

International University College of Turin  
IUC

Master of Sciences in Comparative Law, Economics and Finance

MSc CLEF 2008 – 2009

MSc CLEF in a SNAPSHOT

To obtain the MSc CLEF certificate students must obtain 48 units in two separate academic years. The 2<sup>nd</sup> year program will be tailored according to their individual research interests and special needs, with significant periods of study at one of the approximately 20 global partner institutions.

An academic dissertation of at least 15,000 words (or equivalent piece of work, like a documentary film with script) is required to complete the MSc CLEF program.

## **Foudational Courses**

### 1<sup>st</sup> Term

The Legal and Economic Institutions of Capitalism (Luca Anderlini & Daniel Peñailillo)  
Financial Instruments (Cally Jordan & Theodoros Diasakos)

### 2<sup>nd</sup> Term

Incentives and Regulations (Tom Hertz & Paolisa Nebbia)

## **Specialized Courses**

Issues of Law and Finance in Africa (Nsongurua Udombana & Moussa Djiré)

Issues of Law and Finance in Latin America (Sergio Ariel Muro)

Issues of law and Finance in India (Avi Singh)

Issues of Law and Finance in China (Guanghua Liu)

Issues of Law and Finance in the Islamic World (Bashar H. Malkawi)

Issues of Financial Regulation in Europe and the United States (Giuliano G. Castellano)

Issues of Law and Finance in Central Europe and Russia (Norbert Reich)

International Securities Regulations (Cally Jordan)

Antitrust (Paolisa Nebbia)

Comparative Law and Economics of Taxation (Nicola Sartori)

## **The Legal and Economic Institutions of Capitalism**

Luca Anderlini & Daniel Peñailillo

This course examines the concepts and fundamental principles of two great juridical instruments of capitalism, Property and Contract, trying to detect some of their main problems, with alternatives for solution.

In parallel, the economic and the legal side of the functioning of markets, market failures, contract theory and the role of courts is explored. The analysis of the conditions under which markets produce optimal outcomes leads to the identification of endemic market failures. Important among these is the “hold-up problem.” On this basis, the foundations rest of modern contract theory. Once contract theory is laid out, the course focuses further on the economic and legal side of court intervention in contractual disputes. Covered topics include: Markets and Welfare Optimality, Externalities, Property Rights, Expropriation and Nationalization, The Coase Theorem, Incomplete Contracts, Contract Theory, The Hold-Up Problem and The Theory of the Firm, Contractual Liability and Enforcement, Types of Damages and Indemnification, The Role of Courts in Contractual Disputes.

The method of instruction comprises both more formal lecturing and class discussions on an on-going basis: self-learning (individual research by students); class discussions, with denunciation and alternatives for problem solving, conducted by the professors. Grading is based both on formal tests and on class participation.

Professor Luca Anderlini – BA (Rome La Sapienza), MPhil & PhD (Cambridge UK) - has been at Georgetown since 2001, after having held permanent positions at the Universities of Cambridge (UK) and Southampton (UK). He has also held visiting positions at the Universities of Harvard, Yale, Pennsylvania and the London School of Economics. He is the author of numerous journal articles and other publications, particularly in *Econometrica*, *The Quarterly Journal of Economics* and *The Review of Economic Studies*.

Daniel Peñailillo Arévalo – LLM (Concepción), PhD (Complutense de Madrid) is Professor of Private Law for the Law Doctorate Program, Universidad de Chile, Civil Law Professor at Universidad de Concepción and Universidad Católica de Concepción, and Director of the Law Masters Program, Universidad de Concepción. He was Special Judge of Court of Appeals of Concepción for 10 years. He is an Attorney at Law, has obtained a Fullbright scholarship for a residency at New York University Law School, and studied the Three Cycles of Comparative Law at the International Faculty for the Teaching of Comparative Law of Strasbourg, France. He is the author of 4 books covering topics of Private Law (especially Property and Obligations), over 60 articles in various law publications, and is a member of the editorial committee of several law publications in Chile and abroad. He is consultant for the Chilean Government in projects and research for the new legislation in Private Law.

