

Course title	International Business Litigation (B)				
Teacher(s)	João Ribeiro-Bidaoui, SAITO Akira			開講区分	単位数
				1st semester	1.0
Numbering Code		Day · Period	Other	Timetable Slot Code	1J377

Lesson topic

The complexification of trade and finance, and the development of the rule of law, has resulted in more cross-border legal disputes. Such disputes arise from transnational commercial contracts entered into between private parties (individuals and corporations). When this implicates two or more laws or legal systems, either procedurally or substantively, the dispute is transnational in nature. One of the methods to settle such transnational disputes is by litigating in national judicial courts, and more recently, in international commercial courts. The course will therefore examine international and regional procedural and substantive rules governing the life cycle of transnational commercial litigation: jurisdiction of national courts; choice of court; concurrent jurisdiction (forum non conveniens doctrine, lis pendens, antisuit injunctions); service of legal documents and obtaining of evidence abroad; choice of applicable law; recognition and enforcement of foreign judgments. The course will likewise discuss the major international policy issues at stake and it will introduce the key institutions with a legislative mandate to harmonize and/or unify the relevant rules, namely the Hague Conference on Private International Law (HCCH), the United Nations Commission on International trade Law (UNCITRAL) and UNIDROIT.

The course will, amongst others, address the following questions: In which courts can the plaintiff bring a lawsuit against the defendant in a transnational commercial dispute? What happens when courts in more than one country offer a ground of jurisdiction? Why does it matter if a dispute is litigated in one state rather than in another? When can parties choose in their contract the forum to litigate future claims (forum selection)? What does it mean if a court first-seized regards itself as inappropriate (forum non conveniens)? What happens when the same lawsuit is brought twice, but in different states (lis pendens)? What is an “antisuit injunction” ?

Lesson target

A student who has successfully completed this course should be able to:

- Answer legal questions, assess problem questions, identify the fundamental features and comprehend the state of transnational commercial litigation today
- Identify and apply the key principles, laws, rules and praxis governing transnational litigation in civil or commercial matters
- Develop the skills to apply the acquired knowledge to civil or commercial disputes in domestic and international commercial courts
- Recognize theoretical and practical problems in applying domestic notions and concepts (v.g. res iudicata, public policy) to transnational disputes governed by international law
- Determine in which jurisdiction can commercial litigation take place, which law governs the substantive issues of the dispute and how can a judgment be recognized and enforced abroad
- Evaluate key legal and policy issues in their social and economic contexts arising out of transnational commercial litigation.
- Take part in international legal competitions, namely the PAX Moot, an international competition – moot court – in the field of private international law and transnational litigation, organized by the University of Science Po, Paris: <https://paxmoot.com/>
- Undertake additional research in this captivating and growing field of law and policy

Syllabus and plan

The classes will be conducted on-line in real time. There will be 8 classes of 90 minutes. The following are the topics to be covered.

1. Introduction to transnational litigation
(definitions and basic concepts; international institutional framework)
2. The transnational jurisdiction of domestic courts in civil or commercial litigation
(contrasting E.U. and U.S. approaches)
3. Concurrent jurisdiction
(parallel proceedings and related actions or claims; doctrine of forum non conveniens; lis pendens; antisuit injunctions; international res judicata)
4. Forum selection
(party autonomy; international framework; exclusive, non-exclusive and asymmetric choice of court agreements)
5. The applicable domestic or foreign law
(party autonomy; international framework; aspects of extraterritorial application of domestic law; pleading and proof of foreign law)
6. Recognition and enforcement of foreign judgments in civil or commercial matters
(regional and international framework; the public policy exception)
7. The curious case of the international commercial courts
8. Service of legal documents abroad
(HCCH 1965 Service Convention)
9. Taking of evidence abroad
(HCCH 1971 Evidence Convention)
10. The international obligation of the uniform and autonomous interpretation of private law conventions
(consequences for domestic courts and international organisations)
11. Cross-border access to justice
(international regime; obstacles to access to justice; free legal aid, third-party funding; immunity of States)

Lectures on 20 and 22 July will be held on-demand.

Evaluation method

This course will be assessed by 2 x 2000-word essays addressing two of 10 previously made available questions.

Evaluation baseline

Students should be able to understand the international and regional procedural and substantive rules governing the life cycle of transnational commercial litigation.

Notice (include info. on related class)

The course is taught through 8 sessions of 90 minutes, which combine lecture-style teaching and interactive seminars. Students are expected to prepare for the sessions by completing previously allocated reading and tasks. Learning requires reading. The expected outputs of this course can only be achieved if the student combines lecture attendance with his/her own independent study. In the seminars, students may have an opportunity to present arguments orally to colleagues and be expected to defend a legal position under challenge. Students are strongly encouraged to share relevant case law and literature from the jurisdictions they are more familiar with.

This course is mostly based on the study and analysis of international conventions and multilateral treaties relating to transnational civil or commercial litigation. It will address civil and common law legal traditions comparatively, as well as transnational principles and rules and non-binding instruments.

Review and preparation

Please refer to the main textbook, optional textbook, and some international legal instruments stated below.

Office hour · Contact information

Students can reach me with queries and suggestions at jmt90@cam.ac.uk.

Message for student

Important Notice: This document and all materials made available in the course can only be used for educational purposes and within the course taught by João Ribeiro-Bidaoui. Since they may contain omissions, mistakes or be subject to particular interpretation, they must not be used for other purposes, namely for legal work in practice. All rights are reserved. The views of the lecturer are his own.

Improvements in Teaching

N/A

Text

The course is primarily based on Hartley's "International Commercial Litigation: Text, Cases and Materials on Private International Law (3rd ed.)" and Fentiman's "International Commercial Litigation (2nd ed.)" is used as optional textbook.

International Commercial Litigation: Text, Cases and Materials on Private International Law (3rd ed.) / Trevor C. Hartley : Cambridge University Press ,2020 , ISBN:9781108721134
International Commercial Litigation (2nd ed.) / Richard Fentiman : Oxford University Press ,2015 , ISBN:9780198712916

Reference Material

Required reading of the following international legal instruments:

- HCCH Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (HCCH 1965 Service Convention)
- HCCH Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (HCCH 1970 Evidence Convention)
- HCCH Convention of 30 June 2005 on Choice of Court Agreements (HCCH 2005 Choice of Court Convention)
- HCCH Principles on Choice of Law in International Commercial Contracts
- UNIDROIT Principles of International Commercial Contracts 2016
- ALI / UNIDROIT Principles of Transnational Civil Procedure
- HCCH Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention)

Other materials are listed as required or as additional under each syllabus topic. Relevant court decisions are available in the textbook.

Classroom Language

English

Keywords

Transnational litigation, On-line in real time