

Course Syllabus

INTERNATIONAL CONTRACT LAW

Approved at the Academic Council of Master Program session
«Private International Law»
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ETC	3
Contact hours	40
Self-study hours	76
Year of study	2
Format of course learning	Without use of online-course

1. Course Description

a) 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.

b) 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. *Benoliel 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 Albornoz, 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

Grading in this course will be based on four types of work product:

- 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: $(\text{seminar attendance / participation}) * 0.3 + (\text{interim forms}) * 0.1 + (\text{essay}) * 0.2 + (\text{exam}) * 0.4 = \text{final grade}$

7. Examination Type

- Attendance, active participation and in-class discussion: 30%

Each student is expected to attend all the sessions having gone through the assigned material, including the questions and any problems in the text/ judgment, podcast, etc. that are assigned, and actively participate in class discussions, ask questions and make analytical comments about the assignments. Sessions will be structured as a mix of lectures, seminars, and participative workshops in order to stimulate class discussion: the participants are expected to cover the assigned materials in advance for each class.

- Self-study (interim forms): 10%

Interim assessment consists of a group assignment prepared by the students at home and presented during one of the classes, as well as student colloquium answers. Presentation topics and colloquium questions are announced to students in advance and depend on the subjects previously covered at lectures and seminars.

- Essay: 20%

This assessment component requires each student to draft and timely submit a written essay on a selected topic as agreed with the Course Instructor. The essay must be within 12-15 printed pages (Times New Roman, 14 pt) with proper references to legal sources. Exemplary essay topics are presented further in the syllabus.

- Written exam: 40%

Written open book exam by the end of the course.

7.1. Assessment criteria for a self-study (interim forms)

<i>10-point scale</i>	<i>Assessment criteria</i>
10 points	Excellent presentation that meets all the requirements set out below, provides theoretical background and practical solutions to the identified issues. The presenter shares his/her research results with the audience and successfully sparks a class discussion. The presentation also contains a brief exercise to evaluate how the topic was perceived by the audience and the presentation's effectiveness in conveying new information to the students. The exercise results clearly demonstrate

	that the presenter reached his/her goal in communicating the information to the audience and it was understood correctly and unambiguously by the students.
9 points	The topic of the presentation is fully researched, analyzed and clearly expressed by the presenter. The presentation is drafted using a large number of legal sources based on the recommended main and additional literature, as well as other literature selected by the student independently. The presentation is well-structured and designed. The presenter freely addresses audience's questions providing additional insights into the presented topic. The presenter shares his/her research results with the audience and encourages a class discussion. The presentation also contains a brief exercise to evaluate how the topic was perceived by the audience and the presentation's effectiveness in conveying new information to the students. The exercise results demonstrate that the presenter reached his/her goal in communicating the information to the audience and it was understood by the students.
8 points	The same requirements as for a score of 9 points. The presentation is drafted using a large number of legal sources based on the recommended main and additional literature. The evaluation exercise results demonstrate that the presenter reached his/her goal in communicating the information to the audience.
7 points	The presentation topic is sufficiently researched, analyzed and expressed by the presenter. The presentation is drafted using a number of legal sources based on the recommended main and additional literature. The presentation is well-structured and designed. The presenter properly addresses audience's questions providing additional insights into the presented topic. The presenter engages the audience in sharing his/her research results.
6 points	The presentation topic is adequately researched and expressed by the presenter. The presentation is drafted using a number of legal sources based on the recommended main and additional literature. The presentation is well-structured and designed. The presenter properly addresses audience's questions. The presenter engages the audience in sharing his/her research results.
5 points	The presentation topic is researched and expressed by the presenter based on several legal sources. There are drawbacks in presentation's structure and design. The presenter adequately addresses audience's questions.
4 points	The presentation topic is not sufficiently researched and expressed by the presenter. There are drawbacks in presentation's structure and design. The presenter adequately addresses audience's questions.
3 points	The presentation topic is not properly researched and expressed by the presenter. There are drawbacks in presentation's structure and design. The presenter does not adequately address audience's questions.
2 points	The presentation topic is not properly researched. There are drawbacks in presentation's structure and design. The presenter is not able to address audience's questions.
1 point	The presentation topic is not properly researched. There are drawbacks in presentation's structure and design. The presenter does not appear for the in-class presentation.

