



Tacit Choice of Law in the Metaverse: What Law Applies?

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Abstract

This research discusses the reality of the metaverse with emphasis placed on the need for a rule of law for certain activities within it that is related to Private International Law. This research observes what the metaverse is, its prevalent structure and the recent dialectics on the place of international law as a comprehensive and much needed legal regime within its system. This article utilises a normative legal research methodology and uses qualitative data such as legal theories and related research to arrive at a certain conclusion on the place of Private International Law in the Metaverse. The first part of this research elaborates on the relationship between the Metaverse and Law and the importance of a clear rule of law in the Metaverse. The second part provides an overview of Private International Law in regards to the notions that exist within it to determine a prescriptive jurisdiction. The third section discusses tacit choice of law as an alternative answer to the current uncertainty in the commercial world of the Metaverse. While the last part talks about the incorporation of metaverse regulations in the domestic and regional scenes. The article finds that the need for a clear legal framework not only in regards to choice of law but also for all aspects of the Metaverse is direly needed. While tacit choice can provide legal certainty in the world of commercial contracts, a comprehensive cybersecurity regime is needed for a Metaverse that is truly based in rule of law.

Keywords: *private international law; metaverse; tacit choice of law*



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Abstrak

Penelitian ini membahas realitas metaverse dengan penekanan pada perlunya aturan hukum untuk kegiatan tertentu di dalamnya yang terkait dengan Hukum Perdata Internasional. Penelitian ini mengamati apa itu metaverse, strukturnya dan dialektika terkini tentang tempat hukum internasional sebagai rezim hukum yang sangat dibutuhkan di dalam sistemnya. Penelitian ini menggunakan metodologi penelitian hukum normatif dan menggunakan data kualitatif seperti teori hukum dan penelitian terkait untuk sampai pada kesimpulan tertentu tentang tempat Hukum Perdata Internasional di Metaverse. Bagian pertama dari penelitian ini mengelaborasi hubungan antara metaverse dan Hukum dan pentingnya aturan hukum yang jelas di Metaverse. Bagian kedua memberikan gambaran tentang Hukum Perdata Internasional dan kerangka hukum yang ada di dalamnya dalam penentuan yurisdiksi hukum. Bagian ketiga membahas tacit choice of law sebagai jawaban alternatif atas ketidakpastian di dunia komersial Metaverse. Sedangkan bagian terakhir berbicara tentang kebutuhan regulasi metaverse di kancah domestik dan regional. Penelitian ini menemukan bahwa kebutuhan akan kerangka hukum yang jelas untuk semua aspek metaverse sangat dibutuhkan. Walaupun tacit choice dapat memberikan kepastian hukum dalam dunia kontrak komersial, rezim keamanan siber yang komprehensif diperlukan untuk metaverse yang tertib secara hukum.

Kata Kunci: hukum perdata internasional; metaverse; tacit choice of law

A. Introduction

Metaverse, a compound word derived from "meta" (from the Greek language which means beyond) and "universe," describes a hypothetical and synthetic environment that has a relationship with the real world. Metaverse can be defined as a virtual universe created by computer technology that

combines physical and digital dimensions through the convergence of internet, web technology and Extended Reality (ER)¹. Chronologically, from various existing sources²³, the concept of the Metaverse first appeared in the science fiction paper Snow Crash as well as works by Verner Vinge and William Gibson. The concept that appears in Stephenson's essay is a virtual spatial zone that combines virtual reality (a virtual world that resembles the physical world), augmented reality (an interactive experience of the real world environment where objects in the real world are further realised by perceptual information generated by computer technology) and the Internet. Examples of the Metaverse concept in the modern world now include Roblox, Minecraft, and Fortnite, multiplayer online role playing games such as Halo, Final Fantasy, and World of Warcraft, and virtual worlds such as Second Life⁴.

¹ Lik-Hang Lee et al., “All One Needs to Know about Metaverse: A Complete Survey on Technological Singularity, Virtual Ecosystem, and Research Agenda” 14, no. 8 (2021): 1, <http://arxiv.org/abs/2110.05352>.

² John M. Garon, “Legal Implications Of a Ubiquitous Metaverse,” SSRN, 2019, 1–63, <https://doi.org/10.31826/9781463236984-toc>.

³ Muhammet Damar, “Metaverse Shape of Your Life for Future: A Bibliometric Snapshot,” *Journal of Metaverse* 1, no. 1 (2022): 1–8, <https://journalmetaverse.org/index.php/jm/article/view/article1>.

⁴ Jon M. Garon, “Playing in the Virtual Arena: Avatars, Publicity and Identity Reconceptualized through Virtual Worlds and Computer Games,” *Chapman Law Review* 11, no. 3 (2011): 466, <https://doi.org/10.2139/ssrn.1334950>.

Metaverse actually has been a topic of discussion since the late 90s and early 2000s by various scientific articles⁵ which already discussed the reality of law and the rule of law in communities and virtual worlds with new dilemmas that were not previously covered in codified legal products and may be more applicable to real objects. One of the initial discussions regarding the location and function of law in virtual world cases is related to privacy⁶, ownership rights and rights to law enforcement⁷, the legal status of avatars, and even extends to identity theft and intellectual property rights from products used in private virtual spaces such as music and so on.

