

Global Law Program

Fundação Getúlio Vargas

DIREITO GV

Syllabus

Regular courses - 2 months courses
Spring Semester 2013

Global Law Program - Fundação Getúlio Vargas

Course: Introduction to Brazilian Legal System

Professor: Thiago Reis and Flavio Rubinstein

Workload: 30 hours

Credits: 2

Overview:

The course offers an overview of the Brazilian legal system, focusing particularly on the normative structures of constitutional and private law. The purpose of the first 5 weeks is to introduce students from other legal cultures to the particularities of the Brazilian legal system, to its historical and institutional background as well as to the main concerns of Brazilian legal scholars and practitioners today. The course will definitely have a comparative approach and will try to integrate the students' experiences in their home countries into their comprehension of Brazilian law, for instance by focusing on the international circulation of legal models and ideas in modern legal 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 students 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.

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Global Law Program - Fundação Getúlio Vargas

Course: Trends and challenges of criminal law today

Professor: Marta Rodriguez de Assis Machado

Workload: 30 hours

Credits: 2

Overview:

There's a general diagnosis – at least in western societies – that criminal law regulations and the intervention of its institutions have been expanded, covering new areas and affecting more and more people. This course will explore different aspects of this phenomenon, seeking to address its origins and consequences.

In order to understand the current practices of state intervention through the criminal law apparatus, we will situate them before different – concurrent and complimentary - theoretical explanations available to explain it sociologically (risk society paradigm, increase of individual responsibility, decline of the welfare state, security state's ascension etc.). Secondly, we will address the main consequences of this phenomenon, focusing on the structural challenges of criminal institutions to cope with complex innovative facts; the challenges of constraining State intervention to Constitutional standards, as well as the social consequences of the massive use of punishment and imprisonment. Brazilian case studies and data will be used to enlighten the discussions, as well as focused comparisons.

The course is structured after some key points regarding the shaping of national criminal politics today. They are all complex questions, full of nuances and allowing different point of views.

The classes will develop as a debate concerning a specific problem. All students should be prepared to participate in each class as engaged citizens in the public debate.

Each class a group of students will be previously assigned to defend one point of view or represent a specific organization or group of interest (eg. police, parliamentary, secretary of State, CEO of a private security company, economist, religious group, judge, public prosecutor etc). The others will be advocating for themselves as citizens.

Those who are assigned a specific position/ role should be able to identify the point of view, the mind frame and interests of this player and develop a coherent discourse.

In advocating for themselves or others, students should be previously prepared by the completing recommended readings. Individual complementary research is of the essence in order to gather empirical or historical data and broad the range of arguments.

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Global Law Program - Fundação Getúlio Vargas

Course: Regulation in Brazil: Infrastructure

Professor: Caio Mario da Silva Pereira Neto

Workload: 30 hours

Credits: 2

Overview:

This course will present an overview of the regulatory reform implemented in Brazil in the last 15 years. We will discuss the changes in the role of the State in infrastructure sectors, focusing on the transition from a development model based on state owned enterprises (SOEs) to a model in which the private entities play an important role in implementing and managing infrastructure projects. The course will address different institutional choices in regulatory reform and will present an overview of some of the main changes implemented in Brazil. Also, the classes will discuss the interaction of regulation and competition policy in infrastructures sectors, considering the increasing relevance of antitrust issues in many sectors submitted to regulatory reform. Examples will be drawn from different infrastructure sectors, including telecommunications, oil & gas and railways.

References:

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- ✓ PA 08012.002474/2008-24 (Case of 630ml Bottles); PA 08000.022579/1997-05 (White Martins-Abuse of Dominance)

Global Law Program - Fundação Getúlio Vargas

Course: Capital and Financial Markets in Brazil

Professor: Francisco Satiro

Workload: 30 hours

Credits: 2

Overview:

The course will provide a through view of some Brazilian capital market aspects, with specific emphasis on secondary markets. After the 2008 global financial crises, the many problems involving derivatives revealed that structured transactions are far from ideal and regulation of risk management and investments should be reconsidered. The course will cover the regulatory structure of the market for derivatives and analyze the present setting for private equity and takeovers in Brazil. The main players and structures, checks and balances and the applied principles will be studied from a Brazilian perspective.

