

I. INTERNATIONAL LAW

A. HARD LAW

B. SOFT LAW

⑤ UNIDROIT Principles

⑥ INCOTERMS

⑦ Arbitration Rules – ICC

⑤ UNIDROIT Principles

1. Scope of Application

- **Non-binding** rules for international commercial contracts
- Apply **only if parties expressly** choose them in contract
- Parties can refer to "***general principles of law***" or "***lex mercatoria***"
- Used in **arbitration** to fill legal gaps (suppletive source)

UNIDROIT, available at: <https://www.unidroit.org/>

⑤ UNIDROIT Principles

2. Legal structure

- Adopted by UNIDROIT (Rome-based intergovernmental body)
- First published 1994, updated in 2004, 2010, 2016
- 2016 edition : 11 chapters

⑤ UNIDROIT Principles

2. Legal structure

- **Chapter 1** : general provisions (Art. 1.1 - 1.12)
- **Chapter 2** : formation and authority of agents (Art. 2.1.1 - 2.2.10)
- **Chapter 3** : validity (Art. 3.1.1 – 3.3.2)
- **Chapter 4** : interpretation (Art. 4.1 – 4.8)
- **Chapter 5** : content and third party's rights (Art. 5.1.1 – 5.3.5)
- **Chapter 6** : performance (Art. 6.1.1 – 6.2.3)

⑤ UNIDROIT Principles

2. Legal structure

- **Chapter 7** : non-performance (Art. 7.1.1 - 7.4.13)
- **Chapter 8** : set-off (Art. 8.1 – 8.5)
- **Chapter 9** : assignment of rights, transfer of obligations, assignment of contracts (Art. 9.1.1 – 9.3.7)
- **Chapter 10** : limitation periods (Art. 10.1 – 10.11)
- **Chapter 11** : plurality of obligors and of obligees (Art. 11.1.1 – 11.2.4)

⑤ UNIDROIT Principles

2. Legal structure

- Model rules – **no legal effect without party agreement**
- **Soft law** : valid only within the limits of the subsidiarily applicable national laws (ius cogens)
- Frequently applied by **arbitral tribunals**
- Rarely used by national courts (only to fill gaps when express parties' agreement on it)

⑥ INCOTERMS

1. Scope of Application

- Non-binding rules by International Chamber of Commerce (ICC)
- Standardized General Terms and Conditions (GTC) for cross-border sale of goods
- Apply only if chosen by parties in the contract : concrete choice of the applicable Incoterm necessary
- Define trade obligations (for seller and purchaser) and risk transfer

⑥ INCOTERMS

2. Legal structure

- Updated every 10 years by ICC
- Current version : Incoterms 2020 (valid from Jan 2020 to Dec 2029)
- **11 Incoterms divided into 2 groups:**
 - **Maritime** only : FAS, FOB, CFR, CIF, DPU (ex-DAT)
 - **Multimodal** : EXW, FCA, CPT, CIP, DAP, DDP
- Based on commercial trade practices, not law

⑥ INCOTERMS

2. Legal structure

Incoterms® 2020 Rules Responsibility Quick Reference Guide											
 											
Freight Collect Terms						Freight Prepaid Terms					
Groups	Any Mode or Modes of Transport		Sea and Inland Waterway Transport				Any Mode or Modes of Transport				
Incoterm	EXW Ex Works (Place)	FCA Free Carrier (Place)	FAS Free Alongside Ship (Port)	FOB Free On Board (Port)	CFR Cost and Freight (Port)	CIF Cost Insurance & Freight (Port)	CPT Carriage Paid To (Place)	CIP Carriage & Insurance Paid to (Place)	DAP Delivered at Place (Place)	DPU Delivered at Place Unloaded (Place)	DDP Delivered Duty Paid (Place)
Transfer of Risk	At Buyer's Disposal	On Buyer's Transport	Alongside Ship	On Board Vessel	On Board Vessel	On Board Vessel	At Carrier	At Carrier	At Named Place	At Named Place Unloaded	At Named Place
Obligations & Charges:											
Export Packaging	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading Charges	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Delivery to Port/Place	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Export Duty, Taxes & Customs Clearance	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Loading on Carriage	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Carriage Charges	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Insurance	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable	*Seller	Negotiable	**Seller	Negotiable	Negotiable	Negotiable
Destination Terminal Charges	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller
Delivery to Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller	Seller
Unloading at Destination	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Seller
Import Duty, Taxes & Customs Clearance	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller
 Create your Sales & Shipping Documents at www.incodocs.com											
*CIF requires at least an insurance with the minimum cover of the Institute Cargo Clause (C) (Number of listed risks, subject to itemized exclusions) **CIP now requires at least an insurance with the minimum cover of the Institute Cargo Clause (A) (All risk, subject to itemized exclusions) Copyright © 2020 IncoSolutions Pty Ltd. All Rights Reserved. This is general information for guidance purposes only. IncoSolutions Pty Ltd is not responsible for these contents nor do the contents listed above contain all details. For a full and complete description, refer to the full version of Incoterms 2020 by the International Chamber of Commerce at the ICC website.											

