

Table of contents

Summary	XV
1 Introduction.....	1
2 Supranational, regional and international instruments	9
2.1 Introduction.....	9
2.2 The <i>Convention sur la Loi Applicable aux Ventes a Caractère International d'Objets Mobiliers Corporels</i> (The Hague) (1955)	9
2.2.1 Introduction.....	9
2.2.2 Party autonomy	13
2.2.3 Level of strictness of the criterion for a tacit choice of law	15
2.2.4 Indicators of a tacit choice	15
2.3 The Rome Convention on the Law Applicable to Contractual Obligations (1980).....	16
2.3.1 Introduction.....	16
2.3.2 Party autonomy	19
2.3.3 Level of strictness of the criterion for a tacit choice of law	21
2.3.4 Indicators of a tacit choice	22
2.4 The Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (1986).....	25
2.4.1 Introduction.....	25
2.4.2 Party autonomy	27
2.4.3 Level of strictness of the criterion for a tacit choice of law	29
2.4.4 Indicators of a tacit choice	30
2.5 The Inter-American Convention on the Law Applicable to International Contracts (1994)	31
2.5.1 Introduction.....	31
2.5.2 Party autonomy	33
2.5.3 Level of strictness of the criterion for a tacit choice of law	35
2.5.4 Indicators of a tacit choice	36
2.6 The Rome I Regulation on the Law Applicable to Contractual Obligations (2008).....	38
2.6.1 Introduction.....	38
2.6.2 Party autonomy	39
2.6.3 Level of strictness of the criterion for a tacit choice of law	41
2.6.4 Indicators of a tacit choice	43

Table of contents

2.7	The Hague Principles on Choice of Law in International Commercial Contracts (2015)	47
2.7.1	Introduction.....	47
2.7.2	Party autonomy	50
2.7.3	Level of strictness of the criterion for a tacit choice of law	52
2.7.4	Indicators of a tacit choice	52
3	National legal systems.....	55
3.1	Introduction.....	55
3.2	Africa.....	55
3.2.1	Ghana.....	55
3.2.1.1	Introduction.....	55
3.2.1.2	Party autonomy	56
3.2.1.3	Level of strictness of the criterion for a tacit choice of law	59
3.2.1.4	Indicators of a tacit choice of law	59
3.2.2	Kenya.....	60
3.2.2.1	Introduction.....	60
3.2.2.2	Party autonomy	61
3.2.2.3	Level of strictness of the criterion for a tacit choice of law	64
3.2.2.4	Indicators of a tacit choice of law	64
3.2.3	Nigeria	66
3.2.3.1	Introduction.....	66
3.2.3.2	Party autonomy	66
3.2.4	South Africa	68
3.2.4.1	Introduction.....	68
3.2.4.2	Party autonomy	68
3.2.4.3	Level of strictness of the criterion for a tacit choice of law	71
3.2.4.4	Indicators of a tacit choice of law	72
3.3	Asia.....	75
3.3.1	China.....	75
3.3.1.1	Introduction.....	75
3.3.1.2	Party autonomy	76
3.3.1.3	Tacit choice of law	79
3.3.2	Hong Kong.....	81
3.3.2.1	Introduction.....	81
3.3.2.2	Party autonomy	82

3.3.2.3	Level of strictness of the criterion for a tacit choice of law	84
3.3.2.4	Indicators of a tacit choice of law	85
3.3.3	India	87
3.3.3.1	Introduction	87
3.3.3.2	Party autonomy	88
3.3.3.3	Level of strictness of the criterion for a tacit choice of law	90
3.3.3.4	Indicators of a tacit choice of law	91
3.3.4	Indonesia	95
3.3.4.1	Introduction	95
3.3.4.2	Party autonomy	95
3.3.5	Japan	97
3.3.5.1	Introduction	97
3.3.5.2	Party autonomy	98
3.3.5.3	Level of strictness of the criterion for a tacit choice of law	99
3.3.5.4	Indicators of a tacit choice of law	100
3.3.6	Macau	101
3.3.6.1	Introduction	101
3.3.6.2	Party autonomy	102
3.3.7	Malaysia	103
3.3.7.1	Introduction	103
3.3.7.2	Party autonomy	104
3.3.7.3	Level of strictness of the criterion for a tacit choice of law	105
3.3.7.4	Indicators of a tacit choice of law	106
3.3.8	Singapore	107
3.3.8.1	Introduction	107
3.3.8.2	Party autonomy	108
3.3.8.3	Level of strictness of the criterion for a tacit choice of law	112
3.3.8.4	Indicators of a tacit choice of law	112
3.3.9	South Korea	114
3.3.9.1	Introduction	114
3.3.9.2	Party autonomy	115
3.3.9.3	Level of strictness of the criterion for a tacit choice of law	116
3.3.9.4	Indicators of a tacit choice of law	117