There will be mandatory readings for every class. Socratic and case study methods will be used. Students will be encouraged to comment in class and will be required to make decisions based on the class discussions

References:

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- ✓ Revista Capital Aberto – Ano 7 / nº 81 / May 2010 - BNDES: a negligent agent? – Part I
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- ✓ Control Values and Changes in Corporate Law in Brazil – Tatiana Nenova
- ✓ Can a Stock Exchange Improve Corporate Behavior? Evidence from Firms' Migration to Premium Listings in Brazil – Antonio Gledson de Carvalho and George G. Pennacchi
- ✓ Private Benefits of Control: An International Comparison – Alexander Dyck and Luigi Zingales
- ✓ Crise, inovação e regulação no mercado financeiro – considerações sobre a regulamentação do mercado de derivativos de balcão - Otavio Yazbek

ADMINISTRATIVE GOVERNANCE, INSTITUTIONAL DYNAMICS AND INDUSTRIAL FINANCING IN BRAZIL: NEW PARAMETERS, OLD PROBLEMS - Mario G. Schapiro

Global Law Program Fundação Getulio Vargas DIREITO GV

Syllabus

Visiting Professor – Short Term Courses Spring Semester 2013

Global Law Program – Visiting Professor 2013

Course: Law and Development in Emerging Economies: Comparing India, China, and Brazil

Professor: Jonathan Burton-Macleod

Workload: 15 hours

Credits: 1

Overview:

This course attempts—however presumptuously—to compare and contrast the economic development models of India, China, and Brazil. The study of emerging economies, particularly in relation to one another, is and should be a nuanced one. Most broadly, these three countries share a development model that appropriates and departs from neoliberal prescriptions. In other words, each context exemplifies a qualified embrace of capitalism, one that is intimately connected to existing—and unique—social and political characteristics. The result is that the development model (and political systems) for India, China, and Brazil are incredibly different, even as they are grouped as various iterations under the umbrella of State Capitalism. The course starts with an overview of a history of law and development, but quickly moves to an evaluation of contemporary growth models as decreasingly influenced by international economic forces and institutions, and increasingly influenced by elements of domestic political economy.

To study the avatars of Indian, Chinese, and Brazilian economic development is an exercise in the identification and separation of myth, group-think economics, and nationalist rhetoric. The drivers of growth in the case of India and China lie in the undergrowth of political systems and social realignments. This course is based on a course that I taught in 2012 at Jindal Global Law School, New Delhi. I include the original course description below, because I think the goals for that course translate into the current one. However, two important caveats must be made. First, in the study of emerging economies, the ground is always shifting. Over the past year, Brazil, along with India and China have all experienced worrying downturns in growth. The course will be geared towards analyzing joint, as well as distinctive, reasons for this shared, sharp downturn. Secondly, it is hoped that analyses of Indian and Chinese development models will be brought to bear on the Brazilian economic development experience. Continuing the theme outlined above, Brazil is yet again unique amongst emerging economic models in its reliance on indirect, widespread government ownership through the Brazilian National Development Bank and its investment subsidiaries, as well as its unique attributes in government spending on social programs. Can Brazil's development model and current economic policy be productively compared to that of India and China? How is Brazil posturing itself within the politics of realigning schemes of global governance, and is there any efficacy to the B(R)ICS working as a block to achieve some measure of shared goals?

A significant portion of India's identity, policy, and angst is defined in relation to China. India lags behind China in economic growth and in attracting foreign investment, making Indian economic policy makers uneasy, and sometimes reactionary. With the memory of the 1962 Sino-Indian conflict still painful, India's geopolitics has been built in the shadow of Chinese power. George W. Bush's identification of India as a 'buffer' against China serves only to confirm India's identity in relation to its Chinese 'other'. It is China's ruthlessly efficient autocracy against India's well-meaning, but bumbling democracy.

At least that is how the narrative goes. In reality, the relationship between India and China as Asia's 'rising tigers' is much more complex and nuanced than overbearing stereotypes suggest. It is not to be denied that

Chinese policy is given considerable notice in India. I recently ran a search that showed ‘China’ to be one of the most frequent words in Indian print media in articles about foreign investment. As another example, many commentators feel that India’s engagement with the trading bloc ASEAN is as much about strategy—making inroads into China’s backyard—as it is about economics. There are even indications that India is emerging economically from China’s shadow, hosting the fastest growing rates of foreign investment in four of the last five years (update: that have since precipitously declined).

Admittedly, China and India have very different legal, political and economic systems. However, they undeniably still share many of the same concerns because they are at similar stages of economic development. This means that they face similar levels of corruption, similar pressure from the international community, and exist at the edge of social crisis—a crisis that centers around issues of social and political inclusion. It is essential that China and India (and Brazil!) start to be studied together—not in competition with each other.