These initial cases still seem to be of a general nature, with various kinds of interactions between account owners that are only social in nature and have not yet penetrated economic transactions and real legal actions. But along with the development of technology and virtual interaction vehicles which initiates the players to buy and sell certain in-

⁵ For Example being F. Gregory Lastowka and Dan Hunter, “The Laws of the Virtual Worlds,” *California Law Review* 92, no. 1 (2004): 1–73, <https://doi.org/10.4324/9781315089645-13> and several others in 2004 and 2010.

⁶ Ronald Leenes, “Privacy in the Metaverse: Regulating a Complex Social Construct in a Virtual World,” in *The Future of Identity in the Information Society*, vol. 262 (IFIP International Summer School on the Future of Identity in the Information Society, 2008), 95–112, https://doi.org/10.1007/978-0-387-79026-8_7.

⁷ Nicolas Suzor, “The Role of the Rule of Law in Virtual Communities,” *Berkeley Technology Law Journal* 25, no. 4 (2010): 1817.

game products between fellow players and even accounts, it is necessary to examine the legal concepts that are embedded in such interactions.

Early topics concerning the Metaverse, such as privacy, accountability, and cyber security, prompted legal experts to pay attention to the security of various cyberspace platforms, and thus encompass the metaverse, for the benefit of the people on them. The initial aim of these discussions seems to be towards personal rights and responsibilities and has not yet penetrated into the need for a legal product that refers to the economic and legal interaction of two or more people. In the early stages of development of various kinds of metaverse products, it is correct to say that when an economic transaction and legal action occurs, they are carried out "freely and responsibly," moreover considering that activities that can be carried out in cyberspace were not as expansive as it is now.

However, as time went on, and with the emergence of platforms such as Roblox, Fortnite, Second Life, and so on that allow players to barter or purchase intangible products easily and on an increasingly massive scale, the need for legal regulations that can be applied to it becomes even more real. Moreover, when looking at the reality, many companies are promoting Metaverse products and their economic value is getting higher with more and more consumers.

In light of these developments, and due to the obvious implications of trans-border reality of metaverse business transactions, recently the Hague Conference on Private International Law (HCCH), which portrayed a prominent attempt in the field of International Law to regulate the metaverse, produced a report that urgently stated the need of clear rule of law in the realms of digital economy, which includes multi-dimensional issues regarding the Metaverse⁸. The report noted that the primary concern on why metaverse needs a clear rule of law in Private International Law in trans-border business transactions is the fact that the increasingly borderless and less tangible nature of Metaverse will find itself in tension with the traditional significance of geographic location in Private International Law⁹. Therefore international legal dimensions must be accorded special attention so as to adequately provide the expansions of metaverse that is often governed decentrally.

However, Despite the report indicated that Private International Law implications, such as jurisdiction and choice of court, applicable law and choice of law, recognition

⁸ Permanent Bureau of the Hague Conference on Private International Law, “Developments with Respect to PIL Implications of the Digital Economy,” 2022.

⁹ D. Svantesson, “The (Uneasy) Relationship between the HCCH and Information Technology,” in *The Elgar Companion to the Hague Conference on Private International Law*, ed. Thomas John, Rishi Gulati, and Ben Koehler (Cheltenham, Gloucestershire, United Kingdom: Edward Elgar Publishing, 2020), 462.

and enforcement of court decisions, and cooperation mechanisms across borders and between platforms, become increasingly relevant in digital cross-border relations of the Metaverse, regulators have been noted to be primarily focused on consumer privacy and the protection of personally identifiable data¹⁰.

Moreover, even though many articles have substantiated, in various degrees of specificity, the increasing legal needs and conundrums that must be answered in the Metaverse, more especially in regards to choice of law and choice of court since the dawn of metaverse research in the start of the 21st Century,¹¹ they were rather compendious in

¹⁰ Jie Huang, “Applicable Law to Transnational Personal Data: Trends and Dynamics,” *German Law Journal* 21, no. 6 (2020): 1285, <https://doi.org/10.1017/glj.2020.73>.

¹¹ Dan Hunter, “Cyberspace as Place and the Tragedy of the Digital Anticommons,” *California Law Review* 91, no. 2 (2003): 439–519, <https://doi.org/10.2307/3481336>; Gregory Lastowka and Hunter, “The Laws of the Virtual Worlds”; Suzor, “The Role of the Rule of Law in Virtual Communities”; Clare Chambers, “How Virtual Are Virtual Economies? An Exploration into the Legal, Social and Economic Nature of Virtual World Economies,” *Computer Law and Security Review* 27, no. 4 (2011): 377–84, <https://doi.org/10.1016/j.clsr.2011.05.007>; Suwinto Johan, “Metaverse and Its Implication in Law and Business,” *Jurnal Hukum Progresif* 10, no. 2 (2022): 153–66, <https://doi.org/10.14710/jhp.10.2.153-166>; Safari Kasiyanto and Mustafa R. Kilinc, “Legal Conundrums of the Metaverse,” *Journal of Central Banking Law and Institutions* 1, no. 2 (2022): 299–322, <https://doi.org/10.21098/jcli.v1i2.25>; Turdialiev Mukhammad Ali Polatjon Ogli, “Legal Discussion of Metaverse Law,” *International Journal of Cyber Law* 1, no. 3 (2023): 1–15; and Maria Kalyvaki, “Navigating the Metaverse Business and Legal Challenges: Intellectual Property, Privacy, and Jurisdiction,” *Journal of Metaverse* 3, no. 1 (2023): 87–92, <https://doi.org/10.57019/jmv.1238344>.

nature and tend to offer a broad perspective while rarely delving into specific dimensions that are in need of exposition in light of recent urgencies.

