

**APA-project ("Arbitration and Party Autonomy")**

<http://www.jus.uio.no/ifp/english/research/projects/choice-of-law/index.html>



**UNIVERSITY OF OSLO**  
FACULTY OF LAW



**Arbitration and the not unlimited party autonomy:**

**The impact of the applicable law on the interpretation of contracts**

Date: 21 November 2011

Place: Statoil ASA, Drammensveien 264. Vækerø 0283 Oslo

## The impact of the applicable law on the interpretation of contracts

### Does international arbitration assume that contracts are written on their own terms or as an interplay with the applicable law?

8.30-10.30 **Welcome and introduction**

**Hans Henrik Klouman**, General Counsel, Statoil ASA

**Giuditta Cordero-Moss**, Professor, University of Oslo

#### **The framework:**

The wording of a contract may have different legal effects depending on the governing law

The interpretation of contracts in international arbitration: applicable rules

#### **Panel:**

Michele Graziadei, Fausto Pocar, Gustaf Möller, Anders Ryssdal, Aapo Sarikivi, Jerney Sekolec, Ivan Zykin

*The discussion is open and not limited to the panel participants*

10.30-10.45 **Break**

10.45-12.15 **Expectations when drafting a contract:**

Do (arbitrators expect that) drafters rely on an understanding of the contract as it emerges in international practice, rather than on the legal effects that the wording may have under the specific governing law?

Is (Do arbitrators expect that) every single term of a contract (is) the result of a careful assessment of its legal effects and of detailed negotiations between the parties, or do drafters sometimes take calculated legal risk and insert standardised terms without accurate assessment or negotiation?

#### **Panel:**

Are Brautaset, David Echenberg, James Hope, Christian Fredrik Michelet, Sophie Nappert, Fredrik Norburg, Michael Schneider

*The discussion is open and not limited to the panel participants*

12.15-13.00 **Lunch**

13.00-14.30 **Evaluations when interpreting a contract:**

Do arbitrators interpret one and the same contract clause differently depending on the governing law, or do they develop a harmonised understanding based on the contract's wording and on the arbitrators' international experience?

Do arbitrators take into consideration how their interpretation of the contract may affect enforceability of the award?

**Panel:**

James Castello, Luigi Fumagalli, Stephan Jervell, Cathrine Kessedjan, Kai Uwe Karl, Alexander Komarov, Petri Taikalkoski

*The discussion is open and not limited to the panel participants*

**Panel:**

- Are Brautaset, legal counsel, Statoil ASA
- James Castello, partner, King & Spalding
- Giuditta Cordero-Moss, Professor, University of Oslo
- David Echenberg, senior contract risk manager, General Electric Energy Services
- Luigi Fumagalli, professor, University of Milan
- Michele Graziadei , professor, University of Turin
- James Hope, partner, Advoktafirman Vinge
- Stephan Jervell, partner, Wiersholm
- Kai Uwe Karl, senior counsel litigations, General Electric Oil & Gas
- Cathrine Kessedjian, professor, University of Paris II
- Alexander Komarov, Professor, Russian Academy of Foreign Trade
- Christian Fredrik Michelet, partner, Arntzen de Besche
- Gustaf Möller, Krogerus, and former justice, Supreme Court of Finland
- Sophie Nappert, Avocat, Bar of Quebec, Canada; Solicitor of the Supreme Court of England and Wales
- Fredrik Norburg, partner, Norburg advokatbyrå
- Fausto Pocar, professor, University of Milan and judge, International Criminal Tribunal for Rwanda
- Anders Ryssdal, partner, Wiersholm
- Aapo Sarikivi, attorney at law, Roschier
- Michael Schneider, partner, Lalive
- Jerney Sekolec, arbitrator and former secretary general, UNCITRAL
- Petri Taivalkoski, partner, Roschier
- Ivan Zykin, Professor, Andrey Gorodissky & Partners

