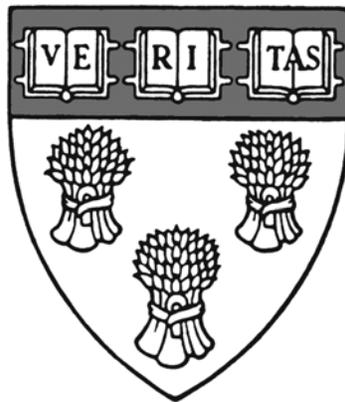


HARVARD LAW SCHOOL
PROGRAM ON THE LEGAL PROFESSION

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THE BRAZILIAN
LEGAL PROFESSION

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Brazil	
Legal Education	
Structure of legal education	<p>An undergraduate law degree, the <i>Bacharelado em Direito</i> (BD), is required to practice law in Brazil.¹ BD programs are offered at both traditional universities and at stand-alone institutions.² Masters and doctorate degrees are also offered at many universities.³</p> <p>By law, the BD degree requires a minimum of five years and a maximum of eight years of study,⁴ but most students complete the degree in five years. Law school is typically part-time since most law students intern with law firms or other legal organizations from the very beginning of law school. In recent years, however, some private law schools have made the first three years of law school full-time. To address complaints from law schools, the Brazilian Congress has recently prohibited students from working more than six hours per day as interns.⁵</p> <p>The federal Ministry of Education (MEC) regulates BD programs, although the OAB advises on the authorization of new degree programs and accreditation of current programs.⁶</p> <p>While law schools have some control over their curricula, the law prescribes the teaching of certain subject matter. Legal topics include Constitutional Law, Civil Law, Administrative Law, Tax Law, Criminal Law, Civil Procedure, Criminal Procedure, Labor Law, Commercial Law and International Law. In addition, law schools are required to include foundational content on philosophy, sociology, economics, and political science.⁷ To complete the course of study, students must write and defend a thesis paper. Students must also complete three hundred hours of vocational training during the degree program.⁸</p>
Typical age of starting lawyer	Students typically graduate high school at 18, and study for five years, becoming a lawyer around 23 years old. ⁹
Status hierarchy of law schools	<p>As of 2010, there were 1240 law schools in Brazil, more than the rest of the world combined.¹⁰ Most of the law schools are concentrated Southeastern Brazil in the states of São Paulo, Minas Gerais, and Rio de Janeiro.¹¹</p> <p>In addition, there are 553 masters and doctorate</p>

	<p>programs in law in Brazil.¹²</p> <p>While formally published rankings of law schools are hard to come by, there are several reputable rankings of the universities of which they are affiliated,¹³ including one by the federal government's National Institute of Educational Studies (INEP).¹⁴ The top-ranked universities are mostly public: Universidade de São Paulo (USP), Universidade Estadual de Campinas, Universidade Federal do Rio de Janeiro, Universidade Federal de Minas Gerais, Universidade Estadual Paulista Júlio de Mesquita Filho, Universidade Federal de São Paulo, Universidade Federal do Rio Grande do Sul, and Universidade Federal de Lavras.¹⁵</p> <p>Notable private universities are Pontifícia Universidade Católica do Rio de Janeiro and Pontifícia Universidade Católica de São Paulo.¹⁶ The stand-alone Direito GV, with branches in Rio and São Paulo, is also known to be a top law school.¹⁷</p> <p>Overall, rankings are not as significant to Brazilian law school applicants as they are to U.S. applicants. Rather than venture outside the region based on reputation, law firms and other legal employers tend to draw from the top regional schools in the area.¹⁸</p>
<p>Rough size of top law schools</p>	<p>USP has a graduating class of approximately 400-500 lawyers, but it is exceptionally large.¹⁹ On average, public law schools graduate more students per year than private institutions.²⁰</p>
<p>How professional (vs. academic) is the law degree?</p>	<p>The curriculum for the BD is relatively academic, however, the required vocational training and the prevalence of internships make it more practical than legal education in the U.S. On the other hand, the classroom component is fairly academic, including foundational courses on the philosophical and social scientific underpinnings of law.²¹</p> <p>Even though the focus of the curriculum is academic, professors spend less time on academic pursuits than their US counterparts.²² Compared to the US, faculty members are more likely to be part-time and classes are sometimes taught by teaching assistants rather than professors.²³ In addition, from the outset of the BD program, most law students in Brazil work in poorly paid intern positions at law firms or government positions. These <i>estagiários</i></p>

