

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

**Syllabus**

**Regular courses - 2 months courses**  
**Spring Semester 2018**

Global Law Program - Fundação Getulio Vargas

**Course:** Introduction to Brazilian Legal System

**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](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>).

**Course:** Global Securities regulation and its influence in Brazil

**Workload:** 30 hours

**Credits:** 2

**Overview:**

Considering the different status of economic openness (free capital movements), and having in mind the specific limits and restrictions imposed by the different jurisdictions and its legal systems, the course will examine the impact of globalization on national and international, and public and private securities regulation. It will focus around the following related issues:

- (i) the relationships established in the international capital markets and how they affect the domestic regulatory activity,
- (ii) the limits of the domestic and international regulation,
- (iii) harmonization possibilities in securities regulation,
- (iv) legal determinants that can drive to the development of the regulatory environment and to the development of the markets.

**References:**

- ✓ COFFEE, John C.; SELIGMAN, Joel; SALE, Hillary. Cases and Materials. Securities Regulation, 10th ed, 2007, New York: Foundation Press
- ✓ IOSCO. Objectives and Principles of Securities Regulation, May/2003. Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf>
- ✓ BALDWIN, R.; CAVE, M.; LODGE, M. Understanding regulation: theory, strategy and practice. Oxford: Oxford University Press, 2012.
- ✓ BRUMMER, C. Soft Law and the Global Financial System: Rule Making in the 21st Century. Cambridge: Cambridge University Press, 2012.
- ✓ EATWELL, J. The Future of International Financial Regulation. In: BURKE, S. (Ed.). Re-Defining the Global Economy. New York: Friedrich Ebert Stiftung Occasional Paper No. 42, 2009. P. 37-43.
- ✓ HELLEINER, E.; PORTER, T. Making Transnational Networks More Accountable. In: Sara BURKE, S. (Ed.). Re-Defining the Global Economy. New York: Friedrich Ebert Stiftung Occasional Paper No. 42, 2009. P.14-24. Available at <http://library.fes.de/pdf-files/iez/global/06293.pdf>.
- ✓ KELLY, C.; KARMEI, R. S. The hardening of soft law in securities regulation. Brooklyn Journal of International Law, v. 34, 2009. (Brooklyn Law School. Legal Studies Paper n. 141). Available at <http://ssrn.com/abstract=1371188>.
- ✓ LA PORTA, R.; LOPEZ DE SILANES, F.; SHLEIFLER, A. What Works in Securities Laws? The Journal of Finance, v. LXI, n 1, 2007.
- ✓ MILHAUPT, C.; PISTOR, K. Law and Capitalism: What Corporate Crises Reveal about Legal Systems and Economic Development around the World. Chicago: University of Chicago Press, 2008.
- ✓ PORTER, T. Globalization and Finance. Cambridge, Mass.: Polity, 2005.
- ✓ SIMMONS, B. The International Politics of Harmonization: The case of Capital Market Regulation. International Organization, v. 55, 2001, p. 589-620.
- ✓ SINGER, D. A. Regulating Capital: Setting Standards for the International Financial System. Ithaca: Cornell University Press, 2007.
- ✓ UNDERHILL, G.; ZHANG, X Setting the rules: private power, political underpinnings, and legitimacy in global monetary and financial governance. International Affairs, v. 84, n. 3, 2008, p. 535-554.

Global Law Program - Fundação Getulio Vargas

**Course:** Social Representation of Law in Brazil

**Workload:** 30 hours

**Credits:** 2

**Overview:**

The course intends to present and discuss accepted representations of Brazilian society. In its history, different images have led to the emergence of competing, sometimes antagonistic views, on the role of Law and the judicial system. By debating myths and perceptions through concrete situations, this course offers an introduction to the economic and social problems that challenge the Brazilian interpreter and that influence how its legal system works

**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

**Course:** Sharing Economy: regulation, consumer protection and liability issues

**Workload:** 30 hours

**Credits:** 2

### Overview:

Sharing economy: concept and context. New Technologies and Consumer Law. Law follows technology. Precaution vs. Laissez Faire. Globalization. Dematerialization. Techno-regulation and the rule of law. Automated decision making and self-learning machines. Technology and its influence on consumers and authorities. Shift from offline to online commerce. Cross border sales. Big Data and marketing. Privacy and data protection. The new power relation between suppliers and consumers. Legal and ethical challenges technology bring within the domain of B2C (business to consumer). Predictive analytics. Consumers' freedom of choice and contract. Traditional liability schemes and sharing economy. Risk sharing and consumer protection. Local authorities and policy makers versus new commercial relations: to regulate or not to regulate?

