

## **CESARE CAVALLINI**

*Full Professor of Civil procedure, Bankruptcy Law, Arbitration Law  
Bocconi University - School of Law*

### **RESEARCH INTERESTS**

Civil Procedure, Bankruptcy Law, Arbitration Law, Comparative Civil Justice.

### **EMPLOYMENT AND ACADEMIC RESEARCH**

#### **2006-present**

- **Full Professor of Civil Procedure, Bankruptcy Law, Arbitration Law**, Department of Legal Studies A. Sraffa, Bocconi University, Milan

#### **2001-2006**

- **Full Professor of Civil Procedure** at Catholic University of Milan

#### **1996-2001**

- **Assistant and Associate Professor of Civil Procedure** at Catholic University of Milan

### **EDITORIAL ACTIVITIES**

#### **2018- present:**

- **Editor** of "GLOBAL JURIST", a prestigious international law review publishing issues on issues of comparative law, law and economics, international law, law and society and legal anthropology.

#### **1996-present**

- **Editor** of *Rivista di Diritto Processuale*, the leading Italian journal for Civil Procedure.

**PUBLICATIONS IN INTERNATIONAL JOURNALS:**

WHY IS THE IURA NOVIT CURIA PRINCIPLE NOT APPLIED YET IN ENGLISH LAW?  
***GLOBAL JURIST*, 2017. DE GRUTYER -BERLIN.**

ON ARBITRAL JURISDICTION. HOW TO DEAL WITH THE COMPLEMENTARITY  
BETWEEN ARBITRAL TRIBUNAL AND THE COURTS,  
***GLOBAL JURIST*, 2018. DE GRUTYER -BERLIN.**

HOW TO REDUCE THE GAP? A COMPARATIVE VIEW ON THE POLICIES BEHIND  
THE INTERVENTION RULES, **39 *THE REVIEW OF LITIGATION*, 1(2019).**  
(COAUTHORED WITH MARCELLO GABOARDI).

THE JUDGE POSNER DOCTRINE AS A METHOD TO REFORM THE ITALIAN CIVIL  
JUSTICE SYSTEM, **2 *COURTS & JUSTICE LAW JOURNAL*, 2020,**

SHOULD WE TEACH (A BIT OF) U.S. CIVIL PROCEDURE IN THE EUROPEAN LAW  
SCHOOLS? **2 *COURTS & JUSTICE LAW JOURNAL*, 2020,**

IS FEDERAL RULE OF CIVIL PROCEDURE 19(B) TOO DISCRETIONARY? **54**  
***AKRON LAW REVIEW*, (2021)**  
(COAUTHORED WITH M. GABOARDI).

ISSUE PRECLUSION OUT OF THE U.S.? THE EVOLUTION OF ITALIAN DOCTRINE  
OF RES JUDICATA IN COMPARATIVE CONTEXT, 31(1) ***THE INDIANA***  
***INTERNATIONAL AND COMPARATIVE LAW REVIEW*, (2021).**  
(COAUTHORED WITH E. ARIANO).

WHO TAKES THE LEAD? TRANSNATIONAL INSIGHTS ON "THRESHOLD ISSUES",  
DELEGATION CLAUSE, AND THE U.S. SUPREME COURT, 51 (1) ***CALIFORNIA***  
***WESTERN INTERNATIONAL LAW JOURNAL* (2020).**

"SPEAKING" IN HER "JUDICIAL VOICE". GINSBURG INTERNATIONAL LESSON  
***GLOBAL JURIST*, 2021 (FORTHCOMING). DE GRUTYER -BERLIN.**

RIGHTS VS REMEDIES: TOWARDS A GLOBAL MODEL, UC DAVIS  
***INTERNATIONAL AND POLICY LAW JOURNAL*, FORTHCOMING 2022**  
(COAUTHORED WITH MARCELLO GABOARDI)

DETERMINATION OF THE U.S PLEADING FROM THE CIVIL LAW PERSPECTIVE,  
WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW, FORTHCOMING  
2022.

### SELECTED PUBLICATIONS

#### TEXTBOOKS

- **Lezioni di Diritto Processuale Civile, I vol.**, Zanichelli, 2021.

#### BOOKS

- *Riflessioni sulla giustizia civile [Reflections on Civil Justice]* 2019. This book addresses the “crisis” of civil justice from a domestic and comparative perspective.
- Editor of the *Commentario alla Legge Fallimentare [Commentary on the Bankruptcy Act]* 2010. A wide study - 4 volumes (4,000 pp.) - to which contributions were made by more than 30 scholars, including 15 papers of my own, considering various issues key to the Italian Bankruptcy Law, including the procedure for declaring bankruptcy, clawback actions, protection for creditors when drawing up the debtor’s schedule of liabilities, along with the new debt restructuring agreement.
- *L’arbitrato rituale. Clausola compromissoria e processo arbitrale [Arbitration Law. Arbitration clauses and the arbitration procedure]*, 2009.
- *Profili dell’arbitrato rituale [Aspects of Arbitration Law]*, 2005.
- *Eccezione rilevabile d’ufficio e struttura del processo [Ex officio objections and the structure of the trial]*, (2003). This book considers the delicate issue of the decision-making structure of the judgment where the court has held on its own motion during the course of the various stages and instances of proceedings that certain facts introduced by the parties have a certain legal effect, exercising one of its *ex officio* powers, with reference to the principle of the right to make representations and the burden or allegation and proof which is incumbent (only) on the parties.
- *L’oggetto del processo di rivendica [The object of the recovery action]*, 2002 explores the fundamental basis for determining the

subject matter of proceedings in relation to the extension of *res judicata*, considering the issue from the perspective of property law. The research has been conducted also by deploying comparative arguments.