⑥ INCOTERMS

3. Key provisions

- Define :
 - Transfer of risk (delivery point)
 - Who pays for freight, insurance, customs, etc.
- Examples :
 - EXW : delivery at seller's premises – minimal seller obligation
 - FOB : seller bears costs/risks up to loading on ship
 - CIF : seller adds basic insurance + transport to destination
 - FCA : seller loads goods for export – risk passes at loading
 - CIP : seller pays carriage + insurance to destination
 - DAP/DDP : seller delivers to buyer's country – risk at delivery

⑦ Arbitration Rules – International Chamber of Commerce (“ICC”)

1. Scope of Application

- Procedural rules set by international arbitration institutions for a private / contractual / justice (vs. traditional / public Justice before State Courts)
- Examples for arbitral institutions :
 - ICC (International Chamber of Commerce) – Global
 - LCIA (London Court of International Arbitration) – London
 - SIAC (Singapore International Arbitration Centre) – Singapore
 - CEA (European Court of Arbitration) – Strasbourg
 - CMAP (Centre de Médiation et d'Arbitrage) – Paris
 - AFA (Association Française d'Arbitrage) – Paris
 - OSCE (Court of Conciliation and Arbitration) – Geneva
 - CIMA (Centre Interprofessionnel de Médiation et d'Arbitrage) – Lyon

ICC, available at: <https://iccwbo.org/>

⑦ Arbitration Rules – ICC

1. Scope of Application

- Apply when parties agree to use the institution's arbitration rules (private / contractual justice) :
 - Arbitration clause (before dispute)
 - Compromise (after dispute)
- Do not confuse :
 - Arbitral institution (organizing and ruling the arbitral proceedings)
 - Arbitral tribunal (jurisdictional power to resolve the dispute)
- If parties do not agree on institutional arbitration : → *ad hoc* arbitration
 - Parties shall organize themselves the arbitral proceedings
 - Parties can ask for assistance to State Courts (supporting Judge)

⑦ Arbitration Rules – ICC

2. Key provisions

- Art 22 : Conduct of the Arbitration
- Art. 24 : Case Management Conference and Procedural Timetable
- Art. 26 : Hearings
- Art. 28 : Conservatory and Interim Measures
- Art. 29 : Emergency Arbitrator
- Art. 31 : Time Limit for the Final Award
- Art. 32 : Making of the Award
- Art. 33 : Award by Consent

II. EUROPEAN LAW

A. Conflicts of jurisdiction

B. Conflicts of law

II. EUROPEAN LAW

A. Conflicts of jurisdiction

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 Regulation) & 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

⑪ Brussels I bis Regulation & Brussels Convention

1. Scope of Application

- Secondary EU law (binding regulation)
- Based on Art. 81 TFEU
- Harmonizes jurisdiction and recognition / enforcement of judgments in EU

⑪ Brussels I bis Regulation & Brussels Convention

1. Scope of Application

- Civil and commercial matters (excludes fiscal, customs, administrative, and public power responsibility)
- Intra-EU disputes (based on domicile of defendant – Art. 4, Art 6)
- Brussels I bis Regulation applies to cases initiated after 10 January 2015 (Art. 66 §1)

⑪ Brussels I bis Regulation & Brussels Convention

1. Scope of Application

- Brussels I bis Regulation replaces the 1968 Brussels Convention, which was the initial legal instrument
- Successive reforms:
 - Brussels Convention (1968)
 - Brussels I Regulation (2001)
 - Brussels I bis Regulation (2012)

⑪ Brussels I bis Regulation

2. Legal structure

- Chapter 1 : Scope and definitions (Art. 1-3)
- **Chapter 2 : Jurisdiction (Art. 4-35)**
- Chapter 3 : Recognition and enforcement (Art. 36-57)
- Chapter 4 : Authentic instruments and court settlements (Art. 58-60)
- Chapter 5 : General provisions (Art. 61-65)
- Chapter 6 : Transitional provisions (Art. 66)
- Chapter 7 : Relationship with other instruments (Art. 67-73)
- Chapter 8 : Final provisions (Art. 75-81)

