

# International Contracts Regarding Cross-Border Trade and Investment

**Semester:** Spring Semester- FS 2024

**Root Number:** 481837

**ECTS:** 3

**Lecturer:** Réka Papp and Benjamin Gottlieb

**Dates:** **July 15 to July 18, 2024**

**Room:** The is a hybrid course. The course will be held on-site at the World Trade Institute, Silva Casa Auditorium, Hallerstrasse 6, 3012 Bern and online on Zoom.

## **Audience:**

- Government officials; Embassy staff; people working for international organizations and NGOs, industry and in legal practice
- Master of Advanced Studies of International Law and Economics (MILE) Students
- Joint LL.M. / Diploma of Advanced Studies Trade and Investment Law (TRAIL+) Students - World Trade Institute / Faculty of Law, Unibe
- Certificate of Advanced Studies / Diploma of Advanced Studies in International Law and Economics (CAS ILE & DAS ILE) Students - World Trade Institute, Unibe
- Students from different universities across Switzerland

## **Course Description**

The fabric of international trade is made of international contracts that organise the purchase and sale of goods and services involving consumers, businesses and, at times, public actors in the global market.

This course enables participants to understand the essential elements of international contracts and how to solve the disputes that might arise in connection with them. The

course provides an overview of the legal framework of international contracts, including domestic and international sources with a special focus on the CISG and sector-specific rules. Participants will analyse the most common contractual clauses and the challenges related to their application, encompassing force majeure and hardship clauses as well as ESG and business and human rights clauses, which are gaining increasing relevance due to the current global situation. Participants will be made familiar with the wide range of dispute resolution mechanisms available and their advantages and disadvantages.

## Lecturers

### Benjamin Gottlieb

Benjamin Gottlieb is a Partner in the Dispute Resolution Group at Schellenberg Wittmer Ltd. His main areas of practice are international arbitration as well as domestic and international commercial litigation. He further specializes in and advises clients on the United Nations Convention for the International Sales of Goods (CISG). He is also a lecturer at the University of Zurich for international commercial arbitration, contract law and the Vienna Sales Convention and taught advocacy classes in Milan.

### Réka Papp

Dr Réka Ágnes Papp is Legal Counsel at the law firm Archipel, in Geneva. She represents clients in international arbitration and related court proceedings and sits as an arbitrator.

Réka has been involved in complex international commercial and investment arbitration proceedings under various arbitration rules and laws. Réka has experience in the fields of construction, energy and aviation. Réka specialises in private international law, contract law and international investment law.

Réka is a Senior Researcher at the Centre for International Dispute Resolution (CIDS) in Geneva and is also a guest lecturer in international arbitration at the Master of Laws in International Trade Law at the International Training Centre of the ILO.

Prior to joining Archipel, Réka was counsel in the Office of Professor Pierre Tercier where she acted as secretary to international arbitral tribunals. She was also a senior lecturer at the MIDS Geneva LL.M and worked as an associate in a law firm in Vienna, Austria in international arbitration and competition law.

Réka holds a PhD in law and a master's degree in international commercial law from the University of Lorraine in France as well as a J.D. from the University of ELTE in Budapest, Hungary.

## Learning Objectives

- To provide an overview of the legal framework governing international contracts as well as international arbitration, the most frequent way to resolve disputes under international contracts.
- To provide an introduction to the different dispute resolution mechanisms available for disputes arising under international contracts.
- To provide participants with practical examples of the different contractual clauses in international contracts and their application by national courts and arbitral tribunals.
- To provide practical training and hands-on experience in the interpretation and drafting of typical clauses in international contracts.
- To provide a comprehensive understanding of the main features of international contracts and the related challenges in international commerce.

## Assessment

- Students' knowledge will be assessed on the basis of a take home exam which needs to be completed on an individual basis.
- Both lecturers will provide a topic to participants, which they have to elaborate upon.
- Take-home assignment made available on 18 July 2024, 16:00 and to be submitted before 19 July 2024, 20:00 to [masters@wti.org](mailto:masters@wti.org)

## Course Overview

| Date    | Day       | Time        | Topic / lecturer   |
|---------|-----------|-------------|--|
| 15 July | Monday    | 10:00 12:00 | The legal framework governing international contracts / R. Papp                              |
|         |           | 13:00 16:00 | The legal framework governing international contracts / R. Papp                              |
| 16 July | Tuesday   | 10:00 12:00 | Analysis of typical contractual clauses in international contracts / B. Gottlieb and R. Papp |
|         |           | 13:00 16:00 |  |
| 17 July | Wednesday | 10:00 12:00 | Transaction and sector-specific transnational rules (CISG, Incoterms, UCP 600) / B. Gottlieb |
|         |           | 13:00 16:00 |  |
| 18 July | Thursday  | 10:00 12:00 | Resolution of disputes arising under international contracts/ B. Gottlieb and R. Papp        |
|         |           | 13:00 16:00 |  |
| 19 July | Friday    | Due 20:00   | Take-home assessment   |

