

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Regular courses - 2 months courses
Fall Semester 2020

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: from contract (re)negotiation to dispute resolution

Workload: 30 hours

Credits: 2

Overview:

In every legal system, the stabilization of business transactions depends on contracts, contract law, private international law and dispute resolution.

In this course we will first have a look at the different legal systems and consider which law applies to an international contract.

The main part of the course will be devoted to central questions of contract law related to crossborder business transactions. Issues related to interpretation, applicable law, remedies, avoidance, hardship, force majeure, damages and dispute resolution (particularly mediation and arbitration) will be discussed.

The course will combine lecturing with experiential learning tools, including simulated negotiations of contract clauses and mock dispute resolution situations.

References:

BASIC BIBLIOGRAPHY (subject to review and complementation)

- ✓ BORTOLOTTI, Fabio. Drafting and Negotiating International Commercial Contracts (pp. 15-28)
- ✓ CALLEROS, Charles - Introducing Civil Law Students to Common Law
- ✓ CISG and Latin America, Regional and Global Perspectives, Netherlands, The Hague 2016, ix and 590 p. (jointly with Cesar Pereira and Leandro Tripodi)
- ✓ GILLIES, Peter, MOENS, Gabriel - International Trade And Business pp. 121-174
- ✓ SCHWENZER, Ingeborg; HACHEM, Pascal; KEE, Christopher. Global Sales and Contract Law, United Kingdom, Oxford 2012, cxiii and 873 p.
- ✓ GOTANDA, J.Y.. Awarding Damages Under the United Nations Convention on the International Sale of Goods a Matter of Interpretation
- ✓ ICC. INCOTERMS 2020
- ✓ MARCEL FONTAINE, Filip De Ly - Drafting International Contracts - An Analysis of Contract Clauses-Martinus Nijhoff Publishers Brill Academic (2006)
- ✓ SCHWENZER, Ingeborg, et. Al. Schlechtriem & Schwenzler, Commentary on the UN Convention on the International Sale of Goods (CISG), 4th edition, United Kingdom, Oxford 2016, cxiv and 1602 p
- ✓ ZWEIGERT, K., KÖTZ, H., Introduction to comparative law - General Considerations

Global Law Program - Fundação Getulio Vargas

Course: Contract 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, Ingeborg. 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: M&A: hot topics and challenges in Brazilian and International practice

Workload: 30 hours

Credits: 2

Overview:

The purpose of this course is three-folded:

- (1) to provide a broad overview of the structuring and development of M&A transactions, including key players, deal motivation and common structures, the due diligence process and management role;
- (2) to debate hot topics in connection with M&A documentation; and
- (3) to discuss policy matters faced by courts addressing M&A challenging issues.

This course will look into real life transactions to further the purposes mentioned above. We may have two or three guest speakers who will offer their invaluable insights during short presentations.

References:

