

THE GOVERNMENT OF THE RUSSIAN FEDERATION
Federal State Autonomous Educational Institution
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THE NATIONAL RESEARCH UNIVERSITY
HIGHER SCHOOL OF ECONOMICS

Faculty of Law
Department of General and Interbranch Legal Disciplines
Chair of Public and Private International Law

Master Degree Curriculum
Year 1
Field of Education **40.04.01. – Jurisprudence**
Master Program **Private International Law**
Level **Master Degree**

INTERNATIONAL CONTRACT LAW

Course Syllabus

Author of the Course / Course Instructor
Elza Dauletshina, assistant professor (edauletshina@hse.ru)

Approved at the Department session

Natalia Y. Erpyleva
Department Head

September 10, 2018 (Protocol N 1)

**Approved at the Academic Council of
Master Program session**

Natalia Y. Erpyleva
Program Academic Supervisor

September 13, 2018 (Protocol N 18)

Approved at the Chair session

Natalia Y. Erpyleva
Chair Head

September 5, 2018 (Protocol N 1)

Moscow, 2018

This Syllabus cannot be used by other departments of the University or by other universities without a permission of the Departments, which drafted it

COURSE DESCRIPTION

International contracts are an essential part of international transactions – being “the backbone” of world trade they are concluded on a day-to-day basis by transnational corporations, entered into by individual entrepreneurs and entail disputes involving parties from different jurisdictions and legal backgrounds. For this very reason the course will focus mainly on common aspects of drafting, interpreting and challenging international contracts, while providing a brief overview of various contracts commonly used in international trade.

The aim of the course is to introduce students to basic principles and the regulatory framework of international contracts together with developing practical skills of contract drafting, review and commercial dispute resolution.

The target audience is both students of the Faculty of Law of the HSE and foreign students.

The course is taught in English.

PREREQUISITES

The course requires the students to have basic knowledge of law, sufficient level of English (to read legal sources, write essays and participate in class discussions), as well as other skills acquired during their studies at the university. The course syllabus follows the comprehensive curricula designed for preparing university masters students at the NRU HSE Faculty of Law in consistency with the Educational Curricular 40.04.01. “Jurisprudence” for masters’ degree in law, LL.M; NRU HSE Faculty of Law Curriculum 40.04.01. “Jurisprudence” for masters’ degree in Private International Law endorsed in 2018.

Additional background in civil law, private international law and international procedure is welcome, although not mandatory for the course.

COURSE OBJECTIVES

The course objectives include:

- familiarization with multilateral agreements comprising International Contract Law (CISG, Convention on the Limitation Period in the International Sale of Goods, etc.);
- familiarization with principles of International Contract Law together with other nonbinding acts of recommendatory character (UNIDROIT Principles, UNCITRAL Model Laws, INCOTERMS, etc.)
- developing students’ skills of contract drafting and interpretation;
- enhancing legal research and analyses techniques for challenging international contracts.

DISTRIBUTION OF WORKLOAD

Table: Total hours against the self-study (extramural) hours broken down by subject

Item	Subject-Headings	Total hours	In-Class Hours, including		Self-study hours
			Lectures	Seminars	
1.	Subject 1. Introduction to International Contract Law; main players on International Contract Law harmonization field	12	2	2	8
2.	Subject 2. Types of international contracts	12	2	2	8
3.	Subject 3. International sales contracts under the CISG and UNIDROIT Principles	12	2	2	8
4.	Subject 4. Formation of contracts	14	4	2	8
5.	Subject 5. Contract interpretation	12	2	2	8
6.	Subject 6. Contractual obligations	12	2	2	8
7.	Subject 7. Remedies	12	2	2	8
8.	Subject 8. Contract termination and settlement of disputes	12	2	2	8
9.	Subject 9. Contract dispute resolution: case study	16	2	4	10
	TOTAL:	114	20	20	74

TYPES OF KNOWLEDGE CONTROL

Self-study control:

- Essay on a selected topic as agreed with the Course Instructor;
- Interim forms: quizzes, presentations and case studies.

Intermediate evaluation:

- Exam – graded assessment of the level of acquired knowledge and developed skills during the course, which includes analysis of a given problem and writing a comprehensive legal advice.

