FGV DIREITO SP

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Regular courses - 2 months courses
Fall Semester 2016

FUNDAÇÃO GETULIO VARGAS
FGV DIREITO SP
Rua Rocha, 233
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Global Law Program - Fundação Getulio Vargas

Course: Introduction to Brazilian Legal System
Professor: Luciana Ramos 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.

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Global Law Program - Fundação Getulio Vargas

Course: Digital Democracy
Professor: Monica Guise
Workload: 30 hours
Credits: 2

Overview:
Explore the debate related to the digital environment and the exercise of democracy;
Work on a concept of digital democracy;
Debate the role of digital technologies regarding political participation in contemporary democracies;
Discuss the main issue related to Big Data and open government;
Debate virtual participation in legislative procedures around the world.
Lectures will fundamentally consist of debates based on the proposed class themes and assigned materials. We will explore theories and practice of digital democracy by reading, researching and discussing. Active student involvement and commitment is key to learning in this course.

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- ✓ SUNSTEIN, CASS. GOING TO EXTREMES: HOW LIKE MINDS UNITE AND DIVIDE. OXFORD: OXFORD UNIVERSITY PRESS, 2009. CHAPTER 2 – EXTREMISM: WHY AND WHEN, PP. 21-98.

Global Law Program - Fundação Getulio Vargas

Course: Comparative Corporate Law: Groups of Companies
Professor: Danilo Borges dos S. G. de Araujo
Workload: 30 hours
Credits: 2

Overview:
Considering that contemporarily the development of business activities through groups of companies not only is fully legitimated by the law, but is also preponderant with regard to medium and large sized business operations, this course, under a comparative law approach, examines how regulation has overall dealt with the phenomenon, specifically aiming at the following issues:
- How corporate groups are diffuse in practice, and how relevant is this kind of business structure to the economic activity, whereas in international or national terms?
- Accordingly to several diverse theories, which are the drivers and the motivations for the emergence of corporate groups?
- Historically, which legal constraints had to be overcome so corporate groups could be a legitimate business structure?
- How corporate groups are essentially characterized? Which are the basic features of a corporate group?
- Which specific problems arise from the development of business activities through corporate groups?
- In abstract, which are the regulatory strategies that may be contemplated to deal with the group problems? How to categorize them? With special attention to paradigmatic jurisdictions, how those distinct strategies are applied in concrete?
With regard to the regulatory problem, focus is then directed to the presentation and discussion of the so called Rozenblum doctrine (characterized by the recognition of a group interest and by the authorization of the conduction of business activities in accordance to a group policy, provided that some standards of group governance are fulfilled), how the principles enunciated by this doctrine were successively assumed by European level initiatives, and in which way the recent Italian discipline of Groups of companies is in itself a concrete manifestation of the Rozenblum doctrine. Finally, the course advocates, de lege ferenda, for the internalization, in Brazil, of the Rozenblum doctrine principles.

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Global Law Program - Fundação Getulio Vargas

Course: The Protection of Foreign Investment in Brazil
Professor: Daniel Levy
Workload: 30 hours
Credits: 2

Overview:
One of the most frequently asked questions of international lawyers working with foreign investment protection is: why Brazil has never ratified any of the investment protection instruments, as Bilateral Investment Treaties (BITs) or the Washington Convention, renouncing to very important foreign investors protection mechanisms. Many would answer that Brazil remains one of the most attractive venues for foreign investments even without BITs because its domestic legal system has incorporated enough international standards of contractual protection as to turn transnational protection needless.
The main purpose of this course is to analyze not only the present position of Brazil in the foreign direct investment (FDI) system, but, also, to expose which are these contractual standards of Brazilian internal law that still makes this country one of the 10th most attractive places for foreign investments. The course will depart from a macroscopic study of the country actual position in the FDI debate to reach a more microscopic perspective in the analysis of the specific contractual standards of different economic areas in order to try to answer the introductory question: can Brazil's contractual standards of protection replace the FDI transnational system?
Therefore, the course main goal is to study how international standards, principles, clauses and philosophies have been incorporated in Brazil's corporate contract law in such different fields as virtual and electronic contracts, infrastructure, energy, insurance, international sales of goods and alternative dispute resolution mechanisms. We will see how these standards were translated within a Brazilian culture and or even inspired new principles and legislations. One example will be the analysis of new business contract clauses like "best efforts", "most favored client", "hardship", only recently internalized in Brazilian legal practice, and which we will study under this "economic-cultural" perspective.
Finally, after beginning with a macroscopic perception of Brazil's position in the worldwide FDI system, passing thought a microscopic perspective of the different kind of contracts where international standards have been incorporated, the course will be concluded with a macroscopic question: to what extend does the protection provided by international contracts in Brazil is – or may be – similar to the protection provided by BITs, which answer may simply reinforce that the FDI system remain pointless for our country.

