

Global Law Program
Fundação Getulio Vargas
FGV DIREITO SP

Syllabus

Regular courses - 2 months courses
Fall Semester 2021

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: Microfinance diffusion and regulation in Brazil

Workload: 30 hours

Credits: 2

Overview:

Microfinance has always been associated as an efficient tool in the fight against poverty and inequalities, from the perspective of financial emancipation and the promotion of human dignity. This course is designed to examine the different actors, contexts and narratives of the microfinance movement and the governmental policies and private arrangements, including services and efforts provided there. It will focus around the following related issues:

- a. Challenges facing microfinance programs vis a vis financial inclusion,
- b. International guidelines on the role of financial sector regulators and on performance and expectation of microfinance institutions and customers.
- c. Objectives and key principles of microfinance regulation and supervision.
- d. Brazilian initiatives and the

References:

- ✓ Armendáriz, Beatriz, and Marc Labie. 2011. "Introduction and Overview: An Inquiry into the Mismatch in Microfinance". In *The Handbook of Microfinance*, edited by Beatriz Armendáriz and Marc Labie. Singapore: World Scientific.
- ✓ Baldwin, R; Cave, M; Lodge, M. *Understanding regulation: theory, strategy and practice*. Oxford: Oxford University Press, 2012.
- ✓ Basel Committee on Banking Supervision, *Microfinance activities and the core principles for effective banking supervision* (2010), available at <http://www.bis.org/publ/bcbs175.pdf>.
- ✓ Barr, Michael S. *Microfinance and Financial Development*. IN: *Michigan Journal of International Law*, 26, no. 1 (2004): 271-96. <<https://reproository.law.umich.edu/articles/61>>
- ✓ Canales, Rodrigo. 2011. "Rule Bending, Sociological Citizenship, and Organizational Contestation in Microfinance." *Regulation & Governance* 5(1):90-117, available at <https://doi.org/10.1111/j.1748-5991.2010.01095.x>
- ✓ CGAP, *Microfinance Consensus Guidelines, Guiding Principles on Regulation and Supervision of Microfinance* (2007), available at http://www.cgap.org/gm/document-1.9.2787/Guideline_RegSup.pdf.
- ✓ Cull, Robert, Demirgüç-Kunt, Asli and Morduch, Jonathan. "Microfinance Trade-Offs: Regulation, Competition and Financing". In: *Policy Research Working Paper Series 5086*, The World Bank, 2009. Available at <https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/846571468339264494/microfinance-tradeoffs-regulation-competition-and-financing>
- ✓ Cull, Robert et al., *Does Microfinance Regulation Curtail Profitability and Outreach?*, FIN. ACCESS INITIATIVE (2008). Available at <https://www.financialaccess.org/publications-index/2008/curtailprofitability?rq=Does%20Microfinance%20Regulation%20Curtail%20Profitability%20and%20Outreach>

- ✓ Demirgüç-Kunt, A., Klapper, L., Singer, D., Ansar, S., & Hess, J. (2018). "The Global Findex Database 2017: measuring financial inclusion and the Fintech revolution". Washington, DC: World Bank
- ✓ Ledgerwood, Joanna. Microfinance handbook: an institutional and financial perspective (Sustainable banking with the poor). Washington, DC: The World Bank, 1999.
- ✓ Meagher, Patrick, Microfinance Regulation in Developing Countries: A Comparative Review of Current Practice, IRIS CENTER (2002), available at <https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-microfinance-regulation-in-developing-countries-a-comparative-review-of-current-practice-2002.pdf>
- ✓ Robinson, Marguerite S. 2001. The Microfinance Revolution. Sustainable Finance for the Poor. Volume 1. Washington, D.C. and New York: The World Bank and Open Society Institute.
- ✓ Schonberger, S. N. Microfinance prospects in Brazil. [Washington, DC]: The World Bank, 2001. (Latin America and Caribbean Region Sustainable Development Working Paper, nº 12).
- ✓ Young, Brigitte (2010) "From Microcredit to Microfinance to Inclusive Finance: A Response to Global Financial Openness," in Geoffrey R.D. Underhill, Jasper Blom and Daniel Mügge, eds., Global Financial Integration Thirty Years On: From Reform to Crisis. Cambridge: Cambridge University Press.
- ✓ Yunus, Muhammad. "The future of Microfinance". In Brown Journal of World Affairs. Spring/Summer2020, Vol. 26 Issue 2, p1-8. 8p.

