

University of Macau
Faculty of Law
International Business Law
Master and Postgraduate Program

Legal Issues of Transnational Contracts

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Seminar 6

Contractual Jurisdiction and Recognition and Enforcement of Judgments for Contractual Disputes

If there is no arbitral clause agreed upon in advance or the parties cannot reach an agreement for their contractual disputes to be arbitrated after their disputes arise, normally the parties will go to litigation. As far as litigation is concerned, the first problem the parties have to be confronted with is where they should go and which country's courts have jurisdiction over their case. Closely related to the question of international contractual jurisdiction is that of recognition and enforcement of judgments for contractual disputes. Can the judgment creditor have his judgment rendered in one country's courts effectively recognized and enforced by the courts in another? This seminar will look at these tough issues. Two main systems will be mentioned here, i.e. those of the European Union and the U.S. By this seminar, students should have knowledge of how these issues have been harmonized in the EU and U.S. and what the present situation is regarding these issues at a global level.

Compulsory Reading:

Literatures:

P. North & J. Fawcett, *Cheshire and North's Private International Law*, Butterworths, London, 1992, Chapter 14, pp. 292-7.

P. R. Dubinsky, 'The Reach of Doing Business Jurisdiction and Transacting Business Jurisdiction Over Non-U.S. Individuals and Entities', submitted to the Hague Conference on Private International Law.

Case Law

International Shoe

Burger King

International Instruments:

Brussels I Regulation (Brussels Convention), Article 5 (1)
1999 Preliminary Draft Convention, Article 6
2001 Interim Text, Article 6

Supplementary Reading:

Uniform Foreign Money-Judgments Recognition Act (revised in July 2005)

Seminar 7

Choice of Forum

As demonstrated by last Seminar, it is difficult to harmonize contractual jurisdictional rules at a global level. However, it seems that as far as the question of finding a forum for contractual litigation is concerned, the principle of ‘party autonomy’ has been respected by countries all over the world although the extent to which this principle has been accepted might vary in different countries. More than one decade’s efforts of the Hague Conference on Private International Law have resulted in the 2005 Hague Choice of Court Convention. If this convention is ratified widely, it would work alongside the New York Convention to provide an effective mechanism for international litigation. This Seminar will look at the issue of choice of forum and analyze the new choice of court convention.

Compulsory Reading:

Literatures:

A. Schulz, ‘The 2005 Hague Convention on Choice of Court Clauses’ (2006) *ILSA Journal of International & Comparative Law* pp. 433-42.

G. Tu, ‘the Hague Choice of Court Convention—A Chinese Perspective’ (2007) 55 *American Journal of Comparative Law* pp. 347-368.

International Instruments:

2005 Hague Choice of Court Convention

Supplementary Reading:

J. Fawcett, ‘Non-Exclusive Jurisdiction Agreements in Private International Law’ (2001) *Lloyd’s Maritime and Commercial Law Quarterly* p. 234.

E. Peel, ‘Exclusive Jurisdiction Agreements: Purity and Pragmatism in the conflicts of Laws (1998) *Lloyd’s Maritime and Commercial Law Quarterly* p. 182.

Seminar 8

Arbitration

Once the contractual relationships between the parties went sour and there are disputes arising between them, one of the most common choices for them to resolve their commercial disputes is arbitration if they decide not to go to litigation. This seminar will consider, compared with litigation, what advantages arbitration has, what are the main international arbitration institutions to which parties can resort and what the main mechanisms for harmonizing arbitration law internationally are. By this seminar, students should have a general picture of what role arbitration has played in resolving international commercial disputes and know UNCITRAL model law on arbitration and how successfully 1958 New York Convention on Arbitral Award has operated in practice.

Compulsory Reading:

Literatures:

C. M. Schmitthoff, *Schmitthoff's export trade: the Law and Practice of International Trade*, Sweet & Maxwell, London, 2007, pp. 537-75.

International Instruments:

1958 New York Convention

UNCITRAL Model Law on Arbitration (as amended 2006).