Global Law Program – Visiting Professor 2013

Course: Global Anti-Laundering/Countering the Financing of Terrorism System

Professor: Eduard Ivanov

Workload: 15 hours

Credits: 1

Overview:

The global system of international legal regulation of combating money laundering and financing of terrorism is barely 25 years old, but about 200 countries in the world now have AML/CFT legislation, which is largely derived from international agreements, such as the UN Conventions of Vienna and Palermo and FATF Standards. The common core of AML/CFT measures uses not only the criminal law, but also the regulation of relevant businesses and professions in order to combat money laundering and financing of terrorism at every stage. Lawyers, working in government agencies, banks, financial institutions, as well as advocates and notaries should have knowledge of international and national legal regulation of combating money laundering and financing of terrorism, understand role of global regulation and national specific. Russia is an important part of the international AML/CFT system, member of FATF, EAG, MONEYVAL, Egmont Group.

Due to the efforts of the UN and the OECD international system of combating corruption gradually formed. Not only public but also private sector is more and more involved in this process. During last 5 years Russia has enacted legislation to implement provisions of UN and OECD conventions.

The main objective of the proposed course is to familiarize students with norms of international law, norms of Russian and foreign legislation in the field of countering money laundering, terrorist financing and several aspects of countering corruption. They will also receive practical skills of implementation of compliance control in private sector. The target audience is both students of the DIREITO GV and foreign exchange students.

The course is aimed at developing the following knowledge and skills:

- knowledge of norms of international law, FATF- standards in the fields of countering money laundering and terrorist financing;
- overview of the activities of international organizations and groups: UN, OECD, FATF, FSRB's, Egmont Group;
- implementation of international legal norms and standards in the law and judicial practice of different countries;
- typologies of money laundering and financing of terrorism;
- practice of financial investigations in the Financial Intelligence Units;
- practical skills in the application of international legal norms, legislation of the Russian Federation and other countries in the field of prevention of money laundering and terrorist financing;
- exercise of internal control in organizations accomplishing transactions in amounts of money or other property, risk assessment, detection of suspicious transactions.

Methodology. Course based on the method of comparative legal analysis. Students will analyze norms of international law, FATF global standards, regional specific and national specific of legal regulation in Russia, USA, UK and other countries. Important role will play case-study based on the experience of law-enforcement bodies and FIU's from different jurisdictions.

Global Law Program – Visiting Professor 2013

Course: Corporate Personhood: The Legal and Economic Significance of Separate Entity Status for Corporations

Professor: Margaret Blair

Workload: 15 hours

Credits: 1

Overview:

This course would examine the evolution of legal rules in Europe and the Americas since the Renaissance by which corporations came to have a legal status that made them “persons” in the eyes of the law. We will consider the economic functions that “legal personhood” serves; how these functions have changed over time; how the law in various countries and legal systems serves this function; and the political problems that arise under different legal systems as a consequence of designating corporations as “persons.” In particular, at the end of the course, we will examine how the U.S. Constitution has been interpreted over time to provide Constitutional protections to corporations, and will consider how similar questions have been dealt with in other legal systems.

Corporations, especially large, publicly-traded corporations, are incredibly important institutions in modern capitalist economies, in part because corporations are able to accumulate and deploy massive amounts of resources for productive (and sometimes destructive!) activity. Corporate law makes this possible by creating a separate legal entity when each corporation is formed. That legal entity can buy, sell, and hold property in its own name (separate from the property of the individuals who organize the corporation), and the entity can exist indefinitely, even as its organizers, managers, directors, employees, or shareholders come and go. This course is designed to explore some of the legal and economic implications of the fact that corporations are treated by the law as separate legal “persons.” These implications include the fact that corporations are self-governed enclaves or islands of central planning within seas of markets; that a corporation can take on a “persona” that distinguishes it from any of its shareholders, managers, or employees, which helps it accumulate intangible assets such as brand and reputation; that corporate assets are “locked-in” and cannot be removed by shareholders or employees without an act by the board of directors; that corporations are taxed separately from their investors or employees; that shareholders have limited liability; and that corporate management can set up numerous separate corporations all controlled by one large parent company in order to avoid taxes or insulate some assets from risks associated with other assets.

Global Law Program – Visiting Professor 2013

Course: International Business Law

Professor: Prof. Dr. Zeynep Derya TARMAN

Workload: 15 hours

Credits: 1

Overview:

This course is an introduction to International Business Law and the legal systems of various countries. Students who are businesspersons, managers, lawyers, accountants or other internationally-oriented professionals will learn how firms' doing business between more than 185 countries are governed and regulated.