⑪ Brussels I bis Regulation

3. Key provisions

- Art. 4 : General principle → jurisdiction at defendant's domicile
- Art. 7 : Special jurisdiction in contractual/tort matters
 - Art 7(1) : contractual matters:
 - Principle : place of performance
 - Specific applications:
 - ✓ Sales of goods: place of delivery
 - ✓ Provision of services : place of provision
 - Art. 7(2) : tort matters : place of damage
- Art. 25 : Choice of court agreement (autonomy of the parties)

⑪ Brussels I bis Regulation

3. Key provisions

- Section 3-5 : protection of the "weak party"
 - Art. 10-16 : Matters relating to insurance
 - Art. 17-19 : Consumer contracts
 - Art. 20-23 : Individual contracts of employment

⑫ Lugano Convention

1. Scope of Application

- Multilateral international treaty signed in 2007 (replacing 1988 version)
- Lugano Convention mirrors Brussels I Regulation structure (rules on jurisdiction, recognition, and enforcement)
- Adopted by Council Decision 2009/430/EC to make EU a contracting party
- Adjusted to fit EFTA legal systems

⑫ Lugano Convention

1. Scope of Application

- Convention between EU and EFTA countries (Switzerland, Norway, Iceland) → extends Brussels I Regulation rules to EFTA states
- Civil and commercial matters (excludes fiscal, customs, administrative, and public power responsibility)
- Exequatur procedure abolished : ensures mutual recognition and enforcement of judgments

⑫ Lugano Convention

2. Legal structure

- Title 1 : Scope
- Title 2 : Jurisdiction
- Title 3 : Recognition and enforcement
- Title 4 : Authentic instruments and court settlements
- Title 5 : General provisions
- Title 6 : Transitional provisions
- Title 7 : Relationship to council regulation (EC) No 44/2001b and other instruments
- Title 8 : Final provisions

⑫ Lugano Convention

3. Key provisions

- Art. 2 : General principle: jurisdiction of defendant's domicile
- Art. 5 : Special Jurisdiction :
 - In matters of contracts = place of performance
 - In matters of tort = place of damage
- Art. 17 : Choice of court agreement

Brussels I bis	Lugano Convention
Art. 4 – General principle: jurisdiction of the defendant's domicile	Art. 2 – General principle: jurisdiction of the defendant's domicile
Art. 7(1) – Contractual matters: jurisdiction at the place of performance • Sale of goods: place where the goods were/were to be delivered • Provision of services: place where the services were/were to be provided	Art. 5(1) – Contractual matters: jurisdiction at the place of performance • Sale of goods: place of delivery/performance • Provision of services: place where the services were/were to be provided
Art. 7(2) – Tort matters: place where the harmful event occurred	Art. 5(3) – Tort matters: place where the harmful event occurred
Art. 25 – Choice of court agreement (party autonomy)	Art. 23 – Choice of court agreement (party autonomy)

II. EUROPEAN LAW

B. Conflicts of law

- 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)

⑬ Rome I

1. Scope of Application

- Regulation (EC) No 593/2008
- Based on Art. 81 TFEU
- Directly applicable in all EU Member States (except Denmark)
- Applicable to contractual obligations in civil and commercial matters in a cross-border context
- Replaces Rome Convention of 19 June 1980

⑬ Rome I

1. Scope of Application

- Legal articulation between Hague Convention 1955 and Rome I Regulation
 - Rome I Regulation does not apply if a previous international convention (like the 1955 Hague Conventions) is already in force
 - Under the condition that the Contracting States of this previous Convention are not exclusively MS of the EU (e.g., Niger and Norway)
 - Consequences for the PIL-rules before a French Court :
 - Hague Convention 1955 is the specific choice-of-laws rule for the contract of sale of goods
 - Rome I Regulation is the general choice-of laws rule for all the other types of contract (besides the sale of goods)

⑬ Rome I

2. Legal structure

- Chapter 1 : Scope (Art. 1-2)
- Chapter 2 : Uniform rules (Art. 3-18)
- Chapter 3 : Other provisions (Art. 19-28)
- Chapter 4 : Final provisions (Art. 29)

