

LEGAL FRAME WORK

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LEGAL FRAME WORK

- A contract is not only a list of ideas agreed by the Exporter and the Buyer but also an enforceable legal instrument.

LEGAL FRAME WORK

- ☐ **Step 1: The Applicable Law**
- ☐ **Step 2: Contract or No Contract?**
- ☐ **Step 3: Entire Agreement**
- ☐ **Step 4: The parties**
- ☐ **Step 5: Status of the Contract**
- ☐ **Step 6: Settlement of Dispute**

LEGAL FRAME WORK

□ **Step 1: The Applicable Law**

Most laws belong to one of two families: Anglo – American or Continental.

The two systems work in the different ways and produce different kinds of contract.

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

From the point of view of the export contract, two families are of special significance - grew out of the two laws which adjust most of export contracts: Anglo – American law (*Case law* or *Common law*) and Continental law (*Civil law*).

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Anglo – American systems :

Goals: Justice in the individual case

CONTRACT TRANSLATION

□ **Step 1: The Applicable Law** **Anglo – American systems :**

Predictability and consistency of court decisions:
Unless matters are carefully regulated in the contract, the decision of the judge is not fully predictable. Different judges may give widely different judgment.

CONTRACT TRANSLATION

□ **Step 1: The Applicable Law** **Anglo – American systems :**

Length and detail of contract: To be clear, contracts must regulate many issues, so they tend to be long and detail

CONTRACT TRANSLATION

□ **Step 1: The Applicable Law** **Anglo – American systems :**

International acceptance: English and American law have been refined over the centuries to cope with issues of international trade. The principles are widely understood and respected.

CONTRACT TRANSLATION

☐ **Step 1: The Applicable Law** **Continental systems :**

Goals: Consistency and uniformity of enforcement

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Continental systems :

Predictability and consistency of court decisions: Decisions in all but the most difficult cases are predictable with some accuracy. Decisions are generally consistent from court to court.

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Continental systems :

Length and detail of contract: Because the law regulates most problems, contracts can be short and lacking in detail.

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Continental systems :

International acceptance: Continental laws do not have the prestige of Anglo – American laws in international practice. They tend to focus on national rather than international issues.

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Continental systems :

Sometimes, the parties cannot agree an applicable law, so they leave the matter open. If the contract does not specify an applicable law, then a special branch of law known as “International private law” comes into play and decides the law of the contract.

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Continental systems :

The Vienna Sales Convention

- This convention is one further issue complicates the choice of an applicable law.

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Continental systems :

The Vienna Sales Convention

- Its provisions are of some importance. The first point is that the rules spelled out in the Convention replace the law of any country that ratifies its: if there is any contradiction between the national law and the Convention, then the Convention rules.

CONTRACT TRANSLATION

□ Step 1: The Applicable Law

Continental systems :

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CONTRACT TRANSLATION

□ Step 2: Contract or No Contract?

2.1. The problem

If a dispute arises about a contract, the lawyers for each side study the text to see if the contract is a binding and enforceable agreement or if there are loopholes. What reasons are common in international cases for deciding that the parties have “no contract”?

CONTRACT TRANSLATION

- ❑ **Step 2: Contract or No Contract?**
- ❑ **2.2. The principle**
- ❑ Under most legal systems, a contract is enforceable only if the parties achieve a “meeting of minds” through a process of offer and acceptance, if both sides are capable of entering a contract, and if the purpose of the contract is legal.

CONTRACT TRANSLATION

- ❑ **Step 2: Contract or No Contract?**
- ❑ **2.3. In more depth**
- ❑ ***Meeting of Minds***
- ❑ Duress: Unless two parties agree freely about the contract's terms without any authority and pressure, the agreement is likely to be ruled "unconscionable.", and it obviously is no contract.

CONTRACT TRANSLATION

- ❑ **Step 2: Contract or No Contract?**
- ❑ **2.3. In more depth**
- ❑ ***Meeting of Minds***
- ❑ **Mistake and Fraud:** A mistake about the goods or a deliberate fraud can mean that there was no meeting of minds.

CONTRACT TRANSLATION

- ❑ **Step 3: The Contract as the Entire Agreement**
- ❑ **3.2. The principle**
- ❑ Most international contracts include an “entire agreement provision” contributed by the background of the contract, contract documents and definitions.