Academic impetus needed to encourage policy-making in the realm of Private International Law is also restricted due to the fact that most research into the dynamics of the metaverse have been focused on its public law dimensions such as intellectual property rights, usage of data, public conducts, labour, and avatar utilisation and its rights and even diplomacy and international relations¹². Even when specific private law dimensions are being discussed, it is usually concerned with ownership of digital assets and the legality of cryptocurrencies and blockchain technologies¹³.

¹² Abhinav Gupta, “Metaverse : Challenges and Opportunities for Diplomacy and International Relations,” *International Law and Politics* 55, no. 1 (2022): 1–15; Ben Chester Cheong, “Avatars in the Metaverse: Potential Legal Issues and Remedies,” *International Cybersecurity Law Review* 3, no. 2 (2022): 467–94, <https://doi.org/10.1365/s43439-022-00056-9>; Stefan Koos, “The Individual and the Property in Virtual Worlds,” *Veritas et Justitia* 8, no. 2 (2022): 267–86, <https://doi.org/10.25123/vej.v8i2.5627>; Muhammad Reza and Syariffudin Zaki, “International Labour Law Perspectives on the Metaverse,” 2023, 1624–35, <https://doi.org/10.46254/ap03.20220281>; and A.P. Zen and I.M. Miraj, “The Legal Status of Metaverse Law and Its Implementation in Modern Era,” *Sustainable Development in Creative Industries: Embracing Digital Culture for Humanities*, 2023, 129–34, <https://doi.org/10.1201/9781003372486-24>.

¹³ Dewi Ambarwati, “Urgensi Pembaharuan Hukum Di Era ‘Metaverse’ Dalam Perspektif Hukum Progresif,” *DIALEKTIKA: Jurnal Ekonomi Dan Ilmu Sosial* 7, no. 2 (2022): 151–67, <https://doi.org/10.36636/dialektika.v7i2.1306>; James Hutson et al., “Architecting the Metaverse: Blockchain and the Financial and Legal Regulatory Challenges of Virtual Real Estate,” *Journal of Intelligent*

While these issues are fundamental in nature and are vital for the development of a legal order in the Metaverse, it is also an unavoidable conclusion that a mature legal structure can only exist if its development is all-round and includes all other facets that can impact the Metaverse substantially. These other facets, of course, include the legal challenges that the HCCH was presented with in their research regarding the newer developments of digital economy. It is important that newer research helps enhance the dialectics of International Private Law by providing elaborations on these challenges. This research is aimed at answering that very necessity and views the primary issues of applicable law and jurisdictional rules in the settlement of metaverse contractual disputes as of utmost importance considering that in various types of commercial transactions in the metaverse, the actors involved come from different countries.

The concept of choice of court in the contractual dimension of the metaverse is undivorceable to the concept of choice of law as understood within the meaning of the freedom of contract as prescribed by Article 1.1. of the UNIDROIT Principles of International Commercial Contracts. The Principles interpreted freedom of contract as an

Learning Systems and Applications 15, no. 01 (2023): 1–23, <https://doi.org/10.4236/jilsa.2023.151001>; and Madiega Tambiama et al., “Metaverse Opportunities, Risks and Policy Implications,” *European Parliamentary Research Service*, no. June (2022): 1–12, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733557/EPRS_BRI\(2022\)733557_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733557/EPRS_BRI(2022)733557_EN.pdf).

autonomy not only to establish contractual relations with each other, but also to determine the contents of the agreement as well. This free determination materialized into a choice of law clause in the contract, wherein law applicable to the contract can be decided by the parties so as to ensure that the contract in general can be governed by the law intended by the parties¹⁴. Choice of Law basically pinpoints which country's legal arrangements are to be used if there is a cross-border civil dispute that occurs as a result of legal actions both in the real world and in the Metaverse. In elaborative contracts, choice of law clauses are usually accompanied with a choice of court clause which expresses the parties' intention that the courts chosen by them will decide disputes between the parties¹⁵ and, in some cases, serve as an implicit choice of law when a choice of law clause does not exist¹⁶.

¹⁴ J.G. Collier, *Conflict of Laws*, 3rd ed. (Cambridge, United Kingdom: Cambridge University Press, 2001), 11.

¹⁵ George A Zaphiriou, "Issue 2 Article 3 and Choice of Law Clauses in International Commercial Agreements, 3 Md," *Maryland Journal of International Law* 3, no. 2 (1978): 311, <http://digitalcommons.law.umaryland.edu/mjil><http://digitalcommons.law.umaryland.edu/mjil/vol3/iss2/3>; and Afifah Kusumadara, "Jurisdiction of Courts Chosen in the Parties' Choice of Court Agreements: An Unsettled Issue in Indonesian Private International Law and the Way-Out," *Journal of Private International Law* 18, no. 3 (2022): 424–49, <https://doi.org/10.1080/17441048.2022.2148905>.

