
4th Baltic Arbitration Days

The Interdependence of Procedural and Substantive Law in International Arbitration

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Overview

1. *Different procedural legal cultures in international arbitration*
2. *Case study*
3. *Incompatibility of the “best practice” in international arbitration with applicable continental substantive law ?*
4. *Proposal*



Different Procedural Legal Cultures in International Arbitration

Common Law vs. Continental Law Approach

- *Structural differences (Full Truth vs. Relative Truth)*
- *Consequences for the Fact Finding Process*
- *„Hybrid Procedural Systems“*



Case Study

Contractual dispute between a German and a Chinese company, German substantive law selected, Zurich as place of arbitration, ICC Rules



Case Study (2)

- *Applicable Substantive Law and Burden of Proof*
- *Applicable Procedural Law*
 - *The Fact Finding Process*
 - *The Role of the Arbitrators*
 - *The Impact of „Softlaw“ (IBA Evidence Rules)*

Case Study (3)

Sec 280 German Civil Code:

Damages for breach of duty

- (1) If the obligor breaches a duty arising from the obligation, the obligee may demand damages for the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.*
- (2) Damages for delay in performance may be demanded by the obligee only subject to the additional requirement of section 286.*
- (3) Damages in lieu of performance may be demanded by the obligee only subject to the additional requirements of sections 281, 282 or 283.*



Incompatibility of the „best practice“ in
international arbitration with applicable
continental substantive law ?

Burden of Proof vs. Disclosure
Inconsistencies likely
Risk of a lack of enforceability ?



Proposal

Balancing in connection with the „Relevancy Test“