CONTRACT TRANSLATION

- ❑ **Step 2: Contract or No Contract?**
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CONTRACT TRANSLATION

- ❑ **Step 3: The Contract as the Entire Agreement**
- ❑ **3.1. The problem**
- ❑ If it is a contract, is it the entire agreement? And if it is the entire agreement, how do the two sides ensure that it includes everything they want it to include?

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CONTRACT TRANSLATION

- ❑ **Step 3: The Contract as the Entire Agreement**
- ❑ ***The Entire Agreement Clause***
- ❑ Anglo-American law states that the final written version of the contract replaces all previous agreements between the parties

CONTRACT TRANSLATION

- ❑ **Step 3: The Contract as the Entire Agreement**
- ❑ ***The Whereas Recital: The Background of the Contract***
- ❑ When the Contract is the “entire agreement”, the lawyers write the background of the Contract into it through the whereas-recital.

CONTRACT TRANSLATION

- ❑ **Step 3: The Contract as the Entire Agreement**
- ❑ ***Contract Documents***
- ❑ In international practice, the parties often wish to “incorporate” outside material into the contract: letters, general conditions, the Incoterms, etc. To achieve this, the contract lists such items as Contract Documents.

CONTRACT TRANSLATION

- ❑ **Step 4: Provisions Concerning the Parties**
- ❑ **4.1. The problem**
- ❑ Once the full legal nature of the contract is established, it is time to turn to the parties signing it. What are the risks of doing business with a shadowy counterpart?

CONTRACT TRANSLATION

- ❑ **Step 4: Provisions Concerning the Parties**
- ❑ **4.2. The principle**
- ❑ The exporter must know the exact name and address of the buyer - otherwise it may be impossible to resolve any payment problems that arise. It is also important that the identity of the buyer does not change during the course of contract performance.

CONTRACT TRANSLATION

- ❑ **Step 4: Provisions Concerning the Parties**
- ❑ **The Names in the contract**
- ❑ On the first page of most contracts is the name of each party. When it first appears, the name is normally the full, registered name of the company. Some companies have complex names. To avoid endlessly repeating this formula in the contract, a short – form follows the first use of the name. The short – form may be a specific name.

CONTRACT TRANSLATION

- ❑ **Step 4: Provisions Concerning the Parties**
- ❑ **Notices**
- ❑ The official mailing addresses of the parties are not usually given in the opening section of a contract but in a separate provision call “notices”. The Notices provision usually stipulates how notices must be delivered, for example by registered email.

CONTRACT TRANSLATION

- ❑ **Step 4: Provisions Concerning the Parties**
- ❑ **Assignment of Rights and Delegation of Duties**
- ❑ Under a contract, each side has rights and duties. A right has some commercial value - so it is possible to sell it, trade it, or give it away. Many contracts contain a clause like:
- ❑ "Assignment of Rights, Delegation of Duties"

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ **5.1. The problem**
- ❑ The contract was signed a year ago - the question now is:
- ❑ Does it still exist? Has anything happened to ends its life prematurely? (the Lifetime of the Contract)
- ❑ If it exists in several languages, which ~~version is real contract? (the Language of the Contract)~~

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ **5.2. The principle**
- ❑ Once a contract has come into force, its life normally ends when the last duty under the contract is performed; one side may have the right to end it; one party may breach the contract allowing the other to cancel; the parties may simply agree to end their contractual relationship; or the whole purpose of the contract may simply disappear.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ ***5.3 The Lifetime of the Contract***
- ❑ *The Contract reaches its end normally (Discharge by Performance)*
- ❑ Both parties perform their duties exactly according to the contract, the contractual relationship ends when the last duty is full performed.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ ***5.3 The Lifetime of the Contract***
- ❑ *The Contract reaches its end prematurely*
- ❑ **Termination**
- ❑ Termination occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ ***5.3 The Lifetime of the Contract***
- ❑ There are two kinds:
- ❑ Termination for convenience: occurs when one party (usually the buyer) simply decides to drop the contract. No reason is required. The buyer must pay for all work performed or partly performed.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ ***5.3 The Lifetime of the Contract***

