

**Federal State Autonomous Educational Institution
for Higher Learning**

**THE NATIONAL RESEARCH UNIVERSITY
HIGHER SCHOOL OF ECONOMICS**

Faculty of Law

Approved at the Academic Council of Master Program
session “Private International Law” (Protocol N 17, 29
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**INTERNATIONAL CONTRACT LAW
Course Syllabus**

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ETC	3
Contact hours	40
Self-study hours	74
Year of study	1
Format of course learning	Without use of online-course

1. Course Description

a. Title of a Course

“International Contract Law”

b. Pre-requisites

The course requires the students to have basic knowledge of law, sufficient level of English (to read legal sources, write essays and participate in class discussions), as well as other skills acquired during their studies at the university. Additional background in civil law, private international law and international procedure is welcome, although not mandatory for the course.

c. Course Type

Elective

d. Abstract

International contracts are an essential part of international transactions – being “the backbone” of world trade they are concluded on a day-to-day basis by transnational corporations, entered into by individual entrepreneurs and entail disputes involving parties from different jurisdictions and legal backgrounds. For this very reason the course will focus mainly on common aspects of drafting, interpreting and challenging international contracts, while providing a brief overview of various contracts commonly used in international trade. The aim of the course is to introduce students to basic principles and the regulatory framework of international contracts together with developing practical skills of contract drafting, review and commercial dispute resolution. The target audience is both students of the Faculty of Law of the HSE and foreign students. The course is taught in English. The course consists of various individual and collective exercises aimed at development of negotiation, writing and advocacy skills. The course will be useful for Russian and foreign students interested in international commerce and contracts.

2. Learning Objectives

The course objectives include:

- familiarization with multilateral agreements comprising International Contract Law (CISG, Convention on the Limitation Period in the International Sale of Goods, etc.);
- familiarization with principles of International Contract Law together with other nonbinding acts of recommendatory character (UNIDROIT Principles, UNCITRAL Model Laws, INCOTERMS, etc.)
- developing students’ skills of contract drafting and interpretation;
- enhancing legal research and analyses techniques for challenging international contracts.

3. Learning Outcomes

Students must gain knowledge on:

- general principles of international contracts;
- enforcement of international contracts in courts and arbitration;
- issues of drafting international contract clauses.

Skills and abilities:

- to use specific terms and sources of international contracts;

- to research and analyze legal sources, recommendations and soft law applicable to contractual agreements;
- to solve practical cases and build up legal positions resolving the disputes arising out of international contracts.

Students should gain the following competences:

- to work with information and sources (search, evaluate and use information to fulfil academic and professional tasks);
- to carry out professional activities in the international environment;
- to search, analyse, and work with legally relevant information by using the juridical, comparative and other specific methods,
- to describe and resolve legal problems and situations involving international contracts.

4. Course Plan

Subject 1. Introduction to International Contract Law; main players on International Contract Law harmonization field

1. Role of international contracts in the modern world. Historical overview of international contracting.
2. What makes a contract “commercial” and “international”.
3. Harmonization v. localization of contract law. Historical tendencies and latest developments.
4. The role of organizations involved in International Contract Law development: Hague Conference on Private International Law (Hague Conference), United Nations Commission on International Trade Law (UNCITRAL), International Institute for the Unification of Private Law (UNIDROIT), International Chamber of Commerce (ICC), other regional and national organizations;
5. Key instruments developed by international organizations.

Subject 2. Types of international contracts

1. Distribution and agency contracts.
2. Leasing contracts.
3. Factoring and franchising agreements.
4. International carriage of goods by land and by sea (Hague-Visby Rules, Hamburg Rules, Rotterdam Rules, the Warsaw System, Montreal Convention).
5. E-commerce, blockchain and smart contracts.
6. Joint ventures, mergers and acquisitions.
7. Financial contracts and international payments.

Subject 3. *International sales contracts under the CISG and UNIDROIT Principles*

1. Application of the CISG and UNIDROIT Principles to international sales contracts.
2. Interpretation of the CISG provisions. CISG Advisory Council opinions and case law.
3. The Observance of Good Faith in International Trade.