	positions are part of the standard hierarchy in many Brazilian law firms. ²⁴
Professional regulation: basic licensing	<p>The federal government has authorized the OAB to control entry to the legal profession in Brazil. A lawyer cannot practice law unless he or she has graduated with a BD degree and, more importantly, passed the OAB exam. The exam is the same nationwide, but state-level sections of the OAB administer it.</p> <p>Only 14.83% of BD graduates pass the OAB exam each year.²⁵ Due to this low pass rate, Brazil has only around 700,000 lawyers.²⁶ Approximately, three million law graduates are not licensed to practice law.²⁷</p>
Lawyers per population and lawyers per working population	In 2011, there were 676,854 licensed lawyers in Brazil, ²⁸ which amounts to 3.55 lawyers per 1,000 people. ²⁹ This does not include the approximately three million unlicensed law school graduates. The number of total law school graduates is about 20.97 per 1,000 people. ³⁰
Law Firms	
Law practice basics: Size of law firm?	<p>“Big law” in Brazil is smaller than its US and British counterparts.</p> <p>The largest firm in Latin America, Siqueira Castro, is located in Brazil and has 509 lawyers.³¹ Other large corporate firms in Brazil, such as Pinheiro Neto and TozziniFreire, have around 200-300 lawyers.³² These tend to be full-service firms with the exception of criminal defense; those specializing in one particular area of the law are usually well under 50 attorneys.³³</p>
Share of lawyers employed in top law firms	While statistics are scarce, it seems fairly self-evident that the top law firms employ only a very small portion of Brazil’s approximately 700,000 lawyers. Overall, there are more law graduates than there are available positions. ³⁴
Leverage of law firms	<p>Most large Brazilian law firms are divided into three ranks: partners (<i>sócios</i>), associates (<i>advogados</i>), and interns (<i>estagiários</i>).³⁵</p> <p>Looking at the ratio of associates to partners across all Brazilian firms with 100 or more lawyers, leverage averages 4.51.³⁶ There is, however, wide variation in the leverage ratios among firms. The firm with the highest leverage is Siqueira Castro at 8.09, and the firm with the lowest is Demarest e Almeida at 2.18.³⁷</p>

	<p>There a number of caveats to these leverage numbers. Within the partner category, some large Brazilian firms have equity partners (A partners) and income partners (B partners) like in the US.³⁸ However, unlike large US firms, large Brazilian firms tend to have more than double the number of income partners to equity partners.³⁹ This makes the leverage comparison with US law firms less useful.</p> <p>Also, since Brazilian law firms rely heavily on <i>estagiários</i>—on average, there are as many interns as there are associates—the traditional measure of leverage in the US, associates to partners, seems likely to undercount the degree of leverage of large Brazilian firms.⁴⁰</p>
Compensation structure	<p>Partners in Brazil are typically compensated based on the amount of business they bring into the firm rather than their seniority (i.e., lockstep). As a partnership, compensation is usually awarded as a percentage share in the equity of the firm, although methods of compensation vary from firm to firm.⁴¹</p> <p>Associates, on the other hand, are generally salaried.⁴²</p> <p>Like the US, the fee structure for client engagements is hourly, although other arrangements exist.⁴³</p>
Law/Legal procedure	
Punitive damages in civil cases	<p>Technically, punitive damages are not allowed in Brazilian civil lawsuits.</p> <p>“Moral damages” are provided for in Articles 186 and 944 of the Brazilian Civil Code.⁴⁴ Judges assessing moral damages sometimes use punitive reasoning, and therefore, it is thought that moral damages sometimes include a punitive element.⁴⁵</p> <p>Legal scholars and practitioners cannot agree whether moral damages are the equivalent to US punitive damages, exemplary damages, or something completely different altogether.⁴⁶</p>
Juries in civil cases	<p>There are no juries in civil cases.⁴⁷ Jury trial is only provided for in the Brazilian Constitution for “<i>crimes dolosos contra a vida</i>” – intentional crimes against life.⁴⁸</p>
Rules on contingent fee litigation	<p>Contingency fees are uncommon but not legally prohibited.⁴⁹ Such fee arrangements are more common for smaller claims.</p>

