

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

**Syllabus**

**Regular courses - 2 months courses  
Fall 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 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](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:** Global Securities regulation and its influence in Brazil

**Professor:** Nora Rachman

**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](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](http://library.fes.de/pdf-files/iez/global/06293.pdf).
- ✓ KELLY, C.; KARMEL, 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](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:** 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:**

- ✓ Regulatory Dualism as a Development Strategy: Corporate Reform in Brazil, the U.S., and the EU. - Ronald J. Gilson; Henry Hansmann; Mariana Pargendler - March 2010
- ✓ Revista Capital Aberto – Ano 7 / nº 73 / September 2009 - Why does the BNDES fund companies that would have no difficulty raising money through debenture or equity issues?
- ✓ Revista Capital Aberto – Ano 7 / nº 81 / May 2010 - BNDES: a negligent agent? – Part I
- ✓ Revista Capital Aberto – Ano 7 / nº 82 / June 2010 - BNDES: a negligent agent? – Part 2
- ✓ 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

**Course:** International Labor and Employment Law

**Professor:** Jedidiah Joseph Kroncke

**Workload:** 30 hours

**Credits:** 2

### Overview:

The course will provide an overview of major contemporary international trends in labor and employment law, with a focus on the value of comparative approaches alongside examination of new transnational dynamics. It will provide a framework for understanding the range of collective and contractual options countries can pursue in workplace regulation, and the relationship that such options hold with national choices about social goals and developmental patterns. As such, the general varieties of public and private union structures will be surveyed alongside the common regulatory frameworks for employment contracts, and concomitantly hiring and termination. The role of international institutions, treaties and civil society networks will be explored to give tangible shape to the impact and limit of transnational workplace influences.

Readings for each class to which students will be required to produce short weekly analytic responses. These responses will inform the content of the lectures each week and serve as the basis for semi-socratic in-class dialogues. The class will culminate in an essay based exam.

### References:

- ✓ Gordon Anderson et al., *The Evolution of Labor Law in New Zealand: A Comparative Study of New Zealand, Australia, and Five Other Countries*
- ✓ Alvaro Santos, *Three Transnational Discourses of Labor Law in Domestic Reforms*
- ✓ Timothy Webster, *Ambivalence and Activism: Employment Discrimination in China*
- ✓ Ana Gomes & Mariana Prado, *Flawed Freedom of Association in Brazil: How Unions Can Become an Obstacle to Meaningful Reforms in the Labor Law System*
- ✓ Michal Kohout, *The New Labor Culture and Labor Law Reform in Mexico*
- ✓ Adnan Zulfiqar, *Religious Sanctification of Labor Law: Islamic Labor Principles and Model Provisions*
- ✓ Sean Cooney, *The New Taiwan and Its Old Labor Law: Authoritarian Legislation in a Democratised Society*
- ✓ Susan Bisom-Rapp, *Exceeding Our Boundaries: Transnational Employment Law Practice and the Export of American Lawyering Styles to the Global Worksite*
- ✓ Orly Lobel, *Agency and Coercion in Labor and Employment Relations: Four Dimensions of Power in Shifting Patterns of Work*
- ✓ Kevin Kolben, *Transnational Labor Regulation and the Limits of Governance*
- ✓ Benjamin Sachs, *Employment Law as Labor Law*
- ✓ Kerry Rittich, *Between Workers' Rights and Flexibility: Labor Law in an Uncertain World*
- ✓ Katherine Stone, *The New Psychological Contract: Implications of the Changing Workplace for Labor and Employment Law*
- ✓ Mozart Victor Russomano, *The Influence of American Industrial Development on Brazilian Labor Law*
- ✓ Matthew Dimick, *Labor Law, New Governance, and the Ghent System*



Atsushi Tsuneki & Manabu Matsunaka, *Labor Relations and Labor Law in Japan*

**Global Law Program  
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**Syllabus**

**Visiting Professor – Short Term Courses  
Fall Semester 2014**



Global Law Program – **Visiting Professor**

**Course:** Introduction to International Taxation

**Professor:** John Forry

**Workload:** 15 hours

**Credits:** 1

**Overview:**

International Tax systems exist in almost all countries. This course begins with an overview of basic principles which govern such systems of most countries. The course then focuses on examples of U.S. & non-U.S. Income Taxation of Foreign Persons & Foreign Income, including rules for determining tax residence, sources of income, transfer pricing between related taxpayers, source taxation of foreign persons, taxation of foreign income of domestic residents, and the use of income tax treaties. In and following the final class, short memoranda by small teams of students covering a hypothetical international investment will be the basis for the students' grades. In addition, I may increase – but not decrease – grades based upon classroom performance by one grade level (e.g., from B to B+ or equivalent).

