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Global Commercial Law
and
the ICC Incoterms
The term “commercial” should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.
Orsanmichele (or "Kitchen Garden of St. Michael", from the contraction in Tuscan dialect of the Italian word orto) is a church in the Italian city of Florence. The building was constructed on the site of the kitchen garden of the monastery of San Michele, which is now gone. Located on the Via Calzaiuoli in Florence, the church was originally built as a grain market [in 1337 by Francesco Talenti, Neri di Fioravante, and Benci di Cione]. Between 1380 and 1404, it was converted into a church used as the chapel of Florence's powerful craft and trade guilds.
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Global Commercial Law and the ICC

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Incoterms
The domestication of commercial law and the conflict of laws

The “law” will vary from one country to another, making it very difficult for the enterprise which is transacting business around the world to organise its affairs so that each country's laws will be complied with. There are wide differences in the philosophy governing commercial transactions (R. Goode, Commercial Law in the Third Millennium).
The domestication of commercial law and the conflict of laws

One major effect of the nationalisation of the old law merchant was the development of private international law or, more accurately, the conflict of laws—rules of national law fashioned for disputes with an international element. These rules cover such matters as determination of the law governing the dispute, the courts that are to have jurisdiction, and the recognition and enforcement of foreign judgments (R. Goode, Commercial Law in the Third Millennium).
The domestication of commercial law and the conflict of laws

The conflict of laws is now highly developed as a branch of jurisprudence but is increasingly seen as a necessary rather than an adequate mode of resolving disputes relating to cross-border transactions. There are many reasons for this. Since the conflict of laws is not international but forms part of each state's national law, its rules vary from state to state (R. Goode, Commercial Law in the Third Millennium).
• “There has been an *increasing movement away from the purely domestic law of international trade* and towards what has become known as *transnational commercial law*, the corpus of law resulting from the harmonisation or convergence of national laws, whether by international convention, conscious or unconscious judicial parallelism, uniform rules for specified types of contract and, more recently, *international restatements of principles of contract law* such as those promulgated by Unidroit (the International Institute for the Unification of Private Law, the intergovernmental body set up in 1926 to work for the progressive harmonisation of private law) and the Commission on European Contract Law” (*R. Goode, Commercial Law in the Third Millennium*).
Hague Principles on Choice of Law in International Commercial Contracts
(approved on 19 March 2015)

Article 3 (Rules of law) - The law chosen by the parties may be rules of law that are generally accepted on an international, supranational or regional level as a neutral and balanced set of rules, unless the law of the forum provides otherwise.
Comisión especial sobre la elección de la ley
en materia de contratos internacionales
(12-18 de noviembre de 2013)

Proposición del Comité de redacción

Preámbulo
1. Estos instrumentos —principios— que siguen están establecidos en aras de la elección de la ley aplicada en materia de contratos internacionales.

Artículo 1 – Ámbito de aplicación de los Principios
1. Estos Principios se aplican a la elección de la ley aplicable en los contratos celebrados por dos o más personas, en ejercicio de su negocio o de su profesión. Los Principios no se aplican a contratos de trabajo.

[WORKING DOCUMENT NO 16]
Article 3 (Rules of law)

Arbitration statutes and arbitration rules commonly allow for the parties' choice of "rules of law" (see Art. 28(1) UNCITRAL Model Law; Art. 21(1) ICC Rules)
Article 3 (Rules of law)

The term "rules of law" is used to describe rules that do not emanate from State sources.

Article 3 broadens the scope of party autonomy [in Article 2(1)] by providing that the parties may designate not only State law but also "rules of law" to govern their contract, regardless of the mode of dispute resolution chosen.

Article 3 admits only those "rules of law" that are generally accepted as a neutral and balanced set of rules.
(13) This Regulation does not preclude parties from incorporating by reference into their contract a *non-State body of law* or an international convention.
Article 10 - In addition to the provisions in the foregoing articles, the *guidelines, customs, and principles of international commercial law* as well as *commercial usage and practices* generally accepted shall apply in order to discharge the requirements of justice and equity in the particular case.
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Thanks for your kind attention

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