

M U N I
L A W

Legal Aspects of International Trade

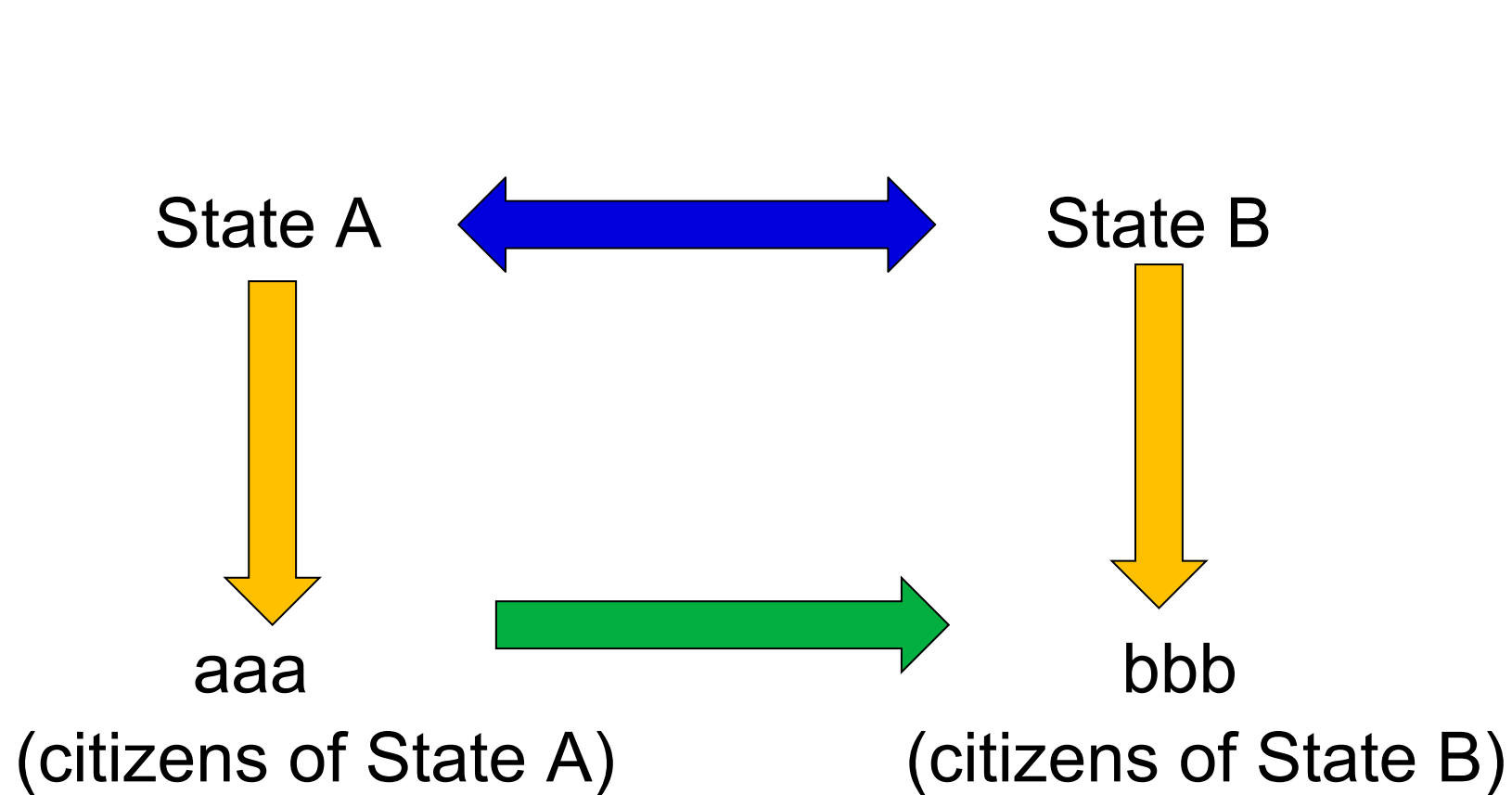
Introduction

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Syllabus

- Introduction
- Three „levels“ of international trade law
- Third level - International Commercial Transactions
- The UN Convention on Contracts for International Sale of Goods (CISG)

Three „levels“ of international trade law



EU



First level

- Public international law, international economic transactions
 - States, international organizations (WTO, IMF)
 - Private individuals?
 - International conventions, international soft law
 - International financial law, development, investments etc.