¹⁶ Hague Conference on Private International Law, *Principles on Choice of Law in International Commercial Contracts* (The Hague, The Netherlands: Permanent Bureau of The Hague Conference on Private

However, the current understanding of such clauses are territorial in nature, which cannot be directly used in the Metaverse, due to its non-territorial nature. The international and quasi-anonymous structure of the Metaverse, reinforced by the use of blockchain technology, cryptocurrencies, and borderless cloud economies¹⁷, is very much divorced from the traditional notions of Private International Law, wherein the *locus* is pivotal in determining the dimensions of a case before a court. This facet of the metaverse institutes the fundamental reason why applicable law and jurisdiction of courts in contractual disputes need an urgent reformulation so as to accommodate the expanding Metaverse. Thus, if such a vital issue can be given a solution, then there will be a definitive conclusion to the question of appropriate legal arrangements regarding the settlement of international civil disputes in the Metaverse.

From the abovementioned elaboration on the Metaverse and its current issues, especially related to Private International Law, the principal emerging question that this article set to answer is: how the choice of law and choice of court in contractual disputes in the metaverse is to be regulated by Private International Law?

International Law, 2015): 45,
<https://doi.org/10.36514/itl.2015.125.125.002>.

¹⁷ Garon, "Legal Implications Of a Ubiquitous Metaverse," 175-185.

As have been elaborated above, while previous research acknowledges the need for the rule of law in the metaverse¹⁸, such studies were more focused on the safeguarding of metaverse users and the need for international and national legal products in general. Research was focused on the public dimensions of issues in the Metaverse, while those that portrayed private law issues have done so non-elaboratively. Thus, a more in-depth and specific exposition of issues, especially one on choice of law and jurisdiction of courts over disputes, are urgently needed so as to provide a more pragmatic and comprehensive picture of the Private International Law dimension of the metaverse needed as an adequate impetus for future rule-making.

In providing an answer to the research question above, this article utilises a qualitative research method. Qualitative research is an approach used for exploring and understanding the meaning individuals or groups ascribe to a social or human problem. The process of research involves emerging questions and procedures with data typically collected in the participant's setting with the researcher making interpretations based on said data¹⁹. Essentially, This method of research, in its process, hypothesis, analysis, and conclusion

¹⁸ Suzor, "The Role of the Rule of Law in Virtual Communities," 1817.

¹⁹ John W Creswell and J David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, Fifth Edition (Los Angeles: SAGE Publications, Inc, 2018), 41.

among others up to its writing utilizes aspects that are non-numerical, descriptive-situational, and analytical²⁰.

More specifically used as a form of qualitative approach in legal studies is the normative legal research method which utilised written materials such as legislations, agreements and doctrines along with other established sources such as articles, books, and theses, to analyse a specific legal issue²¹. Through its methodology and analysis, this research seeks to provide an in-depth elaboration on a particular dimension of issues of Private International Law, which in this case are choice of law and more specifically jurisdiction in the Metaverse, and produces a most pragmatic research which can answer how a more elaborative view of choice of law can provide a more certain picture on jurisdiction of courts in the metaverse. It is hoped that such an exposition can be an adequate impetus for future Private International Law rule-making in the future.

²⁰ Lukas S Musianto, “Perbedaan Pendekatan Kuantitatif Dengan Pendekatan Kualitatif Dalam Metode Penelitian,” *Jurnal Manajemen Dan Kewirausahaan* 4, no. 2 (2002): 123–36, <https://doi.org/https://doi.org/10.9744/jmk.4.2.pp.%20123-136>.

²¹ Muhaimin, *Metode Penelitian Hukum*, Cetakan Pertama (Mataram: Mataram University Press, 2020).

B. Discussion

1. Metaverse and its Relation to Law

During the Internet's development, all the pertinent questions regarding the metaverse were raised, and as a result, multiple tort definitions and sanctions were created as well as updates to national laws. The meta-universe and the Internet are not all that dissimilar. Those who are interested in the history of the Internet will be familiar with the cyber utopians of the 1990s, who proclaimed the Internet to be a place free from legal restrictions and governmental control. However, the metaverse is neither new nor lawless, nor is it above the laws of the real world. Understanding how law can operate at many layers to control various components of an online experience as technology advances is a difficulty²².

It is crucial to remember that the metaverse's regulations are not exempt from the rule of law. The metaverse order is already subject to laws that already exist in areas like anti-money laundering, contracts, data protection, defamation, tort, gaming and gambling, intellectual property, tax, and financial regulation. The laws of the real world and the existing internet will be heavily regulated in the metaverse²³.

²² Alexander Woon, "The Metaverse Is Not above Real-World Law," *The Straits Times*, 2022, <https://www.straitstimes.com/opinion/the-metaverse-is-not-above-real-world-law>.

²³ Ian Liu, "Is the Metaverse above the Law?," *Deacons*, 2022, <https://www.deacons.com/2022/06/07/is-the-metaverse-above-the-law/>.

