



International Commercial Transactions

Lecturers: Erik Van den Haute (erik.vandenhaute@ulb.be) and Paul Hermant (paul.hermant@ulb.be)

I. Course Description and Objectives

The course covers the main legal aspects of negotiating, drafting and implementing international commercial transactions, starting with a general update on international contracts law (including conflicts of laws), the usual content of international commercial contracts and how they are drafted and negotiated (including the role of AI), and then digging into the specifics of international sales contracts, corporate transactions, distribution, agency and franchising contracts, construction and turnkey projects, as well as collaboration and consortium contracts, looking for each of them at (international) applicable rules (including a comparative approach), conflicts of laws and usual content (including through case studies).

II. Readings

For each class, required readings are mentioned in the Class Schedule (below under V). Students are required to have read these documents attentively on beforehand in order to be able to take part to discussions during the classes.

When a standard or model document is mentioned in the required readings, students are in addition required to bring that document to the classroom, printed on paper or in a readily available (i.e. not affected by any potential connection issue) electronic form.

Additional, non-compulsory readings may be found in the Selected Bibliography (below under IV) for students desiring to deepen their general understanding of international commercial transactions and/or in respect of specific commercial contracts.

Students are also encouraged to refresh their memories (or if needed find and read additional sources) in respect of the rules applying in their respective home jurisdictions to commercial contracts in general and to the specific commercial contracts which will be the object of the classes listed under V below.

III. Grading Policy

One quarter of the final grade will result from an assessment of group assignments during the lessons and/or a permanent assessment based on each student's preparation of, active participation in and intellectual skills shown during interactive discussions.

Three quarters of the final grade will result from a written exam, which will combine general questions and questions in respect of documents, which will be made available during the exam. Except for those documents, students will not be allowed to bring or consult their notes or any other document. They will also not be allowed to consult the internet during the exam. Any exam retake will be based on the same concept but will be an oral exam.

IV. Selected Bibliography

A. International Instruments

- Principles on Choice of Law in International Commercial Contracts (The Hague, 2015), available at <https://assets.hcch.net/docs/5da3ed47-f54d-4c43-aaef-5eafc7c1f2a1.pdf>
- UNIDROIT Principles of International Commercial Contracts (2010), available at <http://www.unidroit.org/english/principles/contracts/principles2010/integralversionprinciples2010-e.pdf>
- CISG - United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)

B. European Instruments

- Treaty on the Functioning of the European Union (TFEU), available at http://www.eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF
- 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), available at <http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0593&from=FR>
- 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 Ibis), available at <http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1215&from=FR>
- Draft Common Frame of Reference (DCFR). Principles, Definitions and Model Rules of European Private Law, available at http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf or in outline form at http://www.ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf
- Commission Regulation (EU) No 330/2010 of 20 April 2010 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices, available at <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:102:0001:0007:EN:PDF>
- Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the Application of Article 81(3) of the Treaty to Categories of Vertical Agreements and Concerted Practices, available at <http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999R2790&from=EN>
- Council Directive of 18 December 1986 on the Coordination of the Laws of the Member States Relating to Self-Employed Commercial Agents (86/653/EEC), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31986L0653&from=en>
- Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0025&from=en>

C. National Instruments (as an illustration)

- Book X of the Belgian Code of Economic Law, available online at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013022819&table_name=loi or at the ULB (IUS CODES BELGES 2016 cop. 2)
- Belgian Code of Commercial Law, available online at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1807091030&table_name=loi or at the ULB (IUS CODES BELGES 2016 cop. 2)
- Belgian Code of International Private Law, available online at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2004071631&table_name=wet or at the ULB (IUS CODES BELGES 2016 cop. 2)
- Belgian Code of Civil Law (Articles 1101-1369 *i.e.* provisions governing contracts in general - ordinary law), available online at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1804032133&table_name=wet or at the ULB (IUS CODES BELGES Tables cop. 2)
- United States Uniform Commercial Code (UCC), available online at <https://www.law.cornell.edu/ucc/1>