Second level

- European economic area, internal market
- Commercial relationships between Member States
- External relationships towards Non-Member States
 - Exclusive competence of the EU (Council, Commissions)
 - Bilateral and multilateral treaties
 - EU as part of the international economic system

Third level

- „Core“ of international trade
 - Private international law, „Conflict of laws“ in the U.S.
 - Private law relationships
 - Civil law
 - Labour law
 - Family law
 - **Commercial (trade) law**
- ... with international (cross-border) element

EU

- Supranational entity, entity *sui generis*
- a „state“ – secondary law
- an „international organization“ – primary law

Private law relationship (1)

- *Mr. Novák is a producer of wine domiciled in the Czech Republic. Mr. Svoboda domiciled also in the Czech Republic owns a wine shop. Mr. Novák and Mr. Svoboda concluded a sales contract by which Mr. Novák is bound to deliver wine regularly to Mr. Svoboda.*

Private law relationship (2)

- *Mr. Novák, a Czech citizen lived the whole life in the Czech Republic where he died and left a legacy - the property, the money in the account, etc. His heirs also live in the Czech Republic.*

Private law relationship (3)

- *Mr. Novák from the Czech Republic was in Krkonoše mountains for skiing. While skiing he had accident, he collided with another skier from the Czech Republic.*

Private law relationship (4)

- *Mr. Novák from the Czech Republic works for the Czech company in the Czech Republic.*

PIL Example 1

- *Mr. Novák is a producer of wine domiciled in the Czech Republic. Mr. Müller domiciled in Austria owns a wine shop which specializes in sale of Czech wines. Mr. Novák and Mr. Müller concluded a sales contract by which Mr. Novák is bound to deliver wine regularly to Mr. Müller.*

PIL Example 2

- *Mr. Novák, a Czech citizen lived the last 15 years in Spain, where he died and left a legacy - the property, the money in the account, etc. His heirs live in the Czech Republic.*

PIL Example 3

- *Mr. Novák from the Czech Republic was in Austria for skiing. While skiing he had accident, he collided with another skier from Italy.*

PIL Example 4

- *Pan Wolodyjowski from Poland works for Czech company in the Czech Republic*

PIL – four main questions

1. International jurisdiction of courts
- 2. Law applicable**
3. Recognition and enforcement of judgments
4. Judicial cooperation between states

PIL - principles

- Principle of territoriality
- Importance of „forum“
- Legal predictability
- Legal certainty
- Effectivity

PIL – sources of law

□ *(from the point of view of the Member State of the EU, e.g. The Czech Republic)*

1. Law of the European Union

- a) Regulations
- b) Directives

2. International Conventions

- a) Bilateral
- b) **Multilateral**

3. National laws

➤ Conflicts between these sources of law

International trade law – „alternative“ sources of law

- Why?
- Lex mercatoria*
- ... non-state law, *soft law*, unwritten law, etc.
- International usages, international commercial terms, INCOTERMS, FIDIC,

PIL - methods

1. Conflict of law method and norms

- Resolves „conflict“ between two or more laws applicable
- Older and general type of rules
- Does not directly regulate rights and obligations
- Hague Conference on PIL

2. Direct (substantive) norms

- Younger and special type of rules
- Directly regulate rights and obligations
- Unification of law, esp. in commercial law and transportation law
- UNCITRAL, UNIDROIT

PIL - methods

- ... a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence.*
- The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.*

International commercial transactions

- Commercial relationships with international (cross-border) element
- International multilateral conventions
- International organizations – UNCITRAL
- Unification of law – mainly for contracts – **international sales contract**, transportation of goods
- Direct norms

➤ The UN Convention on Contracts for International Sale of Goods (CISG)

CISG - introduction

- International convention -> directly applicable
- Unification of rules on contracts for international sale of goods
- UNCITRAL (depository, status – list of member states and their reservations)
- 1980's

➤ Test of applicability

CISG – test of applicability

□ International sale of goods

1. ? -> contract on sale of goods
2. ? -> international element
3. ? -> not excluded
4. ? -> entry into force in both of States in question
5. ? -> reservations of States

1. Sale of goods

- Definition of sale of goods?
- Arts. 30 and 53
- *The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.*
- *The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.*

1. Sale of goods

- Frame contracts? Large, long-term contracts?
- Distribution contracts?
- Supply contract – Art. 3
 1. *Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a **substantial** part of the materials necessary for such manufacture or production.*
 2. *This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the **supply of labour or other services.***

1. Sale of goods

□ Excluded goods – Art. 2

- a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- b) by auction;
- c) on execution or otherwise by authority of law;
- d) of stocks, shares, investment securities, negotiable instruments or money;
- e) of ships, vessels, hovercraft or aircraft;
- f) of electricity

1. Sale of goods

- Goods = tangible movable property, not immovables, not intellectual property
- 21st century – software? Oil and gas? Know-how?