**Course Topics**

*Introduction*

Basic Principles of International Taxation

Tax Residence

Sources of Income

Transfer Pricing

*Source Taxation of Foreign Persons*

Passive Investment Income

Trade or Business Income

Real Property Gains

*Taxation of Foreign Income of Domestic Residents*

Foreign Tax Credits

Limitations on Tax Deferral

International Reorganizations

Individual Residents Working Abroad

*Income Tax Treaties*

Residence Rules

Permanent Establishments

Personal Services

Passive Investment Income

Tax Treaty Shelters

Student Teams' Memoranda on Hypothetical International Investment

Global Law Program – **Visiting Professor**

**Course:** International Trade Law

**Professor:** Xiang Gao

**Workload:** 15 hours

**Credits:** 1

**Overview:**

The object of this unit is to provide students with an understanding of the legal environment in which international trade and commerce are conducted by business entities in both civil and common law countries. The course will examine the private and public law aspects of international trade and commerce. The private law component will deal with transactions, such as sale of goods, forms of payments, and related issues such as customs, shipping law and insurance law and private international law aspects with particular reference to dispute resolution. The public law component will consider the impact of international obligations, both multilateral and bilateral, on the conduct of trade and commerce. It will also consider the principles of international law relating to contracts and dispute settlement and arbitration.

On successful completion of this subject, students will have an understanding of:

- 1) the public and private law components of international trade and commerce;
- 2) international treaties, including customs laws, regulating international trade and commerce;
- 3) common law and civil law aspects of international transactions such as the sale of goods, forms of payments, insurance and securities over international transactions in traditional and electronic forms;
- 4) the forms and nature of international dispute resolution.

Global Law Program – **Visiting Professor**

**Course:** European and Union Law and Politics

**Professor:** Jose de Areilza

**Workload:** 15 hours

**Credits:** 1

**Overview:**

In this introductory course we will survey the foundations of European Union Constitutional Law (political institutions, law-making procedures, legal remedies, role of the European Court of Justice, relationship between EC law and national law, and all of this taking into account the crisis of the single currency and the attempt to formulate a stronger economic political Union). We will also analyze two very important areas of substantive law, the rules governing free movement of goods with Europe and within the EU. This will provide you with analytical tools to feel comfortable when you have to work in any area of substantive EC law and to compare this advanced model of regional economic integration with other trading blocks.

The method of instruction will be the typical interactive approach used in American law schools, although at times I will introduce or summarize a topic with a lecture.

We will use a set of teaching materials with selected cases of the European Court of Justice, highest national courts, excerpts of doctrinal analysis and some examples of EU legislation.

Global Law Program – **Visiting Professor**

**Course:** Business Law

**Professor:** Francisco Marcos

**Workload:** 15 hours

**Credits:** 1

**Overview:**

Based on a concept and understanding of commercial or business law that will be set at the beginning of the course, this course will analyze the different legal institutions that serve firms in their business activities. The place of commercial law within legal systems and a brief reference to its historical roots would also be analyzed in the first part of the course.

Part II of the course will analyze the conditions and implications of starting a business firm, considering how law helps and/or deters entrepreneurial activities. Afterwards it looks at basic legal implications of business transactions, trying to shape the legal regime of business firms, from contracts entered into by business firms to business torts (including products liability). It then examines agency and other legal tools that allow businessmen to be assisted by other people when conducting their business.

In the third part of the course, the legal implications of requirements of starting a firm will lead way to the examination of legal instruments, institutions and rules that firms use in their activities. Intellectual property, trademarks, patents and other forms of Intellectual Property Rights (IPRs) will be studied, as formulas firms use to protect innovative and other valuable business assets.

Part Four of the course will look at three different legal areas that govern business actions and decisions in the marketplace. Competition Law, Unfair Competition Law and Advertising Law set rules for firms' strategies that either may distort competition or unfair/unlawful practices that may harm their customers, their rivals or market's interest.

Finally, part five of the course will provide an overall view of organizational forms available for business to conduct their activities, ranging from the most simple form (sole ownership) to the most complex one (corporations) and delving also in the legal features of partnerships as the most classic form of collective business organization agreement through the centuries.