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Global Law Program - Fundação Getulio Vargas

Course: Contracts and the CISG
Professor: Wanderley Fernandes & Paulo Dóron Rehder de Araújo
Workload: 30 hours
Credits: 2

Overview:
The aim of the course is offering knowledge of the rules and principles of the CISG, as well as aspects of the international theory and jurisprudence on CISG and of the comparative terminology used.
By comparison with international principles (Principles of European Contract Law (PECL) and UNIDROIT and domestic legislation (U.S. Uniform Commercial Code (UCC) and Brazilian Civil Code), the course objective is to offer concrete analysis of CISG rules through case method, helping students do develop specific competences to deal with international sales contracts.
Students will be introduced to the structure, principles and rules of the CISG so they will become capable to apply the CISG to real life situations.

The course will concentrate on the following main legal topics:

1. Field of application of the CISG, CISG reservations, questions of jurisdiction and domestic law

2. General principles of the CISG and their application

3. Formation of contract (offer and aceptance)

4. Formation of contract (public offer)

5. Rights and obligations of the parties (breach)

6. Rights and obligations of the parties (damages)

7. Risk management and distribution

8. Remedies by breach of obligations

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FGV DIREITO SP

Global Law Program
Fundação Getulio Vargas
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Syllabus

Visiting Professor – Short Term Courses
Fall Semester 2016

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Global Law Program – **Visiting Professor**

Course: ICTs Revolution, Democracy, and the Rule of Law
Professor: Ugo Pagallo
Workload: 15 hours
Credits: 1

Overview:
Many of the current troubles brought on by the information revolution in the legal and political domain are not new and can be illustrated with the ideas of the most distinguished Italian philosopher of the second mid twentieth century, Norberto Bobbio, and his work on the "six broken promises of democracy" from 1984. From this latter viewpoint, it does not follow that nothing is new under the sun. As today's debate on internet governance elucidates, it is far from clear how we should grasp the model that may successfully orient our political strategy in terms of transparency, justice, and tolerance, so as to strike the right balance between people's representation and political resolution. In light of continuities and breakthroughs between the tradition of democratic theory and the dilemmas of current legal networks, the aim of the course is to offer a normative standpoint with which to take sides in the present debate.

The course is divided into five classes. More particularly:
Class # 1 – What are the broken promises of democracy? What are the contradictory legacies of traditional political and legal thought that still survive in the present era?
According to Bobbio's analysis (Bobbio 1984, ed. 2014), they concern:
1. Individual sovereignty;
2. Political representation;
3. The troubles with the elites;
4. Self-government;
5. Education; and,
6. Transparency.

Class # 2 – What is new under the sun? How is the ICT revolution affecting basic tenets of the rule of law?
According to Tom Bingham's classical text (Bingham 2011), attention should be drawn to the eight key "ingredients of the rule of law," half of which are here under scrutiny. They regard:
1. The accessibility of the law;
2. Legal certainty;
3. Equality; and,
4. Fair Power.

Class # 3 – What is new under the sun vis-à-vis the ICT revolution and the rule of law? The second part.
Focus is here on the last four key ingredients of the rule of law, namely:
5. Individual protection;
6. Dispute resolution;
7. Adjudicative procedures; and,
8. Compliance.

Class # 4 – A case study: Data protection and Privacy by design.
Several topics examined in the previous classes can properly be deepened in connection with current laws and debate on data protection and the principle of privacy by design. The class will restrict the focus of the analysis on:

1. Differences between privacy and data protection;
2. Different legal models for privacy and data protection;
3. The new EU data protection regulation and the US worries;
4. The principle of privacy by design and its challenges to the rule of law.

Class # 5 – A theoretical viewpoint: law as meta-technology.

The final class dwells on the design of norms and institutions in the information era and how such design may affect both requirements and functions of the law, namely, what the law is supposed to be (requirements), and what it is called to do (functions). By distinguishing between the aim of the law to govern the field of technological innovation and the field of techno-regulation, or legal regulation by design, the goal of the class is to shed light on:

1. Classical jurisprudence and new approaches to the law as a meta-technology;
2. Legal automation and enforcement;
3. Legal automation and the protection of fundamental rights;
4. The governance of legal automation.

