

Berkeley Law - 261U sec. 1 (Fall 2011)
European Union Law and Policy
Preliminary Syllabus

Professor: Katerina Linos
Meeting time: Mondays and Tuesdays, 11:20-12:35 pm
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Course Description

The European Union establishes the largest market in the world; it is the biggest US trade partner, and the main site of overseas offices of American law firms. This introductory course examines the doctrines and institutions that structure the European Union, the political context that made this project possible, and the challenges it faces. The course will explore how European law impacts American firms and citizens; to do this, we will examine antitrust, privacy, and environmental regulations. In addition, we will discuss European efforts to protect civil rights, regulate the workplace and fight terrorism, and contrast these with US doctrines. Therefore, the course is not only intended for students interested in European economic law, but also for students interested in exploring US policy debates from a comparative perspective, as well as for students interested in better understanding globalization and other regional agreements.

Requirements and Evaluation

This is an introductory course; no prior knowledge is assumed. That said, LL.M. students and others with a background in the European Union, other regional associations, or an interest in federalism in the United States, are encouraged to take the course, to help develop comparisons between Europe, the United States, and other regional agreements such as ASEAN, NAFTA and MERCOSUR.

I am hoping for vigorous class discussion. For this reason, I will limit readings for each session to approximately 20 pages. Currently, the class will be evaluated on the basis of a take-home examination. Students with a strong interest in a topic related to Europe may write a 30-page research paper in lieu of the examination, and satisfy the writing requirement.

Text available for purchase

Cases and Materials on European Union Law, 3d Edition, George A. Bermann, Roger J. Goebel, William J. Davey, Eleanor M. Fox (2011)

The remaining readings will be made available through b-space and in class.

Course Outline

The course is organized in three thematic units. Part 1 introduces the European Union and its main institutions, and identifies core elements of EU legal doctrines. This part explores how national courts and the European Court of Justice used legal tools to create a strong supra-national order, and compares developments in Europe to U.S. federalism and to other regional communities. Part 2 explores how a free trade area works; it explores how money, goods, services, workers, and judgments move within Europe and around the world, and how baseline protections for workers and consumers are set. Part 3 explores how American firms and citizens, and non-Europeans more generally, are influenced by European regulations. We analyze anti-trust, data protection, environmental regulation and anti-terrorism efforts to show how many European regulations directly impact foreigners, while others lead American regulators to ratchet up standards.

I – EUROPEAN INSTITUTIONS AND KEY DOCTRINES

Session 1: Introduction (8/29)

Bermann et al., Preface, p. v

Extracts from:

Robert Schuman, “The Schuman Declaration” (1950)

Margaret Thatcher, “A Family of Nations” (1988)

Jurgen Habermas, “Why Europe Needs a Constitution” (2001)

Recent Articles from The Economist– “Their Euro Crisis, Our Double Dip”; “Clean-air turbulence: Europe is right to include airlines in its emissions-trading scheme”; “Google and antitrust: The European Union is right to take a closer look at Google”

Session 2: History of the European Union – The Major Treaties (8/30)

Bermann et al., pp. 3-6, 14-31

Labor Day – No Classes (9/5)

Session 3: The EU’s Institutional Structure (9/6)

Bermann et al., pp. 37-60

Session 4: Legislation, the Legislative Process and the Budget (9/12)

Bermann et al., pp. 75-87, 99-102

Session 5: Powers of the European Union and the United States (9/13)

George Bermann & Kalypso Nicolaidis, *Basic Principles for the Allocation of Competence in the United States and the European Union*, in NICOLAIDIS & HOWSE, THE FEDERAL VISION, 483-504 (2001)

Session 6: The Court of Justice and the Supremacy of EU Law (9/19)

Bermann et al., pp. 60-66

Joseph Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403, 2413-2419 (1991)

Session 7: The Doctrine of Direct Effect (9/20)

Bermann et al., pp. 229-44

Session 8: Public Enforcement of EU Law (9/26)