This course aims at providing students an overall and in-depth view of the legal rules of business firms and commercial activities. It will provide a detailed understanding of the relevant legal features that underlie firms' organization and business transactions. Although there may be singularities of that features, rules and institutions that vary in each jurisdiction, the course will look at several legal systems as a way of grasping their commonalities and stressing how functional and economic reasons inspire the configuration and functioning of most of them. In its origins business and trade law was though as an international legal system governing cross-border market transactions and that feature still validly influences it.

Students will become familiar with the institutions and rules of commercial law. They are expected to learn the basic features of legal rules and institutions of business law and to be able to argue and discuss cases in this legal area. It will also cultivate students' abilities to apply theoretical knowledge in problem solution in practice and also in elaborating legal documents (contracts, reports, etc.) and to give arguments in legal role-plays

Global Law Program – **Visiting Professor**

**Course:** Business and Human Rights

**Professor:** Willem van Genugten

**Workload:** 15 hours

**Credits:** 1

**Overview:**

The adoption and content of the 2011 UN Guiding Principles on Business and Human Rights, with a focus on the division of obligations of states and the responsibilities of companies, and their common task to provide for remedies.

International legal and policy initiatives on business and human rights across different industries and in different parts of the world, including National Action Plans on the implementation of the 2011 UN Guiding Principles.

The (reach of the) trend in public international law as to its ‘horizontalization’, including the application of public international law to non-state actors, with an emphasis on companies. Ibidem as to the developing trend on ‘custodial sovereignty’, in the context of companies often translated into ‘due diligence’.

Special items:

Extraterritorial human rights protection (doctrinal developments and a number of relevant cases).

Business and human rights during armed conflict, including the case of Private Military and Security Companies.

The complexity of corporate structures, incl. the liability of parent companies and the concept of ‘piercing the corporate veil’.

Exercising jurisdiction, inter alia, choice of forum and applicable law.

The meaning and scope of remedy under international (human rights) law.

The use of non-judicial means alongside judicial means for solving conflicts between companies and victims (individuals or communities) of business-related human rights violations.

After this course the students should have the (basic) knowledge and skills needed for active participation, orally and in writing, in the ongoing debate on the issue of business and human rights. The course should also act as an appetizer for those who love to do more in this important and booming field.

Global Law Program – **Visiting Professor**

**Course:** Modernity and the Autonomy of Law in Historical Perspective: a Comparative Study of Germany and Brazil in the 19<sup>th</sup> Century

**Professor:** Willem van Genugten

**Workload:** 15 hours

**Credits:** 1

**Overview:**

Different versions of legal theory as well as the broader law and development literature in the USA and Europe presuppose a (positive or negative) connection between the emergence of modern society and the autonomy of law. The idea of some link between a specific set of normative claims and institutional arrangements that shaped life in the West since 1800 and the (non-) differentiation of law from politics, economics and ethics is a recurrent one from Marx to Luhmann, from Trubek to Acemoglu. Surprisingly enough, legal historians have been more willing to accept and reproduce these different theoretical frameworks than to test their analytical gains empirically.

The course tries to fill this gap by looking closely at developments in two specific legal cultures during the 19th Century: Germany and Brazil. Working from a comparative perspective, it attempts first to expound the problems of a singular “modernity”, discussing the challenges of historical comparison on a global level. It then works out a historically productive notion of “autonomy of law” by focusing on the concrete ability of the judiciary, of legal doctrine and of legislation to relate critically or uncritically to positive law (cf. to this approach RÜCKERT, *Autonomie des Rechts aus rechtshistorischer Perspektive*, 1988). By expanding this framework to Brazil and incorporating the comparative perspective, we hope to gain new insights into the specific factors that shaped the paths into modernity of both Germany and Brazil.

III. Objectives

The main purpose of the course is to offer the students (i) an overview of methodological discussions concerning comparative legal history as well as (ii) deeper insight into the development of institutions and the legal system in general in both countries during the decisive transformations of both German and Brazilian societies in the course of the 19th Century.

IV. Methodology

To a large extent, the course will be based on Rückert’s book mentioned above. An English translation will be prepared and made available to the students. However, given its comparative approach, students will be required to work with first hand sources of both German and Brazilian legal history, so that they can build and contrast their interpretations with the views advanced in the secondary literature. The class dynamic itself will be based on a combination of lecture and discussion of the assigned readings and materials presented in class.