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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 Reestructurings. 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/jmpdf/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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Syllabus

**Visiting Professor – Short Term Courses
Fall Semester 2021**

Global Law Program - Visiting Professor

Course: Knowledge, Power, and Law - Comparative Law, Legal Transplants, and the Global South

Workload: 15 hours

Credits: 1

Overview:

The production, exchange and use of legal knowledge are subject to a political economy. These processes are governed by a series of rules and principles that determine the conditions allowing the creation, commerce and consumption of legal theories, doctrines and practices. Consequently, this political economy is not neutral; it constructs a specific subject of knowledge that acts within a particular space and time. This course has two objectives related to the political economy of legal knowledge. Firstly, it seeks to describe and analyze the political economy model that dominates our legal and political imagination. As such, it aims at examining the conceptual structure of what I would like to call the free market of legal ideas model. Secondly, this course aims at describing and analyzing an alternative model of political economy that would best explain the real dynamics that regulate the generation, exchange, and use of legal knowledge. To achieve this objective, the course will examine the conceptual structures that form what I would like to call the colonial model of the production of legal knowledge.

The political economy of legal knowledge is not only a set of abstract concepts, rules, and principles. This set of ideas and norms determines the way people perceive legal knowledge, and therefore the types of behavior considered appropriate within this social field. Consequently, these concepts, rules and principles carry the important effects of enabling, while simultaneously limiting the actions of legal actors. Which context for the production of legal knowledge may be considered rich or poor, what value should be granted to legal ideas produced, what direction does the exchange of legal knowledge take, what issues are considered valuable objects of study, how and where this knowledge may be made public, and who can make appropriate use of the knowledge, are questions conditioned by the political economy of legal knowledge that dominates our legal and political imagination at a given moment in time.

Understanding, analyzing and evaluating this political economy will thus allow us to grasp some practical questions that affect our political communities on a daily basis. This will allow us to understand issues such as why legal transplants are typically exported by Global North countries and imported by Global South countries; why the grammar of modern constitutionalism is primarily created and managed by a small group of European and North American political theorists; why the constitutional products of the Global South appear on the margins of the global market of legal ideas; and why an important number of legal scholars from the Global South can now speak knowledgeably of cases like *Roe vs. Wade* but few can mention the ruling that decriminalized abortion in Canada, and much less the ruling that partially decriminalized abortion in Colombia.

Methodology

In this short course we will use the Socratic method. Regular attendance and active class participation, therefore, are fundamental for the course's success. Students are expected to complete all assigned readings.

Evaluation

Students should write a 1250 words essay on any of the topics discussed in the course. The essay should be emailed (dbonilla@uniandes.edu.co) by Sunday October 10. The essay should not be a summary of the readings or class discussions. It should offer and substantiate a thesis.

References:

Session one: Introduction and Legal Transplants: Dominant Approaches

- ✓ Alan Watson, Comparative Law and Legal Change, 37 Cambridge L.J. 313, 1978.
- ✓ Pierre Legrand, The Impossibility of 'Legal Transplants', Maastricht Journal of European and Comparative Law, 1997.

Session two: Law, Power, Knowledge and Critical Comparative Law

- ✓ Jorge Luis Borges, Brodie's Report, in Jorge Luis Borges, Collected Fictions, Penguin Classics, 1998, pp. 402 – 408.
- ✓ Günter Frankenberg, Critical Comparisons: Re-thinking Comparative Law, 26 Harv. Int'l. L. J. 411 1985.

Session three: Law, Power, and the Political Economy of Legal Knowledge

- ✓ Daniel Bonilla, The Political Economy of Legal Knowledge, in Daniel Bonilla and Colin Crawford (eds.), Constitutionalism in the Americas, Elgar Publishing, 2018.

Session four: Law, Power and Knowledge: A Genealogy of Comparative Law

- ✓ Daniel Bonilla Maldonado, The Legal Barbarians, Cambridge University Press, 2021, Introduction and Chapter 1.

Session five: The Political Economy of Legal Knowledge and Constitutional Law

- ✓ Daniel Bonilla, Towards a Constitutionalism of the Global South, in Daniel Bonilla (ed.), Constitutionalism of the Global South, Cambridge University Press, 2013.