Termination for default: occurs when the contract names certain de-faults which allow one side (usually the buyer) to terminate. The Seller shall be entitled to receive full payment for all goods and services delivered by the Seller at the date of termination.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ ***5.3 The Lifetime of the Contract***
- ❑ Cancellation
- ❑ Cancellation occurs when either party puts an end to the contracts for breach. Not any breach allows cancellation by the other party.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ ***5.3 The Lifetime of the Contract***
- ❑ Rescission
- ❑ Rescission occurs when the two parties agree to end a contract. In legal theory, they enter a new contract to annul the old contract. The term “rescission” is used in other contexts than a mutual agreement to end a contract, international contract drafting would benefit if it were not.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ ***5.3 The Lifetime of the Contract***
- ❑ Impossibility and Frustration
- ❑ Impossibility and Frustration occur when a contract is discharged because it is impossible or totally pointless to continue with it.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
 - ❑ *The parties agreed on the language of the Contract*
 - ❑ When the parties agreed on the language of the Contract, making it clear that translations do not have the same authority as the original version on the contract-language and no translation is ever perfect.
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CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ *The parties cannot agree on the language of the Contract.*
- ❑ There are two roads to deal with dispute:
- ❑ The parties say nothing at all, the judge decides which version to trust
- ❑ The parties make two (or more) versions equally authoritative; the judge decides which version to favor.

CONTRACT TRANSLATION

- ❑ **Step 5: Provisions Concerning the Status of the Contract**
- ❑ *Measurements*
- ❑ Most of the world uses the metric system exclusively, but some countries, notably the United States, use metric and other system side by side. All contracts should apply measurement system.

CONTRACT TRANSLATION

- ❑ **Step 6: Settlement of Disputes**
- ❑ **6.1. The problem**
- ❑ If a dispute arises, what procedures are available? What works best in the international context?

CONTRACT TRANSLATION

- ❑ **Step 6: Settlement of Disputes**
- ❑ **6.2. The principle**
- ❑ To avoid lengthy and expensive proceedings, a well drafted contract specifies an acceptable arbitration procedure.

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- ❑ To avoid lengthy and expensive proceedings, a well drafted contract specifies an acceptable arbitration procedure.

CONTRACT TRANSLATION

☐ **Step 6: Settlement of Disputes**

☐ *Litigation*

- ☐ Of the three options available for settling disputes, litigation before the court is internationally the least attractive: it is public, expensive and time – consuming. The results are often legalistic rather than business – like.

CONTRACT TRANSLATION

- ❑ **Step 6: Settlement of Disputes**
- ❑ *Litigation*
- ❑ Many contracts foresee a two - step process for dispute resolution:
 - ❑ Amicable Settlement;
 - ❑ Arbitration.

CONTRACT TRANSLATION

- ❑ **Step 6: Settlement of Disputes**
- ❑ ***Amicable Settlement and Conciliation***
- ❑ Resolution of Disputes: The Buyer and the Seller shall make every effort to resolve amicably by direct, informal, negotiation any disagreement or dispute arising between them under or in connection with the Contract.

CONTRACT TRANSLATION

- ☐ **Step 6: Settlement of Disputes**
- ☐ Procedure for amicable settlement shall be as follow:
- ☐ The parties shall agree a date and place for an amicable settlement meeting.

CONTRACT TRANSLATION

- ☐ **Step 6: Settlement of Disputes**
- ☐ Attending the meeting shall be one executive representing each party and one lawyer representing each party.
- ☐ The lawyer shall not be allowed to speak at the meeting.
- ☐ The meeting shall take place in three sessions.

CONTRACT TRANSLATION

□ **Step 6: Settlement of Disputes**

□ ***Arbitration***

- If the two sides cannot reach agreement between themselves, the resolution of their dispute requires a forum that is a court of law unless the parties specify otherwise. In practice, most contract do specify otherwise calling for *arbitration*.

CONTRACT TRANSLATION

☐ **Step 6: Settlement of Disputes**

☐ ***Arbitration***

- ☐ The two main advantages of arbitration are:
 - ☐ Its tendency to be quicker than litigation.
 - ☐ The foresee ability of the costs.

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- ❑ ***Arbitration***
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