Bermann et al., 385-93

Katerina Linos, *How Can International Organizations Shape National Welfare States? Evidence from Compliance with European Union Directives* 40 COMP. POL. STUD. 547, 547-49, 556-64 (2007)

Session 9: Preliminary References (9/27)

Bermann et al., pp. 321-41

Session 10: Member state liability in the EU and the US (10/3)

Daniel Meltzer, *Member State Liability in Europe and the United States*, 4 INT'L J. CON. L. 39-48, 54-67 (2006)

Session 11: Lessons from the ECJ for other Tribunals (10/4)

Karen J. Alter & Laurence R. Helfer, *Nature or Nurture? Judicial Law Making in the European Court of Justice and the Andean Tribunal of Justice*, INT'L ORG. (2010), pp. 1-14, 20-29

Session 12: Review & Problems (10/10)

II – FREE MOVEMENT

Session 13: Free Movement of Goods and Consumer Protection (10/11)

Cassis de Dijon and Consumer Protection, Bermann et al., pp. 475-488

Session 14: EU/US Trade Relations (10/17)

EU/US Bananas Dispute, Dunoff et al., *International Law: Norms, Actors, Process : A Problem-Oriented Approach*, pp. 775-793

Sessions 15: Free Movement of Judgments in the US and Europe (10/18)

Brandon B. Danford, "The Enforcement of Foreign Money Judgments in the United States and Europe: How Can we Achieve a Comprehensive Treaty?" 23 *Review of Litigation* 382, 382-402 (2004)

Session 16: The European Monetary Union and the Financial Crisis (10/24)

Bermann et al., pp. 1240-42, 1270-79
(Materials to be updated as crisis progresses)

Session 17: Guest Lecture – Prof. Thanos Veremis on Greece and the Financial Crisis (10/25)

Session 18: Guest Lecture – ECJ Judge Thomas von Danwitz Visit (10/27)

Session 19: Freedom of Establishment and Freedom to Provide Services (10/31)

Bermann et al., pp. 657-74

No class on 11/1 (to make up for von Danwitz Visit)

Session 20: Lawyers' Right to Practice Away from Home (11/7)

Bermann et al., pp. 727-49

Session 21: Equal Treatment of Men and Women (11/8)

Bermann et al., pp. 1395-1419

Session 22: Age, Race, Disability and Sexual Orientation in the US and the EU (11/14)

Katerina Linos, *Path Dependence in Discrimination Law: Employment Cases in the U.S. and the E.U.*, 35 *YALE JOURNAL OF INTERNATIONAL LAW* 116, 116-120, 152-58 (2010)

Bermann et al. pp. 1434-1440, 1445-1450

III: EUROPEAN REGULATIONS OUTSIDE EUROPE

Session 23: Antitrust (11/15)

Eleanor Fox, “GE/Honeywell: The U.S. Merger that Europe Stopped - A Story of the Politics of Convergence,” in *Antitrust Stories* (Daniel A. Crane and Eleanor M. Fox, ed., Foundation Press, 2008)

Sessions 24-25: Environmental Regulations in the EU and the US (11/21 & 11/22)

Joanne Scott, *From Brussels with Love: The Transatlantic Travels of European Law and the Chemistry of Regulatory Attraction*, 57 AM. J. COMP. L. 897 (2009) (selections)

Sessions 26-27: Privacy and Data Protection in the EU and the US (11/28 & 11/29)

Gregory C. Shaffer, *Globalization and Social Protection: The Impact of EU and International Rules in the Ratcheting up of U.S. Data Privacy Standards*, 25 YALE JOURNAL OF INTERNATIONAL LAW 1 (2000) (selections)

Session 28: Fighting Terrorism While Protecting Fundamental Rights (11/30)

A Wealthy Saudi, Mired in Limbo Over an Accusation of Terrorism (NYT, 12/13/08)

Advocate General Maduro Opinion in *Kadi v. Commission*

Bermann et al. pp. 198-199