

# Business Law Program 2011–2012

From student organizations to faculty scholarship to alumni involvement, this year has seen growth on all fronts. The *American University Business Law Review* published its inaugural issue and held its second annual symposium. Student organizations are burgeoning. Two new ones have been founded, one related to social enterprises and the other devoted to transactional law; they join a vigorous International Trade and Investment Law Society as well as an active JD/MBA Club and Business Law Society. Clinics and moots have given students real experience in business law, ranging from bankruptcy and tax to international trade and commercial law. The WCL faculty continues to host its well regarded scholarly workshop series, which is still expanding. Highlights of the year appear in the following pages.



Ricardo Ramirez, Appellate Body Member of the World Trade Organization, speaks to WCL students, faculty, and staff on September 13, 2011 at the Dean's Business Law Lecture

## Events

### Dean's Business Law Lecture with Ricardo Ramirez WCL '94

Current World Trade Organization Appellate Body Member Ricardo Ramirez addressed the relevance of the North American Free Trade Agreement twenty years after its inception. Mr. Ramirez received his LL.M. from WCL and a law degree from the Universidad Autónoma Metropolitana.

### Out of Bounds: Tackling the Agent–Athlete Relationship

Hosted by the Sports and Entertainment Law Society, this panel featured a certified agent, an ESPN commentator, and a representative from the NFL Players' Association. They discussed the athlete–agent dynamic and the impact of new regulation on the relationship.

### Confessions of a White-Collar Criminal: A Discussion with Sam Antar

Former chief financial officer of Crazy Eddie Electronics Sam Antar spoke about his role in and conviction for a securities fraud scandal in the 1990s. Antar also offered advice on how to prevent and detect white-collar fraud.

### Business Law Society Distinguished Alumni Dinner

Hosted at Bistro Bistro in Dupont Circle, the Business Law Society welcomed Carol Melton, WCL '81, the Executive Vice President for Global Public Policy of Time Warner Inc., as well as her husband, Joseph Hassett, a partner at Hogan Lovells. Students learned about Ms. Melton's unplanned road to success.

## Law Review Symposia

### *American University Business Law Review*

*Profits Plus Philanthropy: The Emerging Law of "Social Enterprise"* focused on the establishment of L3Cs, or low-profit limited liability companies, and other flexible corporations. This symposium explored the ways in which these new enterprises support the economy, the development of new businesses, and job creation.

### *Administrative Law Review*

*Regulating Innovation: How the Patent and Trademark Office Intends to Create Adjudication from Scratch*, cohosted by the Intellectual Property Brief and the Program on Information Justice and Intellectual Property, examined the Leahy-Smith America Invents Act and the new grant-review process that agencies will be required to create.



The *American University Business Law Review* 2012 Symposium, "Profits Plus Philanthropy," focused on the rapidly growing popularity, progress, and significance of social enterprises.

# Student Organizations

## Highlights 2011-12

### **Business Law Society**

The Business Law Society's mission is to provide a forum for law students interested in all aspects of business law. The Society provides students with access to alumni at events throughout the year, culminating in a dinner for alumni and current students and featuring a brief talk by a distinguished alumna (see page 1). In addition to networking opportunities, meetings cover topics ranging from job prospects and career advice to hot areas of practice and choosing courses.

### **International Trade and Investment Law Society**

The International Trade and Investment Law Society (ITILS) promotes discussion of international trade law issues and to help students explore careers in international trade law. In 2011-2012, ITILS sponsored discussion forums on topics such as transparency, anti-corruption, and the World Trade Organization, among others (see pages 1 and 4). ITILS strives to provide a balance of views and discussions of trade issues all over the world and all types of trade agreements. The organization also provides its members with information on obtaining a career in international trade.

### **JD/MBA Club**

The JD/MBA program at WCL provides an excellent opportunity for students who desire to combine skills and develop expertise in both law and business. The JD/MBA Club offers a social outlet and forum for students pursuing the dual JD/MBA degree and hosts events that cater particularly to students who are both business students and law students.

## New Organizations

### **Social Enterprise Legal Society**

The Social Enterprise Legal Society combines business associations, corporate, tax, and nonprofit law as part of an effort to understand the legal implications of this emerging sector. The Social Enterprise Legal Society's inaugural year brought events and weekly meetings where students shared research about the field, interviewed social entrepreneurs, and produced content for their blog in addition to other publications.

