

# Good international commercial law thesis example

[Law](#), [Criminal Justice](#)



## **LAW**

### International Commercial Law 2

The best evidence for the indispensability of a given phenomenon is its life through the years and its enclosure to appropriate situations.

Lex Mercatoria as an aggregate of principles and rules created and established by merchants in the medieval ages aiming the regulation of their transactions. It originated from customs and rules used from the merchants mainly in Europe, who needed effective and prompt jurisdiction. Lex Mercatoria could be enforced by the courts of different countries. Public courts did not provide efficient and quick solvation of merchants disputes and they were compelled to lose time and money. The Lex Mercatoria provided low cost, prompt decisions observing the principles of equality, good trade and “reasonable price”.

The merchant law retrograded at the end of the medieval ages. The nation states longed for strong protection of their interests codifying the national merchant law, which on its part was a reiteration of almost all principles of international trade practice and in fact, they repeated the basic principles of Lex Mercatoria. The judges were also appointed according to their expertise, practice and knowledge of the merchant law.

The international trade of goods and services was and is the greatest part of the economic life in the World. The means of manufacturing goods and the legal proceedings underwent impetuous changes which on their part required new modern rules and practices which could answer the demands of the time. The nationalization of the International Merchant Law did not abandon the merchant practices and was not an obstacle to their

international trade.

During the last four decades the world trade community has successfully built a private system for international regulation - the New Lex Mercatoria.

## **International Commercial law 3**

The new Lex Mercatoria

The introduction of Peter Flanagan to its article “ Demythologising the law merchant: the impropriety of the lex mercatoria as a choice of law” in the International Company and Commercial Review (2004) describes it in the following way:

\*I. C. C. L. R. 297 “ Two things are definitively known about the modern lex mercatoria : Berthold Goldman introduced the concept to the legal world in 1964, and its very existence has been questioned ever since. 1 As espoused by its patrons, the lex mercatoria is a body of transnational law devoted to “ promoting the common values in the international business community, irrespective of national divergences on such matters”. 2 Also known as “ transnational law”, “ transnational commercial law” and the “ international law of contracts”, its most ardent proponents insist that the lex mercatoria is an autonomous third legal system of its own right, independent of the first and second orders found in the national and public international spheres. 3. Growing calls for the harmonization of the laws governing international commerce have recently revived this relic of early civilization and the Middle Ages.” (1)

Harmonization is the keyword when we examine the latest reincarnation of lex mercatoria. As it was pointed out “ true harmonization would be better promoted by building a framework within which diverse legal systems can

work and grow together and within which are encouraged to develop compatible rules through common experience.” (2)

Some opponents say that “ Lex mercatoria is nothing more than out-dated and over romanticized notion. Disputes relating to international commercial contracts will always be decided by reference to international and regional conventions and the proper law of agreement as dictated by conflicts of law principles.”

## **International Commercial law 4**

We definitely disagree with that because the International Conventions by their identity have limited possibility for development and growth if any at all. They discuss and arrange a certain range of issues and are not flexible enough to give solution and response to the constantly changing circumstances connected with the international business and commerce.

The UNIDROIT Principles contribute to the development of international contract law. They are called justifiably The New Lex Mercatoria.

The Principles comprise 119 articles, which are divided into 7 chapters. They contain rules defining very important notions as Freedom of contract (3), freedom of form and proof (4), good faith and fair dealing(5) and primacy of international usages and practices in trade(6).

The Principles also arrange the provisions relating the conclusion, effect, interpretation and content of international commercial contracts, their performance and the consequences in case of breach. (7)

The UNIDROIT Principles’s purpose is to " establish a balanced set of rules designed for use throughout the world irrespective of the legal traditions and the economic and political conditions of the countries in which they are to be

applied."(8)

While examining the UNIDROIT Principles (2010) we find detailed commercial law which successfully can be used by all courts and arbitrations in case of conflicts of law. Together with reliable, proven through years instruments as INCOTERMS etc. the disputes can be solved quickly.

Looking at our future, the need of more and more international common rules will be needed. The group of affiliates of international companies operating through the Internet is growing so rapidly that in the near future the virtual shopping will replace the real one. Then the cases must be solved in virtual courts, by virtual means. The people will need quite different legislation.

International Commercial Law 5

## **References :**

- 1 - Peter M. Flanagan, Demythologizing the law merchant; the impropriety of the lex mercatoria as a choice of law. *International Company and Commercial Law Review* (2004)
- 2 - A. Rosett, Critical reflections on the United Nations Convention on Contracts for the International sale of Goods(1984) *Ohio State Law Journal*, vol. 45, 265-340, at. 305
- 3 - See art. 1. 1 of the UNIDROIT Principles (2010)
- 4 - See art. 1. 2 of the UNIDROIT Principles (2010)
- 5 - See art. 1. 3 of the UNIDROIT Principles (2010)
- 6 - See art. 1. 8 of the UNIDROIT Principles (2010)
- 7 - See Chapter 4 - 7 of the UNIDROIT Principles (2010)
- 8 - See page Viii Introduction of the UNIDROIT Principles (2010)