

Rivista di diritto internazionale privato e processuale (RDIPP) No 4/2019: Abstracts



The fourth issue of 2019 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features:

Costanza Honorati,

Professor at the University Milan-Bicocca, **La**

tutela dei minori migranti e il diritto internazionale privato: quali rapporti tra Dublino III e Bruxelles II-bis? (The Protection of Migrant Minors and Private International Law: Which Relationship between the Dublin III and Brussels IIa Regulations?; in Italian)

- Few studies have investigated the relation between Migration Law and PIL. Even less have focused on the interaction between Brussels IIa and Dublin III Regulations. The present study, moving from the often declared assumption that ‘a migrant minor is first of all a minor’ focuses on the coordination between the two Regulations and the possible application of Brussels IIa to migrant minors in order to adopt protection measures to be eventually recognized in all EU Member States or to possibly place a minor in another EU Member State.

Francesca C.

Villata,

Professor at the University of Milan, **Predictability**

First! *Fraus Legis*, Overriding

Mandatory Rules and *Ordre Public*

under EU Regulation 650/2012 on Succession Matters (in English)

- This paper aims at investigating: (i) how *fraus legis*, overriding mandatory

rules and *ordre public* exceptions position themselves within the system of the Succession Regulation; (ii) whether they are meant to perform their traditional function or to pursue any alternative or additional objective; and (iii) which limits are imposed on Member States in the application of said exceptions and to what extent Member States can avail themselves of the same to preserve, if not to enforce, their respective legal traditions in this area, as acknowledged in Recital 6 of Regulation No 650/2012. The assumption here submitted is that the traditional notions to which those exceptions refer have been reshaped or, rather, adjusted to the specific needs of Regulation No 650/2012 and of the entire EU private international law system, which increasingly identifies in predictability the ultimate policy goal to pursue.

In

addition to the foregoing, the following comments are featured:

Michele Grassi,

Research Fellow at the University of Milan, **Sul riconoscimento dei matrimoni contratti all'estero tra persone dello stesso sesso: il caso *Coman*** (On the Recognition of Same-Sex Marriages Entered into Abroad: The *Coman* Case; in Italian)

- With its judgment in the *Coman* case, the Court of Justice of the European Union has extended the scope of application of the principle of mutual recognition to the field of family law and, in particular, to same-sex marriages. In that decision the Court has ruled that the refusal by the authorities of a Member State to recognise (for the sole purpose of granting a derived right of residence) the marriage of a third-country national to a Union citizen of the same sex, concluded in accordance with the law of another Member State, during the period of their residence in that State, is incompatible with the EU freedom of movement of persons. The purpose of this paper is to analyse the private-international-law implications of the *Coman* decision and, more specifically, to assess the possible impact of the duty to recognise same-sex marriages on the European and Italian systems.

Francesco Pesce,

Associate Professor at the University of Genoa, **La nozione di «matrimonio»: diritto internazionale privato e diritto materiale a confronto** (The Notion of 'Marriage': Private International Law and Substantive Law in Comparison; in Italian)

- This paper tackles the topical and much debated issue of the notions of 'marriage' and 'spouse' under EU substantive and private international law. Taking the stand from the different coexisting models of family relationships and from the fragmented normative approaches developed at the domestic level, this paper (while aware of the ongoing evolutionary trends in this field) focuses on whether it is possible, at present, to infer an autonomous notion of 'marriage' from EU law, either in general or from some specific areas thereof. The response to this question bears significant consequences in terms of defining the scope of application of the uniform rules on the free movement of persons, on the cross-border recognition of family statuses and on the ensuing patrimonial regimes. With specific regard to the current Italian legal framework, this paper examines to which extent characterization issues are still relevant.

Carlo De Stefano, PhD, **Corporate Nationality in International Investment Law: Substance over Formality** (in English)

- Since incorporation is usually codified in IIAs as sole criteria for the definition of protected corporate 'investors', arbitral tribunals have traditionally interpreted and applied such provisions without requiring any thresholds of substantive bond between putatively covered investors and their alleged home State. By taking issue with the current status of international investment law and arbitration, the Author's main proposition is that States revise treaty provisions dealing with the determination of corporate nationality so as to insert real seat and (ultimate) control prongs in coexistence with the conventional test of incorporation. This proposal, which seems to be fostered in the recent state practice, is advocated on the grounds of legal and policy arguments with the aim to combat questionable phenomena of investors' 'treaty shopping', including 'round tripping', and, consequently, to strengthen the legitimacy of investor-State dispute settlement.

Ferdinando

Emanuele,

Lawyer in Rome, *Milo Molfa*, Lawyer in London, and *Rebekka Monico*, LL.M.

Candidate, **The Impact of Brexit on International Arbitration** (in English)

- This article considers the effects of the United Kingdom's withdrawal from the EU on international arbitration. In principle, Brexit will not have a significant impact on commercial arbitration, with the exception of the re-expansion of anti-suit injunctions, given that the *West Tankers* judgment will no longer be binding. With respect to investment arbitration, because the BITs between the United Kingdom and EU Member States will become extra-EU BITs, the *Achmea* judgment will no longer be applicable following Brexit. Furthermore, English courts will enforce intra-EU BIT arbitration awards pursuant to the 1958 New York Convention. Investment treaties between the EU and third countries will not be applicable to the United Kingdom.

Finally, the issue features the following case notes:

Cinzia Peraro, Research Fellow at

the University of Verona, **Legittimazione**

ad agire di un'associazione a tutela dei consumatori e diritto alla protezione

dei dati personali a margine della sentenza *Fashion*

ID (A Consumer-Protection Association's Legal Standing to Bring

Proceedings and Protection of Personal Data in the Aftermath of the *Fashion ID* Judgment; in Italian)

Gaetano Vitellino, Research Fellow at

Università Cattaneo LIUC of Castellanza, **Litispendenza e accordi confliggenti**

di scelta del foro nel caso *BNP Paribas c. Trattamento Rifiuti*

Metropolitani (*Lis Pendens* and Conflicting

Choice of Court Agreements in *BNP Paribas*

v. Trattamento Rifiuti Metropolitani; in Italian)

Gaetano Vitellino, Research Fellow at

Università Cattaneo LIUC of Castellanza, **Note a margine di una pronuncia del Tribunale di Torino in materia societaria** (Remarks on a Decision of the Turin Tribunal on Corporate Matters; in Italian)