

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Regular courses - 2 months courses
Fall Semester 2017

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).
- ✓ 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: Stabilization of international business transactions

Workload: 30 hours

Credits: 2

Overview:

It is a truism to say that international transactions are less secure than domestic ones. Nevertheless, not always the reasons why it happens this way are very clear and it is usual to blame the culture and legal system of the other party. This course aims to throw some light on the question of stabilization of international business transactions through the study of the reasons why state legal systems fall short from fulfilling their regular functions. Therefore, the following issues are discussed: the legal institutional underpinnings of market, the legal and non-legal reasons of lack of confidence, national jurisdiction, applicable law, *lex mercatoria*, social and relational basis of certainty. Sales, carriage and complex contracts are instances to discuss the practical use of the theoretical basis presented.

References:

- ✓ BERNSTEIN, Lisa. Opting out of the legal system: extralegal contractual relations in the diamond industry. *The Journal of Legal Studies*, v. 21, n. 1. 1992.
- ✓ COASE, Ronald. The nature of the firm. *Economica*, v. 4, n. 16. 1937. P. 386-405.
- ✓ GOLDMAN, Berthold. *Frontières du Droit et lex mercatoria*. *Archives de Philosophie du Droit*, n. 9. 1964. P. 177-192.
- ✓ GRANOVETTER, Mark. Economic action and social structure: the problem of embeddedness. *American Journal of Sociology*, v. 91, n. 3. 1985. P. 481-510.
- ✓ MACAULAY, Stewart. Non-contractual relations in business: preliminary study. *American Sociological Review*, v. 28, n. 1. 1963.
- ✓ POLANYI, Karl. The economy as instituted process. In: SWEDBERG; GRANOVETTER (Ed.). *The sociology of economic life*, 2 a Ed. Boulder: Westview. 2001.
- ✓ WILLIAMSON, Oliver E. *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*. Nova Iorque: Free Press, 1985.
- ✓ ZWEIGERT, K. KÖTZ, H. *An Introduction to Comparative Law*, 3 a Ed. Oxford: Oxford University Press, 1998.

Global Law Program - Fundação Getulio Vargas

Course: Contracts and the CISG

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 acceptance)
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

References:

- ✓ DIMSEY, Mariel, FOUNTOULAKIS, Christiana, and SCHWENZER, Ingebog. International sales law, a guide to CISG. Oxford: Hart Publishing, 2012.
- ✓ GRAZIANO, Thomas Kadner. Comparative contract law. New York: Palgrave Macmillan, 2010.
- ✓ SCHWENZER, Ingeborg (editor). Commentary on the UM convention on the international sale of goods (CISG), 3RD ed. Oxford: Oxford University Press, 2010.
- ✓ MARTINUSSEN, Roald. Overview of international CISG sales law. Lexington, NY: 2006

Global Law Program - Fundação Getulio Vargas

Course: International Arbitration

Workload: 30 hours

Credits: 2

Overview:

The main goal of this course is to provide the students with an overview of the legal framework on international commercial arbitration. The focus will be the analysis of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), which was adopted in Brazil in 2002. The course will discuss in depth the provisions of the New York Convention, particularly the grounds for denying recognition and enforcement of a foreign arbitral award. In such regard, for each session, at least two cases will be studied and discussed: (i) one from Brazil and (ii) one from abroad. With respect to Brazilian case law, the students will study and discuss paradigmatic cases from the Superior Court of Justice (“STJ”), particularly those cases in which the STJ applied the provisions of the New York Convention in exequatur proceedings. As for the teaching methodology, the course will combine lectures and PBL (problem-based learning). Students will be required to read the cases in advance for the classes and will perform a series of activities in the classroom (both individually and in groups) in order to resolve problems posed by the Professor. Problem-solving, the development of advocacy skills for international arbitration, and the crafting of solid legal arguments based on the provisions of the New York Convention are key features of the course.

Introduction to international arbitration

The 1958 New York Convention: history and preliminary remarks

Arbitration agreement: validity, autonomy and competence-competence

Place of arbitration and applicable law

Drafting of arbitration clauses in the context of international arbitration

Grounds to deny recognition and enforcement of foreign arbitral awards according to the New York Convention:

- Art. V (1) (a) Agreement not valid;
- Art. V (1) (b) Absence of proper notice of arbitrator or proceedings or party unable to present its case;
- Art. V (1) (c) Difference not contemplated by or not falling within the terms of the submission to arbitration,
- Art. V (1) (d) The composition of the arbitral authority or the arbitral procedure not in accordance with the agreement of the parties or the applicable law;
- Art. V (1) (e) Award not yet binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- Art. V (2) (a) Subject matter of the difference not capable of settlement by arbitration;
- Art. V (2) (b) The recognition or enforcement of the award would be contrary to the public policy.