## Financial Instruments

Cally Jordan & Theodoros (Theo) Diasakos

Schedule of Classes

(Recommended chapters from sources are given in brackets)

### I. Theoretical Foundations

#### Bibliography

Copelan E. Thomas and Weston I. Fred, *Financial Theory and Corporate Policy*, 3<sup>rd</sup> ed. (Addison Wesley, 1992) [CW]

Hull S. John, *Option, Futures, and Other Derivatives*, 6<sup>th</sup> ed. (Prentice Hall, 2007) [H]

Estrada Javier, *Finance in a Nutshell: a no-nonsense companion to the tolls and techniques of finance* (FT Prentice Hall, 2005) [E]

I.1: Introduction: Investment Decisions, The Role of Financial Markets and Empirical Regularities (E.1-6; CW.1-3)

I.2: Securities Structure, Choice under Uncertainty, No Arbitrage Principle Pricing (Expected Utility, Stochastic Dominance, Risk Preferences, Arrow-Debreu Prices) (CW.4-5)

I.3: Portfolio Choice: Mean-Variance Analysis (CW.6)

I.4: Equilibrium: CAPM, APT, Equity Premium, Sharp Ratios (CW.7, E.7-12)

I.5: Options (H.1,8-11; CW.8; E.24)

I.6: Weiner Processes, Ito's Lemma, Black-Scholes (H.12-13)

I.7: Interest rates, Bonds, Yield Curve, Term Structure (H. 4; CW.3; E.13-21)

I.8: Forwards, and Futures (H.2-6; CW.9; E.25)

I.9: Swaps, Credit Risk, Credit Derivatives (H.7,20-21)

I.10: Martingales and Equivalent Measures, The Market Price of Risk (H.25)

I.11: Interest Rate Derivatives, Real Options (H.26,28,29,31; E.22)

I.12: Options on Stock Indices or Currencies, Exotic Options, Weather and other Insurance Derivatives (H.14, 22-23; E.26)

### II. Legal and Regulatory Aspects

#### Bibliography

Hal S. Scott, *International Finance, Transactions, Policy, and Regulation*, 15<sup>th</sup> ed. (New York: Foundation Press, 2008) [S] [nb references below are to the 14<sup>th</sup> edition; the 15<sup>th</sup> edition is expected to appear in July 2008]

2002 ISDA Master Agreement (Multicurrency-Cross Border) :

Edward F. Greene, Edward J. Rosen, Leslie N. Silverman, Daniel A. Braverman, Sebastian R. Sperber, *U.S. Regulation of International Securities and Derivatives Markets*, Eighth Edition (2005), chapt. 12

- II.1: Introduction and US Capital Markets (S.1-2)
- II.2: EU – The Single Market in Financial Services (S.4)
- II.3: Asset Securitization (S.12)
- II.4: Futures/Options (S.14)
- II.5: Swaps (S.15; 2002 ISDA Master Agreement)
- II.6: Mutual Funds and Hedge Funds (S.16)
- II.7: ADRs and Privatizations (S.18)
- II.8: Emerging-Market Bonds and Financial System Reform (S.19-20)
- II.9: Irish Stock Exchange
- II.10: Case Study [Subprime Mortgage-Backed Securitization]
- II.11: Case Study [CDO]
- II.12: Case Study – MetLife Equity Units

Cally Jordan holds several degrees, among which a BA (Carleton) and an MA (Toronto); law degrees from McGill University where she was first in her class in the combined common law/civil law program and Editor-in-Chief of the McGill Law Journal; a DEA, with distinction from the Université de Paris I (Panthéon-Sorbonne). She has clerked at the Supreme Court of Canada and practiced commercial and international financial law in New York, California, Ontario, Quebec, and Hong Kong for several law firms, including Cleary, Gottlieb, Steen & Hamilton.

She has taught at the Universities of McGill, Florida, Tulane, Melbourne, and at the Georgetown Law Center and Osgoode Hall Law School. She is a member of the European Corporate Governance Institute (ECGI) and of the Law Council of Australia, and an elected member of the American Law Institute. She has participated in activities of the Council on Foreign Relations (New York City), the Brookings Institution (Washington, DC) and the Asia Society (New York City). Both as counsel to the ADB and the World Bank as well as an external advisor, she has advised the UK Department of Trade and Industry and governments in Asia, Latin America, North Africa, Central and Eastern Europe and the Gulf region, on financial sector law and regulation, capital markets, corporate law and corporate governance. She is the author of nearly 60 publications

Theodoros Diasakos is an Assistant Professor of economic theory and finance at the Collegio Carlo Alberto of Turin. He received his PhD in Economics in 2007 from the University of California at Berkeley along with an MA in Mathematics and an MSc BA (Finance) from the Walter A. Haas School of Business. He obtained his BA in Economics and M Phil in Economic Theory and Econometrics both from the University of Cambridge (King's College), and an MPA/ID from the John F. Kennedy School of Government of Harvard University.

During his studies, Theo Diasakos was granted fellowships and awards from the Josephine de Karman Foundation, the University of California at Berkeley, the Greek State Scholarship Foundation, Harvard University, the Kokkalis Program on Southeastern and East-Central Europe, the Cambridge European Trust, the Foundation in Memory of Elena and Eleytherios Venizelos, and PZ Cussons Plc.