### References:

- ✓ Gellert, R., Data protection: a risk regulation? Between the risk management of everything and the precautionary alternative, (2015) 5(1) International Data Privacy Law, 3.
- ✓ Koop, C. and Lodge M., What is regulation? An interdisciplinary concept analysis, (2015) Regulation & Governance.
- ✓ Koops, Bert-Jaap, The (In)Flexibility of Techno-Regulation and the Case of Purpose-Binding (November 1, 2011). *Legisprudence*, Vol. 5, No. 2, pp. 171-194, 2011. Available at SSRN: <https://ssrn.com/abstract=1953967>
- ✓ Leenes, Ronald E. and Lucivero, Federica, Laws on Robots, Laws by Robots, Laws in Robots: Regulating Robot Behaviour by Design, November 28, 2014, *Law, Innovation and Technology* (2014) 6(2) LIT 194–222. Available at SSRN: <https://ssrn.com/abstract=2546759>
- ✓ Lessig, L., 'The Law of the Horse: What Cyberlaw Might Teach', (1999) 113 *Harvard Law Review*, 501.
- ✓ Morgan, B. and Yeung, K., *An Introduction to Law and Regulation: Text and Materials*, Cambridge University Press, 2007.
- ✓ Morgan, Bronwen and Yeung, Karen, *An Introduction to Law and Regulation: Text and Materials*. Available at SSRN: <https://ssrn.com/abstract=994783>
- ✓ Murray, A. and Scott, C., Controlling the New Media: Hybrid Responses to New Forms of Power, (2002) 65 *Modern Law Review*, 491.
- ✓ Murray, A., *The Regulation of Cyberspace: Control in the Online Environment*, Routledge Cavendish, 2007.
- ✓ Ramsay, Iain, *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets*, 3rd edition, Oxford, Hart Publishing, 2012.
- ✓ Scott C., Regulation in the age of governance: The rise of the post-regulatory state, in Jordana. J. and Levi-

Faur, D., *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, Edward Elgar Publishing, 2004.

- ✓ Valant, Jana, *Consumer protection in the EU: Policy overview*, European Parliamentary Research Service, available at:  
[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS\\_IDA\(2015\)565904\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf)
- ✓ Weatherill, S., *EU Consumer Law and Policy*, Cheltenham, UK, Edward Elgar Publishing, 2013.

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

**Syllabus**

**Visiting Professor – Short Term Courses  
Spring Semester 2018**

Global Law Program - **Visiting Professor**

**Course:** New Technologies and Conflict of Laws

**Workload:** 15 hours

**Credits:** 1

**Overview:**

Law lags behind the rapidly evolving digitalization of our societies and economies. Legal rules generally focus on the physical world around us, even though the use of new technologies for our communications and transactions increasingly challenges the adaptability of such legal rules to these new realities. A growing number of problems have emerged in legal practice in many jurisdictions around the world. For instance, one can think of the liability of online intermediary platforms (eg Uber, Alibaba or eBay), the (civil or criminal) liability of social media (eg Facebook) for contents posted by their users, or the progressive adaptation of commercial law to the new data economy (eg information as a tradeable item).

This course explores certain legal responses to this rapidly evolving problem area. First, it will consider any available or developing international solutions to these challenges. Are worldwide standards and rules desirable and feasible? If not, which legal system governs online communications and transactions? Conflict of laws (also referred to as private international law) has traditionally been the area of the law that links situations with connections to more than one legal system to one jurisdiction and one legal framework. Is conflict of laws aptly adapting to the legal challenges posed by new technologies? The course examines next how conflict of laws has been grappling with the online environment on the basis of a comparative overview of statutory and case law developments. Where possible, reference will be made to any work undertaken at the international or regional (eg MERCOSUR, OAS, EU) of relevance to the students. Furthermore, significant attention will be given to specific solutions (eg Canada's Supreme Court recent judgment against Google) so that students can assess the extent to which existing legislation and case law enhances and boosts digitalization; the extent to which it is an impediment; and whether there is a need for more or different legal solutions.