	In civil cases, the judge will fashion a sort of contingency fee for the winning attorney, awarding a percentage of the total monetary award as a reward despite the attorney collecting his or her regular hourly fees. ⁵⁰
Rules on attorney’s fees and other costs in litigation	The parties pay their respective costs and fees, although judges award attorneys fees. ⁵¹ Although uncommon, a winning defendant could also have a claim for recoupment of attorney’s fees and costs if the plaintiff’s suit is deemed frivolous. ⁵²
Rules on discovery	As a civil law country, there is no American system of discovery in civil lawsuits. Instead the collection of evidence is a judge-directed process. The “parties cannot be obligated to provide the other party with information or answers to inquiries, and there is no obligation to disclose the existence and content of documents” before trial. ⁵³
Rules on class actions	Class actions have been allowed in Brazil since the 1980s. ⁵⁴
Prevalence and prominence of “plaintiff’s bar” and class actions brought on behalf of shareholders or consumers against large companies	Class actions are common in Brazil. ⁵⁵ However, since the local or regional “public prosecutor” (similar to an attorney general) typically brings such actions, there are very few firms focusing exclusively in class actions. ⁵⁶ Overall, the “plaintiff’s bar” is fairly weak.

¹ Lei No. 8.906 art. 8, II, de 4 de Julho de 1994, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.), *available at* http://www.planalto.gov.br/ccivil_03/leis/L8906.htm; Interview with Gisela Mation, L.L.M. Student, Harvard Law School, in Cambridge, Mass. (Sept. 21, 2011).

² *See* Lei No. 8.906 art. 8, II, de 4 de Julho de 1994, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.).

³ *See* Edilenice Passos, *Doing Legal Research in Brazil*, GLOBALEX (Feb. 2005), http://www.nyulawglobal.org/globalex/Brazil.htm#_3.2_Law_Schools.

⁴ Portaria No. 1.886, de 30 de dezembro de 1994, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.), *available at* <http://www.oab.org.br/arquivos/pdf/LegislacaoOab/LegislacaosobreEnsinoJuridico.pdf>.

⁵ Lei No. 11.788 art. 10, II, de 25 de setembro de 2008, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.), *available at* http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/11788.htm; Interview with Gisela Mation, *supra* note 1.

⁶ Portaria No. 05/1995, de 27 de março de 1995, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.), *available at* <http://www.oab.org.br/arquivos/pdf/LegislacaoOab/LegislacaosobreEnsinoJuridico.pdf>.

⁷ Lessa, *supra* note **Error! Bookmark not defined.**; *see also* Portaria No. 1.886, de 30 de dezembro de 1994, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.), *available at* <http://www.oab.org.br/arquivos/pdf/LegislacaoOab/LegislacaosobreEnsinoJuridico.pdf>.

⁸ Portaria No. 1.886, de 30 de dezembro de 1994, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.).

⁹ Interview with Gisela Mation, *supra* note 1.

¹⁰ Marina Diana, *Brasil tem mais faculdades de Direito do que todo o mundo*, IG.COM.BR (Oct. 13, 2010), <http://colunistas.ig.com.br/leisenegocios/2010/10/13/brasil-e-campeao-em-faculdades-de-direito/Conselho>. The rest of the world combined has 1,100 law schools. *Id.*

¹¹ SISTEMA NACIONAL DE AVALIAÇÃO DA EDUCAÇÃO SUPERIOR (SINAES), EXAME NACIONAL DE DESEMPENHO DOS ESTUDANTES (ENADE) 2006 – RELATÓRIO SÍNTESE – DIREITO 22 (2006), *available at* http://download.inep.gov.br/download/enade/2006/relatorios/Direito_Relatorio%20Final.pdf.

¹² *GeoCapes Dados Estatísticos*, CAPES.GOV.BR, <http://geocapes.capes.gov.br/> (click on Visão Analítica; then click Área de Avaliação – Filtro Ano: 2010; then click on Direito) (last visited Sept. 26, 2011).

¹³ These include the QS World University Rankings and the Academic Ranking of World Universities. *QS World University Rankings 2011/12*, QS, <http://www.topuniversities.com/university-rankings/world-university-rankings/2011> (last visited Sept. 26, 2011); *Academic Ranking of World Universities (ARWU) 2011*, SHANGHAI JIAOTONG UNIVERSITY, <http://www.shanghairanking.com/Country2011Main.jsp?param=Brazil> (last visited Sept. 26, 2011).

¹⁴ NATIONAL INSTITUTE OF EDUCATIONAL STUDIES (INEP), ÍNDICE GERAL DE CURSOS DA INSTITUIÇÃO - IGC 2009 (TRIÊNIO 2007, 2008 E 2009) (Jan. 26, 2011), *available at* <http://portal.inep.gov.br/indice-geral-de-cursos>.

¹⁵ See *QS World University Rankings 2011/12*, *supra* note 13; *ARWU 2011*, *supra* note 13; INEP, *supra* note 14. The two top-ranked universities in Brazil in the global rankings, Universidade de São Paulo and Universidade Estadual de Campinas, do not participate in the federal evaluation system.