7.2. Assessment criteria for an essay

<i>10-point scale</i>	<i>Assessment criteria</i>
10 points	Excellent study that meets all the requirements, and also differs in scientific novelty being a contribution to the development of legal science.
9 points	The essay meets all the requirements for this kind of work. The topic of the essay is fully researched and analyzed, the author's position is clearly expressed, there are logical and reasonable conclusions. The essay is written using a large number of legal sources based on the recommended main and additional literature, as well as other literature selected by the student independently. The essay is well-structured and designed.
8 points	The same requirements as for a score of 9 points. The essay is written using a large number of legal sources based on the recommended main and additional literature.
7 points	The essay topic is fully researched; the author's position is demonstrated, reasonable conclusions are formulated; necessary literature and regulations are used. The essay is properly drafted.
6 points	The essay topic is generally analyzed; the conclusions of the student are formulated, but not sufficiently substantiated; analysis of the problem is conducted with references to necessary legal sources; both basic and additional literature is used; the author's position is not clear. The essay is properly drafted.
5 points	The topic is disclosed based on the use of several primary and secondary sources; the author's position is weakly reflected, conclusions are not substantiated; the information is presented inconsistently, without corresponding argumentation and analysis of legal norms, although references to legal acts can be found. There are drawbacks in the essay's structure and design.
4 points	The topic is not fully disclosed; only the main (more than two) sources are used; there are references to legal sources, but the author's position is not expressed; conclusions are absent. There are drawbacks in the essay's structure and design.
3 points	The essay topic is not fully disclosed on the basis of two sources; the information is presented without author's assessment and conclusions; no references to legal sources. There are drawbacks in the essay's structure and design.
2 points	The topic of the essay is not disclosed; the information is presented without author's assessment and conclusions; no references to legal sources. There are drawbacks in the essay's structure and design.
1 point	Most of the essay's text coincides with other source.

7.3. Topics for essays

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.

7.4. Assessment criteria for written exam (written assignment)

<i>10-point scale</i>	<i>Assessment criteria</i>
10 points	Excellent contract analysis that meets all the requirements set out below and provides unique practical solutions to the identified issues. The student identified and highlighted practically all the problems, drawbacks and issues in the given draft. The analysis is impeccably structured and designed.
9 points	The student not only identified practically all the problems, drawbacks and issues in the given draft, but provided additional and/or alternative contractual provisions benefiting one of the contractual parties. The identified issues are fully researched, analyzed and clearly expressed by the student. The analysis is well-structured and designed.

8 points	The same requirements as for a score of 9 points. The student identified and highlighted most of the problems, drawbacks and issues in the given draft. The analysis is well-structured and designed.
7 points	The student identified and highlighted half of the problems, drawbacks and issues in the given draft. The identified issues are properly researched and analyzed by the student. The analysis is well-structured and designed.
6 points	The student identified and highlighted half of the problems, drawbacks and issues in the given draft. The identified issues are adequately researched and analyzed by the student. The analysis is properly structured and designed.
5 points	The student identified and highlighted several problems, drawbacks and issues in the given draft. The identified issues are adequately researched and analyzed by the student. There are some deficiencies in the analysis' structure and design.
4 points	The student identified and highlighted several problems, drawbacks and issues in the given draft. The identified issues are not sufficiently researched and analyzed by the student. There are several deficiencies in the analysis' structure and design.
3 points	The student identified three or less problems, drawbacks and issues in the given draft. The identified issues are not sufficiently researched and analyzed by the student. There are a number of deficiencies in the analysis' structure and design.
2 points	The student identified two or less problems, drawbacks and issues in the given draft. The identified issues are not researched and analyzed by the student. There are substantial deficiencies in the analysis' structure and design.
1 point	The student could not identify any problems, drawbacks and issues in the given draft. There are substantial deficiencies in the analysis' structure and design.

7.5. Example of exam written assignment

Below is provided an exemplary excerpt from a draft contract you are asked to review and comment during the final examination "as a junior lawyer in a law firm representing one of the contractual parties". Please note, that below are given only a few provisions as an example and the final written examination will consist of a full contract with a number of provisions (although, some of them may be missing and for you to suggest their inclusion into the contract).

[DRAFT] Sales and Purchase Agreement

Between **Summer East Ltd.**, 3rd Sea View Road 56, Miami, Florida, USA (Seller) and **Railroad GTMR GmbH**, Herminengasse 3, Berlin, Germany (Buyer).

Art. 3 Delivery

Seller shall deliver the Goods to the Buyer by 31 December 2019 to the Buyer's representative office in Austria. Delivery terms are subject to change by either party with written notice.

Art. 4 Payment

Buyer shall pay the Seller the amount of 10,000,000 RMB for the Goods specified in Annex 1 to the Agreement within 10 days after receiving the invoice from the Seller. All fees and payments shall be due and payable upon the due dates mutually agreed by the Parties. In the event that any fees are not paid to Seller by Buyer within 5 days following such notice, any over due fee may be subject to interest.

Art. 9 Jurisdiction

Any disagreements or claims arising out of or relating to this Agreement are to be submitted to arbitration administered by VIAC in London. The arbitration language shall be English.

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.

9. Special Equipment and Software Support (if required)

Access to internet and computer-based drafting equipment.