

Transnational Business Law

Part A : Introduction

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GENERAL PRESENTATION OUTLINE

A. INTRODUCTION

B. LEGAL SOURCES

C. MAIN TOPICS

D. PRACTICAL CASES

E. SUMMARY

A. INTRODUCTION

- I. What does TBL mean ?**
- II. Who are the TBL-actors ?**
- III. Which relationship exists between TBL-actors ?**
- IV. What kind of mobility do TBL-actors have ?**
- V. How to resolve disputes between TBL-actors ?**
- VI. What are the criteria of TBL-methods?**

A. INTRODUCTION

I. What does TBL mean ?

- **Transnational :**
 - vs. international
 - vs. cross-border
- **Business :**
 - B2B vs. B2C
 - company vs. commerce vs. economic
- **Law :**
 - act / statutory provisions (*lex*)
 - legal rules / rules of law (*ius*)

A. INTRODUCTION

II. Who are the TBL-actors ?

➤ **Companies : legal persons**

- Company's organs & functions :
 - ✓ shareholder / member
 - ✓ directors / board of directors vs. supervisory board
- Commercial issues :
 - ✓ International contracts
 - ✓ Competition – Tort liability – Intellectual property

➤ **Employees : natural persons**

A. INTRODUCTION

III. Which relationship exists between TBL-actors ?

➤ **Companies : legal persons**

- Organs & functions : *lex societatis*
- Commercial issues :
 - ✓ Contractual relationship
 - ✓ Extra-contractual relationship

➤ **Employees : natural persons**

- Towards company : contractual relationship (employment contract)
- Towards third person (clients / supplier / business partners)
 - ✓ Factual relationship
 - ✓ Company representatives (negotiations – commitments – contracts)

A. INTRODUCTION

IV. What kind of mobility do TBL actors have ?

- **Companies : legal persons**
 - International transfer of seat (real vs. statutory)
 - Cross-border merger
 - International conversion of company (change of statutory seat)
- **Employees : natural persons**
 - Expatriate management - Posting employees abroad
 - International mobility
 - Cross border commuters ("*frontaliers*")
 - Multiple employers
 - Multiple workplaces

A. INTRODUCTION

V. How to resolve disputes between TBL-actors ?

- **Jurisdictional vs. Non-jurisdictional method**
 - Jurisdictional : judge's decision
 - Non-jurisdictional : parties' settlement (mediation – conciliation)
- **Traditional (State Justice) vs. alternative (Private Justice)**
 - State Justice
 - ✓ Jurisdictional Procedure : judicial proceedings
 - ✓ Non-jurisdictional Procedure : judicial mediation / conciliation
 - Private Justice
 - ✓ Jurisdictional Procedure : arbitration
 - ✓ Non-jurisdictional Procedure : mediation

A. INTRODUCTION

VI. What are the criteria of TBL-rules ?

- **Jurisdictional** authority / competence :
 - Which tribunal (State Court / Arbitral tribunal) has jurisdiction?
- **Legislative** authority / competence :
 - Which rules shall be applied by the jurisdictional authority

A. INTRODUCTION

VI. What are the criteria of TBL-rules ?

- **(1) Jurisdictional authority / competence :**
 - Arbitral tribunals / arbitrators : choice by the parties (contractual)
 - States Courts : which national Court has jurisdiction ?
 - PIL-rules of the seized Court (national rules vs. EU rules)
 - Choice by the parties
 - Objective determination (in the lack of choice)
 - General rules
 - Special rules
 - Protecting rules

A. INTRODUCTION

VI. What are the criteria of TBL-rules ?

- **(2) Legislative authority / competence :**
 - Arbitral tribunals / arbitrators :
 - ✓ Choice by Parties (PIL-rules) – Better law approach
 - ✓ Soft law & trade usages
 - State Courts :
 - solely PIL-rules : national (hard) law
 - Contractual issues
 - Choice by parties (a priori)
 - Objective connections
 - Extra-contractual issues
 - Choice by parties (a posteriori)
 - Objective connections

B. LEGAL SOURCES

I) International Law

A) Hard Law

- ① United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980
- ② Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods
- ③ Hague Convention of 2 October 1973 on the Law Applicable to Products Liability
- ④ Hague Convention of 14 March 1978 on the Law Applicable to Agency Contracts

B. LEGAL SOURCES

I) International Law

B) Soft Law

- ⑤ UNIDROIT Principles
- ⑥ INCOTERMS
- ⑦ Arbitrations Rules – ICC

B. LEGAL SOURCES

II) European Law

A) Primary Law

- ⑧ Treaty on European Union (TEU)
- ⑨ Treaty on the Functioning of the EU (TFEU)
- ⑩ Charter of Fundamental Rights of the EU

B. LEGAL SOURCES

II) European Law

B) Regulations / Conventions (1/3)

⑪ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I bis) & Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention) of 27 September 1968

⑫ Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention) of 30 October 2007

B. LEGAL SOURCES

B. Regulations / Conventions (2/3)

- ⑬ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
- ⑭ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

B. LEGAL SOURCES

B. Regulations / Conventions (3/3)

- ⑮ Regulation (EC) No 2157/2001 on the Statute for a European Company (Societas Europaea - SE)
- ⑯ Proposal for a Council Regulation of 25 June 2008 on the Statute for a European Private Company (European Private Company)

B. LEGAL SOURCES

II) European Law

C) Directives

⑰ Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (Mobility Directive – Company Law Package)

B. LEGAL SOURCES

III) National Law

A) Material Law

⑱ Civil Code (Code civil)

⑲ Commercial Code (Code de commerce)

B. LEGAL SOURCES

III) National Law

B) Procedural Law

②⑩ Code of Civil Procedure (CPC) – General Jurisdiction Rules & Arbitration Law (Decree 2011 – Arts. 1442–1527 CPC)

C. MAIN TOPICS

- I. **Import / Export** : legal sources n° 1 – 6, 13 – 14
- II. **Companies' mobility in the EU** : legal sources n° 8 – 10, 15 – 17
- III. **International Arbitration** : legal sources n° 7, 18 – 20
- IV. **Cross-border Litigation** : legal sources n° 11 – 12

D. PRACTICAL CASES

- I. CISG – Incoterms**
- II. Hague Conventions (1955 – 1973 – 1978)**
- III. Rome I Regulation**
- IV. Rome II Regulation**
- V. (French) International Arbitration**
- VI. Brussels 1bis Regulation**

E. SUMMARY

- **General revision of the TBL course**
 - Revision of the legal sources (Part. B)
 - Revision of the main topics (Part. C)
 - Revision of the practical cases (Part. D)

- **Preparation to the Multiple Choice Method**
 - Class questions
 - Practical Cases

Thank you for your attention !



Sans limites.

Ohne Grenzen.

Without limits.

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