

Transnational Business Law

Part D: PRACTICAL CASES

University of Strasbourg
Faculty of Law – Master 1

Prof. Jochen BAUERREIS

Avocat & Rechtsanwalt

Avocat spécialisé en droit de l'Arbitrage

Avocat spécialisé en droit international et de l'Union Européenne

Practical case n°1

I. FACTS

A Chinese company ordered a vessel from a German company that shall be delivered in the port of Hamburg (Germany).

II. QUESTION

Is CISG applicable to the contract?

Practical case n°2

I. FACTS

A French supermarket is selling products to a consumer domiciled in Germany.

II. QUESTION

Is CISG applicable to the contract?

Practical case n°3

I. FACTS

The German purchaser orders a machine and provides the Turkish seller with the technical schemes and plans on the basis of which the machine shall be manufactured.

II. QUESTION

Is CISG applicable to the contract?

Practical case n°4

I. FACTS

A company established in the USA is selling products to a Mexican company. The contract does not contain any clause of choice of the law.

II. QUESTION

Is CISG applicable to the contract?

Practical case n°5

I. FACTS

A Spanish company (seller) and a Portuguese company (purchaser) signed a sales of goods contract in December 2021.

II. QUESTIONS

- 1) Is CISG applicable to the contract?
- 2) Would CISG be applicable if the contract had been signed by the parties in December 2019?

Practical case n°6

I. FACTS

An Indian company purchases products from a German company. A dispute arises between the two parties and German courts shall have jurisdiction.

II. QUESTION

- 1) Is CISG applicable to the contract?
- 2) Does the solution change if the seller is an Italian company and Italian courts would have jurisdiction ?

Practical case n°7

I. FACTS

A German company (manufacturer) and a French company (distributor) conclude an international contract of distribution specifying that the French distributor shall promote and sale the products to French B2B customers.

II. QUESTIONS

- 1) The distribution contract does not contain any clause of choice of the applicable law. Is CISG applicable to the distribution contract?
- 2) In order to execute the distribution contract several individual contracts of sale of goods are concluded between the German company (seller) and the French company (purchaser). Is CISG applicable to these contracts?
- 3) What is the solution if the contract of sale of goods contains the following governing law clause: *“This contract is governed by German law”*?

Practical case n°8

I. FACTS

A German Seller makes an offer to a French Purchaser and refers in the offer to its own General Terms and Conditions for Sale which contain a contractual clause choosing German jurisdiction and German law.

The French Purchaser accepts the offer making reference to its own General Terms and Conditions for Purchase which contain a contractual clause choosing French jurisdiction and French law.

Both parties agree on the quantity and quality of the goods as well as the purchase price.

Practical case n°8

II. QUESTIONS

- 1) Has a contract effectively been concluded?
- 2) Is there a difference whether the dispute will be brought before a national (French or German) court or an arbitral tribunal?
- 3) If both parties expressly exclude the CISG and their General Terms and Conditions contain contradictory choice-of-law clauses that cannot be incorporated, which law governs the contract?

Practical case n°9

I. FACTS

A Finish company and a Danish company intend to conclude an international contract of sales of goods and would like to exclude CISG and submit any questions related to the formation of the contract to Norwegian domestic law and all the remaining questions to Danish domestic law.

II. QUESTION

Is such a clause valid under Art. 3 Rome I Regulation?

Practical case n°10

I. FACTS

Two German companies established in Germany intend to choose Swiss law for their domestic contract of sales of goods in order to avoid German mandatory provisions (*ius cogens*) that cannot be derogated from in a contract.

II. QUESTION

Is such a clause valid under Rome I?

Practical case n°11

I. FACTS

A German company (manufacturer) and a French company (distributor) conclude an international contract of distribution specifying that the French distributor shall promote and sell the products to French B2B customers.

The contract does contain neither a jurisdiction clause nor a governing law clause.

In order to execute the distribution contract, several individual contracts for the sale of goods are concluded between the German company (seller) and the French company (purchaser). These contracts for the sale of goods contain neither a jurisdiction clause nor a governing law clause.

Practical case n°11

II. QUESTIONS

1) Distribution contract

- a) Which State Courts have jurisdiction?
- b) What is the applicable law?

2) Individual application contracts (sales of goods)

- a) Which State Courts have jurisdiction?
- b) What is the applicable law?

Practical case n°12

I. FACTS

A Romanian Seller and a German Purchaser conclude an international contract of sales of goods. The contract does not contain a clause of choice of law but gives exclusive jurisdiction to German Courts. According to the contract, the products that are destined for the German market shall be delivered in Germany and meet the German technical and security standards. The whole correspondence of the parties has been made in German, and the contract also has solely been drafted in German.

II. QUESTION

Which national law shall reasonably apply to this contract?

Practical case n°13

I. FACTS

A German company sells a waterslide to a Dutch company. The Dutch company resells the waterslide to a leisure park in Tarragona (Spain) without the required written approval of the German seller. A severe accident occurs in Spain, injuring a tourist domiciled in France. The waterslide had been approved only by the German and Dutch supervisory authorities and was not authorized for commercialization in Spain.

II. QUESTION

- 1) Which national law applies to the product liability claim before German state courts?
- 2) Which national law applies to the product liability claim before Spanish state courts?

Practical case n°14

I. FACTS

Company A, a German manufacturer, and Company B, a French distributor, have been negotiating a distribution agreement. By the end of June 2025, the parties agree on all essential contractual elements, except for the applicable law.

Both parties decided that they would continue negotiating exclusively with each other until the end of 2025, and that the contract would be finalised and signed, entering into force immediately as from 1 January 2026.

However, in October 2025, Company A secretly enters into and signs an alternative distribution agreement immediately with Company C, a French competitor willing to accept German law. Company A does not inform Company B of this new contract.

