

Buxbaum: The Interpretation and Effect of Permissive Forum Selection Clauses Under U.S. Law

Professor Hannah Buxbaum has recently published an important report (see [here](#)), prepared for the International Academy of Comparative Law's International Congress, on forum selection clauses. Below is the abstract.

Abstract

A forum selection clause is a form of contractual waiver. By this device, a contract party waives its rights to raise jurisdictional or venue objections if a lawsuit is initiated against it in the chosen court. The use of such a clause in a particular case may therefore raise a set of questions under contract law. Is the waiver valid? Was it procured by fraud, duress, or other unconscionable means? What is its scope? And so on. Unlike most contractual waivers, though, a forum selection clause affects not only the private rights and obligations of the parties, but something of more public concern: the jurisdiction of a court to resolve a dispute. The enforcement of such a clause therefore raises an additional set of questions under procedural law. For instance, if the parties designate a court in a forum that is otherwise unconnected to the dispute, must (or should) that court hear a case initiated there? If one of the parties initiates litigation in a non-designated forum that is connected to the dispute, must (or should) that court decline to hear the case?

This report, prepared for the International Academy of Comparative Law in connection with its XXth International Congress, analyzes the approach to these questions in the United States. The bottom line is straightforward: almost always, in consumer as well as commercial contracts, forum selection clauses will be enforced. Navigating the array of substantive, procedural, and conflicts rules whose interplay yields that result, though, is far less straightforward. That is the task of this report. Following a short background, it surveys current state law on their use, in consumer as well as commercial contracts. The report then discusses the interpretation and enforcement of forum selection clauses in both state and federal courts. It analyzes their effect on jurisdiction as well as on doctrines

involving venue, such as removal and forum non conveniens. The report also covers choice of law problems, particularly as they arise in the course of litigation in federal courts.