Rivista di diritto internazionale privato e processuale (RDIPP) No 2/2023: Abstracts

The second issue of 2023 of the *Rivista di diritto internazionale privato e processuale* (RDIPP, published by CEDAM) was just released. It features:

Yuriko Haga, Professor at Seikei University, **Avatars, Personalities in the Metaverse: Introductory Analysis on Conflict-of-Laws**

> When people perform various activities in the metaverse, another world on the Internet, they make avatars as their "proxy", representing their personality. However, the connection between an avatar and its user is often unclear. In fact, avatars do not necessarily resemble to their user's figure or face because people can decide its appearance at their disposal. The first question thus arises as to whether the attack on an avatar can be assimilated to an attack on the personality of a user, a person in real world. An avatar should be deemed part of the online personality of its user, and, considering the existing theory of personality rights, it is not completely separate from the person in the real world. Therefore, an attack brought against an avatar can deemed more or less an infringement against the user's personality. The second question is then how to select the applicable law to such cases. An infringement of personality rights in the metaverse is by nature "international" because users can connect to that virtual "world" from all corners of the planet. This leads to a difficulty in determining the place that the connecting factor designates. This paper examines the applicability of actual Japanese conflict-of-laws rule to issues occurring in the metaverse to show its boundary. The traditional theory posits to apply national laws to resolve legal issues, but the world of metaverse is often governed by rules of its own. It follows that the conflict-of-laws theory should now consider the applicability of the rules of other communities, such as the metaverse.

The following comments are also featured:

Pietro Franzina, Professor at the Università Cattolica del Sacro Cuore, **La**

Cassazione muta indirizzo su Incoterms e luogo della consegna dei beni (The Court of Cassation Changes Approach on Incoterms and the Place of Delivery of the Goods; in Italian)

> The ruling by the Joint Chambers of the Italian Court of Cassation examined in this paper (Order No 11346 of 2 May 2023) innovates the Court's case law regarding the relevance of Incoterms to the determination of the place of delivery of goods for the purposes of the rule of special jurisdiction in Art 7 No 1 of Regulation EU No 1215/2012 (Brussels I-*bis*). The Court of Cassation has eventually aligned its views on this issue to the interpretation provided by the Court of Justice in *Electrosteel*, for it acknowledged that the place of delivery must be determined, as a rule, in accordance with the agreement of the parties, whereas, on previous occasions, the Court of Cassation had rather expressed the opinion that the place of delivery normally coincides with the place of the final destination of the goods, and that only by way of exception (and subject to strict standards) the parties should be permitted to agree on a different place of delivery. The Joint Chambers of the Court of Cassation have also asserted, again realigning their approach to that of the Court of Justice, that the Incoterm "EXW" is not merely concerned with the allocation between the parties of the costs and risks of the transaction, but also entails an agreement as to the place of delivery. The ruling, the paper contends, must be welcomed, since it corrects a questionable approach that the Court of Cassation has followed for a long time. Nevertheless, the decision is not entirely convincing. One reason for criticism regards the fact that, like previous rulings of the Court of Cassation, the decision fails to properly distinguish between agreements on the place of performance and choice-of-court agreements. As observed by the Court of Justice in *Zelger*, only the latter are submitted to special conditions of form, imposed by the Regulation. For their part, agreements on the place of performance need to be concluded in writing only if the law applicable to the contract so provides, which is relatively uncommon. The Court of Cassation, it is suggested, should reassess the formalistic approach it has followed regarding Incoterms, if it is to fully comply with the indications of the Court of Justice.

Federica Sartori, Ph.D. Candidate at the University of Pavia, **Sull'ammissibilità di un'eterointegrazione tra legge straniera e *lex fori* in materia di risarcimento del danno non patrimoniale** (On the Admissibility of Hetero-

Integration between Foreign Law and *Lex Fori* in Matters of Compensation for Non-Pecuniary Damage; in Italian)

> This article focuses on an order issued by the Italian Supreme Court over the interpretative question about the possible integration of the foreign applicable law with the lex fori for the compensation of non-pecuniary damage. Through the analysis of opposing legal reasonings, this article examines the legal and jurisprudential bases of each thesis, leaning towards a negative solution in the present case according to the principle of the global application of foreign law, while waiting for the Court to give its final decision in a public hearing on this relevant issue.

In addition to the foregoing, this issue features an obituary by *Luigi Fumagalli*, Professor at the University of Milan, remembering ***Riccardo Luzzatto*, Professor Emeritus at the University of Milan, (1935-2022)**.

Finally, this issue features the following book review by *Francesca C. Villata*, Professor at the University of Milan: **Paul BEAUMONT, Jayne HOLLIDAY (eds)**, ***A Guide to Global Private International Law***, Hart Publishing, Oxford, 2022, pp. XVI-655.