Control Type	Control Element	Modules				Parameters
		1	2	3	4	
Current control	Essay			6		12-15 printed pages (Times New Roman, 14 pt)
Intermediate Evaluation	Exam			*		Written 60-minute exam

METHOD OF INSTRUCTION

Classes are divided into lectures and seminars. Lectures are conducted in the interactive mode with the focus on the feedback from the students. Students are expected to get prepared for the upcoming lectures, which enables them to better comprehend the subject matter delivered by the lecturer. Seminars are aimed at combining interactive methods and stimulate individual and group debates on various issues. Home assignments are designed for an extensive review of international treaties, case law, legal authorities, as well as for in-class work preparation.

LEARNING OUTCOMES

Students must gain knowledge on:

- general principles of international contracts;
- enforcement of international contracts in courts and arbitration;
- issues of drafting international contract clauses.

Skills and abilities:

- to use specific terms and sources of international contracts;
- to research and analyze legal sources, recommendations and soft law applicable to contractual agreements;
- to solve practical cases and build up legal positions resolving the disputes arising out of international contracts.

Students should gain the following competences:

- to work with information and sources (search, evaluate and use information to fulfil academic and professional tasks);

- to carry out professional activities in the international environment;
- to search, analyse, and work with legally relevant information by using the juridical, comparative and other specific methods,
- to describe and resolve legal problems and situations involving international contracts.

CONTENT OF THE COURSE

SUBJECT 1.

Introduction to International Contract Law; main players on International Contract Law harmonization field

1. Role of international contracts in the modern world. Historical overview of international contracting.
2. What makes a contract “commercial” and “international”.
3. Harmonization v. localization of contract law. Historical tendencies and latest developments.
4. The role of organizations involved in International Contract Law development: Hague Conference on Private International Law (Hague Conference), United Nations Commission on International Trade Law (UNCITRAL), International Institute for the Unification of Private Law (UNIDROIT), International Chamber of Commerce (ICC), other regional and national organizations;
5. Key instruments developed by international organizations.

Reading List

A. Required

1. *Cordero-Moss G.* International Commercial Contracts: Applicable Sources and Enforceability. Cambridge University Press, 2014. – 336 p.
2. *Dalhuisen J.H.* Dalhuisen on Transnational Comparative, Commercial, Financial and Trade law. Vol. 1: The Transnationalisation of Commercial and Financial Law and of Commercial, Financial and Investment Dispute Resolution. The New *Lex Mercatoria* and its Sources. Hart Publishing, 2016. – 736 p.
3. *DiMatteo L.A.* International Contracting: Law and Practice. Wolters Kluwer, 2016. – 654 p.
4. *Fox W.F.* International Commercial Agreements and Electronic Commerce. Wolters Kluwer, 2018. – 464 p.

B. Optional

1. *Carr I., Stone P.* International Trade Law. Routledge, 2017. – 854 p.
2. *DiMatteo L., Hogg M.* Comparative Contract Law: British and American Perspectives. Oxford University Press, 2016. – 469 p.
3. *Emery C.* International Commercial Contracts. 2016. (URL: http://www.nyulawglobal.org/globalex/International_commercial_contracts.html).
4. *Kötz H.* European Contract Law. Oxford University Press, 2017. – 464 p.
5. *Zeller B.* CISG and the Unification of International Trade Law. Routledge-Cavendish, 2007. – 128 p.

SUBJECT 2.

Types of international contracts

1. Distribution and agency contracts.
2. Leasing contracts.
3. Factoring and franchising agreements.
4. International carriage of goods by land and by sea (Hague-Visby Rules, Hamburg Rules, Rotterdam Rules, the Warsaw System, Montreal Convention).
5. E-commerce, blockchain and smart contracts.
6. Joint ventures, mergers and acquisitions.
7. Financial contracts and international payments.

Reading List

A. Required

1. *Carr I., Stone P.* International Trade Law. Routledge, 2017. – 854 p.
2. *Cordero-Moss G.* International Commercial Contracts: Applicable Sources and Enforceability. Cambridge University Press, 2014. – 336 p.
3. *Dalhuisen J.H.* Dalhuisen on Transnational Comparative, Commercial, Financial and Trade law. Vol. 1: The Transnationalisation of Commercial and Financial Law and of Commercial, Financial and Investment Dispute Resolution. The New *Lex Mercatoria* and its Sources. Hart Publishing, 2016. – 736 p.
4. *DiMatteo L.A.* International Contracting: Law and Practice. Wolters Kluwer, 2016. – 654 p.
5. *Fox W.F.* International Commercial Agreements and Electronic Commerce. Wolters Kluwer, 2018. – 464 p.