References:

- ✓ Albert Jan van den Berg, The New York Arbitration Convention of 1958. Towards a Uniform Judicial Interpretation. The Hague: TMC Asser Institute, 1981.

- ✓ Albert Jan van den Berg (Ed.), 50 Years of the New York Convention, ICCA Congress Series n.14, 2008.
- ✓ Emmanuel Gaillard and John Savage (eds), Fouchard Gaillard Goldman on International Arbitration, Kluwer Law International, 1999.
- ✓ Gary Born, International Commercial Arbitration, Wolters Kluwer Law, 2014.
- ✓ Andreas Lowenfeld, Lowenfeld on international arbitration: collected essays over three decades. New York: Juris Publishing, 2005.
- ✓ Bryant G. Garth e Yves Dezalay, Dealing in virtue: international commercial arbitration and the construction of a transnational legal order, Chicago: University of Chicago Press, 1996.
- ✓ Franco Ferrari (ed.). Forum Shopping in the International Commercial Arbitration Context. Munich: SELP Sellier European Law Publishers - NYU Center for Transnational and Commercial Law, 2013.
- ✓ Franco Ferrari (ed.). Limits to party autonomy in international commercial arbitration. Huntington, New York, 2016.
- ✓ Jan Paulsson The idea of arbitration. Oxford: Oxford University Press, 2013.
- ✓ Julian D. M. Lew and Loukas A. Mistelis (eds). Pervasive problems in international arbitration. Kluwer Law International, 2006.
- ✓ Julian Lew, Loukas Mistelis, Stefan Kröll, Comparative International Commercial Arbitration, Wolters Kluwer Law, 2003.

- ✓ Marike R. P. Paulsson, The 1958 New York Convention in Action, Kluwer Law International, 2016.
- ✓ Nigel Blackaby, Constantine Partasides, Alan Redfern, J. Martin Hunter, Redfern and Hunter on International Arbitration, Sixth Edition, Oxford University Press, 2015.

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

Syllabus

**Visiting Professor – Short Term Courses
Fall Semester 2017**

Global Law Program - **Visiting Professor**

Course: U.S Regulation of Foreign Corrupt Practices

Workload: 15 hours

Credits: 1

Overview:

Interpretation of U.S. legal instruments, including legislation, judicial decisions and settlement agreements; analysis of the impact of transnational anti-corruption law on multinational enterprises and its implications for economic development.

This intensive course will examine U.S. laws and legal principles that govern the transnational regulation of corrupt practices, with particular emphasis on the U.S. Foreign Corrupt Practices Act (“FCPA”). Topics covered will include an introduction to the scope, content and manner of enforcement of the FCPA; organizational liability for corrupt practices together with the role of anti-corruption compliance programs; and, legal mechanisms for securing compensation for victims of transnational bribery.

Assessment will be based on demonstrated ability to identify legal issues, present competing arguments about how those issues ought to be resolved, and suggest actions that can be taken to avoid future liability.

References:

To be assigned.

Global Law Program – **Visiting Professor**

Course: The laws of the city: Uber, Airbnb and the globalization of the sharing economy

Workload: 15 hours

Credits: 1

Overview:

On June 2016, Bloomberg reported that ten “mayors from New York to Paris to Seoul (...) are jointly preparing a unified rule book in a bid to leverage their combined size to promote clearer ground rules” on Uber and Airbnb. A spokesman for New York Mayor commented that “having the 20 or 30 biggest urban markets of the world all operating under entirely different rules doesn’t do much good for anyone. We want consumers and tourists to have some consistency, city to city”. It is unprecedented that cities in different continents promote convergent regulatory change to tackle urban policy challenges.

Uber and Airbnb are the paramount examples of truly global companies that act at the local level, seeing each city as a unique market. In fact, these global digital platforms are regulated by macro-level legislation, but the services they facilitate - city transportation and accommodation – are mostly regulated at the sub-national level.

