

## Transnational Commercial Law

### Nature, History and Sources of Commercial Law

Sources and their hierarchy in domestic commercial law

Sources and their hierarchy in transnational commercial law

#### History, ideology and reality of the '*lex mercatoria*'

- Reasons for the rise of the new *lex-mercatoria* movement
  - Problems regarding conflict-of-laws approach of nationalizing inherently international situations
  - Ideology
  - Unwillingness of certain arbitrators to be bound by identified rules
  - Market for arbitrations

- **Recommended reading:**

*B. Goldman*, La *lex mercatoria* dans les contrats et l'arbitrage internationaux: réalité et perspectives (Clunet 1979) 475.

*B. Goldman*, The applicable law: general principles of law – the '*lex mercatoria*', in *J. Lew* (ed.), Contemporary Problems in International Arbitration (London 1986) 113

*E. Gaillard*, Transnational Law: A Legal System or a Method of Decision-Making?, in: *K.P. Berger* (ed.), The Practice of Transnational Law (The Hague 2011)

- Conceptual problems and problems of legitimacy
  - 'Grundsatz und Norm'
  - Legal certainty/predictability
  - Unlimited party autonomy?
  - The position of the French courts
  - Austrian and German decisions

OGH 18 November 1982, Rev. arb. 1983, 519 = IPRax 1984, 97 with comment *von Hoffmann*; BGH 26 September 1985, JZ 1986, 401 with comment *Sandrock*.

- **Recommended reading:**

*G. Treubner*, 'Global Burkowina': Legal Pluralism in the World Society, in: *id* (ed.), *Global Law Without a State* (Dartmouth 1997)

*Roy Goode*, Rule, Practice and Pragmatism in Transnational Commercial Law, (2005) 54 *Int. Comp. L. Q.* 539