

**Advanced Master in Legal Sciences /
Master in European and Global Law
2016-2017**

International Business Transactions

Term: 3

Number of Credits: 6

Language: English

Instructor: Franco Ferrari

Office hours: day of teaching, from 1 hour before class to start of the class

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Course Description

This course explores the legal issues - both from a conflict of laws perspective and a substantive law one - that may arise in connection with business contracts (such as contracts for the sale of goods, factoring contracts, leasing contracts, transport contracts, etc.) that involve some element of internationality and examines those issues in light of some of the sets of rules specifically designed to address those issues when embedded in an international setting (such as the United Nations Convention on Contracts for the International Sale of Goods, the International Factoring Convention, the Convention on International Financial Leasing, the Montreal Convention, the Rome I Regulation, etc.). The course will also offer an overview of the basic features of litigation of those issues in state courts and before arbitral tribunals.

Prerequisites

None

Methodology

- 1) This course will allow course participants to learn how to navigate through the multiple and possibly competing sources of law that may potentially apply in the context of doing business internationally. The knowledge gained by the course participants will be tested through an interactive discussion of about 100 hypotheticals.
- 2) Students will be expected to be able to identify which among different approaches to identifying the rules applicable to a given international business transactions to resort and to convincingly argue the reason for selecting one approach over another.
- 3) Attendance policy: Students are required to attend at least 80%. Class attendance will be verified.
- 4) Workload: Students expected to spend about an hour in preparation of each three-hour class carefully studying the materials assigned

Assignments and Evaluation

Students will have to take a final exam composed of two different parts, each of which designed to assess different skills. One part of the exam requires students to write a critical essay on an issue touched upon an issue addressed in class. The second part of

the exam will require students to answer several questions regarding a hypothetical, thus allowing to assess whether students will have learned the practical and analytical skills the course is designed to hone.

Where students fail that exam, they will have to submit to another exam mirroring the approach of the first one.

Schedule and Work Plan

SESSION 1:

Defining International Business Transactions

Reading Assignment: *Delaume*, What is an International Contract? An American and Gallic Dilemma, 28 INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 258 (1979); *Banco Santander Totta S.A. v. Companhia de Carros de Ferro de Lisboa*, High Court, Queen's Bench Div., 3 April 2016, pp. 65-81

SESSION 2:

Distinguishing International Business Transactions from International Consumer Transactions

Reading Assignment: *Ferrari/Ragno*, Consumer Protection in International Private Perspectives. *European Union*, in Arroyo (ed.), CONSUMER PROTECTION IN INTERNATIONAL PRIVATE PERSPECTIVES 581 (2010)

SESSION 3:

Approaches to Dealing with International Business Transactions (9/16/2015)

Reading Assignment: *Randall/Norris*, A New Paradigm for International Business Transactions, 71 WASHINGTON UNIVERSITY LAW QUARTERLY 599 (1993); *Ferrari*, Uniform Law, in Basedow et al. (eds.), THE MAX PLANCK ENCYCLOPEDIA OF EUROPEAN PRIVATE LAW (2012); Tribunale di Vigevano, 12 July 2000, English translation available at <http://cisgw3.law.pace.edu/cases/000712i3.html>

SESSION 4:

Interpretation of Uniform Law

Reading Assignment: *Ferrari*, Have the Dragons of Uniform Sales Law Been Tamed? Ruminations on the CISG's Autonomous Interpretation by Courts, in Andersen/Schroeter (eds.), SHARING INTERNATIONAL COMMERCIAL LAW ACROSS NATIONAL BOUNDARIES. Festschrift for Albert H. Kritzer on the occasion of his eightieth birthday 134 (2008); *Ferrari*, *Homeward Trend: What, Why and Why Not*, INTERNATIONALES HANDELSRECHT 8 (2009))

SESSION 5:

The Need for a Conflict of Laws Analysis Despite the Unification of Substantive Law