As disruptive players – challenging at a large scale established legal and economic concepts of taxi ride and hotel night - these companies have forced regulators, policy makers and legislators to adapt quickly to new forms of business. But, unlike other global digital businesses such as Twitter or Google, for Uber and Airbnb, the regulatory pushback is happening mostly at the local level and in an increasingly coordinated way among cities from different continents and distant legal cultures.

The purpose of this Course is to provide students with the opportunity to test their theoretical knowledge of global law topics in the context of a contemporary legal problem. We will do this by trying to answer three questions:

- 1) Are traditional taxi and hospitality laws applicable to the new realities, both from a legal and policy standpoint? (e.g. should “Ubers” be painted in a set color? Are Airbnb rooms required to have fire extinguishers?)
- 2) Which are the regulatory key issues raised by these new realities, and how should legal systems adapt? (e.g. how do we protect the privacy from riders?; how to tax p2p ridesharing services?; is it reasonable to impose special hotel taxes to booking platforms?; who is liable for Uber traffic accidents?; are Uber drivers Uber’s employees?; is Airbnb in competition with Marriott?)
- 3) Will these sharing economy examples lead to the development of a coordinated international response at a local level? (Is this an example of global law?; What is the legal nature of the mayors initiative?; does traditional international law provide efficient and just solutions for the problems raised?).

References:

To be assigned

Global Law Program – Visiting Professor

Course: Introduction to the legal aspects of technical standards and standardization in the field of information technology.

Workload: 15 hours

Credits: 1

Overview:

As society is more and more imbued with information technology, the technical standards shaping that technology not only influence the physical and digital world around us but also increasingly our economic and social behavior. The regulatory significance of technical standards and standard setting hence reaches far beyond regulating products and services.

Technical standardization can be both an object of regulation as well as a regulatory mechanism for shaping technologies and its impact on our environment and behavior. The latter effect traditionally reaching out to issues such as health, safety and security but increasingly also to 'softer issues' such as corporate responsibility, privacy etc.

For most lawyers, both academic and practicing, the world of technical standards is uncharted territory. In many cases their 'complex' relationship with science and technology might have contributed to that fact.

Technical standards are not an easily accessible aspect of the technological reality around us.

Technical standards are being set in an arena that is virtually unknown to most policy and law makers; to a large extent it is an 'insiders' world operating at a distance from traditional rule making by government and parliaments. Standardization is form of 'self regulation', creating what is some times referred to as 'soft- law'. In a 'tech dominated' world in which we are living, the impact of standards can however be profound in terms of effects on trade and commerce but also regarding access to technologies, information security, data protection etc. This also trigger the question to what extent the standardization process is subject to democratic control.

Understanding the dynamics of technical standardization is highly relevant for those who want to get a better understanding of the (limitations of) technical standardization as a regulatory mechanism in our techno-driven society.

In this course an introduction will be provided to the world of standards (with a focus on information technology), the standard setting process, its governance and the various legal issues that relate to the process of setting standards and the outcomes thereof. The focus will be on the European legal and policy approach towards standards and standard setting.

References:

The list of reading will be defined.

Global Law Program - **Visiting Professor**

Course: Class Actions and Aggregate Litigation Models

Workload: 15 hours

Credits: 1

Overview:

The Course aims to provide students with a basic understanding of the key features, promises and challenges of class actions as they have emerged in North America. The Course will also include comparative discussions of other models of aggregate litigation. The objective is to enable students to critically assess the virtues, failures and complexity of this form of litigation, connecting substantive law to procedural law.

The course is divided into 5 sessions:

1. Introduction, goals and models
2. Operational issues
3. Ethical issues
4. Political issues and institutional competence
5. Conceptual issues.

Students should have a basic understanding of civil procedure, the law of obligations, civil liability and judicial law. No knowledge of North American law will be expected. Strong skills in reading complex texts in English is essential.

References:

Readings will consist of scholarship on class actions, in English, from US, Canadian and European sources. The list of reading will be defined.

