



Welcome to the new interview of "[Digital Coffee Break in Arbitration](#)" by [Svenja Wachtel](#). I am an attorney and arbitrator in the field of international arbitration and the founder of Digital Coffee Break in Arbitration, an initiative creating a debate around digital transformation in international arbitration. In this series, I discuss the latest trends in the field, covering topics such as the use of technology, digital transformation, and digitalization. Digital Coffee Break in Arbitration invites you to grab a drink, sit back and enjoy first-hand insights from General Counsel, arbitrators, legal scholars and other practitioners from all over the world of international arbitration.

Today, I am not talking to one person but to four people about the metaverse and more precisely [MetaverseLegal](#). MetaverseLegal was launched in January 2022 as a decentralised LinkedIn page dedicated to the legal implications of the metaverse. It offers a cross-practice resource for lawyers to understand the metaverse. MetaverseLegal was initiated by Ekaterina Oger Grivnova, who handed over decentralised governance to administrators – who are volunteers contributing to the MetaverseLegal community. There is no hierarchy among MetaverseLegal's administrators. All decisions are made by a voting process using an app called Discord. All interviewees are administrators of MetaverseLegal and specialise both in commercial and investment treaty arbitration.

[Elizabeth Chan](#) (陳曉彤) (Lizzie) is a Senior Registered Foreign Lawyer (England and Wales) in Allen & Overy's international arbitration team based in Hong Kong. She formerly practised international arbitration in London and New York. She is a previous interviewee on Digital Coffee Break (see [here](#)).



[Ekaterina Oger Grivnova](#) (Katja) is a lawyer with Allen & Overy Paris office. Ekaterina also lectures in international arbitration and pursues a PhD degree. Ekaterina is an Editorial Board Member of [Arbitration.ru](#) and a Co-chair of Paris Very Young Arbitration Practitioners ([PVYAP](#)).

[Emily Hay](#) is Counsel at Hanotiau & van den Berg, acting as arbitrator, counsel and tribunal secretary. She also advises on data protection and privacy matters. Emily splits her time between Europe and Asia.



[Juliette Asso-Richard](#) is Counsel at LALIVE. She specialises in international commercial arbitration, with a focus on complex disputes involving major construction projects in the energy, transportation and telecom sectors. She has particular experience advising clients on quantum-related aspects of disputes. She is also specialised in Web 3.0 disputes, including metaverse and non-fungible token (NFT) related legal issues.

Thanks all of you for this interview and for enlightening us with respect to the metaverse. Before we go into detail, I would like to know the basics: What is the metaverse and what are its key features?

LIZZIE The metaverse is a persistent digital world in which we each have a presence. It is at the heart of web 3.0, the third generation of the internet, defined by (among other factors) decentralisation, i.e., the idea that the internet is owned by many and no one actor can own or control it.

It is important to see the metaverse in the context of the digital economy. Already today, seven of the world's ten largest companies by market-capitalisation offer either a window to the digital world like Apple and Microsoft; monetise our attention in the digital world like Facebook, Alphabet and Amazon; or produce the semiconductors which enable the digital world like Nvidia and TSMC. As we spend more time in the digital world, the digital economy will grow with it.

Some of the key features of the metaverse include: users participating as avatars, the use of immersive technologies such as virtual reality ("VR") and augmented reality ("AR"); the use of digital assets, such as NFTs and cryptocurrencies; the existence of centralised and decentralised metaverse platforms; and the ability to enjoy a wide range of experiences.

This sounds very futuristic and more like a subject that requires a very specialized skill set. How did you become interested in the metaverse?

LIZZIE I got interested in the metaverse after trying my husband's Oculus Quest 2 headset. I joined him for a meeting in Horizon Workrooms and was amazed by how well his avatar reflected his facial expressions and gestures. I then got the idea to host the first-ever virtual reality arbitration gathering in January 2022! (This is reported on Kluwer [here](#).)

EMILY I was introduced by a family member to the metaverse and an addictive VR game called Beat Saber, and saw the potential of this new technology. I have some background in data protection law and consumer protection law which sparked my curiosity about how we will face some of these mind-bending new legal issues. It is fascinating to follow technological developments and how the law can (or cannot!) keep up.

