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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/

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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)

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⑦ Arbitration Rules – ICC

2. Key provisions

- **Art. 4** : Request for Arbitration
- **Art. 5** : Answer to the Request : Counterclaims
- **Art. 12** : Constitution of the Arbitral Tribunal
- **Art. 13** : Appointment and Confirmation of the Arbitrators
- **Art 18** : Place of the Arbitration
- **Art. 19** : Rules Governing the Proceedings
- **Art. 20** : Language of the Arbitration
- **Art. 21** : Applicable Rules of Law

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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

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II. EUROPEAN LAW

A. Conflicts of jurisdiction

B. Conflicts of law

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II. EUROPEAN LAW

A. Conflicts of jurisdiction

⑦ 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

⑪ Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Lugano Convention) of 30 October 2007

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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

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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)

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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)

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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)

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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)

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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

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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

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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

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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

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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

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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**)

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II. EUROPEAN LAW

B. Conflicts of law

⑫ 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)

⑬ 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)

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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

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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 <u>specific</u> choice-of-laws rule for the contract of <u>sale of goods</u>
    - **Rome I Regulation** is the <u>general</u> choice-of laws rule for <u>all the other types of contract</u> (besides the sale of goods)

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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)

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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

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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

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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)

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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)

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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

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III. NATIONAL LAW (FRENCH LAW)

A. MATERIAL LAW

B. PROCEDURAL LAW

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A. MATERIAL LAW

⑱ Civil Code (Code civil)

⑲ Commercial Code (Code de commerce)

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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

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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

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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**

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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)

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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 insolvenvy (6th book)

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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

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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)

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⑲ Commercial Code (Code de commerce)

3. Key provisions

- **Art. L.227-1 to L.227-20** : simplified stock company (société par actions simplifies – SAS)

- **Art. L.229-1 to L.229-15** : Societas Europaea (SE)

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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 overring provision" (*Loi de police*)**

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B. PROCEDURAL LAW

⑳ 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

⑳ 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)

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⑳ Code of Civil Procedure (CPC)

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

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

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⑳ 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 : <u>no specific conditions for Art. 48 CPC</u>

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⑳ 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 (= supporting 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

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⑳ 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

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⑳ 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. 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

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⑳ 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

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Thank you for your attention !

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