Reading Assignment: *Ferrari*, PIL and CISG: Friends or Foes?, INTERNATIONALES

HANDELSRECHT 89 (2012); *Ferrari*, Uniform Law of International Sales: Issues of Applicability and Private International Law, 15 JOURNAL OF LAW AND COMMERCE 159 (1995); *Ferrari*, What sources of law for contracts for the international sale of goods? Why one has to look beyond the CISG, INTERNATIONALES HANDELSRECHT 1 (2006); *Rühl*, The Problem of International Transactions: Conflict of Laws Revisited, JOURNAL OF PRIVATE INTERNATIONAL LAW 59 (2010))

SESSION 6:

Forum Shopping due to the Need for a Conflict of Laws Analysis Despite the Unification of Substantive Law

Reading Assignment: *Ferrari*, Forum shopping despite international uniform contract law conventions, INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 689 (2002); *Ferrari*, International Sales Law and the Inevitability of Forum Shopping, 23 JOURNAL OF LAW AND COMMERCE 169 (2004); *Ferrari*, Choice of Forum and CISG: Remarks on the Latter's Impact on the Former, in Flechtner et al. (eds.), DRAFTING CONTRACTS UNDER THE CISG 103 (2007); Tribunale di Rimini, 26 November 2002, English translation available at <http://cisgw3.law.pace.edu/cases/021126i3.html>)

SESSION 7:

Uniform Substantive Law Approach and Internationality Requirements

Reading Assignment: *Ferrari*, CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (2nd ed., 2011), chap. II; *Ferrari*, The International Sphere of Application of the 1988 Ottawa Convention on International Factoring, 31 THE INTERNATIONAL LAWYER 41 (1997))

SESSION 8:

Uniform Substantive Law Approach and Applicability Requirements

Reading Assignment: *Ferrari*, CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (2nd ed., 2011), chap. III

SESSION 9:

Analysis of Various Conflict of Laws Instruments (Rome Convention, Rome Regulation, OAS Convention, 1955 Hague Convention): Choice of Law by the Parties

Reading Assignment: *Albornoz*, Choice of Law in International Contracts in Latin American Legal Systems, JOURNAL OF PRIVATE INTERNATIONAL LAW 23 (2010); *Heiss*, Party Autonomy, in Ferrari/Leible (eds.), THE ROME I REGULATION. THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS IN EUROPE 1 (2009))

SESSION 10:

The Law Applicable Absent a Choice

Reading Assignment: *Ferrari*, From Rome to Rome via Brussels. Remarks on the Law Applicable to Contractual Obligations Absent a Choice by the Parties, RABELSZ 750 (2009); *Magnus*, Article 4 Rome I Regulation: The Applicable Law in the Absence of Choice, in Ferrari/Leible (eds.), THE ROME I REGULATION. THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS IN EUROPE 27 (2009); *Tang*, Law Applicable in the Absence

of Choice the New Article 4 of the Rome I Regulation, 71 *MODERN LAW REVIEW* 785 (2008); *Ferrari/Silberman*, Getting to the law applicable to the merits in international arbitration and the consequences for getting it wrong, in Ferrari/Kröll (eds.), *CONFLICT OF LAWS IN INTERNATIONAL ARBITRATION* 257 (2010))

SESSION 11:

Limitations of the Scope of Uniform Substantive Laws and their Exclusion by the Parties

Reading Assignment: *Ferrari*, Issues not Governed by the CISG, *INTERNATIONAL BUSINESS LAW JOURNAL* 835 (1998); *Ferrari*, Remarks on the UNCITRAL Digest's Comments on Article 6 CISG, 25 *JOURNAL OF LAW AND COMMERCE* 13 (2005); *Mather*, Choice of Law for International Sales Issues not Resolved by the CISG, 20 *JOURNAL OF LAW AND COMMERCE* 155 (2001))

SESSION 12:

Substantive Uniform Law Issues

Reading Assignment: Tribunale di Rimini, 26 November 2002, English translation available at <http://cisgw3.law.pace.edu/cases/021126i3.html>; Tribunale di Forlì, 11 December 2008, English translation available at <http://cisgw3.law.pace.edu/cases/081211i3.html>; Tribunale di Forlì, 16 February 2009, English translation available at <http://cisgw3.law.pace.edu/cases/090216i3.html>; Tribunale di Forlì, 11 December 2012, *INTERNATIONALES HANDELSRECHT* 161 (2013)

Bibliography/List of readings and materials

See papers listed earlier