**References:**

- ✓ Three entries from the Encyclopedia of Private International Law published by Elgar Publishing in 2017:
  - “Electronic commerce” by Dan Jerker B. Svantesson
  - “Internet, jurisdiction” by Pedro de Miguel Asensio
  - “Internet, liability” by Pedro de Miguel Asensio
- ✓ Supreme Court of Canada, *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 (available [here](#))
- ✓ <https://geneva-internet-disputes.ch/>, in particular the Geneva Internet Dispute Resolution Policies 1.0.
- ✓ Dan Jerker B. Svantesson, Sovereignty in International Law – How the Internet (maybe) changed everything, but not for long, Masaryk University Journal of Law and Technology, 2014, 137-155.

Global Law Program – **Visiting Professor**

**Course:** Corporate Legal Compliance in the Transnational Perspective

**Workload:** 15 hours

**Credits:** 1

**Overview:**

The course is designed as an interdisciplinary elective suitable for advanced studies in the areas of regulation and business law. The core objective is to understand the reasons for legal corporate compliance failures and to analyze remedies to enhance business integrity. Students will be confronted with practical examples and will learn about the methodology of compliance management systems. Please find the key topics in the syllabus attached.

**References:**

To be assigned

## Global Law Program – Visiting Professor

**Course:** The Law of Startups.

**Workload:** 15 hours

**Credits:** 1

### Overview:

The purpose of this course is to introduce students to the legal challenges that entrepreneurs and in particular startups face. The aim is two-fold: to help students acquire an understanding of the different rules that define the legal framework pertaining to startups from the founders' agreement to their dissolution; and to provide them with a critical assessment of recent trends in law and technology that can help them grasp and confront the complexity of an increasingly globalized and transnational business environment. The steady internationalization of startups calls for a reinforced comparative approach.

This course is essential in the training of any jurist, since the knowledge and skills it offers are necessary to resolve legal needs for both early-stage and mature startups. Besides, the unique comparative approach given to this specific subject as part of the FGV DIREITO SP Global Law Program is intended to encourage future lawyers to pursue their careers in international, multidisciplinary and multicultural environments, and be capable of learning from experience and incorporating further knowledge in a progressive self-directed and autonomous way.

The course will begin with an introduction to the concept of startup and the notion of disruptive innovation. It will then focus on four legal documents: the founders' agreement, the articles of association, the users' terms and conditions and the third parties' legal documents (contract with employees). It will examine the interaction of startups with the general legal framework such as corporate formation, contracts and the analysis will follow with a comparative overview of the existing case law and ongoing litigation pertaining the aforementioned legal documents. The course will conclude with a reflection on the impact of startups on traditional legal frameworks such as the intellectual property, the data protection, forms of businesses, contract etc.

The objectives of this course are:

1. To introduce students to the ideas of startups, disruptive innovation and examine the interaction between traditional legal disciplines such as contract and intellectual property with entrepreneurship.
2. To develop in students an understanding of:
  - 2.1 the nature of the startups;
  - 2.2 the legal implications at different stages of the startups;
  - 2.3 the institutions and bureaucratic procedures which are relevant for startups;
  - 2.4 the risks that startups face and the legal challenges
3. To encourage a critical assessment of the existing law regarding new technologies by reference to scholarship and proposals for its reform

### References:

- ✓ Robin Feldman, *The Role of Science in Law* (OUP);
- ✓ Norberto Nuno Gomes de Andrade, *Lúcio Tom New Technologies and Human Rights: Challenges to Regulation* (Routledge);
- ✓ Marise Cremona (ed) *New Technologies and EU Law* (OUP);
- ✓ Jens Grundei and Till Talaulicar, *Company Law and Corporate Governance of Start-ups in Germany*:

- Legal Stipulations, Managerial Requirements, and Modification Strategies *Journal of Management and Governance*, March 2002, Volume 6, Issue 1, pp 1–27;
- ✓ Alice Armitage, Evan Frondorf, Christopher Williams, Robin Feldman, Startups and Unmet Legal Needs *Utah Law Review* Vol. 2016, No. 4, 575 – 592, 2016
  - ✓ Samuel F. Ernst, Trolls or Toll-Takers: Do Intellectual Property Non-Practicing Entities Add Value to Society? *Chapman Law Review*, Vol. 18, No. 3, 2015
  - ✓ Debjani Aich, What Are the Employment Law Challenges Faced by Startup Companies from Conception to Global Growth? *Emp. & Indus. Rel. L.* Vol. 26 No. 2, 36 – 40 2016
  - ✓ Anthony Duggan, Jacob S. Ziegel, Jassmin Girgis, Is Crowdfunding Bad for Investors? *Canadian Business Law Journal* Vol. 15, 215-239, 2014
  - ✓ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Europe's next leaders: the Start-up and Scale-up Initiative COM/2016/0733
  - ✓ *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (2001)
  - ✓ *Viacom International, Inc. v. YouTube, Inc.*, No. 07 Civ. 2103
  - ✓ *American Broadcasting Companies v. Aereo*, 573 U.S. \_\_\_\_ (2014)
  - ✓ the “Right to be Forgotten” ruling (C-131/12)