## Incentives and Regulations

Paolisa Nebbia & Tom Hertz

Economic theory is used to predict how rational individuals will respond to rules and economic arguments have been used to analyse the consequences of a wide variety of legal rules, including not only standards of proof, damage rules for breach of contract, negligence rules for torts, but also property and antitrust law, as well as environmental law and law of the financial and of the regulated markets. After an introductory part on the methodology of the law and economics approach, this module will examine areas of law that may be particularly relevant in the context of globalised a market and society, having particular regard to the following:

### 1) Intellectual property law

Utilitarian theorists generally endorse the creation of intellectual property rights as an appropriate means to foster innovation, subject to the caveat that such rights are limited in duration so as to balance the social welfare loss of monopoly exploitation. Non-utilitarian theorists, on the other hand, emphasize creators' moral rights to control their work. We will explore these issues paying special attention to the pharmaceutical industry, which offers a particularly salient example in today's global economy.

### 2) Banking and financial markets

At the macro level, excessive risk taking by financial intermediaries, sometimes related to prior deregulation of financial markets or international capital flows, has lately become a major factor explaining the occurrence of financial crises. The regulation of banking and financial markets is becoming the major challenge for public authorities in a market where information asymmetries, adverse selection and moral hazard problems trigger the need for investors' protection against occurrence of systemic crises that may endanger financial stability. At the micro level, many of the world's poor are effectively shut out of the credit market, except at extremely high interest rates. We will consider recent appraisals of the many "microcredit" and land-titling initiatives that are designed to increase access to credit by the poor.

### 3) Public utilities

The term "public utilities" indicates a wide variety of industries (airlines, telecommunications, oil, natural gas, electricity, water and railroads) that share the characteristic of having a common "network" structure, i.e. an extensive distribution system of lines, pipes or routes that give often rise to monopolies. Historically, public utilities have been either regulated or government-owned: in both cases, they have recently experienced regulatory reform in the form of increased competition. The reasons and the effects of regulation and regulatory reform will be examined.

### 4) The environment

This part of the course will focus on the economics of environmental regulation by first discussing the use of cost-benefit analysis in environmental law and policy and in environmental standard setting; it will then examine the various legal instruments to control environmental pollution and the combined use of regulation and other policy instruments such as liability rules, and tradable rights to pollution.

Tom Hertz is an applied microeconomist, with research in labour, health, education, and agriculture, as well as econometric methods. He received his AB in philosophy, magna cum laude, from Harvard College, and then an MA degree in Urban and Environmental Policy from Tufts University, and a PhD in economics from the University of Massachusetts at Amherst. In 2001 he accepted a one-year post-doctoral fellowship at Princeton University's Woodrow Wilson School of Public and International Affairs, in the Center for Health and Wellbeing. He has been an assistant professor of economics at American University since 2002.

Professor Hertz currently serves as a member of the Core Team of the Rockefeller Project on Economic Security, a multi-year effort to quantify and understand the determinants of economic vulnerability in the United States.

Paolisa Nebbia has been a Reader in Law at the University of Leicester since 2007, having previously been a Fellow in Law at St. Hilda's College (Oxford). She holds a PhD (Southampton) and an LLM degree in Legal Theory from the European Academy of European Law in Brussels. She is also a Visiting Professor at the Universities of Turin and Lyon. She acted as legal advisor to the Committee Organising the XX Olympic Winter Games – Torino 2006. She is a qualified "avvocato" and solicitor.

She is currently working on a project on the private enforcement of competition law and is a UK representative to the Acquis Group, entrusted by the European Commission with the task of systematising the existing body of EC consumer/contract legislation. Her research interests include competition law, EU law, consumer law and comparative contract law.

## **Issues of Law and Finance in Africa**

24 hours, 2 credits

Nsongurua Udombana & Moussa Djiré

This seminar will explore some historical, economic, political and social factors of contemporary African legal and financial systems; will describe the main aspects of these systems, national, regional and sub regional; will show the influence of globalization and international capitalism on these systems; will enlighten the struggle of African people against the maneuvers of international capitalism. The contents will be based on comparison of financial and legal systems in French and English speaking countries. The seminar will be based on magistral lectures, powerpoint and film projection, and commentary of legal and financial documents.

The seminar will be organised around the following subjects:

Preliminary chapter: African law or law in Africa? Definitions of law, its essence, modes of formation and specificities according to different legal systems.

Chapter 1: Historical, economic, political and social factors of contemporary African legal and financial systems. Influence on these systems of customary law, colonisation, domestic political, economical , socio-cultural factors on the one hand and international, especially international capitalism on the other hand.

Chapter 2: African legal and financial systems. African constitutionalism, land issues, investment and financial systems, regional organisations.

Chapter 3: Evolution of African legal and financial systems and influence of globalization on this process. Since the 1980s under the pressure of Bretton Woods institutions (WB and IMF), many African countries started “structural adjustment” programs which led to the emergence of new legal and financial systems in order to protect the interests of international capitalism and emphasized the process of destruction of African countries’ sovereignty .