In reliance on the expected agreement with A, Company B has already made significant investments (marketing, recruitment, stock preparation, commercial development) in preparation for the future distribution relationship.

Practical case n°14

II. QUESTION

Which law governs Company B's claim for pre-contractual liability ?

Practical case n°15

I. FACTS

Company A is a German seller (manufacturer) established in Stuttgart. Company B is a French buyer established in Paris.

Company A works with a commercial agent established in France whose task is to find French potential clients for A.

The French commercial agent negotiates with Company B in France; Company B signs the order in France at the agent's premises. The agent transmits the signed order to Company A's head office in Germany, which receives and acknowledges the order in Germany.

The machine is manufactured in Germany and will be delivered to Company B in France. The written contract expressly excludes the CISG. There is no express choice of national law in the contract.

Practical case n°15

II. QUESTIONS

- 1) Which law would be applicable if the contract contained a jurisdiction clause submitting all disputes to the courts of Paris?
- 2) Which law would be applicable if the contract contained a jurisdiction clause submitting all disputes to the courts of Stuttgart?

Practical case n°16

I. FACTS

A French company and a U.S. company have maintained a long-term contractual relationship for 20 years. The distribution contract specifies that any disputes are subject to the jurisdiction of U.S. courts, and the contract is submitted to U.S. law.

The contract provides that either party may terminate the agreement with one month's notice. All sales and all services within the distribution framework agreement have always been executed by the U.S. company at the French company's place of business.

Recently, after the U.S. Company suddenly terminated the contract, the French company seeks to bring an action before the French courts claiming that the U.S. company has committed a "*rupture abusive*" (sudden/abrupt termination) of the contract in the sense of Art. 442-1 Code de commerce. The French company argues that the jurisdiction clause in favor of U.S. courts cannot be valid, because a U.S. court would not recognize the concept of "*rupture abusive*" as an overriding mandatory rule ("*loi de police*"), and therefore the French court should hear the case to protect mandatory French law.

Practical case n°16

II. QUESTIONS

- 1) Can the French courts exercise jurisdiction over this dispute, given the contract's jurisdiction clause?
- 2) What would happen if the parties had not agreed on a jurisdiction clause?
 - a) Can then French courts exercise jurisdiction over the dispute?
 - b) Would French courts apply the Art. 442-1 Code de commerce (*loi de police*)?

Practical case n°17

I. FACTS

In 1995, a Cypriot company and a French service provider concluded a long-term contract for the provision of helicopter pilots and mechanics.

The contract included a choice-of-law clause designating Jersey law.

In March 2020, the French provider terminated the relationship without any notice period.

The Cypriot company brought an action before French courts, claiming abrupt termination of established commercial relations under Art. L.442-1 II French Commercial Code.

Practical case n°17

II. QUESTIONS

How should the action for abrupt termination of established commercial relations (Art. L.442-1 II French Commercial Code) be characterised?

- 1) Contractual (Rome I), or
- 2) Non-contractual (Rome II)?

Practical case n°18

I. FACTS

A German company based in Berlin makes an offer to sell a machine to a French company established in Paris. They are still in the negotiation phase: the German company offers to sell the machine at a certain price and refers to its General Terms and Conditions (GTC) of sale. These GTC stipulate that (i) German law shall apply, (ii) German courts shall have jurisdiction, (iii) CISG is excluded, and that (iv) delivery is to be made under the Incoterm EXW (Ex Works).

The French company accepts the offer received from the German Company but refers in turn to its own General Terms and Conditions (GTC) of purchase. These provide that (i) French law shall apply, (ii) French courts shall have jurisdiction, (iii) CISG is excluded, and that (iv) delivery shall take place under the Incoterm DAP (Delivered at Place) in Paris.

German company (A) refuses to deliver the machine, and the French company (B) would like to sue A in order to ask for delivery or damages if delivery is not possible.

Practical case n°18

II. QUESTION

Which national State Court have jurisdiction?

Practical case n°19

I. **FACTS : variation of practical case n°18**

A German company based in Berlin makes an offer to sell a machine to a French company established in Paris. They are still in the negotiation phase: the German company offers to sell the machine at a certain price and refers to its General Terms and Conditions (GTC) of sale. These GTC stipulate that (i) German law shall apply, (ii) German courts shall have jurisdiction, (iii) CISG is excluded, and that (iv) delivery is to be made under the Incoterm EXW (Ex Works).

The French company accepts the offer concerning the machine and the price but refers in turn to its own General Terms and Conditions (GTC) of purchase. These provide that (i) French law shall apply, (ii) French courts shall have jurisdiction, (iii) CISG is excluded, and that (iv) delivery shall take place under the Incoterm DAP (Delivered At Place) in Paris.

At the final stage of the negotiations, the German Company and the French Company agreed on the choice of French law (without CISG) and the delivery place in Paris according to the Incoterm DAP.

Practical case n°19

The delivery has been completed at the buyer's premises. The French company refuses to pay because it considers that the machine doesn't work correctly. The German Company (A) will sue the French Company (B) for the price payment.

II. QUESTION

Which national State Courts have jurisdiction?

Practical case n°20

I. **FACTS : variation to practical cases n° 18 and 19**

A German company based in Berlin makes an offer to sell a machine to a French company established in Paris. They are still in the negotiation phase: the German company offers to sell the machine at a certain price and refers to its General Terms and Conditions (GTC) of sale. These GTC stipulate that (i) German law shall apply, (ii) German courts shall have jurisdiction, (iii) CISG is excluded, and that (iv) delivery is to be made under the Incoterm EXW (Ex Works).

The French company accepts the offer including the GTC of sale.

The German company sues the French company for breach of contract.

II. **Questions**

Which national State Courts have jurisdiction?