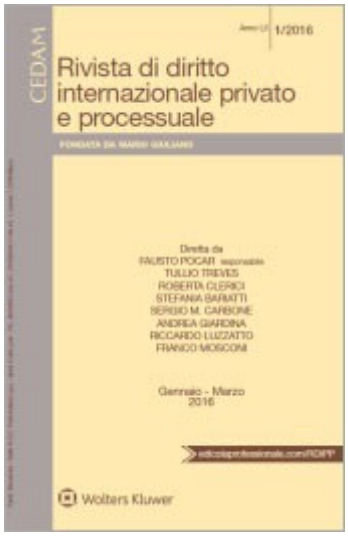
# Rivista di diritto internazionale privato e processuale (RDIPP) No 3/2021: Abstracts




The third issue of 2021 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features:

*Cristina Campiglio*, Professor at the University of Pavia, **Conflitti positivi e negativi di giurisdizione in materia matrimoniale** (Positive and Negative Conflicts of Jurisdiction in Matrimonial Matters)

> Regulation (EC) No 2201/2003 (Brussels II-bis) provides for a range of alternative grounds for jurisdiction in matrimonial matters and is strongly marked by the *favor actoris* principle. The system sets the scene not only for forum shopping but also for a rush to the court. However, spouses who have the nationality of different Member States and reside in a Third State remain deprived of the right to an effective remedy before an EU court. Taking a cue from a case currently pending before the Court of Justice of the European Union, this article examines the possible avenues to address these cases of denial of justice, also in light of Art. 47 of the EU Charter of Fundamental Rights. This analysis is conducted, in particular, with the overarching goal of launching, at a political level, a general reflection on the question of conflicts of jurisdiction and on the opportunity to create a coherent, unified "European system" in which general and special regulations operate in a

coordinated manner.

*Fabrizio Marrella*, Professor at the Ca' Foscari University of Venice, **Forza maggiore e vendita internazionale di beni mobili in un contesto di pandemia: alcune riflessioni** (*Force Majeure* and International Sales of Goods in the Context of a Pandemic: Some Remarks)

> For centuries, national legal systems have recognised both the principle *pacta sunt servanda* and its exceptions, *i.e*. the *rebus sic stantibus* and *ad impossibilia nemo tenetur* principles. However, the manner in which these basic rules operate varies in the landscape of comparative law. The unforeseeable change of circumstances is among the most relevant issues for international contracts. For this reason, international commercial practice has provided some standard solutions. The Vienna Convention on the International Sale of Goods (CISG) of 11 April 1980 is among the instruments that provide some uniform law solutions: however, these are not satisfactory when compared to modern commercial practice and the potential litigation arising from the Covid-19 pandemic crisis. In this context, legal doctrine on the private international law aspects of *force majeure* also seems scarce. This article explores some of the most pressing private international law issues arising from the impact of the Covid-19 pandemic on cross-border B2B contracts. Notably, it analyses the choice of the *lex contractus* and its scope in relation to *force majeure*, addressing issues of causation, penalty clauses, evidence (with particular reference to "*force majeure* certificates" imposed by some governments), payment, and overriding mandatory rules.

The following comments are also featured:

*Marco Argentini*, PhD Candidate at the University of Bologna, **I criteri di radicamento della giurisdizione italiana nei contratti di trasporto aereo transnazionale** (The Criteria for Establishing Italian Jurisdiction in Contracts for International Carriage by Air)

> This article analyses the rules to identify the competent courts, in the field of international air carriage contracts, for passenger claims aimed at obtaining the flat-rate and standardised rights provided for in Regulation No 261/2004 and the compensation for further damage under the Montreal Convention. In particular, the jurisdiction over the former is governed by the Brussels I-bis

Regulation, whereas the one over the latter is governed by the Convention itself. Since passengers are the weaker contractual party, the article also addresses some remedies to avoid fragmentation of legal actions between courts of different States, as well as the particular case, tackled by the Court of Justice of the European Union, of a flight forming part of a broader package tour.

*Claudia Cantone*, PhD Candidate at the University "Luigi Vanvitelli" of Campania, **Estradizione e limiti all'esercizio della giurisdizione penale extraterritoriale nel diritto internazionale: riflessioni a margine della sentenza della Corte di cassazione n. 30642/2020** (Extradition and Limits to the Exercise of Extraterritorial Criminal Jurisdiction in International Law: Reflections on the Court of Cassation's Judgment No 30642/2020)

This article builds upon the judgment of the Court of Cassation 22 October 2020 No 30642, delivered in an extradition case towards the United States of America. The decision of the Supreme Court is noteworthy since, for the first time, the Court examines the restrictions imposed by public international law on States in the exercise of criminal jurisdiction outside their territory. Notably, it states that the existence of a "reasonable connection" could justify the exercise of extraterritorial jurisdiction under international law. In this regard, the Author also analyses the emerging principle of jurisdictional reasonableness in the theory of jurisdiction under international law. Finally, the paper focuses on whether, in extradition proceedings, the judicial authority of the requested State might ascertain the basis of jurisdiction upon which the request is based, taking into consideration the absence of any provision in extradition treaties allowing such assessment.

*Curzio Fossati*, PhD Candidate at the University of Insubria, **Le azioni di private enforcement tra le parti di un contratto: giurisdizione e legge applicabile** (Private Enforcement Actions between Parties to a Contract: Jurisdiction and Applicable Law)

This article deals with the main private international law issues of antitrust damage claims between contracting parties, according to the latest rulings of the Court of Justice of the European Union. In particular, these issues concern (a) the validity and the scope of jurisdictions clauses, (b) the determination of jurisdiction under the Brussels I-bis Regulation, and (c) the

applicable law under the Rome I and the Rome II Regulations. The article aims at demonstrating that the analysis of these aspects should be preceded by the proper characterization of the damage action for breach of competition law between contracting parties. The conclusion reached is that the adoption of a univocal method to characterize these actions as contractual or non-contractual fosters coherent solutions.

In addition to the foregoing, this issue features the following book review by *Francesca C. Villata*, Professor at the University of Milan: Matthias HAENTJENS, ***Financial Collateral: Law and Practice***, Oxford University Press, New York, 2020, pp. XXXIX-388.