This is also the case with contractual relations in the Metaverse. The fact is, the overt-independence that the Metaverse can actually have will threaten the certainty of law that revolves around certain actions such as contractual relationships in the Metaverse. Concluding the narrative of the introduction above, the main problem with contractual relations in the Metaverse is that a multi-layered issue is more than actual in the Metaverse. One aspect is the identity of the contracting parties which in light of the blockchain technology and anonymity mechanisms that platforms have offered in the past has introduced the greatest degree of namelessness in the virtual worlds. This aspect alone, for example, will give rise to other problems in regards to contracts such as the certainty of legal imputation of rights between the parties, obligations, and other effects that arise from a contract.

The usual method of accessing the metaverse is via an avatar. When moving and engaging in relationships with other subjects, who will then enter that metaverse through an avatar of their own, the avatar ultimately becomes the virtual persona one assumes. The practice of metaverse users today explains that outside of the performance of business or economic activities that users carried out professionally, users may not be equipped with an unambiguous guarantee to be given information of the physical identity associated with their another user's

avatar. However, certain policies adopted by metaverse platforms can give legal certainty when, for example, a transfer of a virtual property of a sales contract is to be done. Company policies may require the purchaser to verify that they are actually the buying party of that sales contract so the property in question will not be misgiven. Bearing in mind this certain example, it is then apparent that an exact legal regime is not only needed but also beneficial in giving certainty to all parts of the contracts regime in the metaverse.

In regards to the contractual relations in the Metaverse itself, systematic points on current issues that need proper legal regime, especially in regards to Choice of Law, can be seen from the Report of the Permanent Bureau of the Hague Conference on Private International Law, where in their December 2021 report, Metaverse cases become an issue of discussion and an interesting dialectic in “Digital Economy.” In particular implementation of law is direly needed for:

1. Jurisdiction and choice of court (e.g. how to determine a competent court to resolve disputes in relation to crypto assets (currencies assumed to be the wheels of the Metaverse and Digital Economy economy);
2. Applicable law and choice of law (for example, what is the best connecting factor that best defines the applicable law for transactions through blockchain

systems (blockchain is a digital transaction system that prioritises anonymity, especially in international transactions based on Metaverse);

3. Law Recognition and Enforcement (e.g. how to enforce foreign court decisions in relation to services governed by smart contracts); and
4. Mechanisms for cross-border and cross-platform cooperation (eg, what frameworks for cooperation are feasible and desirable to address the challenges facing the digital economy especially in this regard in relation to the Metaverse).

The main context of this metaverse problem lies in what is known as the cloud economy and the structure of various metaverses that are full of non-integrated economies, or also known as decentralised economies or decentralised finance (DeFi). It is this decentralised systematics that is the main concern of Private International Law in adopting, designing, and enforcing arrangements that suit such Metaverse dynamics, because the implications of Metaverse systematics such as decentralised cloud services also mean that storage, computing, and databases of consumer data exist unlimitedly. It is this borderless nature of the metaverse economy that contradicts the traditional significance of geographic location in Private International Law so that

the location (*locus*) of an international contract in the Metaverse cannot be found immediately, especially regarding the application of the concept of choice of law in Metaverse contracts. It is these facts and these dimensions that are expected to be studied and regulated in new International Private Law products.

2. The Perspective of Classical and Modern Private International Law

The field of Private International Law usually raises serious jurisdiction issues. The questions on what court and what national regulations should be referred to have become persistent questions plaguing the international lawyer. While classic theory requires state consent for the enforcement of international obligation, the modern theory grows disregard for it and a tendency toward the generation of rules along more autonomous lines of reasoning. Especially in the era of a fast growing technology, international law requires vast and diverse judicial systems to remain relevant. The divergence between civil and common law has resulted in challenges in terms of universality. It also impacts the complexity of transnational dispute settlement. It is very often that the dispute on private international law experienced delays, difficulties to measure just outcomes and high- costs procedures.

In 1893, Tobias M.C. Asser led a discussion on the Hague Conference on Private International Law (HCCH) to address the many difficulties in resolving conflicts involving private international law. The ultimate goal of HCCH's creation was to create a global system of negotiated multilateral legal norms to control private international law. The adoption of several significant Conventions was the product of ad hoc diplomatic conferences that were held every few years. It was not until 1955, however, that the Conference was transformed into a permanent organisation with a Permanent Bureau, following the implementing Statute's entry into force. The Nobel Peace Palace in The Hague served as the location for meetings, which continue to occur there today, while English and French, since the 1960s, have been the organisation's working languages²⁴.

If we refer to the Hague Convention, it is clearly stated that a contract is governed by the law chosen by the parties (Article 2 The Hague Principles). The parties may choose the law applicable to the whole contract or to only part of it; and different laws for different parts of the contract. It is also mentioned that no connection is required between the law chosen and the parties or their

²⁴ Hans Van Loon, "Hague Conference on Private International Law," *Hague Justice Journal* 2, no. 2 (2007): 4, <https://doi.org/10.1017/S0165070X00014303>.

transaction. The Hague Principles are designed to promote party autonomy that is aimed at enhancing predictability and legal certainty. By acknowledging that parties as persons in charge who can determine the most suitable legal norms for their transaction, it is hoped that the refinement of effective cross-border trade and commerce can be achieved.

