



**Litigate or Arbitrate? Practitioner's Answers**  
**on the Basis of International and Comparative**  
**Civil Procedure**

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**Course description**

Participants will gain insight into the scientific foundations and the practical use of comparative civil procedure with the aim of handling practical problems of cross border litigation and arbitration from the phase of choice of forum to the closing of the procedures. Each topic will be dealt with partly on the basis of current problems raised in ongoing or closed cases of the lecturer as practicing counsel and arbitrator.

**Course schedule**

1. The motivation structure of choice of forum agreements;
2. Transaction planning vs forum shopping;
3. Contractualization of civil justice – The arbitration agreement as the contractual basis of arbitration;
4. The sources of international civil procedural law and of the law of commercial arbitration;
5. Lex fori regit processum, lex fori arbitrationis and the arbitral principle of territoriality;
6. Subjective and objective arbitrability;
7. Initiation of action and its effects before state courts and in arbitral proceedings;
8. Taking of evidence in state court litigation and in arbitration;
9. Interaction between state courts and arbitral tribunals during the pendency of arbitration;
10. State court judgments' and arbitral awards' fate – Remedial systems of state court judiciary and setting aside procedure;
11. Differences in the territorial extension of effects: Domestic, regional (EU-wide) and worldwide recognition and enforceability;
12. The competition between state and private civil justice and its perspectives in the light of recent commercial and investment arbitration-related developments.

**Assessment:** Written exam

**Reading** (selected uploaded chapters):

- *Born*, International Commercial Arbitration, 3d ed. 2021;
- *Fellas*, Transatlantic Commercial Litigation and Arbitration, 2004;
- *Ferrari/Kröll*, Conflict of Laws in International Arbitration, 2011;
- *Hartley*, International Commercial Litigation, 3d ed. 2020;
- *Poudret/Besson*, Droit comparé de l'arbitrage international, 2002;
- *Redfern/Hunter/Blackaby/Partasides*, On International Arbitration, 6th ed. 2015;
- *Schütze*, Schiedsgericht und Schiedsverfahren, 6. Aufl. 2016;
- *Varga*, Beweiserhebung in transatlantischen Schiedsverfahren, 2006;
- *Wagner*, Rechtsstandort Deutschland im Wettbewerb, 2017.