D. Guidelines and Recommendations

- European Commission Notice - Guidelines on Vertical Restraints SEC(2010) 411, available at <http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:0411:FIN:EN:PDF>
- The European Code of Ethics for Franchising & its National Extensions & Interpretations (EFF – European Franchise Federation), available at <http://www.eff-franchise.com/Data/Code%20of%20Ethics.pdf>
- UNIDROIT Franchising Guide (2nd ed.), Rome 2007, available at <http://www.unidroit.org/english/guides/2007franchising/franchising2007-guide-2nd-e.pdf>
- ICC Model International Franchising Contract, available at <http://store.iccwbo.org/icc-model-international-franchising-contract>
- ICC Model Commercial Agency Contract, available at <http://store.iccwbo.org/icc-model-contract-commercial-agency>
- ICC Model Distributorship Contract, available at <http://store.iccwbo.org/icc-model-contract-on-distributorship>
- ICC Model Selective Distributorship Contract, available at <http://store.iccwbo.org/icc-model-contract-selective-distributorship-2>
- ICC Model Force Majeure and Hardship Clauses, available at <http://store.iccwbo.org/t/ICC%20Force%20Majeure%20Hardship%20Clause>
- ICC Model Mergers & Acquisitions Contract, available at <http://store.iccwbo.org/icc-model-mergers-acquisitions-contract-1-share-purchase-agreement>
- ICC Model Turnkey Contract for Major Projects, available at <http://store.iccwbo.org/icc-model-turnkey-contract-for-major-projects>
- FIDIC Conditions of Contract for Works of Civil Engineering Construction: The Red Book (1987), available at <http://fidic.org/books/works-civil-engineering-construction-4th-ed-1987-red-book>
- FIDIC Conditions of Contract for Electrical and Mechanical Works Including Erection on Site: The Yellow Book (1987), available at <http://fidic.org/books/electrical-and-mechanical-works-3rd-ed-1987-yellow-book>

- FIDIC Conditions of Contract for Design-Build and Turnkey: The Orange Book (1995), available at <http://fidic.org/books/design-build-and-turnkey-1st-ed-1995-orange-book>
- ICE Conditions of Contract Measurement Version 7th Edition: July 2004, available at the online ICE Electronic Library Catalogue <http://library.ice.org.uk/uhtbin/cgiirsi.exe/x/0/0/4>
- ICE Conditions of Contract Design and Construct 2nd Edition: July 2004, available at the online ICE Electronic Library Catalogue <http://library.ice.org.uk/uhtbin/cgiirsi.exe/x/0/0/4>
- ICE Conditions of Contract Minor Works 3rd Edition: July 2004, available at the online ICE Electronic Library Catalogue <http://library.ice.org.uk/uhtbin/cgiirsi.exe/x/0/0/4>
- ICE Conditions of Contract Term Version: July 2004, available at the online ICE Electronic Library Catalogue <http://library.ice.org.uk/uhtbin/cgiirsi.exe/x/0/0/4>
- ICE Conditions of Contract Ground Investigation 2nd Edition: July 2004, available at the online ICE Electronic Library Catalogue <http://library.ice.org.uk/uhtbin/cgiirsi.exe/x/0/0/4>
- NEC – The New Engineering Contract, available at <https://www.neccontract.com/>