Party autonomy can really make a difference in the practical application of those legal rules. Each jurisdiction is legitimately entitled to determine where the choice of law in international contracts makes sense or not. It welcomes any variations however it also has minor weakness for legal uncertainty in international commercial transactions, especially in the absence of a choice of law. The fact that in different regions of the world, party autonomy receives more or less endorsement. That itself should not be a problem because each jurisdiction is of course very legitimately entitled to determine where the choice of law in international contracts makes sense or not. The principle of party autonomy will much more relevant if we referred to the contractual relationship that might be generated from metaverse or other digital space.

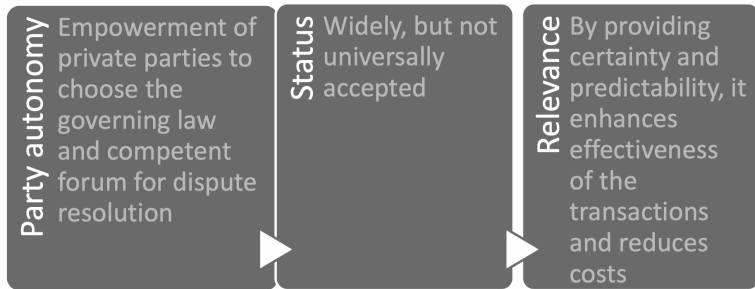


Table 1.1 The Principle of Party Autonomy according The Hague Convention 2015

Each legal system is very much determined by the characteristics of the jurisdiction where it was developed. But in the context of international commercial transactions, this raises the degree of legal uncertainty and as such the transactional costs of that international operation. The Hague Convention itself is a set of non-binding international standards. In order to be able to regulate the transaction on metaverse, a more operationalized set of regulations are needed.

3. The Application of the Tacit Choice of Law Theory in the Metaverse

Commercial relations in the Metaverse are not always preceded by a written contract. As the Metaverse attempted to replicate the physical world's experience, it also attempted to replicate the socioeconomic interactions that take place in physical communities where

transactions are of a more flexible nature, such as when a bank customer withdraws money from an ATM or when a contract is assumed to have been entered when a sale is giving effect to at the fall of a hammer in an auction sale. Such commercial interactions can be sufficiently called a tacit contract which refers to, as opposed to written or verbal agreements coincident statements of purpose, the actual conduct between the parties or its related circumstances. While not determined by a specific agreement of any kind, by agreeing to participate in such commercial transactions, parties tacitly agree and choose to be governed by an already specified law that regulates such activities.

The Ganey Case is one well-known instance that might paint a more complete picture of the idea of tacit choice of law. In Paris, where they also resided, a Mr. and Mrs. Ganey were married. Later on, Mr. Ganey purchased real estate in Lyon. The 'Coutume de Paris', or Parisian customary law, states that property gained during a marriage becomes communal property. In contrast, Lyon's marital system was that of separate property and was governed by written law. Mrs. Ganey's heirs hired Dumoulin to have the Lyon property designated as a community property in accordance with Parisian customary law. He believed that the personal law of the spouse could not be used to extraterritorially apply to land

in Lyon. But he asserted that the parties had the authority to make a contract that would govern property rights in other legal systems. Dumoulin proposed that the Ganeyes had made a tacit agreement to include all property acquired after the marriage in the community; in the community that was created where the marriage was celebrated, since they had not stipulated any matrimonial regime other than that required by Parisian law. Dumoulin stated that the Ganey pair has tacitly chosen to submit the marital property to the Paris Community Property Regime by getting married and residing in Paris²⁵.

A contract dispute that was brought before a Swiss court in the early 2000s is another pertinent instance in this regard. A commercial contract for the delivery and installation of external cladding for a rental home that the client was building in Pully, Switzerland, was signed between a client with Swiss residency and an Italian company on October 25, 1988. The parties agreed that the works would be completed by November 28th, 1988, and the penalty provision reflected that understanding. In its aftermath, there were several problems with the Italian company's ability to fulfil its obligations under the contract. The client ultimately chose to discontinue the agreement with the Italian company, signing over its rights

²⁵ Friedrich K Juenger, "Marital Property and the Conflict of Laws: A Tale of Two Countries," *Columbia Law Review* 81, no. 5 (1981): 1062.

and credit to another company that completed the project. In order to recoup costs and damages, this latter company ultimately filed a case against the Italian company. The problem with the law controlling the contract is that the parties did not explicitly choose the law that would apply to it. While the Italian corporation claimed that Italian law should be used to decide the merits of the disagreement, the client's arguments in the complaint were based on Swiss law²⁶.

Based on the case above, it was obvious that to determine the law applicable to the merits of this dispute, the three main questions that should be answered were:

1. Does the contract contain a choice-of-law clause?
2. If not, have the parties tacitly chosen the law governing the contract?
3. If not, what is the law applicable in the absence of choice by the parties?

By analysing the case above, it was obvious that the contract contained no choice of law clause, in other words, the parties had not expressly chosen the contract's governing law. Furthermore, in this case, The Federal Swiss Court concluded, based on a number of different considerations, that the parties had implicitly chosen

²⁶ Lauro Gama, "Tacit Choice of the Law Governing the Contract" (Centro de Estudios de Derecho, Economía y Política, n.d.), 1-10.

