

**UNIVERSITY OF PENNSYLVANIA
WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES AND BUSINESS ETHICS
SPRING TERM 2018
LGST 219 SYLLABUS
MW 1:30-3:00PM
LAW AND POLICY IN INTERNATIONAL BUSINESS**

Monday-Wednesday 1:30-3:00, JMHH F92

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:

Here is my bio:

David Zaring is Associate Professor in the Legal Studies and Business Ethics Department at the Wharton School. He writes at the intersection of financial regulation, international law, and domestic administration. He has written over forty articles, including publications in the Chicago, Cornell, Michigan, NYU, and Virginia law reviews, and a number of international law journals. In addition to teaching at Wharton, he has previously taught at the Bucerius, Cambridge, Penn, Vanderbilt, and Washington & Lee law schools. He has consulted for the World Bank, for financial regulators on three continents, has testified on financial regulation before Congress, and has written an occasional column on the subject for the New York Times/DealBook.

Course Format:

The course combines lecture, Socratic dialogue, and group discussion. Active class participation is expected. No laptops are permitted.

Readings:

The readings will be available on Canvas, there is no textbook for the class; I may add and subtract from them over the semester, and will occasionally add a handout or two to the mix.

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

- Jan 10 Class Overview
 International Law in class exercise
- Jan 17 Policing International Transactions Through Domestic Agencies
 Case: SEC v. Goldman Sachs
- Jan 22 “Soft” International Law: the Case of Business and Human Rights
 The Extractive Industries Technology Initiative Standard, excerpts.
 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

- Jan 24 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
- Jan 29 Most Favored Nation
 The *Spanish Coffee Case*
 The *Japan-SPF Lumber Case*
 The *Canada-Autopact Case*

- Jan 31 National Treatment
WTO, *National Treatment Overview*
The *Korea Beef Case*
The *Japan Alcohol Case*
- Feb 5 Exceptions: Article XX Chapeau
WTO, Article XX Overview
The *Shrimp-Turtle Case*
Summary of The *Shrimp-Turtle* Compliance Case
- Feb 7 Exceptions: Article XX Health & Safety
Case: Food Fight: The US, Europe, and Trade in Hormone-Treated Beef,
HKS434
- Feb 12 Midterm 1

International Financial Regulation

- Feb 14 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 19 Capital Adequacy I
HBS: Bank Capital Structure: A Primer
Capital Adequacy Exercises
- Feb 21 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 26 Stress Tests
Case: Stress Tests
Mehrsa Baradaran, *Regulation By Hypothetical*, 67 VAND. L. REV. 1247
(2014).
Stress test exercise
- Feb 28 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.
Caroline Bradley, *Cross-Border Financial Regulation*, 10-18
- March 3-11 Spring Break-No Class

- Mar 12 Managers and International Financial Regulation
Case: Hire-Wire Act: Credit Suisse and Contingent Capital
- Mar 14 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 19 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](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](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
Niamh Moloney, 'Capital Markets Union: "ever closer union" for the EU
financial system?' (2016) 41(3) *European Law Review* 307-333
- Mar 21 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 26 Midterm 2

Protecting Foreign Investment

- Mar 28 Bilateral Investment Treaties
HBS Note, *Protecting Foreign Investors*, 9-706-044
2012 US Model Bilateral Investment Treaty
The *Metalclad* Case

- Apr 2 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/>.
- Apr 4 Foreign Investment: Ethics
 Case: The Octopus and the Generals: The United Fruit Company in Guatemala HBS 9-805-146
- Apr 9 Project Finance
 An Overview of Project Finance and Infrastructure Finance: 2014 Update, 214083-PDF-ENG
- Apr 11 Project Finance: Drafting – No Class, drafts due April. 18 @ 5:00 pm
 Negotiation Exercise: H2O4U v. Pluritania
- Apr 16 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)

Special Topics in the Regulation of International Business

- Apr 18 Extraterritoriality
 Bradley, *Issues In Transnational Investment in Securities Morrison v. National Bank of Australia*, 561 U.S. 247 (2010).
- Apr 23 Foreign Corrupt Practices
United States v. Esquenazi, 752 F.3d 912 (11th Cir. 2014)
 Case: Baker Hughes: Foreign Corrupt Practices
 Dow-Corning Case Supplement: FCPA Amendments Overview
- Apr 25 Last Class: Review

Final Exam: May 2