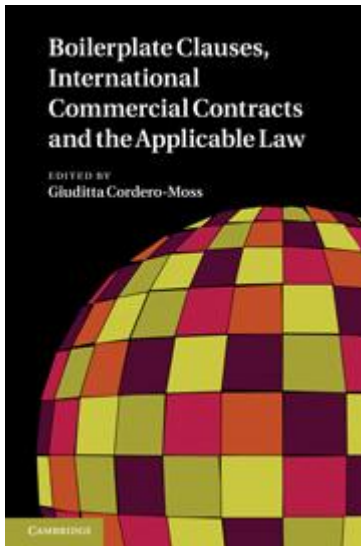
**Participants:**

- Ivar Alvik, Associate Professor, University of Oslo
- Borgar Berg, Partner, Thommessen
- Cathrine Bjoland, Attorney at law, Kluge
- Anne Botne, Attorney at law, Statoil
- Jan Ekeberg, Attorney at law, Statoil
- Ingvald Falch, Attorney at law, Schjødt
- Morten Foss, Attorney at law, Telenor
- Mads Fugelsang, Attorney at law, Selmer
- Olav Hasaas, Partner, Kluge
- Jørgen S. Heffermehl, Partner, Simonsen Law
- Sveinung Heggen, Attorney at law, Orkla
- Ragnar Holm, Attorney at law, Statoil
- Anne Hukkelaas-Gaustad, Attorney at law, Schjødt
- Knut Høivik, Attorney at law, Statoil
- Martin Jetlund, Attorney at law, Selmer
- Hege Kerlefsen, Attorney at law, Statoil
- Roar Klausen, Attorney at law, Statoil
- Harald Kobbe, Partner, Kluge
- Anders Mikelsen, Attorney at law, Kvale
- Tamar Morchiladze, Student, University of Oslo
- Hilde Myrberg, Senior Vice President Corporate Governance, Orkla
- Marie Nesvik, Research Fellow, University of Oslo
- Nicolai René Nielsen, Attorney at law, Kluge
- Fredrik Lekven Nøss, Attorney at law, Statoil
- Linn Hoel Ringvoll, Attorney at law, Kluge

- Hedda Bjøralt Roald, Research assistant, University of Oslo
- Marte Røv, Attorney at law, Statoil
- Amalia Saftoiu, Attorney at law, Kværner
- Ulrik Tetzschner, Research assistant, University of Oslo
- Geir Woxholth, Professor, University of Oslo

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Boilerplate Clauses, International Commercial Contracts and the Applicable Law



## **Boilerplate Clauses, International Commercial Contracts and the Applicable Law**

- Edited by: Giuditta Cordero-Moss, Universitetet i Oslo
- Hardback
- ISBN:9780521197892
- Publication date:March 2011
- 426pages
- Dimensions: 228 x 152 mm
- Weight: 0.77kg
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**AVAILABLE WHEREVER BOOKS ARE SOLD**

With the aim of creating an autonomous regime for the interpretation and application of the contract, boilerplate clauses are often inserted into international commercial contracts without negotiations or regard for their legal effects. The assumption that a sufficiently detailed and clear language will ensure that the legal effects of the contract will only be based on the contract, as opposed to the applicable law, was originally encouraged by English courts, and today most international contracts have these clauses, irrespective of the governing law. This collection of essays demonstrates that

this assumption is not fully applicable under systems of civil law, because these systems are based on principles, such as good faith and loyalty, which contradict this approach.

## **Features**

- Explains the most typical effects of boilerplate clauses under the law of a series of countries to assist practising lawyers who use them in commercial contracts • Demonstrates that international contracts are affected by the applicable law to a previously unsuspected extent, thus inducing practitioners and academics alike to reconsider their reliance on the possibility of uniformly interpreting and applying standard contract wording • Explains how contracts shall be interpreted if they are written on the basis of a law different from the law that governs them, thus providing practitioners with the instruments to write and interpret contracts in the awareness of the governing law

- Explains the most typical effects of boilerplate clauses under the law of a series of countries to assist practising lawyers who use them in commercial contracts • Demonstrates that international contracts are affected by the applicable law to a previously unsuspected extent, thus inducing practitioners and academics alike to reconsider their reliance on the possibility of uniformly interpreting and applying standard contract wording • Explains how contracts shall be interpreted if they are written on the basis of a law different from the law that governs them, thus providing practitioners with the instruments to write and interpret contracts in the awareness of the governing law

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Part II. Methodological Challenges: 3. Does the use of common law contract models give rise to a tacit choice of law or to a harmonised, transnational interpretation? Giuditta Cordero Moss

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15. The East European tradition: application of boilerplate clauses under Hungarian law Attila Menyhárd
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# APA Project Research Plan

	Autumn 09	Spring 10	Autumn 10	Spring 11	Autumn 11	Spring 12	Autumn 12	Spring 13
<b>Company law</b>	Cathrine Bjoland							
<b>Competition Law</b>	Nicolai Nielsen							
<b>Property and Insolvency</b>			Siri Hafeld					
<b>Administrative Regulations</b>			Tone Wetteland					
<b>Arbitrability</b>					Ulrik Tetzsch			
<b>Intellectual Property</b>					Hedda Bjøralt Roald			
<b>Contract Law</b>							XX	
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