## MONDAY, JULY 15, 2024

**Lecturer: Réka Papp**

### Subject

- The legal framework governing international contracts

### Topics

- Presentation of the course and its objectives
- What are international contracts and what is their relevance in international trade?
- Overview of the general legal framework governing international contracts (national law and transnational legal instruments)
- Party autonomy and the myth of the self-sufficient contract
- Which law will govern the international contract? Choice of law clauses and rules of private international law
- The relevance and the effect of the governing law on the interpretation and application of international contracts
- The relevance and the effect of national or international norms other than the norms of the governing law on international contracts
- Negotiation, validity and interpretation of international contracts

### Compulsory Reading Material

- 1. David Echenberg, 'Negotiating international contracts: does the process invite a review of standard contracts from the point of view of national requirements?', in Giuditta Cordero-Moss, *Boilerplate Clauses, International Commercial Contracts and the Applicable Law*, (Cambridge University Press, 2011), pp. 11-19.
- 2. Giuditta Cordero-Moss, *International Commercial Contracts, Applicable Sources and Enforceability*, (Cambridge University Press, 2014), pp. 8-26.

### Optional Reading Material

- 1. Roy Goode, 'Rule, Practice, And Pragmatism In Transnational Commercial Law', *International & Comparative Law Quarterly*, 54(3), 539-562.
- 2. Michael McIlwrath / Gustavo Moser, *Negotiating International Commercial Contracts*, Eleven International Publishing, 2021 (not provided)
- 3. Larry A. DiMatteo, *International Contracting: Law and Practice*, 5th Edition, Kluwer Law International, 2021 (not provided)



- 4. David Frydinger, Oliver Hart, and Kate Vitasek, 'A New Approach to Contracts', *Harvard Business Review*, September-October 2019.
- 5. Barbara Pasa and Larry A. DiMatteo 'Observations on the Impact of Technology on Contract Law' in DiMatteo LA, Cannarsa M, Poncibò C, eds. *The Cambridge Handbook of Smart Contracts, Blockchain Technology and Digital Platforms*, Cambridge University Press, 2019, 334-358.

**TUESDAY, JULY 16, 2024****Lecturer: Benjamin Gottlieb and Réka Papp****Subject**

- Analysis of typical contractual clauses in international contracts

**Topics**

- Standard contract terms and general terms and conditions
- Representations and warranties
- Liquidated damages and limitation of liability clauses
- Force majeure and hardship clauses
- Termination clauses
- ESG, BHR and anti-corruption clauses

**Compulsory Reading Material**

- 1. Marcel Fontaine and Filip de Ly, *Drafting International Contracts an Analysis of Contract Clauses*, (Transnational Publishers 2006), pp. 351-357 (Limitation of Liability Clauses), pp. 401-439 (Force Majeure Clauses), pp. 453-458 (Hardship Clauses), pp. 565-569 (Termination Clauses).

**Optional Reading Material**

- 'Chapter 3 Common International Contract Clauses' in Larry A. DiMatteo *International Contracting: Law and Practice*, 5th Edition, Kluwer Law International, 2021

## WEDNESDAY, JULY 17, 2024

**Lecturer: Benjamin Gottlieb**

### Subject

- Transaction and sector-specific transnational rules (CISG, Incoterms, UCP 600)

### Topics

- History of the CISG / Application of the CISG / Formation of Contract
- Seller's Obligations / Buyer's Remedies
- Buyer's Obligations / Seller's Remedies
- Passing of Risk / Incoterms
- Bank Guarantees / Letters of Credit / UCP 600

### Compulsory Reading Material

- 1 Christoph Brunner/Benjamin Gottlieb (eds.), *Commentary on the UN Sales Law (CISG)*, (Kluwer 2019), pp. 1-11.

### Optional Reading Material

- 1 Peter Huber/Alastair Mullis, *The CISG, A new textbook for students and practitioners*, (Sellier 2014).
- Peter Schlechtriem/Petra Butler, *UN Law on International Sales*, (Springer 2009). (not provided)

**THURSDAY, JULY 18, 2024**

**Lecturer: Benjamin Gottlieb and Réka Papp**

**Subject**

- Resolution of disputes arising under international contracts

**Topics**

- Overview of the possible dispute resolution methods, including their distinguishing features, advantages and disadvantages.
- Specific features of international arbitration from the conclusion of the arbitration agreement and its validity, through the constitution of the arbitral tribunal, the arbitral proceedings to the annulment and enforcement of arbitral awards.
- Choice of forum clauses and national courts as adjudicators of international commercial disputes.
- International commercial courts.

**Compulsory Reading Material**

- 1. Nigel Blackaby , Constantine Partasides , et al., *Redfern and Hunter on International Arbitration* (Seventh Edition), (© Kluwer Law International; Oxford University Press 2023), Introduction.
- 2. *Ristau's International Judicial Assistance: A Practitioner's Guide to International Civil and Commercial Litigation* (2nd Edition), (OSAIL, 2021), pp.9-17

**Optional Reading Material**

- 1. ILA White Paper on Dispute Resolution.
- 2. Weixia Gu and Jacky Tam, 'The Global Rise of International Commercial Courts: Typology and Power Dynamics', *Chicago Journal of International Law*, Vol. 22, No. 2, pp. 443-492.
- 3. Stacie Strong, *Legal Reasoning Across Commercial Disputes: Comparing Judicial and Arbitral Analyses*, (Oxford University Press 2020), Conclusion





## FRIDAY, JULY 19, 2024

- Take-home assessment due 20:00