discuss some aspects of human rights law only superficially. Other aspects will be studied more deeply in the context of a case study.

Educational Objectives

- Give students a brief overview of the sources of modern international human rights law and a framework for understanding how international norms might apply to corporate behavior
- Give students an opportunity to critically examine different philosophical points of view regarding the need to constrain the behavior of corporations, especially multinational corporations conducting business in poor countries
- Give students an opportunity to critically examine the details and history of a particular corporation's impact on an African nation
- Give students an opportunity to learn about current efforts by governments, the international community, and NGOs to establish and implement international norms relating to corporate conduct
- Give students an opportunity to engage in collaborative learning and communication by working in small groups and producing a group presentation

Global Law Program – **Visiting Professor 2013**

Course: Business Law
Professor: William Fox
Workload: 15 hours
Credits: 1

Overview:

The students will learn how to create a U.S. business entity such as a corporation or limited liability company. The students will learn how to work with both judicial opinions (court cases) and legislation in the formation of U.S. business law. The students will learn some techniques for drafting and negotiating contracts under U.S. law.

This is a survey course in United States business law. It will cover basic concepts and procedures for establishing various business entities in the United States such as sole proprietorships, partnerships, traditional corporations and limited liability companies. It will consider basic principles of United States contract law and the Uniform Commercial Code, emphasizing sale of goods among other things. There will be some special exercises in government regulation of business and rules of corporate conduct and business ethics. The instructor will also show how business law is made in the United States through court decisions as well as legislative statutes. There will be some exercises in contract drafting and negotiation under U.S. law.