B. Optional

1. *Emerson R.W.* An International Model for Vicarious Liability in Franchising, 2015 (URL: <http://www.alsb.org/wp-content/uploads/2016/01/NP-2015-An-Intl-Model-for-Vicar-Liab-Emerson.pdf>).
2. Draft E-Commerce Legal Guide. New Markets Lab in partnership with the Center for International Private Enterprise, 2018 (URL: <http://www.intgovforum.org/multilingual/sites/default/files/webform/e-commerce-legal-guide-draft-24-may-2018-nml.pdf>).
3. *Faber D., Schuijling B.* Financial Leasing and Its Unification by Unidroit // Electronic Journal of Comparative Law, 2010 (URL: <http://www.ejcl.org/143/art143-7.pdf>).

SUBJECT 3.

International sales contracts under the CISG and UNIDROIT Principles

1. Application of the CISG and UNIDROIT Principles to international sales contracts.
2. Interpretation of the CISG provisions. CISG Advisory Council opinions and case law.
3. The Observance of Good Faith in International Trade.

Reading List

A. Required

1. *Audit B.* The Vienna Sales Convention and the Lex Mercatoria. Juris Publishing, 1998 (URL: <http://www.cisg.law.pace.edu/cisg/biblio/audit.html>)
2. Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods. V.89-53886, 1989 (URL: <http://www.cisg.law.pace.edu/cisg/text/p23.html>).
3. *Schwenzer I., Hachem P.* The CISG – Successes and Pitfalls // 57 American Journal of Comparative Law, 2009 (URL: <http://www.cisg.law.pace.edu/cisg/biblio/schwenzer-hachem.html>).

B. Optional

1. *Felemegas J.* An International Approach to the Interpretation of the United Nations Convention on Contracts for the International Sale of Goods (1980) as Uniform Sales Law. Cambridge University Press, 2007 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/felemegas14.html>).
2. *Huber P., Mullis A.* The CISG: A new textbook for students and practitioners. European Law Publishers, 2007 (URL: <http://www.cisg.law.pace.edu/cisg/biblio/huber-mullis.html>).

<https://vismoot.pace.edu/media/site/about-the-moot/perspectives/HuberMullis.pdf>).

3. *Schwenzer I. (ed.) Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*. Oxford University Press, 2016. – 1744 p.
4. *Schwenzer I., Fountoulakis C., Dimsey M. International Sales Law: A Guide to the CISG*. Hart Publishing, 2012. – 842 p.

SUBJECT 4.

Formation of contracts

1. Formation of sales contracts under the CISG.
2. Offer and acceptance.
3. Battle of the forms.
4. General Conditions and Standard Terms under the CISG.
5. Drafting international contract clauses: language and structure.

Reading List

A. Required

1. *DiMatteo L.A. International Contracting: Law and Practice*. Wolters Kluwer, 2016. – 654 p.
2. *DiMatteo L.A. Critical Issues in the Formation of Contracts under the CISG*. *Belgrade Law Review*, 2011 (URL: <http://www.cisg.law.pace.edu/cisg/biblio/dimatteo6.html>).
3. *Fox C.M. Working with Contracts: What the Law School Doesn't Teach You* (PLI's Corporate and Securities Law Library Series). Practising Law Institute, 2008. – 330 p.
4. *Fox W.F. International Commercial Agreements and Electronic Commerce*. Wolters Kluwer, 2018. – 464 p
5. *Tobert P.M. Contract Drafting: A Socratic Manifesto, 2011-2012* (URL: <http://www.koncision.com/wp-content/uploads/2012/09/Contract-Drafting-A-Socratic-Manifesto.pdf>).

B. Optional

1. *Adams K.A. A Manual of Style for Contract Drafting*. ABA Publishing, 2018. – 584 p.
2. *Huber P., Mullis A. The CISG: A new textbook for students and practitioners*. European Law Publishers, 2007 (URL: <https://vismoot.pace.edu/media/site/about-the-moot/perspectives/HuberMullis.pdf>).

3. *Joseph J.E.* Contract Formation under the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Commercial Code. Penn State International Law Review. Vol. 3. No. 1. Article 5. 1984 (URL: <http://elibrary.law.psu.edu/psilr/vol3/iss1/5>).
4. *Shippey K.C.* A Short Course in International Contracts: Drafting the International Sales Contract for Attorneys and Non-Attorneys (The Short Course in International Trade Series). World Trade Press, 2002. – 184 p.
5. *Schwenzer I., Mohs F.* Old Habits Die Hard: Traditional Contract Formation in a Modern World. Internationales Handelsrecht, 2006 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/schwenzer-mohs.html>).