JULIETTE With a group of friends in Geneva involved in various Web 3.0 projects (cryptocurrency, blockchain, decentralized finance (DeFi), NFTs, artificial intelligence (AI), gaming, VR, AR, etc.), we decided to launch the first Web 3.0 non-profit association in Switzerland to gather all players of Web 3.0 (called [Sharing 3.0](#)). I got immediately plunged into a fascinating tech world and saw straight away that there was a major legal void. It became obvious to me that Web 3.0 investors would need lawyers specialising on these issues to safeguard their investments and to assist with their future disputes. I very quickly got my

Oculus Quest 2 headset, Metamask wallet and various metaverse accounts to explore the metaverse by myself.

KATJA My husband's start-up aims at providing charging solutions to people during various events (including conferences, seminars and festivals). During COVID, he started to explore opportunities to do events in the metaverse. I just wanted to understand the language he was speaking... but ultimately got trapped!

I see that you all have a certain taste for the metaverse. But how does this interest transform into MetaverseLegal. What is the idea behind it and what is MetaverseLegal?

KATJA MetaverseLegal is a LinkedIn page dedicated to legal implications of the metaverse. MetaverseLegal aims to educate lawyers on issues relating to Web 3.0 and build a legal community around this technological revolution. Alongside its unique content, MetaverseLegal has three distinctive key features: decentralisation, versatility and diversity.

MetaverseLegal is decentralised: The decentralisation implies that MetaverseLegal does not have any central authority, hierarchy between its members or representative bodies. MetaverseLegal is governed by all administrators on an equal footing, notably via voting decisions. The organisation totally relies on the autonomy of the administrators: every administrator contributes independently to the development of the page and can come up with and submit to the voting any project (such as the [First Arbitration Conference in the metaverse](#), for example). MetaverseLegal is therefore free-running and self-sustainable.

MetaverseLegal is versatile: It gathers together lawyers specialised in various areas of law and therefore tackles challenges of Web 3.0 and the metaverse from all potential legal angles.

MetaverseLegal is diverse and inclusive: there was no initial selection or preferential treatment for any administrator. This approach allowed MetaverseLegal to constitute an extremely diverse pool of administrators. It includes lawyers with a range of experience in terms of legal practice (disputes lawyers and transactional lawyers), years of experience (from trainees to partners), tech expertise, nationality, gender, socio-economic background and more.

We now turn to the legal aspects of the metaverse, what are the existing legal disputes that have arisen in relation to the metaverse?

KATJA So far, there are no disputes directly linked to the metaverse. Nevertheless, all disputes related to cryptocurrencies and NFTs – as will be presented further – might also happen in the metaverse (as it was previously the case with the Second Life).

An interesting case was, however, brought by Falcon Rappaport & Berkman law firm against another law firm called "Metaverse Law" in September 2021. The former alleged the term "metaverse" was too generic for protection and that the latter could not appropriate it. The [case](#) is still pending.

What dispute resolution methods are suitable for resolving disputes relating to the metaverse, and – more precisely – do you think that arbitration is a suitable option?

LIZZIE As with all cases, the suitability of particular dispute resolution tools would turn on the needs of each case. But speaking very generally, international arbitration offers some key advantages, including the enforceability of arbitral awards in most jurisdictions of the world under the New York Convention. Of course, some online dispute resolution processes may resolve a dispute entirely on-chain and avoid the need for enforcement altogether. For example, under the UK Jurisdiction Taskforce's Digital Dispute Resolution Rules, the parties may empower the tribunal to directly operate, modify, cancel or transfer digital assets, which obviates the need for enforcement through national courts. Other advantages of arbitration include the option to choose your arbitrator who has expertise in the relevant subject matter. This could be important in disputes involving digital assets, for example, if the arbitrator's knowledge of coding is relevant.

Any disadvantages you can think of?

LIZZIE Arbitration arguably has some disadvantages too, particularly as to speed, cost and the inability to make orders against third parties not bound by an arbitration agreement. That said, procedural flexibility is one of the strengths of arbitration and the parties could agree to an abridged process to address the speed/cost issues.

There's good reason to believe that other forms of ADR, such as decentralised justice systems, might be (or become) very attractive to metaverse users – for reasons of ease and cost. Examples of such systems include Kleros, Jur, and Aragon (there are many others).

The courts are likely to play an important role in resolving metaverse-related disputes too. In instances where the parties do not have an arbitration agreement, the national courts may be the (only) dispute resolution option.