E. Books & Articles

- Mark ANDERSON and Victor WARNER, *Drafting and Negotiating Commercial Contracts: A Guide to the Drafting, Negotiating and Interpretation of Commercial Contracts*, 3rd ed., Bloomsbury, 2012
- Fabio BORTOLOTTI, *Drafting and Negotiating International Commercial Contracts: A Practical Guide*, ICC Publications, 2013
- Larry A. DIMATTEO, *International Contracting, Law and Practice*, 4th edition, Wolters Kluwer, 2016
- Marcel FONTAINE and Filip DE LY, *Drafting International Contracts: An Analysis of Contract Clauses*, Transnational Publ., 2006, available at the ULB (IUS 341.5 F 734 dr)
- William F. FOX, *International Commercial Agreements: A Primer on Drafting, Negotiating, and Resolving Disputes*, Kluwer Law International, 2012, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Michael GRIFFITHS and Stuart WILLIAMS, *Commercial Contracts: A Practical Guide to Negotiating and Drafting*, ICSA Publishing Ltd, 2012
- Vladimir R. ROSSMAN and Morton ROSKIN, *Commercial Contracts: Strategies for Drafting and Negotiating*, 2nd ed., Wolters Kluwer Law & Business, 2015
- Mark R. SANDSTROM and David N. GOLDSWEIG, *Negotiating and Structuring International Commercial Transactions*, 2nd ed., ABA Book Publishing, 2002
- Stefan VOGENAUER, *Commentary on the UNIDROIT Principles of International commercial Contracts (PICC)*, OUP, 2015, available at the VUB (341 G VOG 2015)
- Dirk DESCHRIJVER, Arne GUTERMAN and Marc TAEYMANS, *Standard Business Contracts under Belgian Law*, Larcier, 2013, available at the ULB (IUS 347.741(493))
- Joachim M. BONELL, *The UNIDROIT Principles in Practice: Caselaw and Bibliography on the UNIDROIT Principles of International Commercial Contracts*, Brill, 2006, available at the VUB (341.9 B BONE 2006)
- Michael J. BONELL, *An International Restatement of Contract Law: the UNIDROIT Principles of International Commercial Contracts*, 3rd ed., Transnational Publishers, 2005, available at the ULB (IUS 341.5 BONE)
- Giuditta CORDERO-MOSS, *Boilerplate Clauses, International Commercial Contracts and the Applicable Law*, CUP, 2011, available at the ULB (IUS 347.44 CORD)
- Roy GOODE, "Contract and Commercial Law: the Logic and Limits of Harmonisation" in *Ius Commune Lectures on European Private Law*, 2003, 17, available at the ULB (IUS 347.44(4) GOOD)

- Larry A. DIMATTEO, "False Dichotomies in Commercial Contract Interpretation" in *Journal of International Trade Law and Policy*, 2012, (1) 27, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Bertrand FAGES, "Pre-contractual Duties in the Draft Common Frame of Reference – What Relevance for the Negotiation of Commercial Contracts?", in *European Review of Contract Law*, 2008, (3) 304, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Peter L. FITZGERALD, "The International Contracting Practices Survey Project: An Empirical Study of the Value and Utility of the United Nations Convention on the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts to Practitioners", in *Journal of Law and Commerce*, 2008, 27, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Ole LANDO and Hugh BEALE, *Principles of European Contract Law*, Kluwer Law International, 2000, available at the ULB (IUS 347.44(44) LAND v.1)
- Cristelle ALBARIC and Marianne DICKSTEIN, *International Commercial Agency and Distribution Agreements: Case Law and Contract Clauses*, Kluwer, 2011, available at the ULB (IUS 382 ALBA)
- Geert BOGAERT and Ulrich LOHMANN, *Commercial Agency and Distribution Agreements: Law and Practice in the Member States of the European Union*, Kluwer Law International, 2000, available at the ULB (4CDE 346.07 BOGA)
- Philip F. ZEIDMAN, "With the Best Intentions: Observations of the International Regulation of Franchising", in *Stanford Journal of Law*, 2014, (2) 237, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Michael A. HITT, Jeffrey S. HARRISON and R. Duane IRELAND, *Mergers & Acquisitions - A Guide to Creating Value for Stakeholders*, Oxford University Press, 2001, available at the Library of the National Bank of Belgium (338.0 HITT)
- David FAULKNER, Satu TEERIKANGAS and Richard J. JOSEPH, *The Handbook of Mergers and Acquisitions*, Oxford University Press, 2012, available online at the ULG
- Michael F. STROHMER, *International Mergers and Acquisitions*, Lang, 2005, available at the VUB (346.6 G STRO 2005)
- Dirk VAN GERVEN, *Cross-border Mergers*, Cambridge University Press, 2010, available at the VUB (346.6 G GERV 2010)
- Geoff YATES and Mike HINCHLIFFE, *A Practical Guide to Private Equity Transactions*, CUP, 2010, available at the VUB (351.82 G YATE 2010)
- Donald S. SIEGEL, Douglas J. CUMMING and Mike WRIGHT, "Private Equity, Leveraged Buyouts and Governance", in *Journal of Corporate Finance*, 2007, (13) 4, 439, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Elizabeth CRAWFORD SPENCER, *The Regulation of Franchising in the New Global Economy*, Edward Elgar, 2010
- Carl E. ZWISLER, "Amended ICC Model International Franchise Contract is Problematic for Franchising" in *Franchising World*, 2011, (8) 48, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Camilo A. RODRIGUEZ-YONG, "Unconscionable Clauses in a Franchising Agreement from the United States' Perspective" in *Vniversitas*, 2011, (122) 519, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Edward N. LEVITT, "Negotiating a Master Franchise Agreement – Getting to 'YES'" in *Franchising World*, 2014, (9) 48, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Marco HERO, *International Franchising: A Practitioner's Guide*, Globe Law and Business, 2010, available at the ULB (IUS 347.75 HERO)