SUBJECT 5.

Contract interpretation

1. Determining the contractual intent of parties under the CISG.
2. Objective and subjective standards of interpretation.
3. Parole evidence rule and it's correlation with the CISG.
4. *Contra proferentem* rule of contract interpretation.
5. Application of UNIDROIT Principles and other authorities to contract interpretation.

Reading List

A. Required

1. *Benoliel Ur.* The Interpretation of Commercial Contracts: An Empirical Study // Alabama Law Review, 2017 (URL: <https://www.law.ua.edu/lawreview/files/2017/12/The-Interpretation-of-Commercial-Contracts.pdf>).
2. CISG Advisory Council Opinion No. 3 (URL: <https://www.cisg.law.pace.edu/cisg/CISG-AC-op3.html>).
3. *Lookofsky J.* Interpretation of Statements by Parties // International Encyclopaedia of Laws – Contracts, 2000 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/loo8.html>).
4. *Zeller B.* Determining the Contractual Intent of Parties under the CISG and Common Law – A Comparative Analysis // European Journal of Law Reform, 2002 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/zeller8.html>).

B. Optional

1. *Huber P., Mullis A.* The CISG: A new textbook for students and practitioners. European Law Publishers, 2007 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/huber8.html>).

<https://vismoot.pace.edu/media/site/about-the-moot/perspectives/HuberMullis.pdf>).

2. *Schwenzer I. (ed.) Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*. Oxford University Press, 2016. – 1744 p.

SUBJECT 6. *Contractual obligations*

1. Seller's and buyer's obligations under the CISG.
2. Conformity of the goods.
3. Passage of title and the risk of loss under the CISG.
4. Preservation of goods.
5. Terms of payment.

Reading List

A. Required

1. *Andrews N. et al. Contractual Duties: Performance, Breach, Termination and Remedies*. Sweet & Maxwell, 2017. – 760 p.
2. *Gabrie H.D. The Buyer's Performance Under the CISG: Articles 53-60 Trends in the Decisions* (URL: <https://www.uncitral.org/pdf/english/CISG25/Gabriel.pdf>).
3. *Huber P., Mullis A. The CISG: A new textbook for students and practitioners*. European Law Publishers, 2007 (URL: <https://vismoot.pace.edu/media/site/about-the-moot/perspectives/HuberMullis.pdf>).
4. *Schwenzer I. (ed.) Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG)*. Oxford University Press, 2016. – 1744 p.

B. Optional

1. *Schlechtriem P. The Seller's Obligations Under the United Nations Convention on Contracts for the International Sale of Goods, 1984* (URL: <https://www.cisg.law.pace.edu/cisg/biblio/schlechtriem10.html>).
2. *Sevón L. Obligations of the Buyer under the UN Convention on Contracts for the International Sale of Goods, 1986* (URL: <https://www.cisg.law.pace.edu/cisg/biblio/sevon1.html>).
3. *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, 2012* (URL: <https://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>).

SUBJECT 7.

Remedies

1. Remedies for breach of contract by the seller under the CISG (performance, avoidance of the contract, reduction of the purchase price, damages, right to suspend performance).
2. Remedies for breach of contract by the buyer (performance, avoidance of the contract).

Reading List

A. Required

1. *Blasé F., Höttler P.* Remarks on the Damages Provisions in the CISG, Principles of European Contract Law (PECL) and UNIDROIT Principles of International Commercial Contracts (UPICC), 2004 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/blase3.html>).
2. CISG Advisory Council Opinion No. 5 (URL: <https://cisgw3.law.pace.edu/cisg/CISG-AC-op5.html>).
3. *Huber P., Mullis A.* The CISG: A new textbook for students and practitioners. European Law Publishers, 2007 (URL: <https://vismoot.pace.edu/media/site/about-the-moot/perspectives/HuberMullis.pdf>).
4. *Schwenzer I. (ed.)* Schlechtriem & Schwenzer: Commentary on the UN Convention on the International Sale of Goods (CISG). Oxford University Press, 2016. – 1744 p.

