

**UNIVERSITY OF PENNSYLVANIA  
WHARTON SCHOOL  
DEPARTMENT OF LEGAL STUDIES AND BUSINESS ETHICS  
SPRING TERM 2017  
LGST 219 SYLLABUS  
MW 1:30-3:00PM  
LAW AND POLICY IN INTERNATIONAL BUSINESS**

**Monday-Wednesday 1:30-3:00**

**Professor: David Zaring**

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

**Office Hours: Wednesday: 3:00-4:30**

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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. No previous legal studies or Wharton classes are needed.

**Instructor:**

David Zaring is an Associate Professor at the Wharton School, and has taught at the Cambridge, 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 forty 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. No laptops are permitted.

**Grading:**

- Midterm 1 – 25%
- Midterm 2 – 25%
- Final Exam – 25%
- 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.

### Introduction to International Economic Law

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|--------|---|
| Jan 11 | Class Overview<br>International Law in class exercise   |
| Jan 18 | Policing International Transactions Through Domestic Agencies<br>Case: SEC v. Goldman Sachs   |
| Jan 23 | “Soft” International Law: the Case of Business and Human Rights<br>The Extractive Industries Technology Initiative Standard, excerpts.<br>John Ruggie, <i>UN Guiding Principles for Business &amp; Human Rights</i><br><i>Report of the Special Representative on The Issue Of Human Rights and Transnational Corporations and Other Business Enterprises</i> |

### Trade Institutions

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|--------|--|
| Jan 25 | Dispute Resolution<br>WTO, <i>The GATT Years, Settling Disputes: A Unique Contribution, Settling Disputes: Case Study – The Timetable In Practice</i><br>The U.S. – Gasoline Case<br>The Japan-Film Case |
| Jan 30 | Most Favored Nation<br>The Spanish Coffee Case<br>The Japan-SPF Lumber Case<br>The Canada-Autopact Case  |
| Feb 1  | National Treatment<br>WTO, <i>National Treatment Overview</i><br>The Korea Beef Case<br>The Japan Alcohol Case   |
| Feb 6  | Exceptions: Article XX Chapeau<br>WTO, Article XX Overview<br>The Shrimp-Turtle Case<br>Summary of The Shrimp-Turtle Compliance Case   |
| Feb 8  | Exceptions: Article XX Health & Safety   |

Case: Food Fight: The US, Europe, and Trade in Hormone-Treated Beef,  
HKS434

Feb 13 Midterm 1

International Financial Regulation

- Feb 15 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).
- Feb 20 Capital Adequacy I  
HBS: Bank Capital Structure: A Primer  
Capital Adequacy Exercises
- Feb 22 Capital Adequacy II  
Basel III: An Evaluation of New Banking Regulations 910N29-PDF-ENG  
William Dudley, Speech, *Global Financial Stability - the Road Ahead* (2014).
- Feb 27 Stress Tests  
Case: Stress Tests  
Mehrsa Baradaran, *Regulation By Hypothetical*, 67 VAND. L. REV. 1247 (2014).  
Stress test exercise
- Mar 1 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),  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2282060](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2282060).  
Caroline Bradley, *Cross-Border Financial Regulation*, 10-18
- Mar 4-12 Spring Break-No Class
- Mar 13 Managers and International Financial Regulation  
Case: Hire-Wire Act: Credit Suisse and Contingent Capital
- Mar 15 Sovereign Wealth Funds  
Case: Sovereign Wealth Funds: Barbarians at the Gate or White Knights of Globalization  
Victor Fleischer, *Should We Tax Sovereign Wealth Funds?* 118 YALE L.J. POCKET PART 93 (2008)  
In-class exercise

- Mar 20      EU Financial Regulation As Union  
 House of Lords European Union Committee, *The post-crisis EU financial regulatory framework: do the pieces fit* (HL Paper 103 (2015)), pp 19-22  
<http://www.publications.parliament.uk/pa/ld201415/ldselect/ldecom/103/103.pdf>  
 European Commission, *Towards the completion of the Banking Union* COM(2015) 587  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0587&from=EN>  
 Background (skim):  
 Eilís Ferran, European Banking Union and the EU Single Financial Market: more differentiated integration, or disintegration? (University of Cambridge Faculty of Law Research Paper No 29/2014)  
[http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=2426580](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2426580)  
 Niamh Moloney, 'Capital Markets Union: "ever closer union" for the EU financial system?' (2016) 41(3) European Law Review 307-333
- Mar 22      Exiting EU Financial Regulation  
 European Commission, 'Equivalence with EU Rules and Supervision'  
[http://ec.europa.eu/finance/general-policy/global/equivalence/index\\_en.htm](http://ec.europa.eu/finance/general-policy/global/equivalence/index_en.htm)  
 Lucia Quaglia, 'The Politics of 'Third Country Equivalence' in Post-Crisis Financial Services Regulation in the European Union' (2015) 38 West European Politics 167-184  
 The CityUK, *UK Financial and Related Professional Services: Meeting the Challenges and Delivering Opportunities* (August 2016), pp 21-25
- Mar 27      Midterm 2
- Protecting Foreign Investment
- Mar 29      Bilateral Investment Treaties  
 HBS Note, *Protecting Foreign Investors*, 9-706-044  
 2012 US Model Bilateral Investment Treaty  
 The *Metalclad* Case
- Apr 3      Foreign Investment: Ethics  
 Case: The Octopus and the Generals: The United Fruit Company in Guatemala HBS 9-805-146
- Apr 5      Project Finance  
 An Overview of Project Finance and Infrastructure Finance: 2014 Update, 214083-PDF-ENG
- Apr 10      Project Finance: Drafting – No Class, drafts due April. 18 @ 5:00 pm

Negotiation Exercise: H2O4U v. Pluritania

- Apr 12      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)
- Apr 17      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/>.

Special Topics in the Regulation of International Business

- Apr 19      Extraterritoriality  
              Bradley, *Issues In Transnational Investment in Securities*  
              *Morrison v. National Bank of Australia*, 561 U.S. 247 (2010).
- Apr 24      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
- Apr 26      Last Class: Review

Final Exam: May 1-9