Global Law Program – Visiting Professor

Course: Transnational Law Experiments

Workload: 15 hours

Credits: 1

Overview:

Background: While the term ‘Transnational Law’ was first used by Philip Jessup, a public international lawyer and later Judge at the International Court of Justice in his Yale Law School lectures in 1956, both content and boundaries of a field named ‘Transnational Legal Theory’ remain highly contested. TLT has been used, for example, to describe attempts among constitutional lawyers to describe the migration of human rights standards and constitutional doctrine across borders, for instance when judges draw on court decisions from around the world in search for a suitable answer to a pressing constitutional problem [see Danilel Bonilla (ed.), *Constitutionalism from the Global South* (Cambridge University Press 2013)]. Besides such an obviously ‘public law’ connotation of TLT, the label is used to describe the manifold interactions among lawyers, arbitrators, and national courts in the context of the so-called *lex mercatoria*, the much discussed and contested field of transnational commercial law, as it applies to global shipping, construction or sales contracts. The *lex mercatoria* has often been quoted as a key illustration of a legal order with a predominantly ‘private law’ character, resulting mainly from the business interactions and strategic choices of globally operating merchants rather than through democratic processes of parliamentary or executive rule creation according to the rule of law in a domestic nation state setting.

From a critical perspective, both public and private law interpretations of Transnational Law turn out to be naïve because they too easily assume the exportability of what are predominantly Western traditions of thinking of law as produced by and being tied to the nation state to a mostly undefined ‘global sphere’. Drawing on insights from critical international law, legal pluralism and legal geography, the intensive seminar will investigate alternative approaches to law ‘in a global context’. We will, in particular, attempt to illustrate the limitations of understanding Western connotations of the rule of law as universal and timeless. Instead, the seminar will use examples from transnational labour law disputes to engage in a more productive engagement with diverse ideas about global law, global justice and human rights.

Learning Objectives: This short course on Transnational Legal Theory will introduce students to some of the most important scholarly contributions to the field and illustrate the pertinent political stakes of ‘transnational law’ as a legal field through a series of present-day examples of pressing regulatory challenges. As such, on the one hand, the seminar will offer valuable opportunities for students to read and work through a selection of seminal theoretical writings in the field while, on the other, students will be given the opportunity to work on a very concrete case study in the form of a practice moot court proceeding.

References:

- ✓ *Lochner v. New York*, 198 U.S. 45 (1905) [important: Dissents by Justices Harlan & Holmes].
- ✓ ☐ Peer Zumbansen, *Lochner Disembedded: The Anxieties of Law in a Global Context*, (2013) 20 *Indiana Journal of Global Legal Studies*.
- ✓ Basil Ugochukwu, ‘Beyond Corruption: Qatar Migrant Workers and Issues in FIFA’s Value Chain’, Centre for International Governance Innovation [CIGI], 21 July 2015.

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- ✓  Ben Rumsby, Olympic Stadium operators accused of forced labour in Qatar for build up to 2022 World Cup, The Telegraph, 24 March 2015.
- ✓  SKIM: Nigel G. Crocombe, Building a New Future: The 2022 FIFA World Cup as a Potential Catalyst for Labor Reform in Qatar, 37 Suffolk Transnational Law Review (2014), 33-66, available here.
- ✓  SKIM: United Nations, Office of the High Commissioner for Human Rights [UNHRHC], 'Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework', Geneva 2011.
- ✓ Simon Chesterman, 'An International Rule of Law?' (2008) American Journal of Comparative Law 331-361.
- ✓  Jothie Rajah, "Rule of Law' as Transnational Legal Order', in: TC Halliday & G Shaffer (eds.), Transnational Legal Orders (Cambridge 2015), 340-373.
- ✓  OPTIONAL: Jürgen Habermas, 'Paradigms of Law', (1996) 17 Cardozo Law Review 771-784.
- ✓ Obiora Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?' (2008) 10 International Community Law Review, 371-378.
- ✓  Makau Mutua, 'What is TWAIL?' (2000) 94 American Society of International Law Proceedings 31.
- ✓  Antony Anghie, 'What is TWAIL?: Comment', (2000) 94 Proceedings of the American Society of International Law, 39-41.
- ✓  Luis Eslava & Sundhya Pahuja, Between Resistance and Reform: TWAIL and the Universality of International Law, (2011) III:1 Trade, Law and Development, 103-130.
- ✓ Richard Posner, 'Creating a Legal Framework for Economic Development', (1998) 13(1) World Bank Research Observer 1-11.
- ✓  Rama Mani, 'Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development' (2008) 2 International Journal of Transitional Justice, 253-265.
- ✓  Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections' (2008) 29 Third World Quarterly, 275-289.
- ✓  'Responsibility to Protect – Frequently Asked Questions (and Criticisms)', No Year, available at: <http://www.responsibilitytoprotect.org/files/R2Pcs%20Frequently%20Asked%20Question.pdf>