

1. seminar

Private international law revision – law applicable to contract (choice of law, law applicable in the absence of the choice), jurisdiction. International sales contract – applicable rules, their relationship. Definition of arbitration, arbitrability

PIL revision

Rome I Regulation

1. Assess whether the following clauses can be considered as a choice of law under the Rome I Regulation. Assume that there is a private law relationship between two entrepreneurs with a relevant international element. The parties have explicitly excluded the application of the UN Convention on Contracts for the International Sale of Goods. Where possible, explain the applicability of the Rome I Regulation.
 - a) This contract, including the issues of its creation, termination or changes, together with issues related to it, is governed by Czech law; UN Convention on Contracts for the International Sale of Goods is excluded.
 - b) This Agreement is governed by Islamic law.
 - c) The Agreement and all relations arising out of it shall be governed by Florida law.
 - d) The consequences of a breach of contract, including the determination of damages, are governed by Belgian law.
 - e) This contract is governed by *lex mercatoria*.
 - f) This Agreement is governed by the UNIDROIT Principles of International Commercial Contracts.
 - g) This contract and all rights and obligations arising from it are governed by the terms and conditions of the FIDIC Red Book.
 - h) The contract is governed by the general terms and conditions of ABN 2011 (general insurance conditions in construction used by German insurance companies).
 - i) All disputes arising out of this contract shall be resolved before the Czech courts.
 - j) Obligations under contracts together with any non-contractual obligations are governed by Slovak law.
 - k) The contract is governed by the Czech Civil Code as amended.
 - l) The Contract, including issues related to it, is governed by the Czech Commercial Code, as in effect on 1 January 2005.
 - m) The contract, including issues of its origin, termination, or changes, together with issues related to it, is governed by Czech law if any dispute is resolved by Czech courts, or by Polish law, if any dispute is resolved by Czech courts.
 - n) All disputes arising from the contract shall be resolved at the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. The arbitrators will proceed in accordance with Czech law.
2. Is it possible to choose law applicable tacitly?
3. The company Master Frog, s.r.o., established under Czech law, with its registered office and place of business in Brno, is a distributor and direct seller of frog legs in selected top restaurants in the Czech Republic. It decided to buy the frog legs from Cuisses de grenouille, s. A. R. L., A company incorporated under French law, with its registered office and place of business in Lyon.

Society "boasts" of keeping frogs itself in aquariums. In July 2021, the parties concluded a written sales contract, the subject of which was the delivery of 300 kg of frog legs for the price of 2990 euros. The agreement included, *inter alia*, this clause: "This agreement and the relations arising from it are governed by the law of the island of Guernsey. The UN Convention on Contracts for the International Sale of Goods shall not apply." Assess the validity of such a choice of law. In response, focus on, among other things, whether EU regulations apply in Guernsey.

4. For the following clauses, assume that the parties have not explicitly excluded the United Nations Convention on Contracts for the International Sale of Goods (CISG). Assess whether the following clauses are sufficient to exclude the CISG and justify your reply.

- a) This contract is governed by Czech law.
- b) This contract is governed by Indian law.
- c) This contract is governed by the Czech Civil Code (Act No. 89/2012 Coll.).

Brusel I bis Regulation

5. Theoretic background

- a) What types of jurisdiction rules are governed by the Brussels I bis Regulation and what is the link (hierarchy) between them?
- b) What is the scope of the Brussels I bis Regulation in relation to Article 25?
- c) Explain the possible forms of prorogation agreement between entrepreneurs.
- d) Explain the relationship between the prorogation agreement and the main contract if the main contract contains a prorogation clause. Is the solution explicitly stated in the regulation?
- e) Define the relationship between the Brussels I bis Regulation and the Hague Convention on Choice of Court Agreements.

6. Assess the validity of the following clauses in the context of the Brussels I bis Regulation.

Assume that this is a private relationship between two entrepreneurs, a buyer based in the Czech Republic and a seller based in Italy. The place of performance is the registered office of the buyer.

- a) All disputes arising from this contract shall be resolved in the Czech courts.
- b) All disputes arising out of or relating to this Agreement shall be settled in the courts of Brazil.
- c) The court of the defendant's domicile shall have jurisdiction to settle disputes arising from this contract.
- d) The court of the place of performance is competent to resolve disputes arising from this contract.
- e) Disputes arising out of this contract shall be resolved by Czech and Slovak courts.
- f) If the Czech company is sued, the Italian courts will have jurisdiction. If the Italian company is sued, the Czech courts will have jurisdiction.
- g) All disputes arising from this contract will be resolved in court in Brno.
- h) All disputes arising from this contract will be resolved at the Regional Court in Brno.
- i) The jurisdiction of the Czech courts to resolve disputes arising from this contract is excluded.
- j) The Contracting Parties shall submit to the jurisdiction of the courts of the Italian Republic. Italiano reserves the right to bring legal proceedings against the Buyer in the courts of the Buyer's registered office or in any court of the place where the damage caused to Italiano is caused.
- k) All disputes arising from this contract will be decided by the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. The arbitrators will proceed in accordance with Czech law.

7. Return to Example 2 (Purchase of Frog Legs). The contract included a prorogation clause "*All disputes arising from this contract will be resolved before the French courts.*" The buyer was satisfied with the frog legs, and therefore decided to order the legs from the seller regularly. The same contract (of course with a different delivery date) was concluded in writing by the parties in September 2020, November 2020, December 2021, February 2021. As no problems ever arose between the parties, other contracts were concluded by telephone. Information on the quantity, price, and date of delivery of the goods and the due date of the payment were always agreed orally. However, the buyer did not pay for the delivery from July 2021 and refused to pay even after the seller's reminders. The seller therefore brought an action before the French courts under the prorogation clause. The buyer argued that the prorogation clause had not been agreed for orally concluded contracts, as it only concerned previously concluded contracts in writing and should therefore be tried before the Czech courts in accordance with the general scope of the Brussels I bis Regulation. Assess the situation.

Legal regime of the international sales contract

1. Explain what (where, how) can govern the rights and obligations of the parties to an international purchase agreement.
2. See Article 9 (1) of the UN Convention on Contracts for the International Sale of Goods. What is the significance of the established practice of the parties regarding Article 29 Para 2 of the Convention?

Concept, definition and types of arbitration, arbitability.

1. What alternative dispute resolution methods do you know?
2. What conditions must be met to resolve a dispute in arbitrators?
3. Name the doctrines (concepts) of arbitration. Briefly characterize them.
4. Name the benefits of arbitration.
5. Name the disadvantages of arbitration.
6. Explain what the international element in international arbitration may be. Distinguish between international and national arbitration.
7. Define the sources of the legal regulation for arbitration proceedings from the point of view of the Czech court.
8. What is the difference between arbitration before a permanent court and ad hoc arbitration?
9. What is objective and subjective arbitrability?
10. What conditions must be met under Czech law in order for a dispute to be objectively arbitrable?
11. Decide whether the dispute is objectively arbitrable under Czech law:
 - a) Dispute arising from Example 3.
 - b) Dispute over non-payment of the purchase price, when Mr. Novák, the buyer did buy the frog legs for his own private use.
 - c) Dispute concerning minor child support
 - d) Decision on the registration of a trade mark
 - e) Dispute concerning the sale of the trade mark
 - f) Dispute over the validity of termination of employment (termination)
 - g) Dispute over compensation for damage caused by an employee in the course of work