Chapter 4: Struggle of African people through civil society and regional organizations against the maneuvers of international capitalism. African States’ attempts to protect their interests in the negotiations of GATT and with the EU Commission (prolongation of the Cotonou’s Agreement).

Nsongurua Udombana teaches International Law at the Central European University (CEU) in Budapest, and the University of Pretoria in South Africa. He currently consults for the European Commission/RCN Democracy and Justice on “Assistance to Southern Sudanese Justice System” in Juba, Southern Sudan. Professor Udombana received his LLB and LLM from the University of Lagos and his LLD from the University of South Africa. From 1994 to 2006, he taught at the University of Lagos, Nigeria, part of which he served as Head of Department. He has been Visiting Lecturer at the Nigerian Foreign Service Academy and Visiting Research Fellow at the Danish Institute of International Studies. He was the pioneer Director of the CEU Centre for Human Rights.

Professor Udombana has to his credit over 50 scholarly articles in journals worldwide.

His publications have appeared in the American Journal of International Law, Nordic Journal of International Law, African Yearbook of International Law, Indian Journal of International Law, Singapore Journal of International and Comparative Law, Human Rights Quarterly, as well as in Yale, Stanford, Emory, and Cornell. He consults for many organizations, including the Open Society Justice Initiative, and sits on the editorial board of many journals, including the International Journal of Civil Society Law, US. He has been a member of the Nigerian Bar since 1989.

Moussa Djiré received his MSc and PhD in International Relations from the International Relations and Law Faculty of Kiev State University. He also holds several academic titles in law, finance and administration (among others, from IDLI –Rome the Paris International Institute of public administration). In 2005, he started a second PhD at the Law Faculty of the University of Turin.

Moussa Djiré was appointed as permanent High School Professor at the National School of Administration (ENA) of Bamako in 1994 (currently Faculty of Law and politics), where he directed the Department of Law from 1994 to 1997. Prior to this appointment, he taught at the Military High School of Koulikoro and the Malian section of the International Insurance Institute of Yaounde. While participating to international research programs on issues of law, environment and development, he has developed research partnerships with several institutions – in particular with the African Studies Center of Leiden (Netherlands), University of Mayence (Germany), CIRAD and Center of formation Social workers of Aix en Provence (France), Universities of St Louis (Senegal), Accra (Ghana), Niamey (Niger), World Bank Institute, IIED and FAO where he served as consultant. He is the co-editor and co- author of 2 books on the issues of law in Africa, and the author of several articles on the issues of politics, land law, local government and natural resources management.

## Issues of Law and Finance in Latin America

Sergio Ariel Muro

Latin American exponential economic growth in recent years has brought to surface a host of legal challenges. More than ever before, international and domestic investors as well as national governments recognize the importance of the legal framework to enable sustainable growth within the region and project it globally. Throughout Latin America, the swift growth has placed the spotlight on the legal structure of financial markets and corporations as a way to foster long-term and fair economic development. At the heart of the debate is the relationship between capital structure and governance.

Entrepreneurs and investors need to have a solid understanding of the financial and governance framework as implicit determinants of business failure or success.

This seminar will introduce students to corporate governance theory and practice in Latin America, focusing on Argentina, Brazil and Mexico. The course will explore how and why corporate law shapes and constrains corporate governance structures. Many topics will be approached within an agency cost framework, focusing upon conflicts between stockholders, managers, and other constituencies. Students will be encouraged to analyze and discuss the real-world problems faced by parties, legal counselors and courts called upon to judge such transactions.

Some of the issues to be covered will be: different understandings of corporation objectives and its relations with the theory firm; mechanisms that generate and constrain private benefits and agency costs, including public regulation, disclosure requirements, shareholder voting, derivative suits, takeovers; the role of debt and stock in corporate governance, and the impact of the growing role of derivatives on how corporations are or should be governed; how securitization is shaping the finance structure; various types of financing available to business corporations and related legal issues (issuance of equity and debt, commercial loans and bonds, instruments of mezzanine financing, intra-group cash management, derivatives, etc); private practices such as board independence and monitoring mechanisms; corporate distress private and public treatment.

Sergio Ariel Muro is currently a JSD candidate at Cornell University Law School. He received his LLB from the Universidad Nacional de Rosario, an MA in Law & Economics from the Universidad Torcuato Di Tella (Buenos Aires), thesis with honors, and an LLM from Cornell University, thesis with honors. He is currently a visiting professor at Universidad Torcuato Di Tella, where he teaches Bankruptcy Theory. He was a teaching assistant at Cornell University (Economic Analysis of the Law) in 2007 and a research assistant at the University of Texas Law School in 2004 and Cornell University Law School from 2005 to 2007. Born and raised in Argentina, Mr. Muro has published articles internationally in Mexico, The Netherlands, Spain and the United States.