References:

Class # 1:

- ✓ Bobbio, Norberto (2014) Le promesse non mantenute della democrazia, in Il futuro della democrazia. Torino: Einaudi (it is likely a Portuguese edition exists); and, Pagallo, Ugo (Forthcoming) "Digital Bobbio" and the Six Broken Promises of Democracy: A Normative Standpoint (henceforth "The Text");

Class # 2:

- ✓ Bingham, Tom (2011) The Rule of Law. London: Penguin; and, The Text;

Class # 3:

- ✓ Final part of The Text;

Class # 4:

- ✓ Pagallo, Ugo (2012a) On the Principle of Privacy by Design and its Limits: Technology, Ethics, and the Rule of Law. In European Data Protection: In Good Health?, Serge Gutwirth, Ronald Leenes, Paul De Hert and Yves Poullet (eds.), pp. 331-346. Dordrecht: Springer; or,
- ✓ Pagallo, Ugo (2012b) Cracking down on Autonomy: Three Challenges to Design in IT Law, Ethics and Information Technology, 14(4): 319-328;

Class # 5:

- ✓ Pagallo, Ugo (2015a) The Realignment of the Sources of the Law and their Meaning in an Information Society, Philosophy & Technology, 28(1): 57-73; or,
- ✓ Pagallo, Ugo (2015b) Good Onlife Governance: On Law, Spontaneous Orders, and Design, in The Onlife Manifesto: Being Human in a Hyperconnected Era, pp. 161-177, edited by L. Floridi. Dordrecht:, Springer.

Global Law Program – **Visiting Professor**

Course: International and European Contract Law: the formation of contracts
Professor: Francisco de Elizalde
Workload: 15 hours
Credits: 1

Overview:

It is a common place that globalization has caused a profound transformation in the geographical and personal basis of transactions. The so called «information society» has allowed people to be better communicated and has fostered international contracts. In addition to the aforementioned, the increasing technological development has reinforced imbalances among parties, which are not only found in the business to consumers (B2C) relationship but also among business contracts (B2B). For several decades now, legal transactions have shown that the presupposition of absolute equality between the parties, a cornerstone of classic Contract Law is rarely fulfilled, above all if examining inequality is not limited to the different condition (mainly professional or otherwise) of the parties, but also includes informational inequality.

The said changes in the economic reality have shaken the structure of Contract Law. The nineteenth century (national) concept of contracts and rules that applied to them –which are still largely in force, at least from a formal perspective- have proven to be unable to cope with the current status quo. The contract is not in crisis as it was supposed to be some decades ago, but the nineteenth-century dogma that has for long defined it. It is essential to rebuild the notion of contract in order to bridge the enormous gap existing between the theoretical concepts that are formulated and the realities of life to which they are applied. This task of reconstruction—in a context that is still changing—has not yet been completed.

In this scenario, comparative methodology seems to be an essential tool. The global market requires lawyers that are able to understand the similarities and differences of distinct legal systems and to think out of the box of established concepts. Internationalization of contracts is an issue that can no longer be ignored as it is also having a strong influence on the modernization of national Laws, in an often controversial and not always correctly appreciated process.

The subject will focus on the formation of contracts, trying to point out the main changes experienced by the Laws of the main European countries, whether express or concealed, and hopes to create a forum of debate as regards the desirability of the new approaches assumed by Contract Law.

References:

DAY 1
National Contract Law in Europe and internationalization. Where are we now?
Mandatory readings:

- ✓ ZIMMERMANN, R., "A Change in perspective: European Private Law and its Historical Foundations" (excerpt), in Roman Law, Contemporary Law, European Law. The Civilian Tradition Today, pp. 107-114 & 133-141 & 169-177.
- ✓ MCKENDRICK, E., "Harmonisation of European Contract Law: The State We Are In", in Vogenauer, S. & Weatherill, S. (Ed.), The Harmonisation of European Contract Law, Hart, 2006, pp. 5-29.

Suggested bibliography:

- ✓ LORD BINGHAM, "A New Common Law for Europe", in B. S. Markesinis (Ed.) The Coming Together of the Common Law and the Civil Law, Hart, 2000, pp. 27-35.
- ✓ BERGER, K., "European Private Law, Lex Mercatoria and Globalization", in A. Hartkamp (Ed.), Towards a European Civil Code, Kluwer, 2011, pp. 55-71.

- ✓ SMITS, J., The making of a European Private Law, Intersentia, 2002.