The module examines the key aspects of conflicts of laws principles, as they apply in the context of litigation concerning commercial matters. It has to be ascertained in which country's courts an international dispute can be brought or whether an alternative dispute resolution could be taken into account. After this question has been settled, the module then moves to a consideration of the choice of law process, and of the rules by which a Turkish court will determine the applicable law of a contract, or of other commercial transactions including international sales. Current developments in this field of law will be examined at a European level as well as a global level. The module will have an emphasis on the practical problems which arise in the international commercial arena.

The course will be taught through a combination of lectures and discussions. The contribution of the students through class participation will be highly encouraged. Giving the students an opportunity to analyze actual problems makes learning the techniques and concepts easier and more satisfying. Therefore problem-based learning is used as teaching method which requires students' active participation.

Global Law Program – Visiting Professor 2013

Course: International and European Union Development Law

Professor: Cristina Barenttini

Workload: 15 hours

Credits: 1

Overview:

This course is intended to offer an overview on the growth and strengthening of development law, from the point of view of international organizations and more specifically the European Union.

It starts with attempting to ascertain a legal definition of human rights and following up the gradual recognition of human rights in history, from ancient times to our days. Specific attention is devoted to the recently affirmed 3rd and 4th generation rights, such as right to development, peace, self-determination of peoples, water, clean environment...

The United Nations' approach is taken into consideration, with the Universal Declaration of Human Rights, the Geneva Convention on the Status of Refugees and the UN System for the Protection of Human Rights. The most relevant international regional systems for the protection of human rights in the world are also addressed.

Coming to Europe, the course looks at the Conventions by the Council of Europe, then concentrating on European Union immigration and asylum law and policies, up to the creation of the Common European Asylum System, highlighting strongpoints and critical aspects. The core of the course analyses the key instruments of EU policies on immigration and asylum - discussing the steps towards common policies as well as the most relevant programmes, resolutions, strategic plans and regulations, up to the European Agreement on Immigration and Asylum and the Lisbon Treaty, which makes the European Charter of Fundamental Rights binding – as well as the EU directives on minimum standards for the reception of asylum seekers, trafficking in human beings, qualification as refugees, asylum procedures and returning illegally staying third country nationals.

The final part of the course deals with the European Union's development policy. The growing commitment of the EU in this field, as well as its weaknesses, are discussed with reference to EU support to fair trade and other means for development, to regional and local cooperation programmes and partnerships between the EU and developing countries, and to the new "Energising Development" initiative.

The course aims at offering international students an insight into what stands behind the general concept of "development": the equal right to development for all human beings, and therefore the protection of human rights even in their most recent meanings, the protection of immigrants and asylum seekers, the possible instruments and ways for supporting and enhancing social and economic development on a global scale.

Students will therefore be introduced to the main legal instruments and policies adopted by international organizations, and especially the European Union, towards this scope. They will also be encouraged to work together in mixed international groups discussing relevant documents and case law, in order to strengthen their capability of facing issues from a practical point of view as well as their spirit of collaboration and mutual respect, which is at the basis of any attempt for peace and development.

Global Law Program – Visiting Professor 2013

Course: Maritime Law

Professor: Stephen Girvin

Workload: 15 hours

Credits: 1

Overview:

This course on Maritime Law will provide a survey of some of its more interesting elements, taking a scenario based on real facts. The scenario describes a scene involving a collision, at sea, between two ships. The course will then proceed to develop a legal analysis of this calamitous event, including the collision itself, the salvage of one of the ships by a professional marine salvage company, the towage of the other ship by the same company, and how claimants can limit their liability. The course concludes by examining how the various claimants might best be advised to proceed with their maritime claims, inter alia by the enforcement of those claims by the arrest of ships. The main emphasis will be international conventions on maritime law, as interpreted by the courts in common law countries (such as the United Kingdom).

The course is intended to provide a survey of some of the most important principles of maritime law, developed from a hypothetical scenario. The principle objectives are to provide an overview of: (i) the law relating to collisions at sea; (ii) maritime salvage and towage; (iii) limitation of liability; (iv) maritime claims (including arrest of ships). The course aims to (i) provide students with a synoptic knowledge and understanding of the main principles; (ii) provide students with experience in dealing with legal principles deriving from variety of legal instruments, including international conventions and case law; and (iii) enable students to develop their skills of legal analysis and problem solving.