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Course "Private International Law" (Prof. Carlo de Stefano)

SEMINAR

Choice-of-Court Agreements as Cross-Border Transaction Planning Instruments

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Introduction:

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Abstract

Choice-of-court agreements are important transaction-planning instruments in cross-border civil and commercial relationships. By entering into one such agreement, the parties decide which court, or the courts of which State, will decide upon their current or future disputes arising under their relationship.

To be valid and effectively confer jurisdiction upon the chosen court, choice of court agreements must satisfy certain requirements. Depending on the applicable legal framework, the standards choice of court agreements must meet differ. However, it is possible to identify some core requirements that choice of court agreements must comply with, under any applicable framework. Such core requirements are (i) the existence of the consent of the parties to the choice of court agreement; (ii) the manifestation of the choice of court agreement in a form which can be clearly understood in its implications by all parties concerned (formal validity); (iii) the fact that all parties genuinely wanted to enter into such choice of court agreement (substantive validity).

The purpose of the lecture is to examine how such requirements are regulated under Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the 2005 Hague Convention on choice of court agreements. With respect to such instruments, the most recent case law of the Court of Justice of the European Union, in particular the rulings handed down in *Tilman* (C-358/21), *Lastre SpA* (C-537/23), *Maersk* (C-345/22-C-347/22), and *Pome* (C-398/24), will be analysed.

As parties can enter into choice of court agreements in relation to any type of relationship (both of contractual and non-contractual nature), the relevance of choice of court agreements is not limited to international trade and commerce. Also in the context of climate change litigation, there are certain types of disputes the parties may want to defer to the decision of a specific court. One such dispute could be the one arising between a company and its supplier as to whether the latter adhered to the ESG standards included in the supply contract, which required the latter to behave in such a way as to reduce the overall amount of GHG emissions attributable to the former company. Another type of dispute could arise under a climate change risk-related insurance contract. When the insuring company and the insured person do not agree on whether a certain type of damage caused by climate change-induced extreme event is covered or not by the insurance, they could decide that upon their dispute the court indicated in a choice of court agreement will decide the matter.

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