

**Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP**

Syllabus

**Regular courses - 2 months courses
Spring Semester 2015**

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 Bizzioli, 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 Getulio 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.

The course is an introduction to the institutional and regulatory framework of financial institutions.

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 Getulio Vargas

Course: Crime and punishment in Brazil

Professor: Maíra Rocha Machado

Workload: 30 hours

Credits: 2

Overview:

The objective of this course is to introduce Brazilian Criminal Justice System to foreign students. Organized in two axes – economy and human rights – the course addresses contemporary legal and political issues emerging from the definition and the enforcement of criminal sanctions in Brazil. Case studies of major events in recent Brazilian history contribute to shape each of the axes. First three meetings will discuss the financial and economic dimension of crime and punishment. The case study concerns a corruption and money-laundering scheme involving a Judge, a Senator and a building company. Judicial and administrative proceedings, in Brazil, United States and Switzerland, led to convictions, imposition of fines and incarceration, as well as recovery of assets sent abroad (TRT CASE). The second part of the course focuses on human rights violations, specifically when perpetrated by the State: police violence and incarceration. The case study stems from an unsuccessful police operation at the (at the time) biggest Brazilian Penitentiary which led to the death of 111 inmates according to official data.

Besides the case studies, the course will rely on the available literature in English about Brazilian criminal law proceedings and institutions as well as documentaries, reports and media. Students will be invited to read one article/chapter per class (around 30 pages) and develop small researches about other cases to enrich the discussion of each axe of the course. Written skills will be developed through a brief final essay.

- Overview of the Brazilian Criminal Justice System.
- Corruption cases: from petty offences to major international schemes
- The financial dimension: money laundering and the international arena
- Investigative journalism and the role of the media
- When the State is the defendant: police violence and criminal proceedings against public authorities
- Paradoxical relations between criminal justice and human rights in Brazil

References:

- ✓ TRT Case. IDRC Library. Available at: <https://idl-bnc.idrc.ca/dspace/bitstream/10625/52302/1/IDL-52302.pdf>
- ✓ Machado, Maira. Similar in their differences. Transnational legal processes addressing money laundering in Brazil and Argentina. *Law and Social Inquiry*, 37, 2, 330-366, 2012.
- ✓ Porto, Mario. The media and political accountability. In *Corruption and Democracy in Brazil*. Power and Taylor (ed.). Notre Dame, UNDPress, 2011.
- ✓ Ferreira, Luisa et al. Carandiru Massacre: Twenty years without attributing responsibility (forthcoming).
- ✓ Caldeira, Teresa. *City Walls : crime, segregation and citizenship in Sao Paulo*. University of California Press, 2000. (Chapter 9).
- ✓ Machado, Maira. Prison overcrowding and the transnational legal order to regulate the use of imprisonment: evidence from Brazil. *Artigos Direito GV*, Working paper 71, 2012.
- ✓ Carson, Lindsey and Prado, Mariana. Brazilian anti-corruption legislation and its enforcement: potential lessons for institutional design. IRIBA Working Paper 09. Available at <http://www.brazil4africa.org/wp-content/uploads/2014/07/IRIBA-working-paper-09-Brazilian-Anti-Corruption-Legislation-and-its-Enforcement.pdf>

- ✓ Davis, Kevin; Jorge, Guillermo and Machado, Maira. "Transnational anti-corruption law in action: cases from Argentina and Brazil". Law and Social Inquiry (forthcoming).
- ✓ Power, Timothy and Matthew Taylor (ed.). Corruption and Democracy in Brazil. Notre Dame, UNDPress, 2011.

Global Law Program - Fundação Getulio Vargas

Course: Social representations of Law in Brazil

Professor: José Garcez Ghirardi

Workload: 30 hours

Credits: 2

Overview:

Social representations of Law are elemental to the way legal institutions are shaped and function. In Brazilian history, different representations have led to the emergence of competing, sometimes antagonistic views, on the role of Law and the judicial system. By examining legal documents, art works and mass media productions, this course examines the way historical conditions have impacted the social perception of Law in Brazil and the assessment of its contribution to the fostering of political and economic development.