⑬ Rome I

3. Key provisions

- Art. 2 : Universal application : Rome I applies whether the applicable law to the non-contractual obligation is the national law of a Member State of the EU or not
- Art. 3 : Freedom of choice of law
- Art. 4 : Default rules with objective connection for determining applicable law (e.g., place of habitual residence)
 - § 1 : Abstract definition
 - § 2 : Standard contracts
 - § 3 : Escape clause
 - § 4 : Global clause
- Art. 9 : Overriding mandatory provisions

⑭ Rome II

1. Scope of Application

- Regulation (EC) No 864/2007 of 31 July 2007
- Based on Art. 81 TFEU
- Directly applicable (except Denmark)
- Applicable to non-contractual obligations (torts, delicts) in cross-border context

⑭ Rome II

1. Scope of Application

- Legal articulation between Rome II and the Hague Convention 1973 :
 - Rome II Regulation of 11 July 2007 on the law applicable to non-contractual obligations (Art. 5 : product liability)
 - Hague Convention 1973 is in its Contracting States (that are also MS of EU) the specific conflict-of-laws rule for product liability (→ Art. 5 Rome II Regulation does not apply)
 - Rome II Regulation 2007 is in the Hague Convention's Contracting States (that are also MS of EU) the general conflict-of-laws rule for all the other non-contractual obligations (besides product liability)

⑭ Rome II

2. Legal structure

- Chapter 1 : Scope (Art. 1-3)
- Chapter 2 : Torts / delicts (Art. 4-9)
- Chapter 3 : Unjust enrichment, *negotiorum gestio* and *culpa in contrahendo* (Art. 10-13)
- Chapter 4 : Freedom of choice (Art. 14)
- Chapter 5 : Common rules (Art. 15-22)
- Chapter 6 : Other provisions (Art. 23-28)
- Chapter 7 : Final provisions (Art. 29-32)

⑭ Rome II

3. Key provisions

- Art 3 : Universal application : Rome II applies whether the applicable law to the non-contractual obligation is the national law of a Member State of the EU or not
- Art. 5 : Product liability
- Art. 12 : *Culpa in contrahendo* : sudden (and not communicated) breakdown of negotiations

III. NATIONAL LAW (FRENCH LAW)

A. MATERIAL LAW

B. PROCEDURAL LAW

A. MATERIAL LAW

⑱ Civil Code (Code civil)

⑲ Commercial Code (Code de commerce)

A. MATERIAL LAW

⑱ Civil Code (Code civil)

1. Scope of Application

- Civil Code adopted in 1804
- Continuously updated (notably contract law reform in 2016)
- Primary source for private law in France

⑱ Civil Code (Code civil)

1. Scope of Application

- General law of obligations : material / substantive rules
- May be suppletive rules to CISG if French law is the national law applicable to an international contract of sale of goods (Art. 1, 4, 7 CISG)
- Governs contracts, capacity, legal personality
- Applies to B2B and non-B2B legal relations between the (contracting) parties

⑱ Civil Code (Code civil)

2. Key provisions

- **Art. 1101 CC** : contract = agreement **creating obligations**
- **Art. 1103 CC** : *Pacta sunt servanda* principle
- **Art. 1104 CC** : Principle of **good faith**

⑱ Civil Code (Code civil)

2. Key provisions

- **Art. 1128 CC** : 3 validity conditions = consent, capacity, lawful content
- **Art. 1343-3 CC** : obligations payable in euros unless international contract
- **Art. 2061 CC** : conditions of validity of an arbitration clause (scope in domestic vs. international matters)

⑲ Commercial Code (Code de commerce)

1. Scope of Application

- *Lex specialis* for commercial activities
- Applies to commercial transactions, merchants, and companies
- Also rules matters like company law / corporate governance (2nd book), Competition (4th book) and insolvency (6th book)

⑲ Commercial Code (Code de commerce)

2. Legal structure

- Code adopted in 2000 (from former Napoleonic Commercial Code)
- Includes both substantive and procedural rules
- Complements the Civil Code in business context

⑲ Commercial Code (Code de commerce)

3. Key provisions

- **Art. L.110-1** : defines commercial acts (e.g., sale, banking, brokerage)
- **Art. L.123-1 to L.123-16** : obligations of traders (e.g., bookkeeping, accounting)
- **Art. L.222-1 to L.228** : company law
- **Art. L.223-1 to L.223-43** : rules on limited liability company (SARL)
- **Art. L.225-1 to L.225-102** : rules on société anonyme (SA)

⑲ Commercial Code (Code de commerce)

