

**Master 1 DROIT**

Examen du 1<sup>er</sup> semestre 2019/2020

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 What is a conflict of laws rule?
  - a. A rule of substantive law that provides the answer to a question of law.
  - b. A rule that indicates which domestic legal system will provide the answer to a legal question.
  - c. A rule provided in an International Convention.
  
- 2 What is party autonomy?
  - a. A way to resolve a conflict of laws by allowing the parties to choose the law governing their contract.
  - b. The possibility opened for parties to opt out of a mandatory rule.
  - c. The possibility opened for parties to submit their contract to non-State rules.
  
- 3 What is the difference between simple mandatory rules and internationally mandatory rules?
  - a. There is no difference, both are overriding mandatory rules.
  - b. Simple mandatory rules are provisions that apply territorially while internationally mandatory rules apply extraterritorially.
  - c. Simple mandatory rules are provisions of the law of a country which cannot be derogated from by agreement whereas 'internationally mandatory rules' apply regardless of the otherwise applicable law.

**Please consult the annex to answer the two following questions**

- 4 Bizness, a company based in Mexico enters into a contract according to which it will manufacture and sell cars to Joel, a company based in the Denmark. The contract contains a choice of law clause according to which English law governs the contract.
  - a. The CISG applies by way of direct application (article 1 (1) (a))
  - b. The CISG applies by way of indirect application (article 1 (1) (b))
  - c. The CISG is not applicable
  
- 5 Bizness, a company based in Mexico enters into a contract according to which it will manufacture and sell cars to Joel, a company based in Lisbon (Portugal). The contract contains a choice of law clause according to which English law governs the contract.
  - a. The CISG applies by way of direct application (article 1 (1) (a))
  - b. The CISG applies by way of indirect application (article 1 (1) (b))
  - c. The CISG is not applicable
  
- 6 Under the CISG,
  - a. parties may contract out only of some of the provisions of the CISG.
  - b. parties may not contract out of any provisions of the CISG.
  - c. parties may contract out of the CISG entirely.
  - d. all provisions of the CISG shall be applied when the CISG is applicable.
  
- 7 Under the CISG,
  - a. as a rule, usages are always binding on the parties to a contract for the international sale of goods.
  - b. as a rule, usages are never binding on the parties to a contract for the international sale of goods.
  - c. usages of which the parties to a contract for the international sale of goods knew or ought to have known and which are regularly observed by the parties to contracts of the type involved in the particular trade concerned bind them.
  - d. none of the propositions above is correct.

- 8 Under the CISG,
- parties are always entitled to specific performance of any obligation.
  - parties may be entitled to specific performance, but a court is not bound to enter a judgement for specific performance unless it would do so under its own law.
  - specific performance is a discretionary remedy for the court.
  - None of the answers above is correct.
- 9 Hardship vs Force Majeure
- There is no difference between hardship and Force Majeure.
  - A hardship is an event which makes performance more difficult whereas Force Majeure is an event which makes it physically impossible to perform the contract.
  - Both hardship and Force Majeure are unforeseeable events.
  - None of the answers above is correct.
- 10 Under the CISG, in a contract which involves the carriage of goods, the risk passes to the buyer...
- when the goods are handed over to the first carrier for transmission to the buyer, if the seller is not bound to hand the goods over at a particular place.
  - at the moment provided by the contract.
  - at the moment of delivery of the goods to the buyer.
  - none of answers above is correct.
- 11 The INCOTERMS are letter trade terms that communicate
- tasks and cost
  - tasks and risk
  - cost and risk
  - tasks, cost and risk
- 12 A letter of credit is issued for the benefit of...
- the seller.
  - the buyer.
  - the intermediary.
  - none of the answers above is correct.
- 13 In a letter of credit, the nominated bank...
- opens the credit at the request of the buyer.
  - notifies the beneficiary that it received the credit.
  - has authority to pay.
- 14 Under the UCP 600, a documentary credit is...
- revocable if clearly indicated in its terms.
  - in principle irrevocable.
  - revocable by the seller but not by the buyer.
  - none of the answers above is correct.
- 15 A demand guarantee is
- a secondary obligation
  - a primary obligation
  - a self-standing contract which is independent from the underlying contract
  - none of the above.

- 16 Under Rome I Regulation, the contract between the factor and the exporter
- a. may contain a choice of law clause
  - b. is governed by the law of the habitual residence of the factor
  - c. is governed by the law of the habitual residence of the exporter
  - d. is governed by the law of the assigned claim
- 17 Under French law, the determination of the nationality of a corporation
- a. relies on the real seat criterium
  - b. relies on the statutory seat criterium
  - c. has consequences with regards to the jurisdiction of French courts
  - d. should be clearly separated from the issue of the applicable law
- 18 According to the relevant ECJ case law, a company validly formed according to the law of a Member State
- a. may be prohibited from establishing a branch in another Member State
  - b. shall be recognized by the other Member States
  - c. should in general be submitted to the law of that Member State, even though it exercises most or all of its activities in another Member State
  - d. may only exceptionally be submitted to the law of another Member State
- 19 Under the 2015 Insolvency Regulation, shall have jurisdiction to open insolvency proceedings...
- a. the courts of the Member State of nationality of the debtor.
  - b. the courts of the Member States within the territory of which the debtor has significant assets.
  - c. the courts of the Member States within the territory of which the debtor has an establishment.
  - d. the courts of the Member State within the territory of which the centre of the debtor's main interests is situated.
- 20 An arbitration clause...
- a. is independent from the rest of the contract.
  - b. allows the arbitral tribunal to decide on its own jurisdiction.
  - c. should always be in writing.
  - d. is binding on the parties.

## **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