## Issues of law and Finance in India

Avi Singh

India's growth trajectory, whether real or hyped, likely needs no introduction. Both of the descriptions are indeed true. Parts of the economy have been deregulated, and globalised, and feature Indian companies that have become active players in international finance and trade. Other parts of the economy are still regulated, with different growth patterns. The patchwork of regulations is exemplified by the recent decision, extremely controversial, and politically opposed, to set up special economic zones, ostensibly outside either the regulations of the law, or the protections offered by it.

The course will initially focus on the legal formants, and layers of formal law, and informal practice in India. Thereafter, it will focus on certain areas of the law, where old common law code, socialist-era remnants, are being contemplated and transformed with new globalised model regulations which are partly a response to, and partly a concession to the globalised sections of the economy, and the dichotomy that exists in the law between these sections of the economy, and the law that governs other economic and other activities. The law and economics movement has not been received wholesale in India. Indeed, an entirely different input from economics – from Marxist economics – has informed and inspired a vast zone of Indian legislation and jurisprudence – which is still the law today. Thus, the plurality of formants in India is not only a mix between more traditional and more modern layers, but also layers from different ideological engagement and reception. Recent decisions, such as *Umadevi*, will indicate that the efficiency principle is not paramount, but efficiency and equity interject at random.

To look at the plurality of extremes that Indian legal systems wrestle with, the seminar shall examine:

Introduction to Indian system: Complexity of plurality in Indian - Hindu law, Islamic Law, Persian law, Common Law, Civil Law, Constitutional Law, Socialist Law, WTO/TRIPs. The Indian Constitution: The Republic, pursuant to a constitutional amendment, never repealed, in the 1970s, is a socialist republic, a principle reaffirmed in constitutional decisions till recently. However, the rhetoric of development, economic growth, and market efficiency informs more recent constitutional decisions. The plurality is also found in the constitution, which both grants the right to conduct one's trade or business as part of the freedom of speech, and allows it to be restricted if such restrictions are reasonably related to the government's stated public purpose.

The patchwork of old "mixed economy" statist legislation and connected jurisprudence, such as the Essential Commodities Act, the Industries (Development and Regulation) Act, Foreign Exchange Management Act (FERA has been repealed).

Selected "new economy" regulatory statutes that have been recently implemented to regulate those "new economy" sectors which were deregulated in the 1990s. The

deregulation was in itself sometime deliberate and often arbitrary executive decisions leading to unequal application of economic laws on different sectors in the country. Competition Law: enabled by the Constitution, which envisions distribution of wealth, the competition law is slowly being implemented. Socialist laws and newer efficient market bestow significant advantage to existing institutional players, creating concentration of wealth at unprecedented levels.

Money Laundering Act

Increased introduction of market efficiency economics into judicial decisions, in particular, the rhetoric of development (Special Economic Zones, Foreign Direct Investment, Public Private Partnerships)

Property Law: Property rights were curtailed in the 1970s and have not enjoyed a full restoration, except where international obligations have enabled the government to legislate expansion in intellectual property concepts.

Tribunalisation of the system. The normal courts increasingly do not exercise primary jurisdiction over a host of issues that have been removed to the domain of administrative law, creating a two-tier judicial system, with wide disparities in efficiency and cost in favour of tribunals.

Right to Information Act, 2005 and Consumer Act, 2005: Substantive and procedural grant of new rights is creating new citizen involvement. In particular, the seminar will examine the recently introduced case attempting to use Consumer Protection Act and tribunals to achieve compensation for beneficiaries of food aid.

Environmental laws and the Bhopal toxic cleanup case. The seminar will examine the panoply of environmental regulation through studying the Bhopal toxic cleanup case.

Avi Singh is a barrister who is admitted to practice law in California and India. Having studied in India, Netherlands, UK, and the US, Mr. Singh has extensive experience appearing before the international tribunals in the Hague and Arusha. Currently, Mr. Singh is practicing in New Delhi, India, where he specializes in white collar regulations, particularly those with cross-border implications.

## Issues of Law and Finance in China

Guanghua Liu

By analyzing influential cases, exploring basic knowledge and examining major issues of law and public finance and private finance in China, this seminar will cover topics from the background of China's financial system, the framework of China's legal system, and issues of banking, securities exchange, insurance, financial regulation and grass-root finance in China. Students will be exposed to up-to-date information and fundamental issues of the transition law and finance experience of China; they will also carry out an international comparison between the socialist market and law system with Chinese characteristics and other counterparts (especially the global capitalist market and law system) from a legal, economic and political perspective.

