

Transnational Business Law

2026

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Transnational Business Law

Part A : Introduction

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Powerpoint

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GENERAL PRESENTATION OUTLINE

A. INTRODUCTION

B. LEGAL SOURCES

C. MAIN TOPICS

D. PRACTICAL CASES

E. MULTIPLE CHOICE QUESTIONS

GENERAL PRESENTATION OUTLINE

A. INTRODUCTION

B. LEGAL SOURCES

B.1. International law

B.2. European law

B.3. National law

C. MAIN TOPICS

C.1. Import / Export

C.2. International arbitration

C.3. Cross-border litigation

D. PRACTICAL CASES

I. CISG

II. Soft law

III. Contract clauses

IV. Brussels I bis - Lugano

V. Hague Conventions

VI. Rome I - Rome II

VII. Arbitration

VIII. Mixed cases

E. MULTIPLE CHOICE QUESTIONS

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Part A : Introduction

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A. INTRODUCTION

- I. What does Transnational Business Law (“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

Thank you for your attention !



Sans limites.

Ohne Grenzen.

Without limits.

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