References:

- ✓ BRESSER-PEREIRA, L.C. MARAVALL, José María and PRZEWORSKI, A. Economic reforms in new democracies: a social-democratic approach. In William C. Smith, Carlos H. Acuña and Eduardo Gamarra, eds., *Theoretical and Comparative Perspectives for the 1990s*. New Brunswick, USA: Transaction Books, 1994: 181-212.
- ✓ CANDIDO, A. (translated by Howard S. Becker) – *On Literature and Society* – Princeton University Press, 1995
- ✓ LEVINE, R. & CROCITI, J. (eds.) - *The Brazil Reader: History, Culture, Politics (The Latin America Readers)*, 1999
- ✓ MARTINUSSEN, John – *Society, State and market. A guide to competing theories of development*. Zed Books, 1997.
- ✓ TAYLOR, Charles - *Modern social imaginaries*, Durham : Duke University, 2004. .

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Visiting Professor – Short Term Courses
Spring Semester 2015

Global Law Program – **Visiting Professor**

Course: Business Regulatory Systems in China

Professor: Qing Zhan

Workload: 15 hours

Credits: 1

Overview:

This course includes a general examination of the business regulatory framework, substantial and procedural law that empowers and constrains a wide range of regulatory bodies in China. We will also look at the ways individuals obtain remedies and compensations when their lawful rights and interests are infringed by a specific act of the regulatory bodies.

Course Objectives

- Students will have a good grasp of basics of business regulatory systems in China and the economic, social and political context in which the law operates.
- Students will be able to identify and evaluate an array of issues of current concern in the business regulatory reform, including market entry regulations by licensing and registration.
- Students will be able to conduct independent research in covered areas of business regulatory law in China

The course is based on literatures and empirical data related to the business regulatory framework in China. Literatures and data will be presented in lectures and demonstrations. Papers and issues will be discussed in Class. Students will be able to present their ideas in class.

References:

- ✓ Peter Howard Corne, *Foreign Investment in China: The Administrative Legal System*, Hong Kong University Press (1997)
- ✓ Anthony Ogus, *Regulation: Legal Form and Economic Theory* (Hart, 2004)
- ✓ Qing Zhang, 'The Chinese Regulatory Licensing Regime for Pharmaceutical Products: A Law and Economics Analysis' (2009), 15 *Michigan Telecommunication & Technology Law Review*, 417-452.
- ✓ Anthony Ogus and Qing Zhang, 'Licensing Regimes: East and West' (2005), 25 *International Review of Law and Economics*, 124-142
- ✓ Qing Zhang and Anthony Ogus, 'Licensing Procedures in Developing Countries: Should They be Part of Set-up Process?' (2005), 28 *International Journal of Public Administration*, 1091-1108.
- ✓ Shirley.Svorny, 2000, *Licensing, Market Entry Regulation*, in: B. Bouckaert and G. De Geest, (eds.), *Encyclopedia of Law and Economics*, Vol. 3, Cheltenham: Edward Elgar Publishing Ltd.
- ✓ Feng Lin, *Administrative Law: Procedures and Remedies in China*, Sweet & Maxwell, 1996
- ✓ Donald C. Clarke (ed.), *China's Legal System: New Developments, New Challenges*, Cambridge University Press (2008)
- ✓ Susan Rose-Ackerman & Peter L. Lindseth, *Comparative Administrative Law*, Edward Elgar (2010)

Global Law Program – **Visiting Professor**

Course: COMPARATIVE CORPORATE LAW

Professor: Marco Venturozzo

Workload: 15 hours

Credits: 1

Overview:

Corporate law is increasingly a global topic. In order to fully understand the business law environment, lawyers, judges, business people and scholars can no longer limit themselves to one legal system. This is not only because in an increasingly global world, business transactions are not confined by national boundaries, but also because regulatory models and rules circulate among different legal systems. This short course examines selected issues concerning corporate law and international corporate transactions in a comparative perspective, focusing in particular on U.S. and European law, but not only. It builds on over 15 years of experience practicing, writing, and teaching in the area of comparative corporate law: the instructor has been trained in both civil and common law, and is currently a professor of law both in the U.S. and Italy. The course also builds on a casebook on Comparative Corporate Law that will be published in 2015 by West Academic Press, authored by the Instructor. The course has been taught in a similar format to law students and practitioners from lots of different legal cultures, at Universities and Law Schools in Germany, Spain, India, China, U.S., Italy, just to mention a few.