In order to receive credits, each participant will be required to produce a paper on any topic in consultation with the instructor from a comparative law and finance perspective.

Covered topics will be: an introduction to China and Chinese Culture, with a view to traditional Chinese (herbal) medicine, Chinese language and characters, local religion (Confucianism etc.); legal system in China, main existing system and historic evolution of the institutions; finance system of China, main existing system and historic evolution of the institutions; main issues of law and finance in China, public finance, banking, securities exchange, insurance, bonds, financial regulation, supervision and audit, grass-root finance, private funds and sovereign wealth funds; China and the World in the Context of Global Capitalism.

Basic reading materials:

LIN Yutang(林语堂), "My Country and My People", John Day Company 1935 or Foreign Language Teaching and Research Press 2000.

Albert Hung-yea Chen, "The Introduction to the Legal System of the People's Republic of China" 3rd Ed., LexisNexis December 2004.

Randall Peerenboom, "China's Long March toward Rule of Law", University of California, Los Angeles, September 2002.

Stanley B. Lubman, "Bird in A Cage---Legal Reform in China after Mao", Stanford University Press.

David Smith & ZHU Guobin, "China and the WTO: Going West", Thomson Sweet & Maxwell Press October 2001.

Nicholas R. Lardy, "Integrating China into the Global Economy", Brookings Institution, 2002.

Liu Guanghua – MA, BA, and PhD in Law - is Associate Professor of Law at the Law School of Lanzhou University, where he is also currently serving as Associate Academic Dean. He was visiting scholar at the University of California, Hastings College of the Law (2004-2005).

Dr. Liu's main interests focus on Economic Law/Business Regulation, Social Law and Comparative Law. He is the author of 4 books and over 60 articles on law and related subjects in Chinese, for which he was awarded three times the prize of the highest Social Science of Gansu Province. He is a member of the China Bar, the China Economic Law Studies Association and the China Social Law Studies Association of China Law Society.

## Issues of Law and Finance in the Islamic World

Bashar H. Malkawi

During the last three decades, Islamic finance has expanded rapidly, growing to involve over 300 financial institutions in both Islamic and other countries, and managing billions of dollars in assets. Islamic finance is unique, and can be set apart from conventional finance, since it is founded on Muslims' attempts to live according to the Divine Will as evident in the Islamic law. A well-known principle of Islamic finance is the prohibition of *riba*, which means interest on loans. In addition, Islamic finance prohibits *gharar*, a term which has been translated as "risk-taking." The prohibition against *riba* has not prevented Islamic banks from finding ways around. New alternatives, based on the concept of sharing profit and loss, have been developed to avoid *gharar* and make finance possible. These alternatives are *mudaraba*, *musharaka*, and *murabaha*.

Some of the issues that the course will cover include: sources of Islamic Law (Qur'an, Sunnah, analogical reasoning, and consensus); Islamic Laws of Usury and Risk; Islamic Contracts and Property; Islamic Economics; Islamic Financial Institutions; Islamic Banks; Islamic Equity and Mutual Funds; Life Insurance; Islamic Market Index and Islamic Finance.

Bashar H. Malkawi was appointed as assistant professor of law at the Hashemite University in 2005. He teaches different topics such as Islamic law, business law, and international trade. He received his LLB from Yarmouk University in 1999, an LLM from the University of Arizona, and his SJD degree from Washington College of Law at American University in Washington, D.C. He has acted as reviewer for several leading US law journals, and participated in several international donor-funded projects and programs with the goal of attracting foreign investment and advancing legal reforms in the Middle East. Dr. Malkawi is the author of more than 30 articles on law and related issues.

## Issues of Financial Regulation in Europe and the United States

Giuliano G. Castellano

The seminar will explore the main features of the financial regulatory framework in Europe and the US. Financial rules in such legal systems are strongly influenced by global standards; nevertheless, domestic idiosyncrasies are significant, and will be properly investigated. This is particularly true when recent national reforms are considered. In many countries, the structural dimension of national policy makers is a sensitive policy (and political) issue. Thus, the specificities of such countries will be presented and students will be provided with the methodological tools to approach financial regulation under a comparative law and finance perspective, showing the relevance of investigating domestic dimension, which is profoundly rooted in national traditions and historical paths.

The seminar will be organized in three fundamental sections. By showing some relevant cases, the first two sections will introduce the main driving forces of financial markets and the new challenges that such phenomena might pose to policy makers. After having briefly presented the role of the international architecture governing financial markets, the main regulatory schemes adopted in the EU and the US are illustrated. Finally, in the third section, the relevant characteristics of the European financial regulatory framework are introduced together with the main characteristics of the United States legal arrangements. The narrow limits often attributed to the concept of “multi-level of governance” will be expanded in order to introduce the relevant characteristics of each model.

