

**UNIVERSITY OF PENNSYLVANIA  
WHARTON SCHOOL  
DEPARTMENT OF LEGAL STUDIES AND BUSINESS ETHICS  
FALL TERM 2015  
LGST 219 SYLLABUS  
LAW AND POLICY IN INTERNATIONAL BUSINESS**

**Tuesday-Thursday 3:00-4:30**

**Professor: David Zaring**

**Office: 662 Jon M. Huntsman Hall**

**Office Hours: Wednesday: 1:30-3:30, or by appointment**

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**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 1 – 25%
- Midterm 2 – 25%
- Final Exam – 30%
- Negotiation exercise – 10%
- 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 28      Class overview

## Introduction to International Law

Sept. 1            Introduction to "Hard" International Law  
Philip Trimble, *A Revisionist View of Customary International Law*, 33  
UCLA L. REV. 665 (1986)  
*Air Services Agreement Case* France v. United States (1978).

Sept. 3            "Soft" International Law: the Case of Business and Human Rights  
John Ruggie, *UN Guiding Principles for Business & Human Rights*  
*Report of the Special Representative on The Issue Of Human Rights and*  
*Transnational Corporations and Other Business Enterprises*

## Trade Institutions

Sept. 8            Introduction: The History and Basis of the Trade Regime  
ROBERT. E. HUDEC, *DEVELOPING COUNTRIES IN THE GATT/WTO LEGAL*  
*SYSTEM*  
Douglas Irwin, *From Smoot-Hawley to Reciprocal Trade Agreements:*  
*Changing the Course of U.S. Trade Policy in the 1930s*, 325-27, 350

Sept. 10            Dispute Resolution  
WTO, *The GATT Years, Settling Disputes: A Unique Contribution,*  
*Settling Disputes: Case Study – The Timetable In Practice*  
The U.S. – Gasoline Case  
The Japan-Film Case  
[http://www.jeanmonnetprogram.org/courses/wto/docs/UnitXDisputeSettlementSystem\\_000.pdf](http://www.jeanmonnetprogram.org/courses/wto/docs/UnitXDisputeSettlementSystem_000.pdf) pp. 15-35

Sept. 15            Most Favored Nation  
The *Spanish Coffee Case*  
The *Japan-SPF Lumber Case*  
The *Canada-Autopact Case*

Sept. 17            National Treatment  
National Treatment Overview,  
[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](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\\_National\\_Treatment.pdf](http://www.jeanmonnetprogram.org/courses/wto/docs/Unit_VI_National_Treatment.pdf) pp. 100-116  
 The *Japan Alcohol Case*
- Sept. 22      Exceptions: Article XX Chapeau  
 Article XX Overview,  
[http://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_rules\\_exceptions\\_e.htm](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](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm)
- Sept. 24      Exceptions: Article XX Health & Safety  
 Case: Food Fight: The US, Europe, and Trade in Hormone-Treated Beef, HKS434
- Sept. 29      Midterm 1

### International Financial Regulation

- Oct. 1      Financial Stability: Overview & History  
 Thomas Oatley, *The Dilemmas of International Financial Regulation*, 23 REG. 36 (2001).  
 Pierre-Huges Verdier, *The Political Economy of International Financial Regulation*, 88 Ind. L.J. 1405, 1409-22 (2013).
- Oct. 6      Capital Adequacy I  
 HBS: Bank Capital Structure: A Primer  
 Capital Adequacy Exercises
- Oct. 8      No Class – Fall Break
- Oct. 13      Capital Adequacy II  
 Basel III: An Evaluation of New Banking Regulations 910N29-PDF-ENG  
 William Dudley, Speech, *Global Financial Stability - the Road Ahead* (2014).
- Oct. 15      Stress Tests  
 Case: Stress Tests  
 Mehrsa Baradaran, *Regulation By Hypothetical*, 67 VAND. L. REV. 1247 (2014).  
 Stress test exercise

- Oct. 20      The Emerging Law of International Financial Regulation  
David Zaring, *Finding Legal Principle in Global Financial Regulation*, 52 VA. J. INT'L L. 693, 683-88, 699-700, 701-16 (2012).  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2282060](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282060)  
Caroline Bradley, *Cross-Border Financial Regulation*, 10-18
- Oct. 22      Managers and International Financial Regulation  
Case: Hire-Wire Act: Credit Suisse and Contingent Capital
- Oct. 27      Sovereign Wealth Funds  
Case: Sovereign Wealth Funds: Barbarians at the Gate or White Knights of Globalization  
Fleischer, *Should We Tax Sovereign Wealth Funds?*, 118 YALE L.J. POCKET PART 93 (2008)  
Amarantha exercise
- Oct. 29      Midterm 2

#### Protecting Foreign Investment

- Nov. 3      Bilateral Investment Treaties  
HBS Note, *Protecting Foreign Investors*, 9-706-044  
2012 US Model Bilateral Investment Treaty  
The *Metalclad* Case
- Nov. 5      Foreign Investment: Strategy  
Case: Coca-Cola Back In Burma
- Nov. 10      Foreign Investment: Ethics  
Case: The Octopus and the Generals: The United Fruit Company in Guatemala HBS 9-805-146
- Nov. 12      Project Finance  
An Overview of Project Finance and Infrastructure Finance: 2014 Update, 214083-PDF-ENG
- Nov. 17      Project Finance: Drafting – No Class, drafts due Nov. 18 @ 5:00 pm  
Negotiation Exercise: H2O4U v. Pluritania
- Nov. 19      Sovereign Debt  
*Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014)  
Tim Samples, *Rogue Trends in Sovereign Debt: Argentina, Vulture Funds, and Pari Passu Under New York Law*, 35 NW. J. INT'L L. & BUS. 49 (2014)

Nov. 24      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/>.

Nov. 26      Thanksgiving

Special Topics in the Regulation of International Business

Dec. 1      Extraterritoriality  
Bradley, *Issues In Transnational Investment in Securities*  
*Morrison v. National Bank of Australia*, 561 U.S. 247 (2010).

Dec. 3      Foreign Corrupt Practices  
*United States v. Esquenazi*, 752 F.3d 912 (11<sup>th</sup> Cir. 2014)  
Case: Baker Hughes: Foreign Corrupt Practices  
Dow-Corning Case Supplement: FCPA Amendments Overview

Dec. 8      Last Class: Review

Final Exam: ?????