Topics covered include the incorporation process, piercing the corporate veil, the financial structure of the corporation (shares and bonds), shareholders' agreements, corporate governance (in particular, directors' liability), M&As and hostile takeovers. The goal is to offer to students a solid understanding of different legal approaches to common substantive problems, in order to stimulate them both to consider critically their own legal system, and to be aware of important problems that might arise when dealing with international corporate and business transactions. For these reasons, the course has both theoretical and practical goals: from a more theoretical perspective, it challenges students to think "out of the box"; from a more practical perspective, it broadens their legal culture discussing different regulatory strategies, adopted in different legal systems, in order to govern corporate and business transactions.

References:

- ✓ Ross A. Wilson v. Louisiana-Pacific Resources
- ✓ Centros
- ✓ Sample of AOI and bylaws
- ✓ Baatz v. Arrow Bar
- ✓ Walkovsky v. Carlton
- ✓ Excerpt from M. VENTORUZZO AND OTHERS, Comparative Corporate Law, West, forthcoming 2015, Piercing the corporate veil in civil law systems.
- ✓ Vantage Point v. Examen
- ✓ Morgan Stanley v. ADM
- ✓ Commission of the European Communities v. Kingdom of Spain – C-338/06
- ✓ Practical Exercise: Negotiating and Drafting a Shareholders' Agreements Limiting the Transferability of the Shares
- ✓ Smith v. Van Gorkom
- ✓ Today Homes v. Williams

- ✓ Practical Exercise: Calculating and Negotiating the Exchange Ratio in a Merger
- ✓ Hariton v. Arco
- ✓ Unocal Corp. v. Mesa Petroleum
- ✓ M. VENTORUZZO, Europe's Thirteenth Directive and U.S. Takeover Regulation: Regulatory Means and Political and Economic Ends, 41 Tex. Int'l L. J. 171 (2006)

Global Law Program – **Visiting Professor**

Course: Public Procurement in a globalized world – public procurement according to international and European law

Professor: Nuno Cunha Rodrigues

Workload: 15 hours

Credits: 1

Overview:

The course aims to explain how public procurement works in a globalized world.

There are economics explanations for the liberalization of public procurement that were included in the Government Procurement Agreement (GPA) concluded under the World Trade Organization (WTO) system. Today 47 states are part of the GPA, namely USA, Canada and the European Union.

Brazil has recently develop some barriers to international trade through public procurement since it's not part of the GPA.

Through this course it will be explained how the WTO system works, namely the GPA and the influence of international law in public procurement in Brazil.

References:

Global Law Program – **Visiting Professor**

Course: LAW AND DEVELOPMENT IN CHINA

Professor: Weitseng Chen

Workload: 15 hours

Credits: 1

Overview:

China's rise posts various challenges to conventional thinking, as captured in the fashionable term "Beijing Consensus" that depicts a Chinese model for law and development. Given China's economic performance, if state-owned enterprises can promote economic development, why privatize? If the public ownership fits the market economy, why liberalize? If private banks and insurance companies are too big to fail and require public bailout when in crisis, why privatize state banks in the first place? Also, if the authoritarian system works well in generating growth, why democratize? If the state capitalism is so successful, why free market? The list of doubts may go on and on but it reveals more ambiguity of the Chinese model, if any, than exact configurations of legal institutions and relevant practices. What exactly are the institutional factors that have made China's economic growth a success and whether or not they are sustainable?