Swiss law to regulate the transaction. Such considerations include:

1. First, the contract had been concluded in Switzerland;
2. Second, the contract was drafted in French;
3. Swiss francs were the currency adopted in the contract;
4. Fourth, the works were to be carried out in Switzerland;
5. Fifth, the contract contained a choice of forum clause in favour of the Swiss Courts, and finally;
6. Both parties referred to the SIA standards, a Swiss Society of Engineers and Architects technical standards.

Despite the fact that none of the factors alone may have been important, the court came to the conclusion that the parties' choice of Swiss law was implied. Both of the aforementioned instances led to a single, clear conclusion. When one does not explicitly state their agreement, tacit consent and, consequently, tacit choice of law are assumed and such a consent can be inferred from other circumstances, such as when one does not express an objection (verbally or in writing) to a particular course of action, or even by looking at what potential law a contract, despite not explicitly referencing it, referred to in its articles.

Currently, the basic international instrument that regulates tacit choice of law is the 2015 The Hague Principles on Choice of Law in International Commercial Contracts, especially its article 4 which deals with express and tacit choice under this instrument. Considering tacit choice of law, the Principles regulated that the parties must have intended to choose the governing law and such intent must appear clearly from the provisions of the contract or the circumstances.²⁷

Now, how does tacit choice of law can be applied to the Metaverse? As has been mentioned before, the application of choice of law, that was constrained by physical properties of the laws of physical states, cannot be readily applied to the Metaverse as it is a borderless internet-based reality. A possible entry point for the application of choice of law in the Metaverse is through the internet platforms that provided consumers with virtual worlds of their making. As it is, metaverse platforms can be considered the governing entities in the metaverse world due to their part in providing security and order to users and their communities throughout the meta universe.

²⁷ Lauro Gama, “Tacit Choice of Law in the Hague Principles,” *Uniform Law Review* 22, no. 2 (2017): 336–50, <https://doi.org/10.1093/ulr/unx022>.

As what has been said previously, the Metaverse that emulates the physical world results in the many commercial-related actions such as the sale and purchase of virtual cars and even virtual food that may not be preceded by a written contract between the parties. The role of the platforms therefore is to ensure that the virtual world they created and maintained is governable and secure. To do this, many platforms have introduced several policy tools to keep all of its users in line. For example, when a transfer of a virtual property or a sales contract is to be made, policies set by metaverse platforms can provide certainty by demanding the buyer to confirm that they are indeed the buying party to a particular sales contract before the virtual goods or properties in question can be transferred.

The most important of such policy tools are the Terms and Conditions/Terms of Use that platforms implement as the general guide of conduct for all its customers. The first argument that can be pointed towards their importance is that, many platforms consider that by accessing and playing in the metaverse server that a platform provides, a customer is bound and expected to abide by the rules set by the Terms of Use. The second argument is that, the Terms of Use may refer to a law of a state, usually the place where the platform is domiciled or incorporated, as its governing law that can

assist in bringing legal certainty to a case. By entering and engaging in commercial acts in a particular platform, customers have therefore made their tacit choice to abide by a law of a particular state, even though their specific contracts may not include a tacit choice of law clause, by virtue of the platform's Terms of Use.

An example to this is the Terms of Use made by Sandbox, one of the biggest metaverse platforms to this very day. Sandbox firstly specified that its Terms of Use govern the access to, use of, and interaction with The Sandbox, including any content, functionality, and services offered on or through The Sandbox. Further, The Sandbox informed that by using its platform, one accepts and agrees to be bound and abide by its Terms of Use. The Sandbox regulates the sales and purchases of virtual assets as well as the ownership of virtual assets in its platform. However, most importantly, The Sandbox specified that the rights and obligations of the parties under its Terms of Use are governed by the laws of Malta. Moreover, The Sandbox also regulates that if either party brings against the other party any proceeding arising out of these Terms, that party may bring proceedings only in the courts of Malta. In conclusion, if a party decided to enter into a contract with another party and the contract itself expresses no particular choice of law or even performing transactions without a written contract, the

tacit choice of law becomes the law of Malta considering both parties' choice to abide Sandbox's Terms of Use including its governing law term as the prevailing circumstance surrounding the transaction or the contract itself.

4. The Incorporation of Metaverse Regulations

To conclude this research article, an elaboration of an incorporation of metaverse regulations to further assist the rise of rule of law in the Metaverse especially in the masters of Private International Law is needed. As mentioned on part B there's a weakness in the instrument of Private Law which is regulated under the Hague Convention characterised by being a non-binding instrument. This set of international standards is still in a cloud without direct relevance for the daily transactions especially when it comes to metaverse. Therefore, it is really important for the cloud to be operationalized. In order to make it relevant the term and condition of metaverse transaction has to be put in practice. It has to be implemented to make sure that these abstract international standards become real law. Become part of our legal realities.