### **Transactional Law Society**

The Transactional Law Society is a new student organization to promote interest in and pursuit of transactional law in the WCL community. In 2011-2012, the Transactional Law Society assembled and prepared WCL teams that will compete in mock transactional and negotiation competitions, in addition to educating the community about transactional law.

# Clinical Program

### **THE COMMUNITY AND ECONOMIC DEVELOPMENT LAW CLINIC**

The Community and Economic Development Law Clinic (CEDLC) provides transactional legal services for client groups engaged in neighborhood-based community development. CEDLC represents and helps organize small non-profits, businesses, and tenants' associations, all of which share the goal of developing resources for underserved urban communities.

This year, CEDLC students assisted eighteen community-based organizations across the Washington metropolitan area. Students worked on matters as diverse as researching state and federal securities regulations for subscription agreements for investors; submitting applications for federal and state tax exemption for several organizations; and securing emergency disaster relief from FEMA for an affordable housing co-operative.

### **JANET R. SPRAGENS FEDERAL TAX CLINIC**

The Janet R. Spragens Federal Tax Clinic represents low-income individuals who are being audited by the Internal Revenue Service. Students do not fill out current tax returns for taxpayers, do bookkeeping, or provide accounting services; as a litigation clinic, students provide legal representation for clients before the Internal Revenue Service in appeals conferences and, if the cases do not settle, in the United States Tax Court.

This year the Tax Clinic achieved some remarkable results for its clientele: students succeeded in obtaining innocent spouse relief for an abused spouse; other students assisted foreign embassy household workers in resolving U.S. tax bills; the clinic assisted many taxpayers experiencing onerous tax collection efforts to have collection suspended because of hardship. Students coordinated with other WCL clinics to handle tax issues for immigrants and victims of illegal trafficking.

### **THE GENERAL PRACTICE CLINIC**

The General Practice Clinic represents low-income clients in such areas as consumer protection, employment, and bankruptcy, among others. Student attorneys use a range of legal skills on behalf of clients in settings that include administrative tribunals and trial and appellate courts in the District of Columbia and Maryland. The clinic covers topics such as client-centered representation, interviewing, theory of the client, fact investigation, counseling, and negotiation.

## Moot Court

Students interested in business law participate in moot court competitions in the United States and around the world. Three teams are featured here. With ever-increasing interest, WCL students also plan to participate in more competitions and anticipate adding transactional law moots next year.

### Vis International Commercial Arbitration Moot

The Willem C. Vis International Commercial Arbitration Moot Court Competition is the world's largest and most prestigious private-law competition. Taking place annually in Vienna and Hong Kong, the competition brings together hundreds of teams from around the globe. This year's competition focused on a contract dispute for the sale of high-tech computer chips and was argued under the United Nations Convention on Contracts for the International Sale of Goods pursuant to the arbitration rules of the China International Economic and Trade Arbitration Commission. The WCL team advanced to the Round of 32 in the Vienna competition, beating out well over a hundred other teams. Three WCL students received honorable mention for best oralist. Adding to the awards, the Hong Kong team received an honorable mention for the claimant's memorandum.



### World Trade Organization Moot Court

The World Trade Organization Moot Court Competition is a simulated hearing of the World Trade Organization dispute settlement system and is organized annually by the European Law Students Association. The competition is international in scope, with selection rounds held in the United States, Canada, Europe, Latin America, South East Asia, the Asia-Pacific region, Africa, and the Middle East. The North American Round of the WTO Moot Court Competition was again hosted here at WCL, where the home team placed third.



### Duberstein Bankruptcy Moot Court

The Honorable Conrad B. Duberstein Bankruptcy Moot Court Competition promotes and recognizes the finest oral and written advocacy on significant issues in bankruptcy practice. The competition consistently attracts a wealth of leading practitioners and bankruptcy judges as well as approximately fifty competition teams, making it among the largest single site appellate moot court competitions. Entering the moot for the first time this year, WCL prepared and sent third-year students Ada Esdebe and Diana Pak Yi to represent the school at the competition in New York City.



Pierre Mayer professor at the University of Paris I (Sorbonne) and partner at Dechert LLP (Paris); Dominique Hascher, judge of the Court of Appeal of Reims (France); Juan Fernandez Armesto of Madrid; and David Snyder of WCL, participate in a panel on “Salient Issues in International Commercial Arbitration in Europe” held at WCL on November 16, 2011.

## Guiding Students

### **Business Law Program Orientation**

Business law faculty, program staff, student leaders, and publication editors provide students with an overview of the courses, organizations, externships, publications and other resources within the Program.