- ***I poteri dell'interventore principale nel processo di cognizione*** [***The powers of the principal intervener within cognisance procedures***] (1998) deals with multi-party procedure, which involves a variety of issues relating to the structure of complex litigation and decision making in accordance with the right to be heard, and in general the due process, as well as the involvement of a third party in a trial pending between two other parties.

## ARTICLES AND OTHER SELECTED PUBLICATIONS

### Civil Procedure

- ***Il principio della domanda e la "giustizia della decisione": verso una nuova Iurisprudentia ?*** [***The principle of the claim and the "justice of the decision": towards a new jurisprudence?***], in *Riv. Dir. Proc.* 2016.
- ***L'eccezione "nuova" rilevabile d'ufficio nel giudizio d'appello riformato***["***New*** ***ex officio objections within the reformed appeal procedure***], in *Riv. Dir. Proc.*, 2014 deals with the new trends in the case law of the Court of Cassation concerning the appeal stage.
- ***Azione collettiva risarcitoria e controversie finanziarie*** [***Damages class actions and financial litigation***], *Riv. Soc.*, 2010 considers the issue of the class action, which was introduced into Italian law in 2009, with specific reference to commercial and financial disputes.
- ***Il rilievo d'ufficio della nullità del contratto: problemi e prospettive*** [***Ex officio annulment of contracts: problems and perspectives***], *Studi in onore di Carmine Punzi*, Giappichelli 2008, addresses the *ex officio* assessment of nullity with reference to the doctrine and rules of *res judicata*. This point of view expressed in this article was later endorsed by the Italian Supreme Court.
- ***L'oggetto della sentenza di condanna generica*** [***The object of generic rulings declaratory of a right***], *Riv. dir. proc.* 2002, deals with the *interim* adjudication known as the "condanna generica" (i.e. generic declaratory rulings).
- ***L'efficacia (riflessa) della sentenza nel pensiero di E.T. Liebman*** [***The (reflex) effect of the judgment in the thinking of E.T. Liebman***] in *Riv. Dir. Proc.*, 2007, tackles the extension to third parties of the incidental effects of a final judgment and starts from the renowned

viewpoint of one leading Italian proceduralist and takes forward the ongoing debate within the literature and case law. This issue has been analysed more recently in greater depth in *L'efficacia della sentenza impugnata [The efficacy of judgments under appeal]*, in *Riv. Dir. Proc.*, 2015.

- *Il procedimento di opposizione alle sanzioni della Consob e della Banca d'Italia [The opposition procedure to sanctions imposed by the Consob and the Bank of Italy]*, in *Banca, Borsa e Tit. di Cred.* 2003 addresses the judicial protection of rights in respect of measures adopted by independent authorities, including in particular the Consob (the association of Italian businesses) and the Bank of Italy. *La Camera di Conciliazione e di Arbitrato della Consob [The Consob Conciliation and Arbitration Chamber]*, in *Riv. Soc.*, 2007.
- The rules of civil procedure, including the powers of the parties and the powers of the judge, have been considered in numerous articles, including: *Le nuove norme sul procedimento di cognizione di primo grado [The new rules on cognisance procedures at first instance]*, in *Riv. Dir. Proc.*, 2005; *Questioni rilevabili d'ufficio e processo societario [Questions that may be considered ex officio and corporate litigation]*, in *Riv. Dir. Proc.*, 2005; *Il procedimento sommario di cognizione nelle controversie societarie [The summary cognisance procedure within corporate litigation]*, *Giust. Civ.*, 2003; *Nullità della citazione e inosservanza del termine a comparire [The nullity of the writ of summons and failure to comply with time limits for entering an appearance]*, in *Riv. Dir. Proc.*, 1998.

## Legal Theory, Legal Education and Comparative Civil Procedure

Particular attention has recently been dedicated to the general issue of the functioning of civil justice also from a comparative perspective.

- *Is Federal Rule of Civil Procedure 19(b) Too Discretionary?*, 54 *AKRON LAW REVIEW* (forthcoming 2020) (co-authored with Marcello Gaboardi).
- *The Judge Posner Doctrine as a Method to Reform the Italian Civil Justice System*, 2 *COURTS & JUSTICE LAW JOURNAL* (2020) (co-authored with Stefania Cirillo)
- *A Comparative View on the Policies Behind the Intervention Rules*, 39 *THE REVIEW OF LITIGATION* 1 (2019) (co-authored with Marcello Gaboardi).