The Hague Convention had characterised itself by producing a number, almost 40 international conventions, that then are ratified by States, and this is the traditional way how international law becomes binding in the national

legal systems. When we look around in the area of international business law, there are several stakeholders that are very active in narrating private international law, among others, UNIDROIT, the Rome based organisation and UNCITRAL, as an agency of the United several international organisations that had succeeded in developing soft law. First soft-law instrument developed by HCCH (not Convention; not model law); approved by HCCH Members on 19 March 2015. A “package” consisting of Preamble and 12 Articles, with an Introduction and a Commentary. It is Recognised as international standards in relation to party autonomy in international commercial contracts. It also provides a comprehensive blueprint to guide users in the creation, reform, or interpretation of choice of law regimes at the national, regional, or international level. This road map can also be adapted in narrating metaverse regulations especially in determining the jurisdiction.

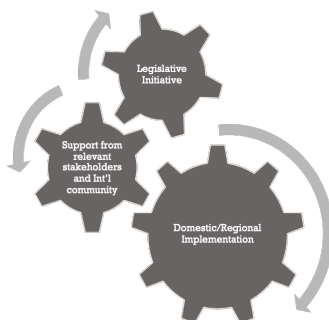


Table 1.2 The Road Map towards an Operationalized
Metaverse Regulations

Particularly in the European Union, measures to control the metaverse have baffled many. The European Commission only recently opened a public consultation in order to create an interoperable vision for the impending metaverses. It is stated that the rules must be based on both cutting-edge principles based on virtual worlds and respect for digital rights and EU legislation. This project closely follows another public consultation on cost sharing for extending network infrastructure that is being held by the EU and is open through May 19, 2023. According to Thierry Breton, the EU's commissioner for the internal market, emerging technologies like the metaverse require more data, which calls for changes to the underlying digital infrastructure. A separate non-legislative initiative on the metaverse was also introduced by Commission President Ursula von der Leyen in September of last year. The European Parliament is similarly working on a study of its own accord on the prospects, risks, and policy implications of the metaverse.

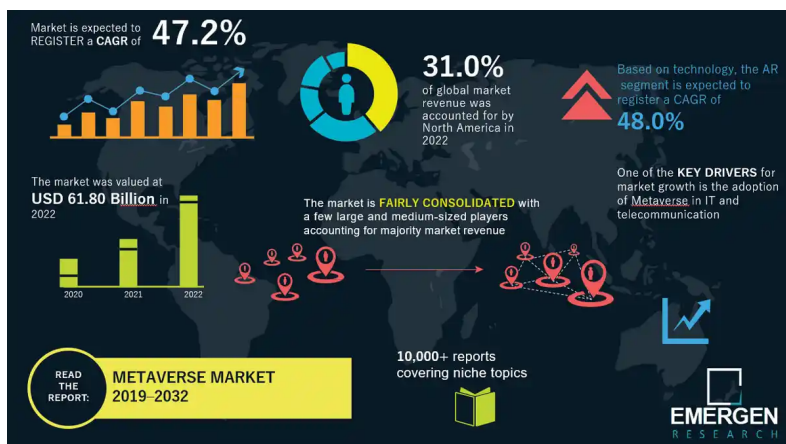


Table 1.3 Metaverse Market

(source:<https://www.emergenresearch.com/industry-report/metaverse-market>)

However, it requires more universal parties in order to regulate the metaverse. Especially, if we take a look at the data of the metaverse market which implicated diverse states and regions. According to the data that we generated from Emergent Research, North America currently has a dominant share in the metaverse market, while the Asian market is expected to experience the fastest growth with Europe setting a steady pace in the forecast period. Seeing such results, the developing metaverse of the future will bring about vast and immense contributions not only from diverse investors but also global citizens. Thus, the urgent issue of regulations for

metaverse must be resolved and narrated under a comprehensive and fluent transnational law.

C. Conclusion

In conclusion, the Metaverse as a part of the new global economic order, with its various kinds of complex economic activities, indicates a new model of economico-social life that cannot be easily defined and needs a comprehensive medium in International Law that can anticipate and regulate its ever-evolving mechanisms. In the field of International Private Law, this article posits that there is an urgent need to clearly define choice of law and, most importantly, jurisdiction of courts in the Metaverse, which have not been comprehensively treated and elaborated by previous studies as far as rule of law is concerned. This article finds that a more elaborate concept of tacit choice of law can provide a unique solution to the issues of applicable law and jurisdiction of courts in metaverse contractual disputes. For example, the examination of an electronic Terms of Use Agreement, frequently made a mandatory compliance upon registrations by private persons and created by a service provider, can provide a clue on what jurisdiction and law applicable to a dispute due to the fact that all users within that provider's metaverse tacitly agree to abide completely by that agreement.

However, though the article can pinpoint the usage of tacit choice of law in providing a rule of law in these dimensions

of Private International Law, the article realizes in the last part of the article that the Metaverse as a whole needs a comprehensive, fluent, and all-rounding transnational law. One which is operationalizable and can be universally accepted by all states. Though the operationalization of metaverse regulations can be achieved part by part in current bodies of international, regional, and local laws, the article now concludes by recommending that there should be a new specific regime of international cybersecurity with all its legal aspects under a separate legal umbrella regulated by a competent international organisation. Such a suggestion is made due to the fact that the application of one solution to a problem may not be adequate to cover all other interconnected dimensions of said problem without the need to reform the solution's field of study from end to end. Thus, the article deems a new dedicated field of an all-rounding international cybersecurity law as a most perfect solution to minimise the legal conundra that can emerge in the Metaverse.

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