Supplementary Reading:

D. McClean, Morris, *the Conflict of Laws*, 5th ed., Sweet & Maxwell, London, 2000, pp. 169-180.

P. North & J. Fawcett, *Cheshire and North's Private International Law*, Butterworths, London, 1992, Chapter 17.

Seminar 9

Choice of Law

Once a case is taken up, the second step for resolving international disputes regarding a contract is to find the applicable law for the contract out of which the disputes arise. To harmonize substantive contractual law at a global level, if not impossible, is a very tough task. Even only to harmonize choice of law rules for contracts is not an easy job. However, choice of law rules regarding contracts have been harmonized by the Rome Convention on Choice of Law Issues in Respect of

Contractual Obligations in the European Union. This seminar will look at the Rome Convention and its successor, the Rome I Regulation to see how it deals with relevant important issues in this field. By this seminar, students should gain some inspirations from the Rome Convention (and Rome I) and know how to cope with the problem of choice of law when drafting an international commercial contract. In the meantime, students should be able to critically assess the approaches adopted in the Rome system.

Compulsory Reading:

Literatures:

P. North & J. Fawcett, *Cheshire and North's Private International Law*, Butterworths, London, 1992, Chapter 18, pp. 457-504.

J. Hill, 'Choice of Law in Contract under the Rome Convention: the Approach of the UK Courts' (2004) 53 *International and Comparative Law Quarterly* pp. 325-50.

International Instruments:

1980 Rome Convention

Rome I Regulation

Supplementary Reading:

D. McClean, Morris: *the Conflict of Laws*, 5th ed., Sweet & Maxwell, London, 2000, pp. 319-352.

Harvard Law Review Association, 'Article 7(1) of the European Contracts Convention: Codifying the Practice of Applying Foreign Mandatory Rules' (2001) *Harvard Law Review* p. 2462.

Seminar 10

Economic Hardship, Impediment, Impracticability, Frustration and Force Majeure

While it is difficult to harmonize substantive contractual law at a global level, there have been some achievements in this field such as the Vienna Convention and the Unidroit Principles. Due to the complexity of contract law, it is impossible to explore article by article through the two whole instruments. This Seminar will choose one of the most important issues to be studied.

Once an international commercial contract has been signed, normally the parties must perform their obligations according to their agreements. However, the

contractual obligations are not absolute in the sense that one party might be exempted from his contractual obligations if some legal reasons arise. One of those reasons is 'force majeure', a term used in French law or 'frustration', a term used in English law. However, to what extent should the principle of 'sanctity of contract' be obeyed by the parties or even by the courts? The laws vary in this field. This seminar looks at the different solutions in the main national legal systems and international instruments. By this seminar, students should know the different methods adopted in the different legal systems at this aspect. Furthermore, students should have some knowledge about how to deal with this issue and how to take some preventive measures at the stage of drafting an international commercial contract.

Compulsory Materials:

Literatures:

C. M. Schmitthoff, *Schmitthoff's export trade: the Law and Practice of International Trade*, London, Sweet & Maxwell, 2007, Ch. 6.

UNCITRAL Digest of case law on Article 79.

Statutes:

United Nations Convention on Contracts for the International Sale of Goods 1980, Article 79

Unidroit Principles of International Commercial Contracts 2004, Articles 6.2.2. and 6.2.3.

Uniform Commercial Code of USA, s 2-615

French Civil Code, Article 1148

Contract Law of PRC 1999, Article 94 and 117

Supplementary Materials:

Literature:

A. D. M. Forte, 'Economic Frustration of Commercial Contracts: A Comparative Analysis' (1986) *Juridical Review* pp. 1-24.

Nicholas 'The Vienna Convention on International Sales Law' (1985) *Law Quarterly Review* pp. 201-243.

Case Law:

Multiservice Bookbinding Ltd v Marden [1979] Ch 84

British Movietone News Ltd v London & District Cinemas Ltd [1952] AC 166

Tsakiroglou & Co Ltd v Noblee Throl GmbH [1962] AC 93.