- ✓ CARNEY, William J. Mergers and Acquisitions: cases and materials. New York: Foundation Press, 2011.
- ✓ DEPAMPHILIS, Donald. Mergers, acquisitions, and other restructuring activities : an integrated approach to process, tools, cases, and solutions. San Diego : Elsevier, 2015.
- ✓ ADAMS, Kenneth A.. A Legal-Usage Analysis of “Material Adverse Change” Provisions. Fordham Journal of Corporate & Financial Law. v. 10, n. 1, p. 9-53, 2004.
- ✓ AGUIAR, Anelize S. The Law Applicable to International Trade Transactions with Brazilian Parties: A Comparative Study of the Brazilian Law, the CISG, and the American Law About Contract Formation. Revista Brasileira de Arbitragem, v. IX, n. 33, p. 38-82, 2012.
- ✓ ALVES, Daniel Rodrigues. Determinabilidade, negociação e elaboração das cláusulas de preço contingente (earn-out) nas operações de compra e venda de participação societária ou de estabelecimento e análise de conflitos à luz do princípio da boa-fé objetiva. 2016. 87 f. Dissertação (Mestrado Profissional em Direito) - FGV Direito SP, Fundação Getulio Vargas, 2016. Disponível em <http://bibliotecadigital.fgv.br/dspace/handle/10438/17494> . Acesso em 17 Jun 2019.
- ✓ BORN, Gary B.. Chapter 3: Drafting International Arbitration Agreements. In International Arbitration and Forum Selection Agreements: Drafting and Enforcing. 4th e, Kluwer Law International, 2013, p. 37-40.
- ✓ BRAGHETTA, Adriana. A Importância da Sede da Arbitragem. In: Selma Ferreira Lemes; Carlos Alberto Carmona; Pedro Batista Martins. (Org.). Arbitragem - Estudos em Homenagem ao Prof. Guido Fernando da Silva Soares, In Memoriam. 1 e., São Paulo: Atlas, 2007, v. 1, p. 18-32.
- ✓ BUSCHINELLI, Gabriel S. Compra e Venda de Participações Societárias de Controle. São Paulo: Quartier Latin, 2018.
- ✓ DELOITTE. Seizing sell-side M&A opportunities in Brazil. May 2018. Disponível em

- <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Mergers-and-Acquisitions/gx-ma-sell-side-brazil-report.pdf> . Acesso em 14 Jun 2019.
- ✓ DIVINCENZO, Melissa. Repose vs. Freedom – Delaware’s prohibition on extending the statute of limitations by contract: what practitioners should know. *Delaware Law Review*. v. 12, p. 29-53, 2010.
 - ✓ EPSTEIN, Barry J. Earn out agreements: accounting pitfalls for buyers and sellers. *Chicago Bar Association Record*. v. 21, p. 30-35, 2007.
 - ✓ GAUGHAN, Patrick O. *Mergers, Acquisitions and Corporate Restructurings*. 4 e., Wiley, 2007.
 - ✓ GILSON, Ronald J.; BLACK, Bernard S. *The Law and Finance of Corporate Acquisitions*. Westbury: Foundation Press, 1995.
 - ✓ HATCHARD, Michael E.; SIMPSON, Scott V. *Mergers and Acquisitions 2018*. 7 e. Disponível em http://www.veirano.com.br/upload/content_attachments/694/Global_Insights_2018_M_A_Brazil_original.pdf . Acesso em 14 Jun 2019.
 - ✓ HOTCHKISS, Edith S. et al. Bankruptcy and the Resolution of Financial Distress. Chapter 14 of *The Handbook of Corporate Finance: Empirical Corporate Finance*, v. 2, Elsevier, 2008. Available at <https://ssrn.com/abstract=1086942> . Acesso em 14 Jun 2019.
 - ✓ J.P. Morgan. 2018 Global M&A Outlook – Navigating consolidation and disruption. Disponível em <https://www.jpmorgan.com/jpmpdf/1320744801603.pdf> . Acesso em 14 Jun 2019.
 - ✓ LANGEVOORT, Donald. The Behavioral Economics of Mergers and Acquisitions. *Transactions: The Tennessee Journal of Business Law*. v. 12, p. 65-79, 2011.
 - ✓ LIPSHAW, Jeffrey M.. Of fine lines, blunt instruments, and half-truths: business acquisition agreements and the right to lie. *Delaware Journal of Corporate Law*. v. 32, p. 431-476, 2007.
 - ✓ MILLER, Robert T. Canceling the Deal: Two Models of Material Adverse Change Clauses in Business Combination Agreements. *Cardozo Law Review*. v. 31, p. 99-204, 2009.
 - ✓ MILLER, Robert T. The Economics of Deal Risk: Allocating Risk Through MAC Clauses in Business Combination Agreements. *William & Mary Law Review*. v. 50, n. 6, p. 2007-2103, 2009.
 - ✓ MIZIOLEK, Aleksandra; ANGELAKOS, Dimitrios. Contract Drafting: Sandbagging: From Poker To The World Of Mergers And Acquisitions. *Michigan Bar Journal*. v. 92, p. 30-34, 2013.
 - ✓ PETER, Wolfgang. Arbitration of Mergers and Acquisitions: Purchase Price Adjustment Disputes. *Arbitration International*. v. 19, n. 4, p. 491-505, 2003.
 - ✓ PIERANTONI, Alexandre. Disponível em <https://www.duffandphelps.com/-/media/assets/pdfs/publications/mergers-and-acquisitions/brazil-ma-activity-rebounds-with-strong-momentum-poised-to-continue-throughout-2018.ashx> . Acesso em 14 Jun 2019.
 - ✓ RODAS, João Grandino. Elementos de conexão em Direito Internacional Privado Brasileiro relativamente às obrigações contratuais. In ARAUJO, Nadia (Org.). *Contratos Internacionais*. São Paulo: RT, 2002, p. 49-59.
 - ✓ SALLES DE TOLEDO, Paulo F.; POPPA, Bruno. UPI e Estabelecimento: uma visão crítica. In *Direito das Empresas em Crise: Problemas e Soluções*. São Paulo: Quartier Latin, 2012, p. 265-294.
 - ✓ SIEDEL, George J. The Double Liar Dilemma in Business Negotiations. *Stanford Journal of Law, Business & Finance*. v. 17, p. 1-24, 2011.
 - ✓ SUNDSTROM, Eric. Tall Steps, Slippery Slopes & Learning Curves in the Behavioral Economics of Mergers and Acquisitions. *Transactions: The Tennessee Journal of Business Law*. v. 12, p. 99-105, 2011.
 - ✓ STARK, Tina L. Non-Binding Opinion: Another View on Reps and Warranties. *Business Law Today*, v. 15, n. 3, 2006. Disponível em <https://ssrn.com/abstract=1886357>. Acesso em 14 Jun 2019.
 - ✓ THREET, Hunter C. The definition of Material Adverse Change: Balancing Risk in Merger Agreements under Delaware Law. *Transactions: The Tennessee Journal of Business Law*. v. 18, p. 1007-1028, 2017.

