

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

Syllabus

**Regular courses - 2 months courses
Spring Semester 2022**

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.

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Global Law Program - Fundação Getulio Vargas

Course: Contract Design

Workload: 30 hours

Credits: 2

Overview:

The course proposes a contextualized approach to contracts, considering the ideas and concepts emerged in the United States of America between the 1990s and 2000s, called the Contract Design Theory. For supporters of this theory, more than a legal transaction or an expression of individual freedom, contracts are artifacts in the service of the circulation of wealth. Therefore, its content must be carefully designed and executed considering the economic agents' objectives, surrounding circumstances and the current legal and institutional environment. In sum, contracts merely are documents to anticipate or adjourn conflicts. That is the reason why the design of each contract is fundamental for success or failure of economic operations.

Students will face recurring themes of contemporary Contract Law, such as penalty clauses, performance clauses (SLA, KPI etc.), limitation of liability, hardship, duty to renegotiate, anticipation of maturity (covenants etc.), dispute resolution and subjects related to insolvency. However, the approach to these recurring themes will be enlightened by the innovative perspective of Contract Design Theory.

The idea is, based on the latest economically efficient contract drafting techniques, to offer tools with immediate practical application to read, write, manage and enforce contracts in a more effective, efficient and simple way

Program:

Day 1 – Introduction to Contract Design

Day 2 – Designing Efficient Contract Performance Clauses

Day 3 – Contract Penalties and Liquidated Damages

Day 4 – Risk Allocation and Risk Management

Day 5 – Hardship, Force Majeure, Frustration, and other similar remedies

Day 6 – **Contract Termination**

Day 7 – Dispute Resolution Clauses

Day 8 – Evaluation Workshop

References:

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 - ✓ LEVY, Fernanda Rocha Lourenço. Cláusulas escalonadas: a mediação comercial no contexto da arbitragem. São Paulo: Saraiva, 2013.
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Paper No. 2306209; Stanford Law and Economics Olin Working Paper No. 450. Available at SSRN:
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Global Law Program - Fundação Getulio Vargas

Course: Brazilian Administrative State against Corruption

Workload: 30 hours

Credits: 2

Overview:

This course tackles the global issue of corruption from the Brazilian standing point, considering its legal framework, culture, and peculiarities. More specifically, the course focus on how public institutions that inform the Brazilian Administrative State suffers and struggles to deal with the different forms of corruption. The classes are organized in three drives: (i) theoretical debate, namely the legal certainty, consensus, and punishment debates; (ii) case study of "Lava Jato" (the "Car Wash Operation"); and (iii) tools largely used to handle with corruption and ongoing reforms, such as the FCPA practice and whistleblowing introduction. Therefore, the course also provides to the students knowledgement regarding the structure of Administrative State in Brazil and the model of the most important dynamics, such as public bidding, contracts, rulemaking, public policies, elections, and oversight system.

Students are required to participate in class based on the material assigned and must expose a seminar.

The assessment is composed of the following grades: (i) class participation; (ii) seminar; (iii) reaction papers; and (iv) final paper.

References:

To be assigned

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.
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Syllabus

**Visiting Professor – Short Term Courses
Spring Semester 2022**

Global Law Program - **Visiting Professor**

Course: International Commercial Arbitration

Workload: 15 hours

Credits: 1

Overview:

The importance of alternative methods of dispute resolution (“ADR”) in the international arena has steadily increased in the recent past. ADR often allows the parties involved in a dispute to reach resolution earlier and with less expense than traditional litigation. In particular, international arbitration has become one of the most important methods for resolving international commercial disputes.

I have designed this course to explore the field of international commercial arbitration in depth; in particular, the following topics:

- Introduction to international commercial arbitration. Local vs. international arbitration. Differences, applicable law, and institutional landscape. Institutional vs. ad hoc arbitration. Regulatory framework, advantages and disadvantages. The UNCITRAL rules of arbitration.
- The arbitration agreement: content, interpretation, effects and enforcement. Arbitrability, parties to arbitration agreements, multiple parties, pathologies.
- The arbitral tribunal: arbitrator qualifications, independence and impartiality, procedures for the appointment of arbitrators, objections, challenge of arbitrators, provisional measures ordered by arbitrators, IBA Guidelines on Conflicts of Interest in International Arbitration, rights and duties of the arbitrators. Liability of the arbitrators.
- The arbitral proceedings: parties’ autonomy to determine the arbitral procedure, procedural phases, seat of the arbitration, language of the arbitration. IBA rules on the taking of evidence in international arbitration. Submissions and Hearings.
- The arbitral award: form and content, correction, interpretation and supplementation of arbitral awards.
- The role of the local courts: intervention in aid of the arbitration - appointment and challenge of arbitrators, provisional measures, evidence, annulment, recognition and enforcement of the arbitral award. The New York Convention of 1958 and other treaties. Parallel proceedings.