Issues to be covered include:

- I. The Market's Phenomena, with a general outlook over the fundamental economic phenomena driving financial markets. Accordingly, in order to identify the concerns and challenges posed by the constant evolution of financial markets, the following phenomena will be introduced: conjunctures among financial segments (financial mixed products, conglomerates); cross-border operations; technological change; crises and scandals.
- II. The Regulatory Response, with an illustration of the economic dynamics leading national and international policy makers to define new common rules, and of the characteristics of the current international financial architecture. Against this backdrop fundamental issues will be covered such as the international rulemaking activity (soft-laws and hard-laws; e.g. Basel 2, Solvency 2, etc.), and the different domestic models (solo-structure, multiple-structure, etc).
- III. The Comparative Analysis: EU and the US, with a focus on the core characteristics of financial markets. At first, the EU regulatory action for financial markets will be presented, by introducing the *ad hoc* lawmaking processes recently introduced and the fundamental rules lying at the core of the EU supervisory framework. Then, several European national specificities will be examined in order to elicit national characteristics. The evolution of the US system will be introduced in order to fully understand the

current regulatory framework and explain the current debate concerning future reform projects.

Giuliano G. Castellano graduated in Law at Bocconi University (Milan) in 2004, after being a visiting student at Paris XII University, Faculté de Droit. He has recently obtained a PhD from the Centre for the Comparative Analysis of Law and Economics, Economics of Law, Economics of Institutions (CLEI) at the Collegio Carlo Alberto (Moncalieri), and a PhD in Economie et Science Sociales of the Ecole Polytechnique of Paris. His research project won the renowned Vinci Scholarship, granted by the Università Italo-Francese, an intergovernmental body established jointly by the French and the Italian governments. He has teaching assistant for the Law and Economics course at Bocconi University, and worked for the Office of Legislative Analyst of the City and County of San Francisco, where he received an official Board Commendation for his contribution to the policymaking process.

## Issues of Law and Finance in Central Europe and Russia

Norbert Reich

After the fall of socialism, the former socialist countries “jumped” into economic freedom without particular safeguards in the area of banking and financial services. This resulted in several banking crisis in the 1990s provoking huge financial losses for citizens of the newly established democracies, thereby greatly undermining trust in the market economy. Regulation and consumer protection in financial services became a high priority on the political agenda. Countries on their way to membership in the EU like Poland, Hungary and the Baltic countries more or less voluntarily took over the “*acquis communautaire*”. Russia, particularly after the 1998 crash, intensified state control and regulation over the banking industry, tried to stop outflow of capital and improve consumer protection through mandatory rules in the new Civil Code and special legislation on investment services.

The course will give an overview of the present state of regulation by making use of the comprehensive study: “Financial Services Regulation in Europe”, Oxford University Press 2006. It will then take up certain issues of financial services in new EU Member countries with a particular emphasis on consumer and investor protection. There will always be a reference to relevant EU regulations and directives, including the recent Dir. 2008/48 on consumer credit. Russia is a special case because of its position outside the EU and its still limited liberalisation. Therefore, the relevant provisions of the Russian Civil Code (which will be made available in an English translation) must be studied as well as specific rules on securities by the Federal Securities Commission, including self-regulation by the so-called NAUFOR rules.

Norbert Reich was visiting professor at the University of Tartu (Estonia) where he taught EU internal market, competition and consumer protection law in 2006-2008, Rector of the Riga Graduate School of Law in 2000-2004, Director of the Centre of European Legal Policy in Bremen (ZERP) in 1982-1991, and Professor of civil and economic law at the University of Bremen until his retirement in 2005. He will be a Braudel Senior Fellow at the European University Institute in Florence. He has published and lectured extensively on EU law, economic and contract law of new member countries, and consumer and investor protection in Russia.

## International Securities Regulations

Cally Jordan

This course will examine the internationalization of capital markets in the last 20 years from a legal and regulatory perspective. An introductory section will look at the history, trends and issues associated with internationalization of the markets and the regulatory techniques that have developed in response to them. Several different markets will be studied, regulated and unregulated, developed economies as well as developing or emerging markets, the Euromarket, the EU, the US, China and others. Part of the course will be devoted to specific US regulatory responses to the internationalization of capital markets: Foreign Private Issuer exemptions, Regulation S, Rule 144A, Mutual Recognition Systems, ADRs. The last part of the course will examine the consolidation of stock exchanges, the emergence of international standards, the work of the International Organization of Securities Commissions (IOSCO) in developing principles of securities regulation and disclosure; the OECD Principles of Corporate Governance and the role of international financial institutions such as the International Monetary Fund and The World Bank, developments in China and basic principles of Islamic finance. The course concludes with country studies.

