

Master 1 DROIT

Examens du 1^{er} semestre 2018/2019

Session 1

Transnational Business Law

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Multiple question choice

Durée de l'épreuve : 1h

Document(s) autorisé(s) :

None

Matériel autorisé : Aucun/none

Remarques : Chaque question est notée sur 1 point. Il n'existe pas de point négatif. Chaque question peut appeler 1, 2, 3 ou 4 bonnes réponses. Il existe toujours au moins 1 bonne réponse.

Toutes les bonnes réponses attendues doivent être cochées pour obtenir le point.

Ex. pour la question X, les réponses *a* et *c* sont correctes ; les réponses *b* et *d* sont fausses. Pour obtenir le point, il faut cocher les cases *a* et *c*. Si seule la case *a* ou seule la case *c* est cochée, aucun point n'est compté.

Each question is scored 1 point. No negative point is given. There might be 1, 2, 3 or 4 correct answers for each question.

There is always at least 1 correct answer.

All correct answers should be checked to get the point.

E.g. for question X, answers *a* and *c* are correct; but answers *b* and *d* are not correct. Boxes *a* and *c* shall be checked in order to get the point. If only box *a* or box *c* is checked, no point is granted.

- 1 The UNIDROIT Principles on international commercial contracts claim to apply:
 - a. only when the parties so wished
 - b. when parties did not choose any law applicable to their contract
 - c. by way of a conflict of law rule
 - d. to interpret or supplement international uniform instruments

- 2 What were the objectives of the Convention of International Sale of Goods (CISG)?
 - a. Harmonizing rules of international sale of goods
 - b. Harmonizing conflict of laws rules on international sale of goods
 - c. Harmonizing rules on domestic sale of goods
 - d. None of the answers above is correct

Please consult the annex to answer the four following questions

- 3 TOTO, a company based in Tokyo enters into a contract according to which it will manufacture and sell computers to a company, PEARS, based in London. The contract contains a choice of law clause according to which Japanese law governs the contract.
 - a. The CISG applies by way of article 1 (1) (a)
 - b. The CISG applies by way of article 1 (1) (b)
 - c. The CISG is not applicable

- 4 TOTO, a company based in Tokyo enters into a contract according to which it will manufacture and sell computers to a company, PEARS, based in London. The contract contains a choice of law clause according to which English law governs the contract.
 - a. The CISG applies by way of article 1 (1) (a)
 - b. The CISG applies by way of article 1 (1) (b)
 - c. The CISG is not applicable

- 5 TOTO, a company based in Tokyo enters into a contract according to which it will manufacture and sell computers to a company, PEARS, based in London. The contract stipulates that PEAR will supply TOTO with the all the necessary materials needed for the manufacturing of the computers. The contract contains a choice of law clause according to which Japanese law governs the contract.
 - a. The CISG applies by way of article 1 (1) (a)
 - b. The CISG applies by way of article 1 (1) (b)
 - c. The CISG is not applicable

- 6 TOTO, a company based in Tokyo enters into a contract according to which it will manufacture and sell computers to a company, PEARS, based in London. The contract stipulates that PEAR will supply TOTO with the rare-earth metal necessary for the manufacturing of the computers. The supply of this metal represents 20% of the necessary materials for the manufacturing of the computers. The contract contains a choice of law clause according to which Japanese law governs the contract.
 - a. The CISG applies by way of article 1 (1) (a)
 - b. The CISG applies by way of article 1 (1) (b)
 - c. The CISG is not applicable

- 7 According to article 6 of the CISG,
 - a. parties may rule out some of the provisions of the CISG
 - b. parties cannot rule out provisions of the CISG
 - c. parties may rule out the application of the CISG

- 8 According to article 92 of the CISG,
- a State can declare that it will not be bound by part I of the CISG
 - a State can declare that it will not be bound by part II of the CISG
 - a State can declare that it will not be bound by part III of the CISG
 - a State cannot make a declaration not to be bound by the CISG
- 9 According to the CISG, when both parties use standard terms that differ:
- the terms of the contract are the terms of the offer with the modifications contained in the acceptance
 - the terms of the contract are only those which are common in substance
 - the terms of the contract are the terms of the offer; the acceptance cannot change the terms
 - None of the answers above is correct
- 10 What is a hardship clause?
- a clause by which the parties foresee that the contract is null and void in case of change of circumstances
 - a clause by which the parties foresee that they will not be liable for non-performance in case of change of circumstances
 - a clause by which the parties foresee a duty to renegotiate in case of change of circumstances
 - none of the answers above is correct.
- 11 Mitigation of damages means:
- that parties to a sale contract have the duty to settle their dispute amicably
 - that in case of change of circumstances, parties have the duty to minimize their damages
 - that parties are both responsible for a breach of contract
 - none of the answers above is correct
- 12 A letter of credit aims at facilitating international trade by:
- granting the buyer a credit
 - warranting the seller payment of the goods sold
 - paying the price to the seller
 - none of the answers above is correct
- 13 Which of this/these principle(s) is/are wrong?
- A letter of credit is always irrevocable
 - A letter of credit is always revocable
 - A letter of credit is autonomous from the sale contract
 - A letter of credit is always valid
- 14 When documents presented for the payment of a letter of credit do not comply with the terms of the letter of credit
- the issuing bank cannot pay the letter of credit
 - the applicant can waive the discrepancies, allowing the issuing bank to pay the letter of credit
 - the applicant cannot waive the discrepancies, no payment is made
 - the issuing bank can waive the discrepancies and pay the letter of credit
- 15 A demand guarantee aims at facilitating trade by:
- granting the buyer a guarantee
 - granting the seller a guarantee
 - warranting the seller payment of the goods sold
 - none of the answers above is correct
- 16 The URGC 758 apply to:
- the letter of credit
 - the demand guarantee
 - international factoring
 - international leasing