- *Quale insegnamento del diritto processuale?*[*How should civil procedure be taught*], in *Riv. dir. Proc.* 2018, specifically focuses on legal education and the teaching of Civil Procedure from a comparative perspective.
- *Why is the Iura Novit Curia Principle not Applied Yet in English Law*, in *Global Jurist*, 2017. This article adopts a comparative approach to map a global context for the fundamentals of civil justice. In view of the acknowledged incomplete role of the EU regulatory framework in this respect, the article aims to discuss whether it would be useful and how it would be possible to find a shared space for civil justice, starting from the role of the judge to «find the law» as well as the notorious principle of «iura novit curia». From this perspective, the article recognises the commonalities in the role of the judge between civil and common law through the value of the constitutional principles. The aim is to understand the natural enforcement of iura novit curia also in English Law, notwithstanding the fact that this principle has been traditionally cast within the «public» civil procedural rules (rather than, by way of example, the «private» arbitration act).

#### **Arbitration Law (domestic and international)**

Several studies have been published on arbitration law, both domestic and international.

- These includes the studies into the compatibility of arbitration with certain forms of provisional orders (such as orders subject to the objections, generic declaratory rulings, and payment orders for undisputed amounts): *Condanne speciali e arbitrato rituale* [*Special orders and arbitration according to established procedures*], in *Riv. Arb.* 1996; *Ancora sull'inammissibilità delle ordinanze anticipatorie nel processo arbitrale* [*Further comments on the inadmissibility of pre-emptive orders within arbitration*], in *Riv. Arb.*, 2001). It is also important to mention both the study concerning the rules of arbitration in the event that the contested right has been assigned, *L'alienazione della res litigiosa nell'arbitrato* [*The alienation of the res litigiosa within arbitration*], in *Riv. Dir. Proc.*, 1996, and the possibility of challenges to an award by a third party (*Lodo rituale e impugnazione del terzo* [*Awards adopted according to established procedures and third party challenges*], in *Riv. Dir. Proc.*, 2000).
- More recently, the overall issue of arbitration – including the so-called “ritual” arbitration that is arbitration regulated by the Code of Civil Procedure, “irritual” arbitration i.e. free, contractual arbitration, and corporate arbitration - has been discussed for the **Enciclopedia**

**Giuridica Treccani on line**, subdivided as follows: 1) *Arbitrato Rituale (Convenzione arbitrale e Arbitri)* [*Arbitration according to established procedures (arbitration agreement and arbitrators)*], 2012; 2) *Arbitrato rituale (Procedimento)* [*Arbitration according to established procedures (procedure)*], 2012; 3) *Arbitrato Internazionale* [*International arbitration*], 2012; 4) *Arbitrato irrituale* [*Arbitration according to freely determined procedures*], 2013; 5) *Arbitrato societario* [*Corporate arbitration*], 2016;

- **On Arbitral Jurisdiction. How to Deal with the Complementarity between Arbitral Tribunal and the Courts**, *Global Jurist*, 2018. This article aims to address (and partially reframe) the core issues relating to arbitral jurisdiction by comparing different legal systems and operative solutions. There is no doubt that the orthodox position traditionally starts from the assumption that access to the courts within parallel proceedings, which (also) questions the allocation of jurisdiction, is problematic also due to the risk of delaying tactics by one party. According to this line of reasoning, when the authority of the arbitrators is challenged, the balance between the legitimacy and the efficiency of the arbitration process could be conditioned by prejudices relating to the (necessary) interference of the courts with the power of the arbitral tribunal to determine its own potestas iudicandi (or its lack thereof) on the merits.
- In an attempt to move on from the classical framing of this issue and towards a comparative evaluation of the rationales and values underlying domestic legislation on arbitral jurisdiction, considered also with reference to the provisions of the UNCITRAL Model Law, this article will seek to provide a solution that is rooted in the complementary role of the courts and of arbitral tribunals. The complementarity between arbitral tribunals and the courts will be shown to be key in securing the legitimacy of arbitration and the actual pre-eminence of this source of alternative private justice and, accordingly, also as a way of striking the optimum balance with the efficiency of the arbitration process.

## **Bankruptcy Law**

- Studies and research in this area have continued, pending the imminent adoption of an important new legislative reform, with a series of papers and articles including: *Trust e procedure concorsuali* [*Trusts and bankruptcy procedures*], in *Riv. Soc.*, 2011; *Dalla crisi alla*

*conservazione dell'impresa nelle ultime riforme fallimentari: uno sguardo d'insieme tra novità della legge e statuizioni della Suprema Corte [From the crisis to the conservation of the company under the last bankruptcy reforms: an overview of the legislative novelties and Supreme Court rulings], in Riv. Soc. 2013; Amministratori e società insolvente: responsabilità e nuove frontiere della tutela cautelare prefallimentare [Directors and bankruptcy companies: liability and new frontiers in pre-bankruptcy precautionary protection], in Riv. Soc., 2016.*