Table of contents

3.4	Australasia.....	117
3.4.1	Australia.....	117
3.4.1.1	Introduction.....	117
3.4.1.2	Party autonomy	118
3.4.1.3	Level of strictness of the criterion for a tacit choice of law	121
3.4.1.4	Indicators of a tacit choice of law	123
3.4.2	New Zealand.....	127
3.4.2.1	Introduction.....	127
3.4.2.2	Party autonomy	128
3.4.2.3	Level of strictness of the criterion for a tacit choice of law	129
3.4.2.4	Indicators of a tacit choice of law	130
3.5	Europe.....	131
3.5.1	Belarus.....	131
3.5.1.1	Introduction.....	131
3.5.1.2	Party autonomy	132
3.5.1.3	Level of strictness of the criterion for a tacit choice of law	133
3.5.1.4	Indicators of a tacit choice of law	133
3.5.2	Russia.....	134
3.5.2.1	Introduction.....	134
3.5.2.2	Party autonomy	134
3.5.2.3	Level of strictness of the criterion for a tacit choice of law	135
3.5.2.4	Indicators of a tacit choice	137
3.5.3	Switzerland	139
3.5.3.1	Introduction.....	139
3.5.3.2	Party autonomy	140
3.5.3.3	Level of strictness of the criterion for a tacit choice of law	142
3.5.3.4	Indicators of a tacit choice of law	142
3.6	Middle East.....	144
3.6.1	Israel	144
3.6.1.1	Introduction.....	144
3.6.1.2	Party autonomy	146
3.6.2	Turkey	147
3.6.2.1	Introduction.....	147
3.6.2.2	Party autonomy	148

3.6.2.3	Level of strictness of the criterion for a tacit choice of law	150
3.6.2.4	Indicators of a tacit choice of law	150
3.7	North America	151
3.7.1	Canada	151
3.7.1.1	Introduction.....	151
3.7.1.2	Party autonomy	152
3.7.1.3	Level of strictness of the criterion for a tacit choice of law	154
3.7.1.4	Indicators of a tacit choice of law	156
3.7.2	Quebec	159
3.7.2.1	Introduction.....	159
3.7.2.2	Party autonomy	160
3.7.2.3	Level of strictness of the criterion for a tacit choice of law	161
3.7.2.4	Indicators of a tacit choice of law	162
3.7.3	United States of America	162
3.7.3.1	Introduction.....	162
3.7.3.2	Party autonomy	164
3.7.3.3	Level of strictness of the criterion for a tacit choice of law	166
3.7.3.4	Indicators of a tacit choice of law	167
3.8	South America	168
3.8.1	Argentina.....	168
3.8.1.1	Introduction.....	168
3.8.1.2	Party autonomy	169
3.8.1.3	Level of strictness of the criterion for a tacit choice of law	170
3.8.1.4	Indicators of a tacit choice of law	171
3.8.2	Brazil	172
3.8.2.1	Introduction.....	172
3.8.2.2	Party autonomy	173
3.8.2.3	Level of strictness of the criterion for a tacit choice of law	178
3.8.2.4	Indicators of a tacit choice of law	178
3.8.3	Paraguay.....	179
3.8.3.1	Introduction.....	179
3.8.3.2	Party autonomy	180

Table of contents

3.8.3.3 Level of strictness of the criterion for a tacit choice of law	181
3.8.3.4 Indicators of a tacit choice of law	182
3.9 The English common law	183
3.9.1 Introduction.....	183
3.9.2 Party autonomy	184
3.9.3 Level of strictness of the criterion for a tacit choice of law	187
3.9.4 Indicators of a tacit choice of law	187
4 Future instruments of developmental organisations.....	191
4.1 Introduction.....	191
4.2 Africa.....	191
4.2.1 The Organization for the Harmonization of Business Law in Africa (OHADA).....	191
4.2.1.1 Introduction.....	191
4.2.1.2 Party autonomy	192
4.2.1.3 Level of strictness of the criterion for a tacit choice of law	194
4.2.1.4 Indicators of a tacit choice	194
4.2.2 The African Union	195
4.2.2.1 Introduction	195
4.2.2.2 The African Principles on the Law Applicable to International Commercial Contracts	199
4.2.2.2.1 Introduction	199
4.2.2.2.2 Party autonomy	199
4.2.2.2.3 Level of strictness of the criterion for a tacit choice of law	200
4.2.2.2.4 Indicators of a tacit choice.....	200
4.3 Asia.....	201
4.3.1 ASEAN	201
4.3.2 The Asian Principles of Private International Law	205
4.3.2.1 Introduction	205
4.3.2.2 Party autonomy	206
4.3.2.3 Level of strictness of the criterion for a tacit choice of law	207
4.3.2.4 Indicators of a tacit choice	208
5 Evaluation, conclusions and proposals.....	209
5.1 Introduction.....	209
5.2 Party autonomy.....	209

5.3 Tacit choice of law.....	209
5.4 Level of strictness of the criterion for a tacit choice of law.....	217
5.5 Indicators of a tacit choice of law	229
5.6 Proposals.....	246
 Bibliography.....	249
Table of national legislation	265
Table of international, supranational and regional instruments.....	269
Table of cases	271