### **Business Law Curriculum Advising Sessions**

The Program hosts special sessions where faculty and students offer wisdom on tailoring course selections to meet career interests. Students ask questions about professors’ styles, course content, and offerings at the AU Kogod School of Business and other schools on main campus.

## International Business

### **Double Remedies: A Closer Look at the United States–China Relationship**

The International Trade and Investment Law Society sponsored this panel of practitioners from government and private firms. Panelists debated the effect of application of both countervailing duties and anti-dumping laws to non-market economies, particularly China.

### **Salient Issues in International Commercial Arbitration**

The Center on International Commercial Arbitration led this day-long symposium covering current issues in arbitration, from Africa and Asia to Europe and the Americas.

### **Discussion with Johann Human, Director, World Trade Organization Rules Division**

Presented by the Program on International Organizations, Law, and Diplomacy in conjunction with the ABCI Institute and the International Trade and Investment Law Society, the event featured a candid account of life in the Rules Division, which is responsible for monitoring ongoing negotiations and actively assisting in the implementation of various World Trade Organization Agreements.

### **Russia’s Accession to the World Trade Organization**

Chiedu Osakwe, Director of the WTO Accessions Division, presented his first-hand account of the events and circumstances surrounding Russia’s accession.

### **How to Handle Distribution and Agency issues in International Commercial Arbitration**

This eighth annual seminar sponsored by the Center on International Commercial Arbitration provided practical wisdom for handling international arbitration cases.

### **Securing the Benefits of Trade and Investment Through Transparency and Anti-Corruption**

This event highlighted the unique challenges of trading and investing abroad, including hidden subsidies, bribe requirements, customs clearance, and more. Panelists gave various perspectives on progress made and challenges to come.

# Faculty Workshop Series

The Business Law Faculty holds a monthly scholarly workshop where faculty from WCL and around the world present drafts of papers they are preparing for publication. The workshop functions as a faculty seminar in which the author introduces the discussion and the gathered scholars provide comments and questions based on their reading of the paper and on their knowledge of the law, business, and academic research. In addition, the WCL distinguished speaker series features workshops each year in business law.



## **Challenging the Myth: Does the United States Really Tax Corporate Profits at a Comparatively High Rate?**

**by Andrew Pike**

*Professor, American University Washington College of Law*

This article for *Tax Notes* challenges the accepted notion that the United States taxes corporate income at rates in excess of other OECD countries, specifically questioning whether the nominal U.S. tax rates applied to business profits flowing through corporations are higher than the rates of U.S. trading partners. A proper comparative analysis of the OECD countries reveals that a large portion of the corporate sector in the United States is subject to relatively low nominal tax rates, as compared to other OECD countries. This conclusion results from the following three factors: (1) corporations (and other businesses) in other OECD countries are VAT taxpayers; (2) for a corporation, the measurement of corporate value added incorporates a measure of corporate profit comparable to the U.S. corporate tax base; and (3) the VAT can fairly be viewed as incorporating a tax on corporate (or business) profit.



## **Wait for It . . . Latency, Equilibrium, and Copyright in Scholarly Publishing**

**by Jorge Contreras**

*Professor, American University Washington College of Law*

In considering the appropriate scope of copyright protection for scholarly works, Professor Jorge Contreras discusses several examples in which competing stakeholders have arrived at compromise positions far short of the full duration of copyright protection. Drawing on prior work, he refers to the period prior to full public release of these materials as their "latency" period. An examination of the latency periods developed by stakeholders through bilateral negotiation, unilateral action, agency rulemaking and legislation reveals surprisingly similar results. Thus, in contrast to the roughly 100 years of copyright protection, most of these negotiated compromises have resulted in latency periods in the range of 6–12 months. This convergence suggests that within the field of scholarly

publishing, this period may represent an "equilibrium" value at which the interests of differing stakeholder groups are appropriately balanced.



## **Clash of Paradigms: Actors and Analogies Shaping the Investment Treaty System**

**By Anthea Roberts**

*Professor, London School of Economics and Political Science; Visiting Professor, Harvard Law School*

In this contribution, Professor Roberts analyzes controversial issues in the investment treaty system. They often result in participants drawing comparisons with and analogies from other legal disciplines like public international law, international commercial arbitration, public law, trade law and human rights law. This paper explains how these comparisons shape our thinking about the investment treaty system, why different comparisons often support different answers to concrete problems, and which participants tend to support which paradigms and why.