- ✓ WHITEHEAD, Charles K. Sandbagging: Default Rules And Acquisition Agreements. Delaware Journal of Corporate Law. v. 36, p. 1081-1115, 2011.
- ✓ ZERBE, Alana A.. The Material Adverse Effect Provision: Multiple Interpretations & Surprising Remedies. The Journal of Law and Commerce. v. 22, p. 17-35, 2002

**Global Law Program
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FGV DIREITO SP**

Syllabus

**Visiting Professor – Short Term Courses
Fall Semester 2020**

Global Law Program - **Visiting Professor**

Course: Contemporary Corporate Governance Issues

Workload: 15 hours

Credits: 1

Overview:

Corporate governance is a crucial topic with growing importance in a globalized economic and business environment. It is vital for students to have an understanding and a broad knowledge of various governance models used in different jurisdictions. Whether as a corporate director, investor or employee, knowing the difference between shareholder value, stakeholder and enlightened shareholder value jurisdictions and understanding how corporate scandals and frauds occur is of critical importance. The course will examine various models, analyze examples of governance problems and discuss emerging governance issues.

Course Objectives

We will focus on the following primary objectives: 1) understanding the role of directors in corporate governance; 2) the difference between shareholder and stakeholder models; 3) various conflicts of interest associated with each model; 4) the impact of state-ownership and/or state control of corporations (such as SOEs) on the economy, corruption and governance; 5) comparing and contrasting several models and 6) the exploring the serial misconduct of corporations in specific jurisdictions.

Class participation is strongly encouraged. The best way to prepare for the exam will be reading the assigned readings and class participation. All questions in class are welcomed. But if you prefer, I will happily answer your questions outside of the classroom and I will make myself available after class to answer any questions you may have about what we covered in class.

The final exam will consist of 4 essays of which you will select 2 essays. Each essay is worth 50 points for a total of 100 points.