3. Key provisions

- **Art. L.227-1 to L.227-20** : simplified stock company (société par actions simplifiées – SAS)
- **Art. L.229-1 to L.229-15** : Societas Europaea (SE)

⑲ Commercial Code (Code de commerce)

3. Key provisions

- **Art. L.442-1 : prohibition of sudden termination of established business relations**
 - **PIL-rules aspects in practice :**
 - **Contractual qualification**
 - ✓ Art. 7(1) Brussels I bis Regulation
 - ✓ Rome I Regulation
 - **Extra-contractual qualification**
 - ✓ Art. 7(2) Brussels I bis Regulation
 - ✓ Rome II Regulation
 - **Qualification as a “mandatory overruling provision” (*Loi de police*)**

B. PROCEDURAL LAW

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

N.B: Link for the English translation of the Decree 2011:

<https://share.google/tNeDsU6pNzpZFmvtW>

B. PROCEDURAL LAW

②① Code of Civil Procedure (CPC)

1. Scope of Application

- **Procedural rules** for civil and commercial disputes
- Determines **jurisdiction venue** and **proceedings** (jurisdictional competency)
- Applies to **domestic** and **international** cases
- Sets forth legal framework for **domestic** and **international arbitration** (implements 2011 decree on Arbitration)

②② Code of Civil Procedure (CPC)

3. Key provisions : General Jurisdiction Rules (Art. 42-48 CPC)

- **Art. 42 CPC** : jurisdiction = defendant's domicile
- **Art. 43 CPC** : exception for real property
- **Art. 46 CPC** : specific jurisdiction rules for contractual / tort matters

②⑩ Code of Civil Procedure (CPC)

3. Key provisions : General Jurisdiction Rules (Art. 42-48 CPC)

- **Art. 48 CPC : Jurisdiction clauses**
 - **Domestic contracts : solely valid if two conditions fulfilled**
 - Apparently specified in the contractual text
 - Concluded between commercial entities
 - **International contracts :**
 - Priority of Brussels I bis Regulation in EU-context
 - ✓ **Art. 4** Brussels I bis (vs. Art. 42 CPC)
 - ✓ **Art. 7** Brussels I bis (vs. Art. 46 CPC)
 - ✓ **Art. 25** Brussels I bis (vs. Art. 48 CPC)
 - Outside the EU : no specific conditions for Art. 48 CPC

②⑩ Code of Civil Procedure (CPC)

3. Key provisions : Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

- **Art. 1442** : Arbitration agreement = arbitration clause or compromise
- **Art. 1447** : Clause is independent from main contract
- **Art. 1448** : State courts must decline jurisdiction if valid arbitration agreement
- **Art. 1453** : In case of disagreement, the arbitrators are designated by the arbitral institution or the judge acting in support of the arbitration (= supportive judge / *juge d'appui*).
- **Art. 1454** : Any other conflict regarding the constitution of the arbitral tribunal is settled by the arbitral institution or by the supporting judge

② Code of Civil Procedure (CPC) - Arbitration Law

3. Key provisions : Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

- **Art. 1464** : guiding principles = loyalty and confidentiality
- **Art. 1465** : arbitral tribunal has jurisdiction to decide on its own jurisdiction
- **Art. 1466** : estoppel (waiver by silence)
- **Art. 1467** : large investigation powers of the arbitral tribunal
- **Art. 1468** : interim or protective measures can be taken by the arbitral tribunal

②⑩ Code of Civil Procedure (CPC) - Arbitration Law

3. Key provisions : Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

- **Art. 1469** : a party may summon a third party before the judicial court's president to obtain the delivery or production of a document.
- **Art. 1503** : no appeal in international arbitration
- **Art. 1504** : definition of “international” arbitration = involves interests of international trade.
- **Art. 1505** : international arbitration principle : supporting judge (*juge d'appui*) is president of the Judicial Court (*Tribunal Judiciaire*) in Paris

②⑩ Code of Civil Procedure (CPC) - Arbitration Law

3. Key provisions : Arbitration Law (Decree 2011 – Art. 1442–1527 CPC)

- **Art. 1506** : application of domestic arbitration rules to international matters (domestic rules may have a suppletive character)
- **Art. 1507** : no formal requirement for international arbitration clause
- **Art. 1511** : international arbitrator shall
 - apply rules of law chosen by the parties, and in the default of choice,
 - apply rules of law that seem appropriate to the case, and
 - take trade usages into account
- **Art. 1520** : limited grounds to annul arbitral award

Thank you for your attention !



Sans limites.

Ohne Grenzen.

Without limits.

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