COURSE SYLLABUS

COURSE TITLE: International Commercial Litigation

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COURSE LEVEL: Basic

CREDITS: 1 ABA / 2 ECTS

COURSE DESCRIPTION

This course deals with cases where an international commercial transaction has given rise to a legal dispute between the parties and where this dispute is not decided by arbitration. In such a scenario, the parties have to litigate before the domestic court of a State. This raises a number of difficult issues, a selection of which will be dealt with in the course.

One part of the course will be devoted to the issue of international jurisdiction: In which state’s courts can the plaintiff bring his lawsuit against the defendant? What if there are several states that offer a ground of jurisdiction? Why does it matter at all whether a dispute is litigated in one state rather than in another? Can the parties in their contract choose the forum in which future claims will be litigated (forum selection)?

A second part of the course will deal with a selection of specific issues that may arise in international commercial litigation: What if the court which is seized with the lawsuit regards itself as an inappropriate forum (forum non conveniens)? What if the same lawsuit is brought twice, but in different states (lis alibi pendens)? What are the so-called “torpedo claims”? Is it possible to prevent the other party from bringing a lawsuit in a certain state by way of an “antisuit injunction”? Will a judgment from the courts of one state be recognized and enforced in other states?

The course will address these issues primarily from a European (EU) and from a US perspective. A detailed reading list and a reader with materials covering European and US sources (e.g. cases, articles) will be available before the course.

COURSE OUTLINE (PER CLASS UNIT)

Seminar 1: General introduction and bases of jurisdiction in the EU/1

- Forum shopping and the importance of international jurisdiction: “As a moth is drawn to the light, so the litigant is drawn to the United States. If he can only get his case into their courts, he stands to win a fortune. At no cost to himself, and at no risk of having to pay anything to the other side…” (Lord Denning, English Court of Appeal, Smith Kline (…).v. Bloch, 1983) - ???
- Bases of jurisdiction in the EU / Part 1: The Brussels-I Regulation 1215/2012

Seminars 2: Bases of jurisdiction in the EU/2

- General jurisdiction
- Specific jurisdiction: contract, tort, subsidiaries
• Multiple defendants
• Consumer protection
• (Choice of court agreements (forum selection), cf. Seminar 5)

Seminar 3: Bases of jurisdiction in the US
• Historical background and overview
• General jurisdiction
• Specific jurisdiction
• (Choice of court agreements (forum selection), cf. Seminar 5)

Seminar 4: Forum non conveniens and lis alibi pendens
• The forum non conveniens doctrine in England, in the US and under the Brussels-I Regulation 1215/2012
• The treatment of parallel proceedings: lis alibi pendens under the Brussels-I Regulation 1215/2012 and in the US

Seminar 5: Choice of court agreements – Antisuit injunctions
• Forum selection: Choice of court agreements
  o EU approach
  o US approach
  o Hague Convention on Choice of Court Agreements of 2015
• Antisuit injunctions in the Common Law and under the Brussels-I Regulation 1215/2012

Seminar 6: Recognition and enforcement of foreign judgments and general revision
• European approach, US approach, Hague Convention on Choice of Court Agreements, Hague Judgments Project
• General revision

ATTENDANCE POLICY
Bucerius policy applies

FINAL EXAMINATION/ASSIGNMENT
Exam