- Honey V. GHANDID, "Franchising in the United States" in *Law and Business Review*, 2014, (1) 3, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Matthew KREUTZER, "Franchising Law" in *The Licensing Journal*, 2013, (10) 28, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Mark ABELL, *The Law and Regulation of Franchising in the EU*, Edward Elgar, 2013
- Axel-Volkmar JAEGER and Götz-Sebastian HÖK, *FIDIC: A Guide for Practitioners*, Springer-Verlag, 2010, available at the ULB (ULB Library Catalogue CIBLE PLUS)
- Lukas KLEE, *International Construction Contract Law*, Wiley, 2015
- Julian BAILEY, *Construction Law*, Routledge, 2011
- Robert KNUTSON and Wilfred ABRAHAM, *FIDIC: An Analysis of International Construction Contracts*, Kluwer Law Int., 2005, available at the ULB (IUS 710 KNUT)
- Jacob C. JØRGENSEN, *Delay Clauses in International Construction Contracts*, Kluwer Law International, 2010
- Jan M. SMITS, *Contract Law: A Comparative Introduction*, Edward Elgar, 2014
- Ronald C. WOLF, *A Guide to International Joint Ventures*, Kluwer Law International, 1995, available at the ULB (IUS 347.72 WOLF)
- Luiz Olavo BAPTISTA and Pascal DURAND-BARTHEZ, *Les Joint Ventures Dans le Commerce International*, Bruylant, 2013, available at the ULB (IUS 382 BAPT)
- Charles-Henry CHENUT, *Le Contrat de Consortium*, L.G.D.J., 2003, available at the ULB (IUS 347.45(44) CHEN)
- Yan AIMIN and Luo YADONG, *International Joint Ventures: Theory and Practice*, Routledge, 2015
- Erik P.M. VERMEULEN, *The Evolution of Legal Business Forms in Europe and the United States: Venture Capital, Joint Venture and Partnership Structures*, Kluwer Law International, 2003, available at the VUB (351.82 G VERM 2003)
- Dennis CAMPBELL and Antonida NETZER, *International Joint Ventures*, Kluwer Law International, 2009
- Dennis THOMPSON, "The Grouping of Enterprises for Joint Ventures" in *International and Comparative Law Quarterly*, 1965, (2) 693, available at the ULB (ULB Library Catalogue CIBLE PLUS)

F. Online Resources

- Cible (ULB Library Catalogue) : <http://cibleplus.ulb.ac.be/>
- UniCat (Belgian Libraries Catalogue) : <http://www.unicat.be/>
- HeinOnline : <http://ezproxy.ulb.ac.be/login?url=http://heinonline.org/HOL/Welcome>
- EBSCO : <http://search.ebscohost.com/login.aspx?lauthtype=ip,uid&profile=ehost>
- Springer : <http://ezproxy.ulb.ac.be/login?url=http://link.springer.com/>
- DOAJ (Directory of Open Access Journals) : <https://doaj.org/>
- Google Scholar : <https://scholar.google.com>
- Academia.edu : <https://www.academia.edu/>
- SSRN : <http://www.ssrn.com/>
- Westlaw : <http://legalresearch.westlaw.co.uk/>
- PLC : <http://www.plc.com>

V. Class Schedule

Unless indicated otherwise, classes will be held on Monday from 15.00 to 18.00.