Subject 4. *Formation of contracts*

1. Formation of sales contracts under the CISG.
2. Offer and acceptance.
3. Battle of the forms.
4. General Conditions and Standard Terms under the CISG.
5. Drafting international contract clauses: language and structure.

Subject 5. *Contract interpretation*

1. Determining the contractual intent of parties under the CISG.
2. Objective and subjective standards of interpretation.
3. Parole evidence rule and its correlation with the CISG.
4. *Contra proferentem* rule of contract interpretation.
5. Application of UNIDROIT Principles and other authorities to contract interpretation.

Subject 6. *Contractual obligations*

1. Seller's and buyer's obligations under the CISG.
2. Conformity of the goods.
3. Passage of title and the risk of loss under the CISG.
4. Preservation of goods.
5. Terms of payment.

Subject 7. *Remedies*

1. Remedies for breach of contract by the seller under the CISG (performance, avoidance of the contract, reduction of the purchase price, damages, right to suspend performance).
2. Remedies for breach of contract by the buyer (performance, avoidance of the contract).

Subject 8. *Contract termination and settlement of disputes*

1. Fundamental, anticipatory and partial breach of contract under the CISG.
2. Exemptions from liability under the CISG.
3. Mitigation of losses, mediation, arbitration and court claims. Model and tailor-made clauses.
4. Choice of law clauses in international contracts.

Subject 9. Contract dispute resolution: case study

Best practices of drafting submissions and presenting your case.

5. Reading List

a. Required

1. *Emery C.* International Commercial Contracts, 2016 [Electronic resource]. – Режим доступа: http://www.nyulawglobal.org/globalex/International_commercial_contracts.html
2. *Benoiel Ur.* The Interpretation of Commercial Contracts: An Empirical Study [Electronic resource] // Alabama Law Review, 2017. – Режим доступа: <https://www.law.ua.edu/lawreview/files/2017/12/The-Interpretation-of-Commercial-Contracts.pdf>
3. *Fried, Charles.* Contract as Promise: A Theory of Contractual Obligation. 2nd ed., New York, 2015 [Electronic resource]. – Режим доступа: <http://proxylibrary.hse.ru:2225/view/10.1093/acprof:oso/9780190240158.001.0001/acprof-9780190240158>
4. *Neil Andrews.* Arbitration and Contract Law: Common Law Perspectives [Electronic resource]. Springer International Publishing, Switzerland, 2016. – Режим доступа: <https://proxylibrary.hse.ru:2103/10.1007/978-3-319-27144-6>
5. *Luca Siliquini-Cinelli, Andrew Hutchison.* The Constitutional Dimension of Contract Law: A Comparative Perspective [Electronic resource]. Springer International Publishing AG, 2017. – Режим доступа: <https://proxylibrary.hse.ru:2103/10.1007/978-3-319-49843-0>
6. 35 Years CISG and Beyond, edited by Ingeborg Schwenzer [Electronic resource]. Eleven International Publishing, 2016. – Режим доступа: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/detail.action?docID=4205770>
7. *María Mercedes Alborno, Nuria González Martín.* Towards the uniform application of party autonomy for choice of law in international commercial contracts [Electronic resource] // Journal of Private International Law, 12:3, 2016, p. 437-465. – Режим доступа: <https://proxylibrary.hse.ru:2129/doi/full/10.1080/17441048.2016.1234812?scroll=top&needAccess=true>

