# RabelsZ: New issue alert (1/2023)

The latest issue of RabelsZ has just been published. It contains the following articles:

*Holger Fleischer:* Große Debatten im Gesellschaftsrecht: Fiktionstheorie versus Theorie der realen Verbandspersönlichkeit im internationalen Diskurs, pp. 5–45, DOI: 10.1628/rabelsz-2023-0003

> *Great Debates in Company Law: The International Discourse on Fiction Theory versus Real Entity Theory. – This article opens a new line of research on great debates in domestic and foreign company law. It uses as a touchstone the classical debate on the nature of legal personhood, which was moribund for a time but has recently experienced an unexpected renaissance. The article traces the scholarly fate of fiction theory and real entity theory over time and across jurisdictions. It describes the origins of both theories, explores the processes of their reception in foreign legal systems, and through selected case studies illustrates the areas in which both courts and doctrine to this day have continued to draw on their body of arguments.*

*Sabine Corneloup:* Migrants in Transit or Under Temporary Protection – How Can Private International Law Deal with Provisional Presence?, pp.46–75, DOI: 10.1628/rabelsz-2023-0004

> *An increasing number of migrants are provisionally present in the territory of a State other than their State of origin, be it because they are granted temporary protection until they can return to their country of origin or because migration*

*policies– notably externalization measures– prevent them from accessing the territory of their State of destination. As a result, many migrants are stuck for months, if not years, in transit countries at the external borders of Europe before being able to resume their migratory route. Their provisional presence, which initially was meant to remain transitional and short-term, often becomes indefinite. In the meantime, life goes on: children are born, couples marry and divorce, parental child abductions take place, etc. How can private international law deal with these situations? The 1951 Geneva Refugee Convention, which requires that the personal status of refugees be governed by the law of domicile or residence, does not provide an answer to all difficulties. The paper aims to explore PIL connecting factors, such as nationality, habitual residence, and mere presence, and assess their appropriateness for migrants on the move or under temporary protection.*

*Hannes Wais:* Digitale Persönlichkeitsrechtsverletzungen und anwendbares Recht, pp.76–117, DOI: 10.1628/rabelsz-2023-0005

*Digital Infringement of Personality Rights and the Applicable Law. – Under art. 4 para. 1 Rome II Regulation, the law applicable to torts is the law of the state in which the damage occurred. With respect to the violation of personality rights, however, art. 40 para. 1 EGBGB points to the law of the place where the event giving rise to the damage occurred (sent. 1) or, should the victim so decide, the place where the damage occurred (sent. 2). This essay demonstrates that this approach entails an element of unequal treatment and is inconsistent with German substantive law, which tends to favour the tortfeasor over the victim in personality rights cases. These findings give reason to subject the German conflict-of-law rules regarding the infringement of personality rights (which almost exclusively take place online) to an expansive review. The article first discusses the exclusion of personality rights infringements in art. 1 para. 2 lit. g Rome II Regulation and the dormant reform initiative, followed by an analysis of the shortcomings of the solution laid down in art. 40 para. 1 EGBGB. Alternative approaches are subsequently discussed before concluding with a proposal de lege ferenda.*

*Zheng Sophia TANG:* Smart Courts in Cross-Border Litigation, pp. 118–143, DOI: 10.1628/rabelsz-2023-0006

*Smart courts use modern technology to improve the efficiency of trials, enabling the parties to access court proceedings from a distance. This advantage is particularly important in cross-border litigation, which is characterised by the cost and inconvenience for at least one party to take part in proceedings abroad. However, although technology can significantly improve procedural efficiency, legal obstacles make efficiency impossible to achieve. This article uses service of proceedings, collecting evidence and virtual hearing as examples to show how the current law, especially the old-fashioned concept of sovereignty, hampers the functioning of technology. In the age of technology, it is necessary to reconceptualise sovereignty. This article argues that private autonomy may be utilised to reshape sovereignty in cross-border litigation procedures and reconcile the conflict between sovereignty and technology.*