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## Comments on the Bremen v. Zapata Off-shore Co.

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## Comments on the Bremen v. Zapata Off-shore Co.

Unterweser Reederei, G.m.b.H., a German corporation, contracted with Zapata Off-Shore Company, a Texas corporation, to tow a seagoing oil drilling rig from Louisiana to Italy. The provisions of the towage contract included a forum-selection clause stipulating that all litigation concerning the contract would be resolved before the High Court of Justice in London. Two additional clauses purported to release Unterweser from liability for damages to the tow. A severe storm during the voyage caused extensive damage to the rig and Zapata instructed Unterweser's tug to tow the rig to the nearest port, Tampa, Florida. Ignoring the forum-selection clause, Zapata commenced a suit in admiralty in the federal district court at Tampa against Unterweser in personam and the tug in rem, seeking damages for negligent towage and breach of contract. Unterweser moved to dismiss the action for lack of jurisdiction and on the ground of *forum non conveniens*. The district court found the equitable considerations presented by the German corporation to be unpersuasive and denied the motion.<sup>1</sup> The Court of Appeals for the Fifth Circuit affirmed.<sup>2</sup> On the writ of certiorari, the United States Supreme Court vacated the judgment and remanded the case to the Court of Appeals, holding that United States courts will enforce forum-selection clauses in international towage contracts in the absence of unforeseeable and extreme hardships that would effectively deprive the resisting party of his day in court.<sup>3</sup> Citing extensive international recognition of the

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1. *In re Unterweser Reederei, G.m.b.H.*, 296 F. Supp. 733 (M.D. Fla. 1969).

2. *In re Unterweser Reederei, G.m.b.H.*, 428 F.2d 888 (5th Cir. 1970), *aff'd mem. on rehearing en banc*, 446 F.2d 907 (5th Cir. 1971).

3. 407 U.S. 1 (1972).

desirability of enforcing agreements freely made by contracting parties, the Court dismissed the "ouster"<sup>4</sup> and "public policy" arguments as vestigial legal fiction. The Court noted that the forum-selection clause was negotiated at arm's length by highly sophisticated, knowledgeable businessmen and concluded that the clause was a vital part of the agreement on which the parties had undoubtedly relied in allocating insurance costs. Furthermore, the Court emphasized that international development and continued commercial expansion would be hampered by American insistence on litigating disputes concerning her citizens in domestic courts. The forum-selection clause was held to be binding unless the resisting party could show that its enforcement would be unreasonable and unfair.

*The Bremen v. Zapata Off-Shore Co.*, by bringing domestic law more into harmony with international custom and comparative practice, represents a step in the development of uniformity in transnational law. For this reason the *Journal* invited the following comments. Professors Charles L. Black, Jr., Robert Lefflar and Harold G. Maier explore various aspects of this highly significant case.

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4. "Ouster" refers to the doctrine that private parties will not be allowed to deprive a court of its jurisdiction by agreement.