b. Optional

1. *Emerson R.W.* An International Model for Vicarious Liability in Franchising, 2015 [Electronic resource]. – Режим доступа: <http://www.alsb.org/wp-content/uploads/2016/01/NP-2015-An-Intl-Model-for-Vicar-Liab-Emerson.pdf>
2. Draft E-Commerce Legal Guide. New Markets Lab in partnership with the Center for International Private Enterprise, 2018 [Electronic resource]. – Режим доступа: http://www.intgovforum.org/multilingual/sites/default/files/webform/e-commerce_legal_guide_draft_24_may_2018_nml.pdf
3. *Djurovic, Mateja.* European Law on Unfair Commercial Practices and Contract Law [Electronic resource]. Bloomsbury Publishing PLC, 2016. – Режим доступа: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/detail.action?docID=4529793>
4. *Mitkidis, Katerina Peterkova.* Sustainability Clauses in International Business Contracts [Electronic resource]. Eleven International Publishing, 2015. – Режим доступа: <https://ebookcentral.proquest.com/lib/hselibrary-ebooks/detail.action?docID=1992198>
5. *Nicolas Nord, Gustavo Cerqueira.* International Sale of Goods: A Private International Law Comparative and Prospective Analysis of Sino-European Relations [Electronic resource]. Springer International Publishing AG, 2017. – Режим доступа: <https://proxylibrary.hse.ru:2184/book/10.1007%2F978-3-319-54036-8#about>
6. *Bonell, Michael Joachim.* The Law Governing International Commercial Contracts and the Actual Role of the UNIDROIT Principles [Electronic resource] // Uniform Law Review, no. Issue 1, 2018, p. 15. – Режим доступа: <https://proxylibrary.hse.ru:2057/ulr/article/23/1/15/4944890>
7. *Basedow, Jurgen.* International Economic Law and Commercial Contracts: Promoting Cross-Border Trade by Uniform Law Conventions [Electronic resource] // Uniform Law Review, no. Issue 1, 2018, p. 1. – Режим доступа: <https://proxylibrary.hse.ru:2057/ulr/article/23/1/1/4952062>

6. Grading System

A. Assessment

- Seminar attendance / participation – 30%
- Self-study (interim forms) – 10%
- Self-study (essay) – 20%
- Examination (written assignment) – 40%

An overall assessment formula comprises a sum total of the following variables: $(\text{seminar attendance / participation}) * 0.3 + (\text{interim forms}) * 0.1 + (\text{essay}) * 0.2 + (\text{exam}) * 0.4 = \text{final grade}$

B. Grading

Grading rates for essay and written exam:

- Excellent 8 – 10 points
- Good 6 – 7 points
- Satisfactory 4 – 5 points
- Fail 1 – 3 points
- No attendance 0 points

7. Guidelines for Knowledge Assessment

Self-study control:

- Essay on a selected topic as agreed with the Course Instructor (12-15 printed pages (Times New Roman, 14 pt);
- Interim forms: quizzes, presentations and case studies.

8. Methods of Instruction

Classes are divided into lectures and seminars. Lectures are conducted in the interactive mode with the focus on the feedback from the students. Students are expected to get prepared for the upcoming lectures, which enables them to better comprehend the subject matter delivered by the lecturer. Seminars are aimed at combining interactive methods and stimulate individual and group debates on various issues. Home assignments are designed for an extensive review of international treaties, case law, legal authorities, as well as for in-class work preparation.

Use of interactive educational technologies, including:

- socratic method; but also
- interactive seminars;
- participative workshops;
- group discussion;
- brainstorming sessions.

Essay Topic Examples

1. Harmonization of International Contract Law: history and current practice.
2. Contemporary choice of law issues in International Contract law.
3. *Lex mercatoria*: history, present and the future.
4. The significance of UNCITRAL/UNIDROIT/ICC for development of international contract law.

5. Distribution/agency/leasing/factoring/franchising contracts: current issues and global tendencies.
6. International contracts for carriage of goods by land/sea: recent developments in regulation and practice.
7. International perspective on e-commerce, blockchain and smart contracts.
8. Issues arising out of contractual obligations in international joint ventures, mergers and acquisitions – analysis and suggested solutions.
9. Party autonomy in international contract law – should there be a limit?
10. The principle of good faith in International Contract Law.
11. Interpreting intention of the parties under the CISG – recent trends and developments.
12. Application of *contra proferentem* rule to international contract interpretation – challenges and current trends.
13. Formation of an international commercial contract – issues and proposed solutions.
14. References to General Conditions and Standard Terms in international contracts – current issues and practices.
15. Choosing the correct remedy by the buyer/seller under the CISG – issues and proposed solutions.
16. Issues of passage of title and the risk of loss under the CISG.
17. Contract breach and termination under the CISG – when is it worth to save the contract?
18. Force majeure as an exemption from liability under the CISG – cases and current issues.
19. Settlement of disputes arising out of international contract – choice of the venue and law.

The above non-exhaustive list provides only examples of essay topics to consider by the student. A topic chosen by each student is subject to individual approval by the Course Instructor.

9. Special Equipment and Software Support (if required):

Access to internet and computer-based drafting equipment.