

COURSE SYLLABUS

Negotiation and Drafting of Commercial Agreements

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Winter Term / AY 2023-2024

1 US credit / 2 ECTS credits

No pre-requisites

Office hours: by appointment

Brief Introduction:

The course offers a practice-oriented introduction into the work of legal counsel, and specifically the craft of drafting (and, to some degree, negotiating) commercial agreements and transactional practice. It presents techniques to identify and address legal challenges in the context of contract design and provides insights into certain provisions of international commercial contracts. To exemplify, the course specifically addresses M&A transactions, international supply agreements with an introduction of United Nations Convention on Contracts for the International Sale of Goods (CISG), an introduction to commercial arbitration based on an example of post-M&A dispute, the choice of law and jurisdiction as well as drafting dispute resolution clauses.

Learning outcomes:

By the end of the course students will be able to understand basic principles of drafting international commercial contracts.

Learning activities and teaching methods:

Case work and seminar-style classroom discussions, lectures

Assessment:

The final grade is based on class-participation (25%) and written final exam (75%).

The final examination is a 120 min closed book in class exam.

Course materials:

Course materials are available with the e-learning site of the course

The readings below are approximate for the classes indicated: we may fall behind or move ahead. Therefore, please try to stay about half of an assignment ahead.

Please make sure to check this site regularly for updates. PowerPoint slides used during the course are available to students on the e-learning site after each class session.

Required and recommended readings, assignments:

Class 1. Basics about Drafting Commercial Contracts

Concepts, principles, and styles of contract design and drafting; case exercises

Recommended Reading:

Fernandez, Ben, Transactional Drafting: Introduction to Contract Drafting and Transactional Practice (December 5, 2022)

Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4294001

pp. 11-18 (First Chapter)

Class 2. Stages and Legal Instruments of an M&A Transaction

Mergers & Acquisition: Case study of an M&A transaction with a focus on the legal workstream; legal instruments in an M&A process; practical drafting exercises

Recommended Reading:

Practice Guide: M&A Transactions (available on www.lawworks.org.uk under <https://www.lawworks.org.uk/sites/default/files/files/LW-NFPP-C19-CORP-Merger-detailed-guide.pdf>)

Class 3. Share Purchase Agreement – Structure and Specific Clauses

Introduction to the structure of the centerpiece legal instrument in an M&A transaction, the share purchase agreement (SPA); discussion of specific typical provisions of an SPA

Recommended reading:

Adam Kudryl / Harper James LLP: Share Purchase Agreements (SPA): your practical legal guide

<https://harperjames.co.uk/article/share-purchase-agreements-practical-legal-guide/#section-2>

Class 4. - International Supply Contracts and CISG

Recommended Reading:

Chapter 2: CISG Principle of Uniformity: Meaning, Scope, and Practical Implications', in Boris Praštalo, Uniformity in the Application of the CISG: Analysis of the Problem and Recommendations for the Future, Global Trade Law Series, Volume 52

Text of CISG can be found under https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf.

Class 5. - Choice of law and jurisdiction and drafting dispute resolution clauses

Recommended Reading:

Dana H. Freyer, Practical Considerations in Drafting Dispute Resolution Provisions in International Commercial Contracts: A US Perspective, *Journal of International Arbitration*, pp. 7 – 46.

Class 6. - Arbitrating M&A Disputes

Recommended Reading:

Harold Frey and Dominique Müller, Chapter 8: Arbitrating M&A Disputes, in Manuel Arroyo (ed), *Arbitration in Switzerland: The Practitioner's Guide (Second Edition)*, 2nd edition (© Kluwer Law International; Kluwer Law International 2018) pp. 1115-1190