¹⁶ INEP, *supra* note 14.

¹⁷ Interview with Gisela Mation, *supra* note 1.

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ *Id.* For example, Direito GV graduates only about 50 BD students per year. *Id.*

²¹ See *id.*; see also Portaria No. 1.886, de 30 de dezembro de 1994, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.); Marina Morena Costa and Priscilla Borges, *Elas são as melhores, mas não aprovam 100% na OAB*, IG.COM.BR (Sept. 26, 2011), <http://ultimosegundo.ig.com.br/educacao/elas-sao-as-melhores-mas-nao-aprovam-100-na-oab/n1597226109154.html>.

²² Interview with Gisela Mation, *supra* note 1.

²³ See *id.* However, the use of part-time faculty and teaching assistants is not so different than the US practice when we account for the fact that the BD is an undergraduate rather than a professional degree.

²⁴ Interview with Gisela Mation, *supra* note 1.

²⁵ Marina Morena Costa and Priscilla Borges, *supra* note 21.

²⁶ See *Quadro de Advogados*, OAB.ORG, <http://www.oab.org.br/relatorioAdvOAB.asp> (last updated Sept. 26, 2011).

²⁷ Marina Diana, *supra* note 10.

²⁸ *Quadro de Advogados*, *supra* note 26.

²⁹ Based on Brazil's total population of 190,733,694 from the 2010 Census. Instituto Brasileiro de Geografia e Estatística, *2010 Population Censuses*, IBGE.GOV.BR,

<http://www.ibge.gov.br/english/estatistica/populacao/censo2010/default.shtm>

³⁰ See Marina Diana, *supra* note 10.

³¹ *Siqueira Castro Profile*, LATINLAWYER.COM (subscription required), <http://www.latinlawyer.com/firms/1171/11250/5259/siqueira-castro-advogados/>.

³² See *Latin Lawyer 250 - Brazil*, LATINLAWYER.COM (subscription required), <http://www.latinlawyer.com/11250/countries/16/brazil/>.

³³ See Interview with Gisela Mation, *supra* note 1. For example, the IP specialist Gusmão & Labrunie has only 17 lawyers. *Latin Lawyer 250 – Brazil*, *supra* note 32.

³⁴ Interview with Gisela Mation, *supra* note 1.

³⁵ *Id.*

³⁶ See *Latin Lawyer 250 – Brazil*, *supra* note 32. This author calculated the leverage ratios by summing up the total number of associates among all Brazilian law firms with 100 lawyers or more and dividing that number by the total number of partners (equity and non-equity) among the same law firms. The number of partners listed in the firm profiles of the Latin Lawyer 250 does not differentiate between equity and non-equity partners. See *id.*

³⁷ *See id.*

³⁸ Interview with Gisela Mation, *supra* note 1.

³⁹ *See id.*

⁴⁰ *Id.* [Recent OAB regulations only permit law firms to employ interns for a maximum of two years, and therefore, law firms are beginning to use more paralegals.] *Id.*

⁴¹ *See id.*

⁴² NEED CITE.

⁴³ Interview with Gisela Mation, *supra* note 1.

⁴⁴ *Id.*

⁴⁵ *See id.*

⁴⁶ *See* Jorge A. Vargas, *Moral Damages Under the Civil Law of Mexico*, 35 U. MIAMI INTER-AM L. REV. 183, 187-188, 266-268, 271-275 (2004).

⁴⁷ Interview with Gisela Mation, *supra* note 1.

⁴⁸ *Id.*

⁴⁹ *See id.*

⁵⁰ Brazilian Civil Procedure Code, Lei No. 5.869/7 art. 20, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.).

⁵¹ *See id.*

⁵² *See id.*

⁵³ MOLLY STEELE, THOMPSON & KNIGHT, DISCOVERY AND ATTORNEY-CLIENT PRIVILEGE IN INTERNATIONAL LITIGATION 13 (2000), available at [http://www.tklaw.com/resources/documents/Discovery%20and%20Attorney-Client%20Privilege%20in%20International%20Litigation%20\(Steele,%20M.\).pdf](http://www.tklaw.com/resources/documents/Discovery%20and%20Attorney-Client%20Privilege%20in%20International%20Litigation%20(Steele,%20M.).pdf).

⁵⁴ Class Action Act, Lei No. 7.347/1985, DIÁRIO OFICIAL DA UNIÃO de 2011 (Braz.).

⁵⁵ Interview with Gisela Mation, *supra* note 1.

⁵⁶ *See id.*