References:

The main “texts” will be various journal articles which I have published including:

- ✓ The Virtues of Shareholder Value Driven Activism: Avoiding Governance Pitfalls
https://repository.uchastings.edu/hastings_business_law_journal/vol12/iss3/4/
- ✓ The Director Duty of Care in Qatar <https://scholarship.law.duke.edu/djcl/vol26/iss2/2/>

We will also use the draft of an upcoming book chapter on national security in international economic law; the section related to state-ownership/SOEs and its impact on corporate governance, which will be emailed or otherwise distributed to each of you.

Global Law Program – **Visiting Professor**

Course: International Law and New Technologies: Problems and Prospects

Workload: 15 hours

Credits: 1

Overview:

Technological progress has changed (and will further change) every field of law. Public international law is no exception. New technologies influence all aspects of international law, including the law regulating the use of force, international humanitarian law, and international economic law. The course will offer a critical overview of the impact that new technologies have on established rules and principles of public international law focusing on three key fields:

- (i) law regulating the use of force by States (*ius ad bellum*),
- (ii) international humanitarian law (*ius in bello*) and
- (iii) international economic law.

From the new technologies perspective, in each of these fields the focus will be respectively on (i) cyber-attacks and cyber-warfare, (ii) autonomous weapons systems and (iii) crypto currencies. At the end of the course, students are expected to be familiar with the basic concepts and principles of international law in the above fields, be able to critically discuss the impact of new technologies and provide normative and policy recommendations.

METHODOLOGY AND EVALUATION

The course will explore how technological change has affected or will affect public international law. The students will be required to explore, familiarize themselves, and discuss both the technological and legal aspects of each topic. The course will be taught using the Socratic method and it will be highly interactive, requiring prior study of the course materials (see below) and active student participation in the discussions in class.

The evaluation of the students will be based on (i) a final exam (consisting of a multiple-choice part and a problem question part) accounting for 80% of the grade, and (ii) class participation, accounting for the remaining 20% of the grade.

References:

Basic reading

- ✓ Catherine Lotrionte, 'Reconsidering the Consequences for State-Sponsored Hostile Cyber Operations Under International Law' (2018) 3(2) *The Cyber Defense Review* 73-114
- ✓ Nehal Bhuta and Stavros-Evdokimos Pantazopoulos, 'Autonomy and uncertainty: increasingly autonomous weapons systems and the international legal regulation of risk' in Nehal Bhuta et al (eds), *Autonomous Weapons Systems: Law, Ethics, Policy* (Cambridge University Press, Cambridge 2016) 284-300.
- ✓ Hin-Yan Liu, 'Categorization and legality of autonomous and remote weapons systems' (2012) 94 *International Review of the Red Cross* 627-652, available at

<http://ebrief.icrc.org/wp-content/uploads/2017/01/42.-Categorization-and-legality-of-autonomous-weapons.pdf>

✓ Peter Asaro, 'On banning autonomous weapon systems: human rights, automation, and the dehumanization of lethal decision-making' (2012) 94 International Review of the Red Cross 687-709, available at <http://e-brief.icrc.org/wp-content/uploads/2016/09/22.-Onbanning-autonomous-weapon-systems.pdf>

✓ Sandeep Chandy and Prakhar Bhardwaj, 'Adjudicating Cryptocurrencies at the WTO: Potential Threshold, Substantive and Compliance Issues', Conference on 'International Economic Law in the Era of Distributed Ledger Technology' at the University of Turin, on 9 April 2019, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3381314
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✓ Sandeep Chandy, 'Guest Post: Venezuela Challenges US' blockade of its National Cryptocurrency at the WTO', available at <https://ielp.worldtradelaw.net/2019/01/guestpost-venezuela-challenges-us-blockade-of-its-national-cryptocurrency-at-the-wto.html>