25/9: (beware, this is a Friday): Lesson 1. Negotiating international commercial transactions (pre-contractual phase) (Paul Hermant)

Required readings:

- Book II, chapters 3 and 4 (as from page 187) of the Draft Common Frame of Reference (DCFR) by the Study Group on a European Civil Code, available at https://www.law.kuleuven.be/personal/mstorme/2009_02_DCFR_OutlineEdition.pdf
- M.O.U. (International Joint Venture) Model, available on the UV (standard document)

5/10: Lesson 2. Sources and genetics of contract law – transnational approach (Erik Van den Haute)

Part I : Case studies & discussion

Part II : Theoretical elements

Possible required readings to be provided later on

9/10 (beware, this is a Friday): Lesson 3. International corporate transactions (Paul Hermant)

Required readings:

- *International Joint Ventures Handbook*, published by Baker & McKenzie, 2015, available at http://www.bakermckenzie.com/-/media/files/insight/publications/2015/09/bk_jointventureshandbook_15.pdf?la=en
- Share Purchase Agreement Model, available on the UV (standard document)

12/10: Lesson 4. Elements of private international law (Erik Van den Haute)

Part I : Theoretical elements

Part II : Case studies & discussion

Possible required readings to be provided later on

19/10: Lesson 5. International distribution contracts (Paul Hermant)

Required readings:

- Cristelle ALBARIC and Marianne DICKSTEIN, *International Commercial Agency and Distribution Agreements: Case Law and Contract Clauses*, Kluwer, 2011, available at the ULB (IUS 382 ALBA)
- International Distribution Agreement Model, available on the UV (standard document)

26/10: Lesson 6. International franchising contracts (Paul Hermant)

Required readings:

- Mark ABELL, *The Law and Regulation of Franchising in the EU*, Edward Elgar, 2013
- International Franchise Agreement Model, available on the UV (standard document)

9/11: Lesson 7. International collaboration and consortium contracts (Paul Hermant)

Required readings:

- Rajneesh NARULA and John HAGEDOORN, "Innovating through strategic alliances: moving towards international partnerships and contractual agreements", *Technovation*, 1999, Pages 283–294
- DESCA Horizon 2020 Model Consortium Agreement, available on the UV (standard document)

16/11: Lesson 8. Content of international commercial contracts (Hardship, Boilerplate, etc.) (Erik Van den Haute)

Part I : Drafting exercises & discussion

Part II : Theoretical elements

Possible required readings to be provided later on

23/11: Lesson 9. International sale of goods (part I) (Erik Van den Haute)

Part I : Case studies & discussion

Part II : Theoretical elements

Possible required readings to be provided later on

27/11: Lesson 10. International construction and turnkey projects (Paul Hermant)

Required readings:

- Robert KNUTSON and Wilfred ABRAHAM, *FIDIC: An Analysis of International Construction Contract*, Kluwer Law International, 2005, available at the ULB (IUS 710 KNUT)
- Design & Build Contract 2016 (JCF) , available on the UV (standard document)

30/11: Lesson 11. International sale of goods (part II) (Erik Van den Haute)

Part I : Case studies & discussion

Part II : Theoretical elements

Possible required readings to be provided later on

7/12: Lesson 12. Agency contracts (Erik Van den Haute)

Part I : Exercise: negotiating an agency contract

Part II : Theoretical elements

Possible required readings to be provided later on

A Q&A and information on the exam session (optional) (Erik Van den Haute and Paul Hermant) will be organized at the end of the 7/12 lesson (at around 17.30)