COURSE LEARNING OBJECTIVES

The course learning objectives are as follows:

- Learn about the characteristics that make international arbitration an attractive option for dispute resolution;
- Develop a critical understanding of when it is advisable to use it; and
- Learn the sequential phases of an international arbitration, from the design of an arbitration agreement through the enforcement of an award.

METHODOLOGY

The course methodology consists of interactive lectures, practical exercises, and debates.

Global Law Program - **Visiting Professor**

Course: European and Comparative contract Law

Workload: 15 hours

Credits: 1

Overview:

The course deal with the development (or non-development) of harmonised contract law, especially in Europe, the main concrete questions of contract law in the light of this development, and the effects of harmonized (or non-harmonised) contract law. These questions are not dealt with in a perspective of theory of harmonization, but tackling the main topics of classical contract law and of contract law in a globalising and digitalizing world.

The course builds upon my experience in teaching (international business law, comparative contract law, European private law, ...), drafting model laws (PECL and DCFR) and legal practice.

Summary of topics:

- ✓ Private law & primary EU law (incl. effect or free movement law on contract law)
- ✓ The role of harmonization instruments and projects (CISG, EU law, soft law as Unidroit PICC and PECL/DECFR)
- ✓ Main tendencies in sales law - business sales (CISG) v. consumer sales
- ✓ Main features of EU Consumer contract law
- ✓ Precontractual dealings, formation and validity of contracts in general v. EU consumer sales
- ✓ Content, performance and remedies of contracts in general v. EU consumer sales
- ✓ The new law on consumer contracts for digital content
- ✓ EU consumer law in relation to national law: effectiveness; transplantation problems for uniform law in general
- ✓ Stars and chains of contracts – risk and liability in designing contractual relations
- ✓ Multiparty (contractual) relationships
- ✓ Related topics of insolvency law (incl. insolvency avoidance of contracts)
- ✓ Related topics of tort law (Product liability, supply chain liability, immunities esp. in e-commerce)

Main materials:

Texts of legal instruments, case law of the ECJ and some national courts, doctrinal articles

Global Law Program - **Visiting Professor**

Course: Hate Speech, Equality and Democracy: the Global Judicial Dialogue

Workload: 15 hours

Credits: 1

Overview:

This course intends to offer an introduction to the principles and values behind the protection of freedom of expression as a fundamental right and a cornerstone to any democracy, in order to analyse the theory debate on hate speech and constitutional equality. In particular, a core question will be placed: is there any space for hate speech bans or does the regulation of hateful speech by the state undermine its democratic legitimacy (R. Dworkin, 2009) as well as the acceptance and enforcement of antidiscrimination laws (J. Weinstein, 2017)?

In order to understand the reasons behind contemporary bans of hate speech, students will familiarize with the European multilevel protection of equality and non-discrimination on different grounds, such as ethnicity, religion, gender and sexual orientation. The need to strike a balance between freedom of expression and equality will be explored through the case-law of the European Court of Human Rights, the Court of Justice of the European Union and some domestic constitutional judges (e.g.: the French Conseil Constitutionnel, the German Bundesverfassungsgericht, the Italian Constitutional Court) deciding different hate speech cases. Particular attention will be paid to the judicial reaction to: a) the spread of racist and Islamophobic discourse following the current perceived migration crisis and the global fear of terrorist attacks; b) the recent attempts to ban degrading and discriminatory statements against women and LGBT people increasing throughout Europe following the rise of rightwing populism.

Moreover, the analysis of hate speech will take into consideration the effects of the use of internet and social platforms on sexist discourse, particularly targeting young women, women in the media and female politicians and will explore the most recent EU legislative and political responses.

Eventually, the course intends to stimulate a comparison between the European and the Latin-American approach to the limitation of the freedom of expression examining the potential and practical outcomes from a dialogue between Strasbourg and San José.

Objectives

The course offers an insight into the theories behind the so-called “hate speech dilemma” and provides students with a basic knowledge of the European multilevel system of protection against discrimination and of the current judicial approach towards hate speech bans as a means to achieve greater equality and fight social exclusion. It also aims at enabling them with the ability to critically evaluate the relevant case-law, to compare judicial interpretations in the European and the Latin American contexts and to debate on the possible responses to harmful speech online as a new challenge for democratic societies.

Methodology

The course will alternate face-to-face lessons and in-class discussions of landmark cases and theoretical essays. Interaction will always be encouraged, especially with the aim of holding a final roundtable debate on the future common challenges in European and Latin-American legal systems on the risks and benefits of hate speech bans as a means to face populist challenges to liberal democracies.