Further reading

✓ Emmanuelle Ganne, Can Blockchain revolutionize international trade? (WTO Publications, Geneva 2018), available at

https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf

✓ Michael N Schmitt, Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations (Cambridge University Press, 2017)

✓ Kriangsak Kittichaisaree, Public international law of cyberspace (Springer, Cham 2017)

✓ Nehal Bhuta et al (eds), Autonomous Weapons Systems: Law, Ethics, Policy (Cambridge University Press, Cambridge 2016)

✓ Dan Saxon, International humanitarian law and the changing technology of war (Martinus Nijhoff, Leiden 2013)

Global Law Program - Visiting Professor

Course: Constitutional Democracy in Crisis: Diagnosis and Remedies

Workload: 15 hours

Credits: 1

Overview:

Constitutional Democracy is undergoing its biggest crisis since Francis Fukayama declared the 'end of history' at the end of the cold war. Across the globe, what have previously been assumed to be stable and reasonably well governing constitutional systems are being increasingly captured by populist leaders challenging some of the key principles of liberal constitutionalism which have been rolled out across the globe in the aftermath of the second world war. Whereas the forms of populism vary from jurisdiction to jurisdiction - some populist movements lean to the left, others to the right; some target internal 'elites', others external actors such as supranational actors - the common thread in these developments is the assumption that winning an electoral majority (whether fairly or otherwise) gives populist leaders an enhanced legitimacy above the constitutional constraints put in place to ensure good governance including the separation of powers and fundamental rights protections.

This course is designed to allow students to gain a deeper knowledge and understanding of these developments from the viewpoint of the ideals of constitutional democracy through an analysis and examination of the foundational ideals of constitutional democracy including the separation of powers, democracy, the rule of law and fundamental rights protections and subsequent examination of these developments in the light of these core ideals. It adopts an empirical, theoretical and comparative methodology where students will be immersed in the theories of key precepts of constitutional democracy before looking at different case studies of crisis in a comparative perspective. They will then be encouraged to appraise their own constitutional systems in the light of these developments.

Each seminar will be dedicated to a specific area of crisis in contemporary constitutional democracy and will examine and evaluate the extent to which the crisis represents a pathology of its core ideals such as the separation of powers, the rule of law or democracy, explicitly identifying the ways in which different crises can be considered pathological from a constitutional democratic point of view as well as exploring methods of addressing and managing the crises. The key learning objectives of the course are as follows:

- In-depth knowledge of the core principles of constitutional democracy including their rationale and justification
- An ability to clearly articulate those principles and their rationale
- A detailed understanding of how populist movements challenge those principles in different contexts
- An ability to think creatively about finding solutions to problems facing constitutional democracies
- The development of a sense of citizenship around the core principles of constitutional democracy such as to be able to criticise developments and advocate reforms.

Teaching and Assessment

Drawing on his considerable expertise in the area of constitutional democracy, teaching graduate level public law seminars at leading Universities including the University of Edinburgh and Leuven University, and his globally recognised research on the themes of constitutional democracy, Dr. Mac Amhlaigh will deliver 5 x 3-hour 'discursive lectures' on the course. Discursive lectures are sessions which involve a short introductory lecture delivered by the course instructor which are then converted into interactive seminars where students

are expected contribute. Each discursive lecture comes with a list of set readings for the seminars and students are expected to have read the set readings in advance of the discursive lecture and contribute to the seminar by articulating and justifying different viewpoints on the particular topic under discussion. They will be expected to include information drawn from the prescribed readings in order to make their case. The course will be assessed by a single coursework essay to be submitted two weeks after the end of the course.

The title of the essay will be circulated at the beginning of the course.

Topics to be covered:

- The foundational principles of public law and their rationale: the separation of powers, democracy, the rule of law and fundamental rights
- The limits of democracy
- Populism and constitutional democracy
- Authoritarian Constitutionalism
- Case studies on populist constitutional reform: Brexit in the UK and challenges to the rule of law in Poland and Hungary
- Constitutional Democracy after the crisis

References:

To be assigned