INTERNATIONAL CONTRACTS OF SALE OF GOODS

- Jurisdiction and Enforcement:
  - Regulation 44/2001

- Applicable Law:
  - Rome Regulation on the law applicable to contractual obligations (Rome I)

ROME REGULATION ON THE APPLICABLE LAW TO CONTRACTUAL OBLIGATIONS (ROME I)
SCOPE OF APPLICATION

1. MATERIAL: International Contractual Obligations in civil and commercial matters.

2. PERSONAL: ERGA OMNES.

3. TEMPORAL: Contracts concluded after its entry into force.

4. TERRITORIAL: Territory of the EU Member States.

ARTICLE 1. MATERIAL SCOPE

- Apply:
  1. Situations involving a conflict of laws.
  2. Contractual obligations.
  3. Civil and commercial matters.

- Not apply to:
  1. Revenue
  2. Customs
  3. Administrative matters
EXCLUSIONS

1. Status or legal capacity of natural persons.

2. Obligations arising out of family relationships, including maintenance obligations.

3. Obligations arising out of matrimonial property, and wills and succession.

4. Obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments.

5. Arbitration agreements and agreements on the choice of court.

6. Questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies.

7. The question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party.

8. Trusts.

9. Obligations arising out of dealings prior to the conclusion of a contract.

10. Insurance contracts arising out of operations carried out by organisations.
ARTICLE 2. PERSONAL SCOPE
UNIVERSAL APPLICATION
ERGA OMNES

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

ARTICLE 28. TEMPORAL SCOPE
APPLICATION IN TIME

- Date of entry into force
- Retrospective effect?
This Regulation shall apply to contracts concluded after 17 December 2009.
TERRITORIAL SCOPE

Territory of the EU Member States

- UK
- Denmark

ARTICLE 3. FREEDOM OF CHOICE

1. A contract shall be governed by the law chosen by the parties.

REQUIREMENTS:

• expressly or clearly demonstrated by the terms of the contract or the circumstances of the case (IMPLICIT CHOICE OF LAW)

• to the whole or to part only of the contract.
2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation.

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

ARTICLE 4. APPLICABLE LAW IN THE ABSENCE OF CHOICE

To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the law governing the contract shall be determined as follows:
1. **Sale of goods** → the law of the country where the seller has his habitual residence.

2. **Provision of services** → the law of the country where the service provider has his habitual residence.

3. **Immovable property** → the law of the country where the property is situated.

4. A **tenancy of immovable property** concluded for temporary private use for a period of no more than six consecutive months → the law of the country where the landlord has his habitual residence:
   - tenant is a natural person
   - has his habitual residence in the same country

5. **Franchise contract** → the law of the country where the franchisee has his habitual residence.

6. **Distribution contract** → the law of the country where the distributor has his habitual residence.

7. **Sale of goods by auction** → the law of the country where the auction takes place, if such a place can be determined.

8. A contract concluded within a **multilateral system** which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, in accordance with non discretionary rules and governed by a single law, shall be governed by that law.
4. 2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

4. 3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

4. 4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

ARTICLE 9. OVERRIDING MANDATORY PROVISIONS

Provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.
ARTICLE 11. FORMAL VALIDITY

- Persons who are in the same country at the time of the conclusion of the contract:
  Contract formally valid if it satisfies the formal requirements of:
  - the law which governs it in substance under this Regulation, OR
  - the law of the country where it is concluded.

- Persons who are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of:
  - the law which governs it in substance under this Regulation, OR
  - the law of either of the countries where either of the parties or their agent is present at the time of conclusion, OR
  - the law of the country where either of the parties had his habitual residence at that time.

ARTICLE 13. INCAPACITY

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.
CASE 1

• A and B are fighting over an international contract for the supply of goods which B has breached. A begins a claim against B before the Spanish Courts. The international contract has no express choice of Law clause. A bases its claim on German Law and B answers the claim also according to German Law.

  - According to which Law would this contract be valid?

CASE 2

• An English businessman lives with his family in Altea (Alicante, Spain) during eight months every year and the other four months he stays in London, where he has his business. He contracts with an Italian company to provide some services to this company and there is a breach of contract. He is the characteristic performer of the contract (provider of services).

  - In order to determine the applicable Law, which connecting point must be chosen?
CASE 3

• A Spanish company reaches an agreement in Madrid with a technician who is a national of Zambia. He is 20 years old. According to Spanish Law the technician has capacity to enter into the agreement, but the Law from Zambia says that for the contract to be valid the technician should be at least 21 years old.

  - Will the contract be valid?

CASE 4

• A contract is concluded by e-mail between a representative of a Russian company who is in New York at the time, and an Spanish company’s director based in Madrid. The contract is subject to the Law of the State of Florida.

  - According to which Law would this contract be valid?
CASE 5

• A Spanish company buys goods from a USA company subject to the latter general conditions of contract. The sales contract, which is concluded in Spain, contains a choice of Law clause in favour of the Law of the State of New York. There is a disagreement between the two companies as to the application of the general conditions of contract. According to the Law of the State of New York those general conditions are valid, but the Spanish Act on General Conditions of Contract considers them to be illegal. Article 3 of this Act establishes that “the Act will also be applicable to contracts subject to a foreign Law when the adherent party had made his acceptance in the territory of Spain and has his habitual residence in this country”.

- ¿Will article 3 be applicable to this contract instead of the Law of the State of New York?