DAY 2

Duties of information and pre-contractual statements. Case study.

Mandatory readings:

- ✓ ATIYAH, P. S., "The Binding Nature of Contractual Obligations", in D. Harris & D. Tallon, Contract Law Today. Anglo-French comparisons, Clarendon Press, 1989, pp. 22-37.
- ✓ MASSON, K., "Paradox of presumptions. Seller warranties and reliance waivers in commercial contracts", 109 Columbia Law Review 503.
- ✓ Case Harlindgon and Leinster Enterprises Ltd. v Christopher Hull Fine Art Ltd. [1991] 1 QB 564 (available at www.bailii.org).
- ✓ Legislation and projects: EU Directive 1999/44/EC (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0044:en:HTML); arts. 4:106 & 4:107 PECL (http://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002); arts. II. 3:101-3:109 DCFR (http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf).

Suggested bibliography:

- ✓ BEN-SHAHAR, O., "The Myth of the Opportunity to Read in Contract Law", European Review of Contract Law, 1/2009, pp. 1-28.
- ✓ BEN-SHAHAR, O. & SCHNEIDER, C., More Than You Wanted to Know: the Failure of Mandated Disclosure, Princeton University Press, 2014.
- ✓ DE ELIZALDE, F.: "On the statement-term distinction: from Britain to the continent and vice versa", IE Law School Working paper series, 2013.
- ✓ KÖTZ, H., "Precontractual Duties of Disclosure. A Comparative and Economic Perspective", European Journal of Law and Economics, 9, 2000, pp. 5-19.
- ✓ TWIGG-FLESNER, C., "Information duties", in H. Schulte-Nölke et al (Eds.), EC Consumer Law Compendium. The Consumer Acquis and its transposition in the Member States, Sellier, 2008, pp. 482-496.
- ✓ Case Drake v Thos Agnew & Sons Ltd. [2002] EWHC 294 (QB); Cass. Civ. (3), 01/17/2007.

DAYS 3 & 4

New implied warranties in contracts. Towards common binding terms? Case study.

Mandatory readings:

- ✓ HONNOLD, J., "Art. 35", in Uniform Law for International Sales under the 1980 United Nations Convention, Kluwer, 1999 (available at: http://www.cisg.law.pace.edu/cisg/biblio/ho35.html)
- ✓ PARISI, F., "The Harmonization of Legal Warranties in European Law: an Economic Analysis", Law and Economics Working Paper Series, George Madison University School of Law, 2001 (available at: http://papers.ssrn.com/abstracts=276993).
- ✓ Legislation: art. 35 CISG (http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf); § 275, 433, 434 & 439 BGB (http://www.gesetze-im-internet.de/englisch_bgb/); S. 14 SGA 1979 (http://www.legislation.gov.uk/ukpga/1979/54); Ss. 6 & 7 UCTA 1973 (http://www.legislation.gov.uk/ukpga/1977/50); art. IV. A. 4:202 DCFR (http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf).

Suggested bibliography:

- ✓ COLLINS, H., Regulating Contracts, Oxford University Press, 1999, pp. 143-148 (Reasonable expectations)
- ✓ PEDEN, E., "Policy concerns behind implication of terms in law", 117 LQR 459, pp. 459-476.
- ✓ STEYN, J., "Contract Law: fulfilling the reasonable expectations of honest men", 113 LQR 433, pp. 433-442.

- ✓ BRIDGE, M., "The UK Sale of Goods Act, the CISG and the Unidroit Principles", in P. Šarčević & P. Volken (Ed.), The International Sale of Goods Revisited, Kluwer, 2001, pp. 115-155.

DAY 5

The effects on the interpretation of contracts. Case study

Mandatory readings:

- ✓ VOGENAUER, S., "Interpretation of Contracts: Concluding Comparative Observations", in A. Burrows & E. Peel, Contract Terms, Oxford University Press, 2007, pp. 123-150.
- ✓ CANARIS, C-W & GRIGOLETTI, H. C., "Interpretation of Contracts" (excerpt), in A. Hartkamp (Ed.), Towards a European Civil Code, 2011, pp. 587-599.

Suggested bibliography:

- ✓ COLLINS, H., "Objectivity and Committed Contextualism in Interpretation", in S. Worthington (Ed.), Commercial Law and Commercial Practice, Hart, 2003, pp. 189-209.
- ✓ CLIVE, E., "Interpretation", in H. MacQueen & R. Zimmermann, European Contract Law: Scots & South African Perspectives, Edinburgh University Press, 2006, pp. 177-185.