B. Optional

1. *Liu C.* Remedies for Non-performance: Perspectives from CISG, UNIDROIT Principles & PECL (URL: <http://www.cisg.law.pace.edu/cisg/biblio/chengwei.html>).
2. *Magnus U.* The Remedy of Avoidance of Contract Under CISG – General Remarks and Special Cases // Journal of Law and Commerce, 2006 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/magnus2.html>).
3. *Piliounis P.A.* The Remedies of Specific Performance, Price Reduction and Additional Time (Nachfrist) under the CISG: Are These Worthwhile Changes or Additions to English Sales Law? // Pace International Law Review, 2000 (URL: <https://www.cisg.law.pace.edu/cisg/biblio/piliounis.html>).
4. *Schlechtriem P.* Subsequent Performance and Delivery Deadlines – Avoidance of CISG Sales Contracts Due to Non-conformity of the Goods // Pace International Law Review, 2006 (URL: http://www.globalsaleslaw.org/_temp/Schlechtriem-PaceInt_ILRev.pdf).

SUBJECT 8.

Contract termination and settlement of disputes

1. Fundamental, anticipatory and partial breach of contract under the CISG.
2. Exemptions from liability under the CISG.
3. Mitigation of losses, mediation, arbitration and court claims. Model and tailor-made clauses.
4. Choice of law clauses in international contracts.

Reading List

A. Required

1. *Azere do da Silveira M.* Termination of Contract under the Principles of European Contract Law – A Comparative Study, 2006 (<http://www.cisg.law.pace.edu/cisg/biblio/silveira.html>).
2. *DiMatteo L.A.* International Contracting: Law and Practice. Wolters Kluwer, 2016. – 654 p.
3. *Koch R.* The Concept of Fundamental Breach of Contract under the United Nations Convention on Contracts for the International Sale of Goods (CISG). Kluwer Law International, 1999 (URL: <https://cisgw3.law.pace.edu/cisg/biblio/koch.html>).
4. UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods, 2012 (URL: <https://www.uncitral.org/pdf/english/clout/CISG-digest-2012-e.pdf>).

B. Optional

1. *Born G.* International Commercial Arbitration. 3 vols. Wolters Kluwer Law & Business, 2014. – 4408 p.
2. *Ferrari F. (ed.)* The Impact of EU Law on International Commercial Arbitration. Jurisnet, LLC, 2017. – 710 p.
3. *Moses M.L.* The Principles and Practice of International Commercial Arbitration. Cambridge University Press, 2017. – 432 p.

SUBJECT 9.

Contract dispute resolution: case study

Best practices of drafting submissions and presenting your case.

Essay Topic Examples

1. Harmonization of International Contract Law: history and current practice.
2. Contemporary choice of law issues in International Contract law.
3. *Lex mercatoria*: history, present and the future.
4. The significance of UNCITRAL/UNIDROIT/ICC for development of international contract law.
5. Distribution/agency/leasing/factoring/franchising contracts: current issues and global tendencies.
6. International contracts for carriage of goods by land/sea: recent developments in regulation and practice.
7. International perspective on e-commerce, blockchain and smart contracts.
8. Issues arising out of contractual obligations in international joint ventures, mergers and acquisitions – analysis and suggested solutions.
9. Party autonomy in international contract law – should there be a limit?
10. The principle of good faith in International Contract Law.
11. Interpreting intention of the parties under the CISG – recent trends and developments.
12. Application of *contra proferentem* rule to international contract interpretation – challenges and current trends.
13. Formation of an international commercial contract – issues and proposed solutions.
14. References to General Conditions and Standard Terms in international contracts – current issues and practices.
15. Choosing the correct remedy by the buyer/seller under the CISG – issues and proposed solutions.
16. Issues of passage of title and the risk of loss under the CISG.
17. Contract breach and termination under the CISG – when is it worth to save the contract?
18. Force majeure as an exemption from liability under the CISG – cases and current issues.
19. Settlement of disputes arising out of international contract – choice of the venue and law.

The above non-exhaustive list provides only examples of essay topics to consider by the student. A topic chosen by each student is subject to individual approval by the Course Instructor.

ASSESSMENT AND GRADING

A. Assessment

- Seminar attendance / participation – 30%
- Self-study (interim forms) – 10%
- Self-study (essay) – 20%
- Examination (written assignment) – 40%

An overall assessment formula comprises a sum total of the following variables:

(seminar attendance / participation) 0.3 + (interim forms)* 0.1 + (essay)* 0.2 + (exam)* 0.4 = final grade*

B. Grading

Grading rates for essay and written exam:

- Excellent 8 – 10 points
- Good 6 – 7 points
- Satisfactory 4 – 5 points
- Fail 1 – 3 points
- No attendance 0 points

Author of the Course / Course Instructor

Elza Dauletshina, assistant professor (edauletshina@hse.ru)