

European Business Law

Part D: PRACTICAL CASES

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Practical case n°1

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°2

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°2

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°3

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, CISG is excluded and the products are destined for the German market, shall be delivered in Germany and shall 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°4

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°4

II. QUESTION

Which national State Court have jurisdiction?

Practical case n°5

I. **FACTS : variation of practical case n°4**

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°5

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°6

I. **FACTS : variation to practical cases n° 4 and 5**

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**

- 1) Which national State Courts have jurisdiction ?
- 2) Which national law is applicable ?

Practical case n°7

I. FACTS

A consumer lives in France. He/She purchases a high-end electronic device for his/her personal use through the website of a company established in Germany.

The German company operates a commercial website available in several languages, including French, and regularly delivers products to customers located in France. Prices are displayed in euros and delivery to France is expressly offered. The contract is concluded online. The contract contains neither a jurisdiction clause nor a choice-of-law clause.

After delivery in France, the device stops functioning properly.

The consumer requests reimbursement of the product, which the company refuses. The consumer wishes to bring legal proceedings against the company.

Practical case n°7

II. Questions

- 1) Which national State Courts have jurisdiction ?
- 2) Which national law is applicable ?

Practical case n°8

I. **FACTS : variation to practical case n° 7**

At the time of the conclusion of the contract, the professional company submitted to the French consumer its General Terms and Conditions for sale of the professional.

These GTC for sale contain a jurisdiction clause conferring exclusive jurisdiction to German courts as well as choice of law clause in favor of German (domestic) law.

II. **Questions**

- 1) Which national State Courts have jurisdiction ?
- 2) Which national law is applicable ?

Practical case n°9

I. FACTS

In 2021, a German company concludes an employment contract with an employee domiciled in Strasbourg (France), as a salaried commercial agent.

According to the contract:

- the employee carries out the essential part of his/her activity in France, where he/she manages clients and negotiates contracts;
- He/she occasionally travels to the company's headquarters in Germany for internal meetings and training sessions;
- the contract contains a choice-of-law clause providing that "this contract is governed by German law"

Practical case n°9

I. FACTS

After three years, the employer dismisses the employee (termination of the employment contract) and applies exclusively German law in order to determine the financial consequences of the dismissal (termination).

The employee brings proceedings before the French courts in order to challenge the consequences of the dismissal (termination) of his/her contract.

II. Questions

- 1) Which national State Courts have jurisdiction ?
- 2) Which national law is applicable ?