

**UNIVERSITY OF PENNSYLVANIA
WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES AND BUSINESS ETHICS
FALL TERM 2014
LGST 219 SYLLABUS
LAW AND POLICY IN INTERNATIONAL BUSINESS**

Monday-Wednesday 3:00-4:30

Professor: David Zaring

Office: 662 Jon M. Huntsman Hall

Office Hours: Tuesday: 1:30-2:30 Wednesday: 1:30-2:30, or by appointment

Email: zaring@wharton.upenn.edu

Office Phone: (215) 573-7154

Subject:

This class covers legal issues confronting international business, with an emphasis on global financial regulation and international trade and investment law.

Instructor:

David Zaring is an Associate Professor at the Wharton School, and has taught at the Penn, Washington & Lee, Vanderbilt, Bucerius, and NYU law schools. Before entering academia, he served in the Department of Justice, handling matters related to ecommerce and internet censorship, health care, and affordable housing. He also served as a political aide to Andrew Cuomo. He writes at the intersection of financial regulation, international law, and domestic administration, and has published over thirty articles, including in the NYU, Michigan, Virginia, and Cornell law reviews, and a number of international law journals. He has consulted for the World Bank and securities regulators on three continents, and writes an occasional column on financial regulation for the New York Times's DealBook.

Course Format:

The course combines lecture, Socratic dialogue, and group discussion. Active class participation is expected.

Grading:

- Midterm exam – 30%
- Negotiation exercise – 10%
- Final exam – 45%
- Class participation – 15%

Schedule:

I intend to cover one topic per class, but we will adjust if time requires it or digressions are appropriate. You should accordingly read the next assignment for the next class, even if we haven't exhausted all discussion of the current one.

August 27 Class overview

Introduction to International Law

Sept. 1 Labor Day – no class

Sept. 3 Introduction to International Law
Lea Brillmayer, *International Law in American Courts: A Modest Proposal*, 100 Yale L.J. 2277, 2291-99 (1991).

Sept. 8 Actors In International Law
The *Barcelona Traction* Case, <http://www.icj-cij.org/docket/files/50/5389.pdf>

International Financial Regulation

Sept. 10 Financial Regulation: Overview
Scott & Gelpern, *International Finance*, 481-511

Sept. 15 Financial Stability: The Goals
Pierre-Huges Verdier, *The Political Economy of International Financial Regulation*, 88 Ind. L.J. 1405 (2013).
William Dudley, Speech, Global Financial Stability - the Road Ahead, available at
<http://www.newyorkfed.org/newsevents/speeches/2014/dud140226.html>

Sept. 17 Capital Adequacy I
Bank Capital Structure: A Primer UV1053-PDF-ENG.
<https://cb.hbsp.harvard.edu/cbmp/content/UV1053-PDF-ENG>

Sept. 22 Capital Adequacy II
Basel III: 910N29-PDF-ENG
Capital Adequacy Exercises

Sept. 29 The Emerging Law of International Financial Regulation
Zaring, *Finding Legal Principle in Global Financial Regulation*,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282060
Bradley, *Cross-Border Financial Regulation*, 10-18

Oct. 1 Sovereign Wealth Funds: Barbarians at the Gate or White Knights of Globalization, <https://cb.hbsp.harvard.edu/cbmp/content/712022-PDF-ENG>

Fleischer, *Should We Tax Sovereign Wealth Funds?*, 118 Yale L.J. Pocket Part 93 (2008), <http://www.yalelawjournal.org/forum/should-we-tax-sovereign-wealth-funds>

- Oct. 6 Managers and International Financial Regulation
Case: Hire-Wire Act: Credit Suisse and Contingent Capital, HBS 9-312-007
- Oct. 8 Project Finance
An Overview of Project Finance and Infrastructure Finance: 2014 Update
<https://cb.hbsp.harvard.edu/cbmp/content/214083-PDF-ENG>
- Oct. 13 Project Finance: Drafting – No Class, drafts due Oct 14 @ 5:00 pm
Negotiation Exercise: H2O4U v. Pluritania

Protecting Foreign Investment

- Oct. 15 Sovereign Debt
Argentina v. NML excerpt
Tim Samples, *Rogue Trends in Sovereign Debt: Argentina, Vulture Funds, and Pari Passu Under New York Law*,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2403342&download=yes
- Oct. 20 Bilateral Investment Treaties
HBS Note, *Protecting Foreign Investors*, 9-706-044
The *Metalclad* Case
http://www.biiicl.org/files/3929_2000_metalclad_v_mexico.pdf
- Oct. 22 Foreign Investment: Strategy
Case: Coca-Cola Back In Burma, Ivey, W13315
- Oct. 27 Foreign Investment: Ethics
Case: The Octopus and the Generals: The United Fruit Company in Guatemala HBS 9-805-146
- Oct. 29 Midterm
- Nov. 3 No class. Niall Ferguson, *Planet Finance*, episode 4 of *The Ascent of Money*, on your own,
<http://www.pbs.org/wnet/ascentofmoney/featured/the-ascent-of-money-episode-4-planet-finance/102/>.

Trade Institutions

- Nov. 5 Introduction & Dispute Resolution

WTO, *The GATT Years, Settling Disputes: A Unique Contribution, Settling Disputes: Case Study – The Timetable In Practice*
 The U.S. – Gasoline Case
<http://www.uchastings.edu/academics/faculty/facultybios/paul/classwebsite/docs/superfund2.pdf>
 The Japan-Film Case
http://www.jeanmonnetprogram.org/courses/wto/docs/UnitXDisputeSettlementSystem_000.pdf pp. 15-35

- Nov. 10 National Treatment
 National Treatment Overview,
http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm
 The *Korea Beef* Case
http://www.jeanmonnetprogram.org/courses/wto/docs/Unit_VI_NationalTreatment.pdf pp. 100-116
- Nov. 12 Exceptions: Article XX Chapeau
 Article XX Overview,
http://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm
 The *Shrimp-Turtle* Case
<http://www.uchastings.edu/academics/faculty/facultybios/paul/classwebsite/docs/shrimp.pdf>
 Summary of The *Shrimp-Turtle* Compliance Case
http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm
- Nov. 17 Exceptions: Article XX Health & Safety
 Case: Food Fight: The US, Europe, and Trade in Hormone-Treated Beef,
 HKS434

Special Topics in the Regulation of International Business

- Nov. 19 Sovereign Immunity,
 Banco Nacional de Cuba v. Sabbatino,
http://lawweb.pace.edu/dld/CivPro2_Materials/Supplement%20Cases%20and%20Materials/Banco%20Nacional%20Case.pdf
 OED, “Indirect Expropriation” and the “right to Regulate” in International Investment Law,
<http://www.oecd.org/investment/internationalinvestmentagreements/33776546.pdf>
- Nov. 24 Act of State Doctrine
 W.S. Kirkpatrick v. Environmental Tectonics
 Callejo v. Bancomer, S.A.
- Nov. 26 Friday schedule – no class

Dec. 1 Extraterritoriality
Bradley, *Issues In Transnational Investment in Securities*/ Morrison v.
National Bank of Australia, 1-21

Dec. 3 Foreign Corrupt Practices
Case: Baker Hughes: Foreign Corrupt Practices
<https://cb.hbsp.harvard.edu/cbmp/content/CG18-PDF-ENG>
Dow-Corning Case Supplement: FCPA Amendments Overview,
<https://cb.hbsp.harvard.edu/cbmp/content/394068-PDF-ENG>

Final Exam: Friday, 12/19, 3:00-5:00 pm