This course aims to unveil these puzzles by a thorough examination of a wide range of legal institutions and their practices in China, including political system, property, contract, corporate law regime, foreign investment and financial institutions. The objective of this course is to provide students with a comprehensive understanding and analytical framework for various law and development topics in light of Chinese experiences. Scholars of law and development stress that institutions matter, but how they matter and which institutions matter most remain hotly contested questions. As such, the lecturer will work with students to continually ask and answer why and how China has been able to offset its institutional weaknesses while achieving impressive economic results both at home and worldwide without moving closer to the existing models of western countries. Instead of focusing only on China, this course aims to use Chinese experiences to shed light on the evolution of legal institutions concerning economic development and to scrutinize and enrich contemporary legal theories that have not been examined with great care in the context of non-western countries.

References:

- ✓ Donald Clarke et al., *The Role of Law in China's Economic Development*, in *CHINA'S GREAT ECONOMIC TRANSFORMATION* (Loren Brandt & Thomas G. Rawski eds., 2008)
- ✓ Barry Naughton, *The Socialist Era, 1949-1978: Big Push Industrialization and Policy Instability*, in *THE CHINESE ECONOMY: TRANSITIONS AND GROWTH*, pp.55-84 (2007)
- ✓ Richard A. Posner, *Creating a Legal Framework for Economic Development*, *The World Bank Research Observer*, Vol. 13, No. 1, pp. 1-11 (1998)
- ✓ Kevin E. Davis & Michael J. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 56 *AM. J. COMP. L.* 895 (2008)
- ✓ TONY SAICH, *GOVERNANCE AND POLITICS OF CHINA*, pp. 142-178 (3rd edition, 2011)
- ✓ R. Peerenboom & Weitseng Chen, *The East Asian Model and Developing the Rule of Law*, in *POLITICAL CHANGE IN CHINA: COMPARISONS WITH TAIWAN* (Larry Diamond & Bruce Gilley eds., 2008)
- ✓ Francis Fukuyama, *China and East Asian Democracy: The Patterns of History*, *JOURNAL OF DEMOCRACY*, Vol. 23, No.1, at 14 (2012)
- ✓ LILY L. TSAI, *ACCOUNTABILITY WITHOUT DEMOCRACY: SOLIDARY GROUPS AND PUBLIC GOODS*

- PROVISION IN RURAL CHINA (2007)
- ✓ Fu Hualing, Challenging Authoritarianism through Law: Potentials and Limit, NATIONAL TAIWAN UNIVERSITY LAW REVIEW, Vol. 6, at 339 (2011)
 - ✓ Xin He, A Tale of Two Chinese Courts: Economic Development and Contract Enforcement, JOURNAL OF LAW AND SOCIETY, Vol. 39, No. 3, 384-409 (2012)
 - ✓ Simon Johnson et al., Courts and Relational Contracts, THE JOURNAL OF LAW, ECONOMICS, & ORGANIZATION, Vol. 18, Issue 1, at 221(2002)
 - ✓ Madeleine Zelin, The Firm in Early Modern China, 71 JOURNAL OF ECONOMIC BEHAVIOR & ORGANIZATION 623 (2009)
 - ✓ Don Clarke, Order without Order in Chinese Corporate Governance Institutions, 30 Nw. J. Int'l L. & Bus. 131 (2010)
 - ✓ Susan H. Whiting, The Regional Evolution of Ownership Forms: Shareholding Cooperatives and Rural Industry in Shanghai and Wenzhou, in PROPERTY RIGHTS AND ECONOMIC REFORM IN CHINA, pp. 171-200 (1999)
 - ✓ Robert Ellickson, The Costs of Complex Land Titles: Two Examples from China, PROPERTY RIGHTS CONFERENCE JOURNAL, Vol. 1, at 281 (2012)
 - ✓ Donald Clarke, China's Stealth Urban Land Revolution (George Washington University Law School, working paper, Feb. 22, 2012)
 - ✓ Eva Pils, Waste No Land: Property, Dignity and Growth in Urbanizing China, ASIAN-PACIFIC LAW & POLICY JOURNAL, Vol. 11, issue 2, at 1 (2010)
 - ✓ Minxin Pei, Fighting Corruption: A Difficult Challenge for Chinese Leaders, in CHINA'S CHANGING POLITICAL LANDSCAPE (Cheng Li ed., 2008)
 - ✓ Andrew Brady Spading, The Irony of International Business Law: U.S. Progressivism, China's New Laissez Faire, and Their Impact in the Developing World, 59 U.C.L.A. L. REV. 354 (2011)
 - ✓ Weitseng Chen, Institutional Arbitrage: China's Economic Power Projection and International Capital Markets, COLUMBIA JOURNAL OF ASIAN LAW, VOL. 26, NO.2 (2013)
 - ✓ Michael Schuman, Is the Chinese Yuan Becoming a Rival to the Dollar? TIME (Feb. 15, 2011)
 - ✓ Katharina Pistor, The Governance of China's Finance, in CAPITALIZING CHINA (Joseph P. H. Fan & Randall Morck eds., 2012)
 - ✓ Yasheng Huang, Debating China's Economic Growth: The Beijing Consensus or The Washington Consensus, ACADEMY OF MANAGEMENT PERSPECTIVES, pp.31-47 (May, 2010)
 - ✓ Li-Wen Lin & Curtis J. Milhaupt, We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China, 65 Stanford L. Rev. 697 (2013)