➤ Need for interpretation of the CISG

➤ Art. 7 Para 1

➤ *In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.*

1. Sale of goods - examples

- Party A from the Czech Republic concluded a contract with party B from Germany on supply of 100 pcs wooden chairs for price 100 EUR for one chair.

1. Sale of goods - examples

- Party A from the Czech Republic concluded a contract with party B from Germany on on sale of a house located in Austria.

1. Sale of goods - examples

- Mr. A from the Czech Republic went on a trip to Vienna, Austria. During his visit he bought a new coffee machine to his kitchen.

1. Sale of goods - examples

- Party A from the Czech Republic concluded a contract with party B from Germany on leasing of a industrial machine.

1. Sale of goods - examples

- Party A from the Czech Republic (seller) concluded a contract with party B from Germany (buyer) on supply of 1000 pcs wooden chairs for price 100 EUR for one chair. Party B (buyer) will provide all the wood to make the chairs.

1. Sale of goods - examples

- Party A from the Czech Republic (seller) concluded a contract with party B from Germany (buyer) on supply of 1000 pcs wooden chairs for price 100 EUR for one chair. Party B (buyer) provided designed on the chairs.

1. Sale of goods - examples

- Party A from the Czech Republic (seller) concluded a contract with party B from Germany (buyer) on sale of industrial flow line (machinery). Party A agreed to install the machinery. Cost of the machinery is 200.000 EUR, cost of the installation is 10.000 EUR.

2. International element

- Only contracts on sale of goods with international element
- Art. 1

*1. This Convention applies to contracts of sale of goods between parties whose **places of business** are in different States:*

- a) when the States are Contracting States; or*
- b) when the rules of private international law lead to the application of the law of a Contracting State.*

2. International element

- Multiplicity of places of business

- Art. 10

- a) if a party has more than one place of business, the place of business is that which has **the closest relationship to the contract** and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;*
- b) if a party does not have a place of business, reference is to be made to his **habitual residence**.*

3. Not excluded

- CISG contains **non-mandatory rules**

- Art. 6

- The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.*

3. Not excluded

□ How to exclude application of the CISG?

- a) This contract shall be governed by the Czech law.
- b) This contract shall be governed by the Czech Civil Code.
- c) Application of the CISG to this contract is excluded.
- d) This contract shall be governed by the Czech law, application of the CISG is hereby excluded.

3. Not excluded

- Parties may even include the CISG into their contract
- This contract shall be governed by the CISG.

4. Entry into force

- The CISG shall be in force in **both** States in question to the date of the conclusion of the contract on sale of goods.
- Art. 100
- List of States and dates on entry of the CISG into force – via UNCITRAL
- http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980_CISG_status.html

5. Reservations of States

- Reservations under Arts. 91 – 98
- Articles excluded by States are not applicable for them.
- List of States and their reservations – via UNCITRAL
- http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980_CISG_status.html

CISG - examples

- Czech seller with place of business in Prague enters into contract with buyer from Germany on 19 October 2015. The contract is on delivery of 120 pcs of tables. The goods will be delivered from the warehouse of the seller in Brno, Czech Republic, to the warehouse of the buyer in Zurych, Switzerland.
- Is the CISG applicable?

CISG - examples

- Company Expas with seat in Canada entered into force with company Imporet with seat and place of business in Madrid, Spain. Company Expas delivered goods (machinery) from its factory in Birmingham, UK.
- The contract contained provision: *This contract shall be governed by the CISG.*
- Is the CISG applicable?

CISG - examples

- Company ZOS (seat in the UK) ordered for its enterprise in Brno (Czech Republic) a delivery of 50 kg of olives from company TROP (seat in Portugal). The goods were delivered from the seller's establishment in Madrid, Spain. Contract was concluded on 1 September 2015.
- Contract concluded provision: *This contract shall be governed by the CISG.*
- Is the CISG applicable?

Useful links - PIL

- Nice video on the aim and goal of PIL
- <https://www.youtube.com/watch?v=da0X1V8ZLX4>

Useful links - CISG

□ List of States and their reservations (Status)

➤ http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980_CISG_status.html

□ Text of CISG in English

➤ <http://www.cisg.law.pace.edu/cisg/text/treaty.html>

□ Text of the CISG – Explanatory Note

➤ <http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>

□ Pace Law University and database

➤ <http://www.cisg.law.pace.edu/>

For fun

□ CISG song

➤ <https://www.youtube.com/watch?v=1n9YvPuDTb0>

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Thank you.