Course materials have been specially prepared for this course. The readings below will be supplemented by class handouts. The course format will be a combination of lecture, class discussion and in-class student presentations worth 50% of the final mark. There will then be a short (90 minutes) final exam worth 50% of the final mark. The exam will be a combination of problem and essay questions. The presentations should be no longer than 20 minutes accompanied by a written outline (which may be in powerpoint form) and a short bibliography. Below are possible topics (based on the existing reading list); other topics may be discussed with the instructor.

1. Regulation of UK capital markets: the Financial Services Authority
2. International Accounting Standards: an Overview of the Issues
3. Sarbanes-Oxley and its international implications
4. Stock Exchanges: Recent Developments
5. IOSCO, its origins and impact
6. IOSCO International Standards
7. European Markets: the Prospectus Directive
8. European Markets: Market in Financial Instruments Directive
9. European Markets: Cross-border mergers
10. European Markets: Market Abuse Directive
11. Emerging Markets: Issues, institutions and regulation (choose a market)
12. Regional Markets, their development and prospects

For a biography of Cally Jordan see the Financial Instruments course.

## **Antitrust**

Paolisa Nebbia

This module is articulated in 4 parts. First, the different goals that underlie competition policy and law are discussed. While the negative welfare consequences of monopoly power justify the need for competition rules, economic efficiency is not the only possible goal of competition policy: rules of competition law may be inspired by other considerations, such as consumer welfare, defence of smaller firms, promotion of market integration and fairness. Second, an overview of the evolution of the thinking and approach to competition law will be provided: competition rules may be adapted as the underlying economic theory changes in both space and time, and accordingly the outcomes of competition law cases may be affected by changes in the underlying theory. The third part will then address the notion of market power and devote a critical analysis to the concept of relevant market, which forms the basis of the assessment of market power. The fourth part will contain an economic analysis of the substantive rules of competition law, including the prohibition of horizontal restraints, the regulation of vertical restraints and of abuses of dominant position.

Throughout the course, frequent comparisons between the US and the EU will be drawn. Since competition laws are often phrased in deliberately general terms, they get their precise meaning when competition authorities and courts interpret them. For this reason, leading cases from the EU and the US will be discussed.

For a biography of Paolisa Nebbia see the Incentives and Regulations course.

## Comparative Law and Economics of Taxation

Nicola Sartori

Tax is an important part of the business environment. With the growth in globalization and the expansion of cross border flow of investments, tax plays a major role in the decision making process. Therefore, the ability to accommodate the distinctions of various tax systems around the globe and to understand the policy considerations behind them is what this course is aimed at. This course offers a comparative analysis of various solutions that were adopted by several tax systems as a response to increasing common tax problems of their income tax systems. First, the common core of tax systems of industrialized countries in relation to basic tax problems will be identified. Second, different tax models (and their circulation) among different countries will be analyzed. Finally, a closer look at the US and Italian tax mechanisms for the resolution of the tax problems discussed earlier in the course will be taken. In the first part of the course, the theory and methods of comparative taxation (tax models, formants and common core in tax law) will be illustrated and the economic principles of taxation (efficiency, vertical and horizontal equity, simplicity) will be described so to critically analyze tax policy issues and compare different tax designs. Some of the specific issues and topics that will be covered in a comparative way during the course are: Definition, history and reasons of tax law; Progressive versus proportional tax systems; Ability-to-pay principle and new trade-off between efficiency and equity as a new way to introduce equity into models of tax analysis; Tax legislative process, constitutional limitations, power to make tax laws (distribution of tax-law- making power between the legislative and executive branches of government and division of tax powers between central and local governments); Tax procedure and litigation (regulations and rulings, tax returns and record keeping, audits, dispute settlement, recovery, refunds, penalties, litigation); Prevention of tax avoidance and evasion: enforcement tools; Definition of tax: income versus consumption taxes; Definition of taxable income: global versus schedular system and source versus accretion concept of income; Role of business in tax law: why tax corporations? Who bears the corporate tax? What is the relationship between corporate and individual level of taxes? International tax regime: international tax as international law (the benefit principle and the single tax principle); Principles of international taxation: taxation of multinationals and cross border investments; Use of tax law for delivering social policies.

Nicola Sartori specializes in International and Comparative Taxation and Tax Policy. He is experienced in both Italian and US Tax Law. He earned his degree in Law and Business Administration, summa cum laude, from Bocconi University, Milan, in 2003, and his PhD in Law (curriculum Tax Law) from the University of Milan Bicocca in 2008. He also holds an LLM in International Taxation from the University of Michigan, School of Law, where he is currently an SJD student. Before joining IUC Torino, he has been tutor professor of tax law and research assistant in Italian, International and Comparative Tax Law at Bocconi University, where he is a member of the International Technical Committee.