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Editorial

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We are pleased to be publishing the second issue of the Transnational Commercial Law Review which has been in the pipeline for the best part of two years in which we have been in constant fire-fighting mode thanks to the COVID-19 pandemic. All of our contributors, who are established academics or rising stars in their field, have faced the same challenges as we have, with the move to online and subsequently mixed-mode education, as well as dealing with increased student needs for engagement and pastoral care, to say nothing of a multitude of additional administrative tasks.

We were also unfortunate to lose our excellent copy-editor Antonia Harris in summer 2021, which also slowed down the publication process. We are nevertheless grateful to her for all the work done on this issue prior to her departure. We could not have brought the issue to fruition without the excellent contribution of Dr Andrea Miglionico (University of Reading) who recently joined the TCLR team as Assistant Editor. His input has been invaluable, and we are both extremely grateful to him.

This issue of the review features a number of papers presented at the 11th Transnational Commercial Law Teachers' Meeting and Conference which took place in London on 12th to 13th September 2019, with the title 'When is Commercial Custom Law? The Dialogue between Commercial Practice and the Law', generously sponsored and hosted by Morgan, Lewis & Bockius UK LLP. We are pleased to publish several of the papers that were presented in that conference.

One of them is the article of Professor **Fabrizio Cafaggi** entitled, 'Custom and law in Transnational Commercial Contracts: A co-evolutionary perspective'. There, the author explores the role of custom and trade usages in the context of transnational commercial law through the lens of their co-evolution with law. He considers the different mechanisms of co-evolution, and he argues that the distinction between hard and soft law affects co-evolution and

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also explains the emergence of different forms of complementarity between law and commercial custom.

In his article 'The Law and Reality of Custom in a Civil Law Country: Experiences of Japan', Professor **Souichirou Kozuka** considers the dialectic relationship between commercial custom and usage and state law in Japan. The author argues that finding 'the right place for custom and usage in Japanese law' has been a challenging task for Japanese courts. He further shows that, at least in part, this was due to the penetration of foreign doctrine into the Japanese legal jurisprudence and scholarly thought. By way of conclusion, the author reflects on the advent of digital technology and identifies the emerging digital architecture of contract law as an additional source of legal uncertainty.

Professor **Miklos Kiraly**'s article 'The Unification of Contract Law and Commercial Usages' examines the historical evolution of the treatment of commercial usage as an aspect of international and European attempts to develop uniform law in the field. Against this backdrop, he offers an assessment of the state of progress with the development of a common framework for the application of commercial usage. The key finding of his analysis is that, even though there is now a degree of legal standardisation, legal variation persists due to the infiltration of different domestic legal traditions into the legal unification project.

In his essay, 'Enforcement of Security Interests in Transnational Commercial Law: Current State and Future Trends', Dr **Thomas Keijser** argues that the enforcement of security interests in transnational commercial law reflects a variety of paradigms and highlights the role of a series of policy considerations in shaping those paradigms including party autonomy, fiduciary law, and the desirability of access to credit. He concludes his analysis with reflections on the implications of his finding to the provision of financial assistance in the wake of the COVID-19 pandemic and the impact of technology.

Another set of contributions are academic papers which formed the basis for lectures in the TCL Lecture Series organised by the QMUL-UNIDROIT Institute of Transnational Commercial Law. A number of these lectures were based on updated versions of papers that had been previously published in edited books. We consider the latter to present work of strong current significance which deserves to obtain wider (open access) dissemination. We are very grateful to first publishers for granting us permission to publish updated versions of these papers in this issue.

In their article entitled ‘Making Contracts Readable — Developing Contracts in Comic Book Form’, Professor **Camilla Baasch Andersen** and **Peter Corner** introduce the concept of visual contracts (or “comic-book contracts”) which rather than being designed to protect the position of one of the parties in the event of a dispute using (mostly unread) boilerplate, aim to accomplish the fundamental raison d’être of contracts, namely to establish the basis upon which the relationship between the parties is to be conducted. The contracts discussed in the article are not visual translations of traditional (text-based) contracts. They are contracts written as comic strips designed to give the parties a framework for the conduct of their relationship that can be visualised and understood in advance. In other words, ‘the comic *is* the contract, and is *not* a visual aid to understanding the contract.’ The article argues that legal professionals need to focus on developing ‘a language, format and interface for non-lawyers’ rather than relying on ‘foggy and obtuse clauses which are rarely even read and cannot be said to have influenced a relationship.’ They explain why visual contracts are an appropriate method of achieving these goals, in that they ‘focus on the relationship not the deal’, and they provide a number of illuminating case studies.

Professor **Chris Reed**’s paper, ‘Cyberspace Institutions, Community and Legitimate Authority’ sets out and analyses the challenges of governing cyberspace in a uniform way, taking into account the ‘mass of diverging law and regulation which [information technology services] need to cope with in order to achieve their apparent universality’. He assesses the extent to which traditional law making institutions are suited to the purpose of making rules for the governance of cyberspace and reflects on the transnational norm-generating activities which are leading to a gradual convergence of the rules governing cyberspace. The paper discusses issues of authority and legitimacy which arise as a result of this transnational activity.

Next is Professor **Djakhongir Saidov**’s fascinating examination of ‘Trade Usages in International Sales Law’. He provides a careful evaluation of the plurality of ways in which norms emerge from commercial activity, when practices settle into usages, which then become binding whether as part of the contract’s context (or factual matrix) or through a process of incorporation. He provides insights into ‘usage incorporation strategy’ and the role that trade usages actually play today in governing commercial relations.

To close what we believe to be an issue rich in diverse perspectives on transnational norm generation, we are delighted to have Professor Sir **Roy Goode**’s paper entitled ‘The Creative Force in Transnational Commercial Law’, in which he reflects on the intense activity that has resulted in the growth of transnational commercial law in recent years, through the

adoption of a series of international conventions and protocols, model laws, restatements and contractually incorporated rules of international institutions. He observes that these instruments are all designed to harmonise conflicting laws or business practices so as to overcome the obstacles that impede the efficient conduct of cross-border trade and finance, and ensure that all participants, in whatever jurisdiction they may be, play by the same rules. Based on his analysis, he concludes that the creative forces that have underpinned the development of transnational commercial law are characterised by a willingness to break with established doctrine in searching for best solutions to typical problems confronting international trade and finance, sometimes even inventing new legal techniques.

We are also pleased to include in this issue a series of book reviews in the field of transnational commercial law. Specifically, we are thankful to Dr **Gabriel Gari** for his careful assessment of the second edition of *Advanced Introduction to International Trade Law* by Michael J. Trebilcock and Joel Trachtman (Cheltenham: Edward Elgar, 2020), Dr **Jacco Bomhoff** for his insightful review of *Jurisprudence in a Globalized World* by Jorge Luis Fabra-Zamora (ed) (Cheltenham: Edward Elgar, 2020), and to Dr **Jeremmy Okonjo** for his perceptive examination of *The Legitimacy of Standardization as a Regulatory Technique* by Mariolina Eliantonio and Caroline Cauffman (eds) (Cheltenham: Edward Elgar, 2020).

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