## **Patent Risk: Financial Innovation, Business Methods Patents, and the Regulation of System Risk**

**by Heidi Schooner**

*Professor, The Catholic University of America, Columbus School of Law*

This paper explores the characteristics of financial innovation, as well as the intersection between financial innovation, intellectual property rights, and the regulation of systemic risk. Financial institutions innovate in pursuit of profit. Governments encourage financial institutions' innovation to achieve economic growth and other policy goals. Both firms and governments are aware of the potential risks from innovation; each has a risk-management strategy. Regulation is at the heart of the government strategy. However, regulation targeting innovation spurs further innovation (regulatory arbitrage) and potentially greater risk. Patent law is usually seen as outside the realm of financial regulation; however, patent rights affect incentives for innovation and thereby implicate the management of systemic risk.



**Exclusion as a Core Competitive Problem  
by Jonathan Baker**

*Professor, American University Washington College of Law*  
Anticompetitive exclusion is treated rhetorically among antitrust enforcers and commentators as a lesser offense than collusion, even though it is equally serious as a matter of legal doctrine and has similar economic consequences. This paper explains why exclusion should be restored to antitrust's core and why developments in the international economy may lead that to happen.



**The Four Functions of Corporate Personhood  
by Margaret M. Blair**

*Professor, Vanderbilt University Law School*  
This article argues that the legal device of separate juridical "persons" for certain business activities serves many functions that became especially important to business organizers during and after the industrial revolution and that those functions are still important to most large, publicly traded corporations. These functions of entity status in corporations are important sources of value in organizing business activities that involve a substantial number of people using dedicated assets over long periods of time. Careful analysis of the functions of "personhood," or "entity status," can shed light on policy questions about what constitutional rights should be recognized for corporations.



**Sue on Pay: How and Why Say on Pay Should Impact  
Directors' Fiduciary Duties  
By Lisa Fairfax,**

*Professor, George Washington University Law School*  
"Say on pay" litigation should enhance state courts' role in policing directors' compensation decisions. Outrage over what many perceive to be excessive executive compensation has escalated dramatically in recent years. In 2010, such outrage prompted Congress to mandate say on pay—a nonbinding shareholder vote on executive compensation. In the wake of say on pay votes, some shareholders have brought suit against directors, alleging that a negative vote indicates a breach of directors' fiduciary duty. The vast majority of commentators believe that such suits are both unnecessary and inappropriate. Professor Fairfax disagrees; Delaware courts can and should use say on pay litigation to enhance their oversight of board duties related to pay practices. Instead of being used as a tool to bypass fiduciary duty law, say on pay should serve as a springboard for reinvigorating such law.



**Global Economies, Regulatory Failure, and Loose Money:  
Lessons for Regulating the Finance  
Sector from Iceland's Financial Crisis  
by Andrew P. Morriss**

*D. Paul Jones, Jr. & Charlene Angelich Jones Chairholder of Law and Professor of Economics, University of Alabama*  
Professor Morriss argues that neither the "Icelandic miracle" nor

the "collective madness" accounts of Iceland's rise and fall are accurate. The "miracle" story does not include crucial policy failures and relationships among monetary and fiscal policies and financial markets, which ultimately undermined the initial gains from deregulation. Similarly, the "collective madness" story ignores these failures and interconnections, instead putting the blame on markets generally and specifically on Icelandic financiers' lack of experience. Neither glib explanation pays sufficient attention to the vital role feedback plays in financial regulation. Feedback from markets to regulators and from markets to financial actors is critical to avoiding financial crises. Unfortunately for Iceland, and the world, policymakers around the globe dampened feedback mechanisms during the 1990s and 2000s and continue to do so today.

**Special Speakers**

**Sean Hagan**

General Counsel of the International Monetary Fund, Mr. Hagan gave an overview of the Fund, what lawyers do there, and the Fund's role in the European crisis to an International Finance class.

**Lee Buchheit**

Mr. Buchheit, who represented Greece in its well publicized debt restructuring, spoke to Professor Anna Gelpern's Contracts class about Greece and contract drafting and negotiation.

**Financial Institutions "Winter Camp"**

Presented in conjunction with the Association of American Law Schools Section on Financial Institutions and Consumer Financial Services, the Winter Camp is an ongoing project designed to foster contributions to financial institutions policy and theoretical analysis from the academic legal community. In conjunction with the AALS annual meeting, legal academics from around the country gathered at WCL and at the Marriott Wardman Park to discuss their papers and participate in panels exploring the state of financial institutions today.