- 17 For which purpose(s) may the seat of a corporation be relevant?
- to assess the jurisdiction of a court located in the country where the corporation has its seat
 - to determine the applicable law governing the contract concluded by the corporation
 - to determine the applicable law governing the organization of the corporation
 - to determine the nationality of the corporation
- 18 According to the "territorialist" approach to solve transnational insolvency
- only one court should have jurisdiction to open insolvency proceeding and the effects of such proceedings should be restricted to the state where the debtor has its main center of interest
 - only one court should have jurisdiction to open insolvency proceeding and the effects of such proceedings should concern the assets of the debtor where ever they are located
 - the court of each country where the debtor has assets should have jurisdiction to open insolvency proceedings and the effects of such proceedings should concern the assets of the debtor where ever they are located
 - the court of each country where the debtor has assets should have jurisdiction to open insolvency proceedings and the effects of such proceedings should be restricted to the local assets
- 19 The UNCITRAL Model law on Cross-Border Insolvency (1997) provides:
- access of foreign representatives and foreign creditors to Courts
 - a conflict of law rules designating the applicable law to insolvency proceedings
 - that national courts should coordinate their insolvency proceedings
 - the equality of rights between local and foreign creditors
- 20 Under the New York Convention on Recognition and Enforcement of arbitral awards (1958), an arbitration agreement:
- shall be in writing
 - shall not be subject to any requirements as to its form
 - shall be evidenced in writing
 - None of the answers above is correct
- 21 Under French law on international arbitration, the principle "Compétence-compétence" means that:
- national courts only can rule on the jurisdiction of an arbitral tribunal
 - arbitral tribunals only can rule on the jurisdiction of an arbitral tribunal
 - national courts have priority to rule on the jurisdiction of an arbitral tribunal
 - arbitral tribunals have priority to rule on their jurisdiction

Please consult the annex to answer the four following questions

- 22 ARNOLD, a company which has its place of business in Germany, exports furniture to PETROV, a company which has its place of business in the Russian Federation. Arnold assigns its invoices to DEUTSCHE FACTOR, a factoring company which has its place of business in Germany. The contract of sale of furniture is governed by law of the Russian Federation. The factoring contract is governed by German Law.
- the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (a)
 - the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (b)
 - the Ottawa Convention (Unidroit) on international factoring is not applicable *rationae loci*
- 23 KAIE, a company which has its place of business in Sweden, exports furniture to PETROV, a company which has its place of business in the Russian Federation. Arnold assigns its invoices to DEUTSCHE FACTOR, a factoring company which has its place of business in Germany. The contract of sale of furniture is governed by law of the Russian Federation. The factoring contract is governed by German Law.
- the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (a)
 - the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (b)
 - the Ottawa Convention (Unidroit) on international factoring is not applicable *rationae loci*

- 24 KAIE, a company which has its place of business in Sweden, exports furniture to PETROV, a company which has its place of business in the Russian Federation. KAIE assigns its invoices to LUX FACTOR, a factoring company which has its place of business in Luxembourg. The contract of sale of furniture is governed by law of the Russian Federation. The factoring contract is governed by the Law of Luxembourg.
- a. the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (a)
 - b. the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (b)
 - c. the Ottawa Convention (Unidroit) on international factoring is not applicable *rationae loci*
- 25 KAIE, a company which has its place of business in Sweden, exports furniture to WALLTART, a company which has its place of business in Canada. KAIE assigns its invoices to Lux Factor, a factoring company which has its place of business in Luxembourg. The contract of sale of furniture is governed by French Law. The factoring contract is governed by German law.
- a. the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (a)
 - b. the Ottawa Convention (Unidroit) on international factoring applies pursuant to art. 2 (1) (b)
 - c. the Ottawa Convention (Unidroit) on international factoring is not applicable *rationae loci*

ANNEX:

1. List of Contracting States to the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)

Albania, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czechia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Fiji, Finland, France, Gabon, Georgia, Germany, Greece, Guinea, Guyana, Honduras, Hungary, Iceland, Iraq, Israel, Italy, Japan, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Mauritania, Mexico, Mongolia, Montenegro, Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, Republic of, Korea, Republic of Moldova, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Serbia, Singapore, Slovakia, Slovenia, Spain, State of Palestine, Sweden, Switzerland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Turkey, Uganda, Ukraine, United States of America, Uruguay, Uzbekistan, Viet Nam, Zambia

2. Extracts of the UNIDROIT CONVENTION ON INTERNATIONAL FACTORING (Ottawa, 1988) and List of Contracting States

Article 2

1. – This Convention applies whenever the receivables assigned pursuant to a factoring contract arise from a contract of sale of goods between a supplier and a debtor whose places of business are in different States and:

- (a) those States and the State in which the factor has its place of business are Contracting States; or
- (b) both the contract of sale of goods and the factoring contract are governed by the law of a Contracting State.

2. – A reference in this Convention to a party's place of business shall, if it has more than one place of business, mean the place of business which has the closest relationship to the relevant 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 that contract.

Contracting States: Belgium, France, Germany, Hungary, Italy, Latvia, Nigeria, Russian Federation, Ukraine