As Katja mentioned, while there may not yet be disputes arising directly out of the metaverse, there are examples of disputes relating to digital assets used in the metaverse, such as NFTs. Consider, for example:

- Hermès' [US lawsuit](#) against an individual artist's creation of NFTs based on Hermès' line of fashion bags;

- Nike's [US lawsuit](#) against StockX for creating NFTs based on Nike's physical shoes;
- an individual NFT-holder's [US lawsuit](#) against NFT marketplace, OpenSea, for negligence in respect of a security hack resulting in theft of the NFT; and
- Shenzhen Qice Diechu Cultural Creatiity Co., Ltd's [copyright claim in the Chinese courts](#) relating to an NFT digital work against the operator of an NFT marketplace called Bigverse.

Do you expect to see a rise of arbitration proceedings with metaverse implications?

JULIETTE Like in the physical world, people interact in the metaverse through their avatars. There, you can not only socialise but also work, play, shop designer brands, go to exhibitions, buy virtual land, build skyscrapers, and a lot more. The amounts at stake are skyrocketing: for example, the total volume of virtual real estate transactions reached USD 500 million last year (including a single transaction of USD 2.43 million in Decentraland, one of the metaverse platforms) and is expected to double in 2022. Where there are interactions between people and money, there are disputes. As stated above, arbitration is a particularly well-suited method to resolve these metaverse-related disputes. We will therefore necessarily see a rise in arbitration proceedings relating to commercial transactions in the metaverse: e.g. arbitration proceedings relating to the construction of virtual buildings, the sale of digital assets, the provision of virtual services.

What are the legal jurisdictional issues in the metaverse (in the context of disputes by users against metaverse platforms)?

EMILY For disputes between a user and a metaverse platform, you have some very interesting legal jurisdictional issues. Some of these issues are not new, in that similar issues arise with Web 2.0 technology such as social media and e-commerce. However, the metaverse both amplifies existing challenges and creates new ones.

The starting point is to check the terms of use that the user agreed to. Almost all platforms will set out a law applicable to the terms, and a dispute resolution method. Some specify arbitration, such as Decentraland (ICC arbitration, seated in Panama City) and Oculus (AAA Consumer Arbitration Rules). Others specify the courts of a particular jurisdiction.

However, it's not as simple as that. For example, consumer protection and data protection laws in some jurisdictions do not allow consumers to be deprived of the benefit of mandatory protections under the law where they reside, including the right to go to court. The EU in particular has strong legal protections in place for consumers. Unlike in the US, arbitration of consumer disputes on the basis of pre-agreed terms of use will almost never be valid under EU law. Some terms of use anticipate this problem by providing for back-up options, referring to the possibility of going to small claims courts, or by mentioning that in case of invalidity of part of the terms, the rest will remain in effect. Several terms also contain carve-outs for IP disputes. An additional issue is that whether under domestic procedural rules or under private international law, it is not settled how concepts such as the place of business and

targeting of specific markets will be understood and applied, which will be important to determine the application of mandatory laws.

As you can see, it can be a challenge to figure out how this patchwork of laws will apply to any specific dispute in terms of traditional dispute resolution methods.

How might disputes between users on metaverse platforms be resolved?

JULIETTE In my view this is where a legal void exists at the moment. Whereas the relationship between users and metaverse platforms is governed by terms of use specifying the applicable law and the dispute resolution method (that every user has to accept to access the metaverse platform), relationships between users are not governed by anything. This is because users can, without any control of the platform, (i) offer services

to other users (e.g. gaming experience, concert, real estate agency services, coaching), (ii) create digital assets (e.g. wearable, accessories, art) and sell them to other users and (iii) rent or re-sell parcels of virtual land to other users. The blockchain technology has allowed the monetization of all these transactions without the need for a central organisation to regulate them. Technically, these transactions are completed through smart contracts, which automatically transfer (permanently or temporarily) the ownership of the digital asset (i.e. the virtual land, the virtual object, or the virtual voucher giving access to the virtual service) from one user to another upon receipt of crypto-payment.

What are the obstacles in these disputes concerning digital assets?

JULIETTE What if the digital shoes you receive from a famous shoe brand having set up a digital flagship store in the metaverse do not have the colour you thought? Or the virtual land you bought on the secondary market ends up not being exactly as described? Or because of a technical glitch, you cannot access the concert organised by a world-known artist in the metaverse for which you had bought a ticket? Or the Chanel blazer or the Cartier "Love bracelet" you had bought ends up being a counterfeit (which happened in the Roblox metaverse)?