## Global Law Program - Visiting Professor

**Course:** Introduction to International Environmental Law

**Workload:** 15 hours

**Credits:** 1

**Overview:** Over the last forty-five years, International Environmental Law has developed as a discrete field of International Law. The international community has slowly recognized the importance of protecting the environment and has mobilized itself since the 1970s, both by the adoption of broad political declarations and by the adoption of global conventions imposing obligations on sovereign States to protect their national resources or to prevent extra-territorial harm. Although Multilateral Environmental Agreements (MEAs) have been mostly adopted on an ad hoc basis as environmental issues emerged, they rely nevertheless on common principles and follow the same patterns. An analytical framework can accordingly be developed to review these agreements in a systematic way.

The objective of this course is to present International Environmental Law as a distinct disciplinary field of International Law governed by its own principles, objectives, and techniques. The course will cover the development of International Environmental Law, the principles that must guide the adoption of treaties, the different forms of regulation, and the common features of MEAs. The course will hand pick specific environmental issues as case studies among which biodiversity, climate change, transboundary pollution, and Antarctica. For each of these issues, the course will address the treaty negotiation process, the role of international institutions in developing the treaties, as well as their core provisions. Finally, the course will discuss enforcement strategies based on major case-law by international judiciary bodies.

### 1.2 Learning objectives

- Identifying milestones in the development of International Environmental Law
- Understanding the various factors interacting with the development of International Environment Law
- Understanding the key principles of International Environmental Law, identifying them in MEAs and being capable of discussing their legal strength
- Developing a critical approach to the different regulatory techniques used to address environmental issues
- Understanding of common structure of MEAs and being capable of identifying key provisions
- Being capable of discussing the effectiveness of MEAs

### References:

- ✓ Philippe Sands, Principles of International Environmental Law, 2 ed., Cambridge UP, 2003
- ✓ Sumudu A. Atapattu, Emerging Principles of International Environmental Law, Transnational Publisher Inc., 2006
- ✓ P. Birnie, AE Boyle and C Redgwell, International Law and the Environment, 2d ed., OUP, 2002
- ✓ Alexandre Kiss and Dinah Shelton, International Environmental Law, 3rd ed., Transnational, 2004
- ✓ David Hunter, James Salzman and Durwood Zaelke, International Environmental Law and Policy, 5th. ed, 2015 Foundation Press (University Casebook Series)
- ✓ David Hunter, James Salzman and Durwood Zaelke, International Environmental Law and Policy (Treaty Supplement 2016), 2016 Foundation Press (University Casebook Series)

## Global Law Program – Visiting Professor

**Course:** Compliance with & Enforcement of investor-state Arbitration awards

**Workload:** 15 hours

**Credits:** 1

### **Overview:**

Compliance has been regarded as one of the most central questions of international law, one that has vexed all subfields in international affairs and that has long been dealt by and intrigued many scholars. The above quotation by Louis Henkin, though ostensibly unsatisfactory, has nonetheless timelessly succeeded in encapsulating the perplexity of, and states of affairs within, the wider phenomenon of state compliance with international law.

International investment law, as a system, codifies the obligations that states owe to foreign investors and gives such private parties a direct right of action against host states for breaches of those obligations. Unlike other areas of international law where obligations are perceived as merely aspirational and where the prospect of enforcement varies, such obligations are concrete and directly enforceable through an international arbitral tribunal. Furthermore, with an ever-widening network of (predominantly bilateral) treaties and agreements, the investor-state dispute settlement (ISDS) system has grown immensely, not only in terms of the number of participating countries but also the sheer value of global foreign direct investment (FDI) that it oversees.

Unsurprisingly then, under international investment law too, compliance with arbitral awards exists not just as the daily practical question facing claimant-investors once they emerge victorious following arbitral proceedings that are often protracted and costly, but also as an important phenomenon that underpins its own legitimacy.

Broadly, the vast majority of participants in the international investment law system have abided by their obligations and state compliance with investor-state arbitral awards has been largely prevalent. This course aims to explore the set of forces, including both legal and nonlegal dimensions, which have led to high overall rate of compliance and to systematically examine the phenomenon of state compliance with investor-state arbitration awards.

### **References:**

To be defined.