



INTERNATIONAL CONTRACTING AND CIVIL LIABILITY

Purpose of the course

The purpose of this course is to introduce the students in the particularities of international contracting and, in particular, to teach them the importance of the contract in the framework of international trade. To reach this objective, the students shall learn the essential elements of an international contract, including the principles on which international contracting is based and the main legal provisions that should be taken into consideration in cross-border trading (above all, the most important international conventions and European legal provisions applicable at present), and shall also be given an outline of the different types of contracts that are commonly used in international trade.

1. INTRODUCTION

The subject: program, participation, exercises, exam.

2. PRINCIPLES OF CONTRACTS LAW

2.1 Principles of international contracts: Privacy of contract. Binding effect.

Freedom of parties. The UNIDROIT principles.

2.2 Essential elements of contracts: consent, object, consideration.

- 2.3 Timing of the contractual relationship: parties, object, terms, breach of contract, jurisdiction, applicable law, litigation.
- 2.4 Types of agreements: long term agreements, agreements with a weaker party, synalagmatic agreements, co-operation agreements.

- 3. GOVERNING LAW
 - 3.1 Governing Law
 - 3.2 Rome Convention 1980 on the Law Applicable to contractual obligations: scope, general principles, exclusions, rules, exceptions.
 - 3.3 Practical scenario.

- 4. PURCHASE AND SALE AGREEMENT (I)
 - 4.1 Introductory notions: importance of the purchase and sale agreement
 - 4.2 The purchase and sale agreement as a standard agreement for the transfer of goods.
 - 4.3 Elements: consent, object and price.

- 5. PURCHASE AND SALE AGREEMENT (II)
 - 5.1 International conventions.
 - 5.2 The UN Convention on Contracts for the International Sale of Goods, Vienna 1980.
 - 5.3 INCOTERMS 2000.

- 6. PURCHASE AND SALE AGREEMENT (III)
 - 6.1 Seller's obligations: delivery, conformity of the goods, rights or claims of third parties.
 - 6.2 Purchaser's obligations: payment of the price, collecting merchandise.

- 7. PURCHASE AND SALE AGREEMENT (IV)
 - 7.1 Breach of contract and damages. Remedies.
 - 7.2 Force majeure.

8. PRODUCT LIABILITY

- 8.1 Concept.
- 8.2 Background: liability in tort and in contract. Problems. Case law.
- 8.3 The EC Directive and Spanish law.
- 8.4 Product, defect, producer, evidence, manufacturer's defense.
- 8.5 Liability: joint and several, scope of protection, limits of compensation, time limits.
- 8.6 Product Safety. The Rapex System.
- 8.7 Practical scenario.

9. FRANCHISE AGREEMENTS

- 9.1 Concept: IP & uniform image & signs, know how, technical assistance.
- 9.2 Obligations of the parties.
- 9.3 Exclusivities. Territory. Uniform image.
- 9.4 Breach of contract.
- 9.5 Master franchising.
- 9.6 Local legal requirements: registration, pre-contractual discovery.

10. E-COMMERCE

- 10.1 E-Commerce Directive 2000
- 10.2 Consumer protection issues. Distance sales contracts. Standard terms. Jurisdiction and choice of law.
- 10.3 Data protection issues

11. AGENCY AGREEMENTS

- 11.1 Introduction as well as main aspects of agency agreements.
- 11.2 Differences with similar agreements: distribution & labor relationship.
- 11.3 Obligations of each party.
- 11.4 Right to conclude agreements.
- 11.5 Territory. Exclusivity. Commission.

- 11.6 Consequences of termination.
- 11.7 Compensation for damages & goodwill upon termination.

12. AGREEMENTS RELATED TO DISTRIBUTION

- 12.1 Introduction.
- 12.2 Distribution agreements: difference with similar agreements.
- 12.3 Obligations of each party.
- 12.4 Exclusive distribution.
- 12.4 Exclusive purchase agreement.
- 12.5 Selective distribution.
- 12.6 Consequences of termination.
- 12.7 Compensation for damages & goodwill upon termination.
- 12.8 Practical scenario.

13. COMPETITION RULES

- 13.1 Limit to freedom of parties.
- 13.2 Prohibitions and exemptions.
- 13.3 Concerted practices: Art. 81 EC Treaty. Block exemptions.
- 13.4 Vertical restraints.
- 13.5 Abuse of a dominant position: Art. 82 EC Treaty.
- 13.6 State Aids.
- 13.7 Unfair competition.

14. CONCENTRATION AGREEMENTS

- 14.1 Mergers & acquisitions: introduction.
- 14.2 Acquisition of shares or assets.
- 14.3 Main steps: due diligence, agreement, closing.
- 14.4 Main terms: representations & warranties, escrow clauses, etc.
- 14.5 Joint ventures: contractual and corporate.
- 14.6 Practical scenario.

15. SECURITIES FOR PAYMENTS

- 15.1 Securities: concept and classification.
- 15.2 Retention of title.
- 15.3 Mortgages: real estate mortgages and mortgage over movable assets.
- 15.4 Pledges: pledge of assets, pledge with no delivery.
- 15.5 Stand-by letters of credit.
- 15.6 Bank guarantees.
- 15.7 Personal guarantees.

16. FINANCE AGREEMENTS

- 16.1 Loan agreements.
- 16.2 Credit facility agreements.
- 16.3 Issuance of securities: bonds & shares.

17. DISPUTE RESOLUTION

- 17.1 Dispute Resolution. Difficulties involved with international litigation.
- 17.2 Jurisdiction. The Brussels Regulation and the Lugano Convention.
- 17.3 Introduction to alternative dispute resolution.
- 17.4 Arbitration. Commercial international arbitration

18. PRINCIPLES OF INTERNATIONAL NEGOTIATION

- 18.1 Cultural issues.
- 18.2 Choice of professional advisors.

19. CLOSURE.

- 19.1 Questions & Answers

Bibliography

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Materials

Course materials will be distributed either through photocopies or on Aul@-ESCI.

Grading Policy

To be in a position to pass this course it is necessary to obtain a grade of at least 4.5 on the final exam. Not taking the exam or presenting any of the course requirements implies receiving 0 points for that grade component. If the grade on the final exam is less than 4.5 over 10, the overall grade will be equal to the grade on this exam. Otherwise the final grade will be the weighted average of the following components:

In-class participation:	15%
Homework and case study:	30%
Final exam (or retake):	55%

In-class participation shall include attendance, participation in case studies and in discussions, and team work.

Homework shall include any project that may be required to be done, as well as case studies that may be requested to be solved at home.

The same weighting will be applied in case of a retake exam.