To resolve these disputes between users (i.e. not involving a metaverse platform as a party), it is not clear what laws or what dispute resolution mechanisms apply. Most metaverse platforms and digital marketplaces currently do not offer any assistance regarding disputes between users; in fact, in their terms of use, they expressly waive their liability regarding disputes between users. To safeguard the rights and obligations of users, platforms could offer a dispute settlement mechanism for disputes between them, or at least some assistance, which is what some e-commerce platforms currently do.

Smart contracts used to execute these transactions

could also be further fine-tuned to assist with post-transaction disputes. Currently, they are generally limited to payment and ownership transfer obligations.

They do not include governing law or dispute resolution clauses. In fact, even if one would deviate from the standard forms of smart contracts and include such clauses in the code (which incidentally would dramatically increase the cost of the transaction on the blockchain), the question would still arise of whether every single user is deemed to have read and consented to thousands of lines of sibilant smart contract's code including

such language. Furthermore, to become effective, one would need to find a way to automatically enforce such clauses.

What is your advice in these situations?

JULIETTE At the moment and until these solutions are further developed, I would personally advise any client who wants to enter into a significant transaction with another user in the metaverse to enter into a "classic" contract, allowing him or her to know who his or her counterpart is in the physical world and providing for an applicable law and a dispute resolution mechanism.

Another question arising out of the metaverse-context is VR and its connection to the metaverse. What are the benefits of using VR?

LIZZIE VR allows us to interact with others and with the environment in the metaverse as if we are truly "present" in that alternative reality. When I put on my Oculus Quest 2 VR headset and enter a Horizon Workroom, I sit in a chair, just like I sit in my physical chair in my office. I can turn to face the person next to me, and even give them a high five. The headset has built in sensors that help make my experience more immersive. For example, just like in physical life, I hear those speaking next to me more clearly than those from across the room. The sensors also pick up my hands so I can gesture with my hands and point with my fingers.

Can you imagine a full hearing taking place in the metaverse?

LIZZIE Yes, I can imagine a full hearing taking place in the metaverse. I think the significant advantage that a hearing in VR would offer is the sense of presence – like you are really speaking to a room of people – that 2D video-conferencing does not offer. It would be fantastic in the future to be able to customise your hearing facilities exactly as you need it – the shape of the room and number of seats, the number of break-out rooms etc. That said, I'm not sure the technology is quite there yet for a full hearing. For example, at present, in Horizon Workrooms, you can only have 16 avatars in the room. I am also not sure how people would react to witnesses giving evidence as avatars that do not attempt to represent themselves at all. For example, what if a witness wanted to use an animal or a robot as his or her avatar?

I think the VR technology will continue to improve too. Whereas right now the VR headsets can be a little tiring to wear and the controllers a bit awkward to manoeuvre, in the future, perhaps we'll be wearing lightweight VR goggles and donning haptic gloves.

But in the meantime, we should definitely become more familiar with VR technology and its possibilities. For example, I have suggested that the Vis Moot next year should host a mock hearing in virtual reality – with a three-member tribunal and counsel for each side, all appearing as avatars.

I love the idea of getting involved early in this new technology, such as hosting a mock hearing in virtual reality for the Vis Moot. Do you think that law schools should offer programmes and courses on legal technology subjects or is this too much of a niche to be taught in law school?

LIZZIE The wonderful thing about education today is that there are

now so many accessible and available courses on all aspects of legal technology. Many law schools already offer courses on law and technology, clinical programmes relating to digital innovation, specialist LLM programmes on law and technology and more. Even if your law school doesn't offer those courses and programmes, there are plenty of affordable courses out there on different aspects of technology, e.g., basics of blockchain and coding. Check out coursera, for example. You can also consider joining some arbitration and

tech groups, for example, ArbTech, to connect with other lawyers with an interest in the metaverse.

What are your recommendations if someone is interested in the metaverse and wants to learn more, where should one start?

LIZZIE Follow MetaverseLegal on LinkedIn! I've also learnt a lot from Matthew Ball's writing on the metaverse: check out www.matthewball.vc/the-metaverse. You can also set up news alerts for the "metaverse", so that you can read about latest trends in this space.

EMILY Another great organisation to follow on LinkedIn is ArbTech (as Lizzie mentioned), which covers a lot of technological and dispute resolution developments. Learning about blockchain, cryptocurrency, gaming and NFTs is all going to be relevant to understanding the metaverse.

Thanks so much to all of you! I am very much looking forward to our first meeting in the metaverse.

Disclaimer: None of the content contained in this interview reflected the position of the firms/organisations which the interviewees are affiliated with.