Global Law Program – **Visiting Professor**

Course: A REGIONAL APPROACH TO HUMAN RIGHTS PROTECTION: THE EUROPEAN HUMAN RIGHTS SYSTEM

Professor: Zeynep Oya Usal Kanzler

Workload: 15 hours

Credits: 1

Overview:

The main purpose of this course is to provide an overview of the protection of human rights and fundamental freedoms in Europe. The emphasis will be on the Council of Europe (COE) system, primarily focusing on the European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR). The substantive rights and freedoms laid down in the ECHR - issues related to, inter-alia- right to life, prohibition of torture, right to a fair trial, protection of private life, freedom of expression, freedom of religion, protection of property, right to education, non-discrimination will be discussed. The supervisory mechanism of the ECHR including the execution of judgments as well as some general concepts and doctrines like positive obligations and the margin of appreciation will be covered. References that have been made in the judgments of the European Court to judgments of the Inter-American Court of Human Rights (IACHR) or the American Convention on Human Rights – of which Brasil is under its jurisdiction - will also be set out during the discussion of cases in order to show the interaction between international judicial bodies.

Course Objectives

- to deliver a comprehensive understanding of internationally recognized human rights instruments and standards to provide a coherent account of human rights institutions under COE system
- to explain how human rights standards laid down in the ECHR work and to show how they can be applied in practice
- to show the relevance of European human rights law to domestic law and the interaction between international courts
- to identify how human rights standards influence the development of law and policy in Contracting States

References:

- ✓ Right to life and the prohibition of torture and inhuman treatment –
ECHR: Soering, 1989; Tomasi, 1992; Ireland v. UK, 1978; McCann, 1995; Aydin, 1997; Gäfgen, 2010.
IACHR: Neira Alegria, 1995 ; Velásquez Rodriguez v. Honduras, 1988
- ✓ Right to respect for private and family life, home and correspondence -
Lopez Ostra, 1994; Fadeyeva, 2005; Von Hannover, 2004-2012; Dickson, 2007; Schalk and Kopf, 2012; Costa and Pavan, 2012; X and others, 2013.
- ✓ Freedom of expression
Vereinigung Bildender Künstler, 2007; Stoll, 2007; Akdaş, 2010; Tuşalp, 2012.
- ✓ Freedom of religion
Buscarini, 1999; Leyla Şahin, 2005; Sinan Işık, 2010; Bayatyan, 2011 ; Lautsi, 2011; Eweida and others, 2013.
- ✓ Right to education and non-discrimination related issues
Folgero, 2007; Hasan-Eylem Zengin, 2007; Opuz, 2009; Munoz Diaz, 2009; Sejdic and Finci, 2009; Orsus, 2010; Sampani, 2012.