New Rules of International Civil Jurisdiction in Japan

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Notion of International Court Jurisdiction

- Exercise of Judicial Sovereign Power of a State is not open for every international cases
- In what case, or under what condition, an International Civil and Commercial Disputes can be handled by the Japanese Court?
- In what case the plaintiff can sue the defendant in Japanese Court?
- Example:
Malaysia Airlines Case of 1981

A (Jap. Businessman) → Malaysia Airlines

X (Successors) → Sued in Japanese court

- Defendant: "Japanese court has no jurisdiction, because the incident has no sufficient connection to Japan"
- Jap. Supreme Court affirmed international jurisdiction because the Defendant had its Branch in Japan

→ Not very persuasive
Factors to be considered

◆ From the Defendant's perspective:
  • The Accident occurred in Malaysia
  • Important evidences were mostly located in Malaysia
  • Most Witnesses / Victims were there
    → Japan is not a good place to hear the case

◆ From the victim's perspective:
  • The parties were not equal
Ⅱ Relevant Basis of International Civil Jurisdiction

1 Defendant's Domicile

- Art.3-2(1) JCCP: "The courts shall have jurisdiction over an action against a person: if he/she has his/her domicile in Japan"
- Art.3-2(3)JCCP: "The courts shall have jurisdiction over an action against a juridical person or any other association or foundation, if its principal office or business office is located in Japan"
• Even the Roman Law knew this principle ("actor sequitur forum rei")
• Court of the defendant's domicile can exercise jurisdiction over ANY action against him ("General Forum")
• *ratio legis* of this rule: protection of the procedural right of the defendant (consulting lawyer, collection of evidence/witnesses: procedural status of the plaintiff is generally better than the defendant)
• The law gives priority to the defendant
2 Location of the Defendant's Asset

- Art.3-3 (3) JCCP: Japanese court has international jurisdiction, if "seizable property of the defendant is located in Japan (excluding cases where the value of such property is extremely low)"
- Ratio legis: possibility of execution
- If the defendant has assets in the Forum State, the plaintiff can enforce judgment to collect money
Forum of the Defendant Assets
- criticized as "Excessive" Jurisdiction

• "Excessive jurisdiction" - inadequate exercise of court jurisdiction, where the Forum State has NO relevant connection to the case

• Why Jurisdiction of the Defendant Assets can be excessive?
### 3 Place of Performance

- Place of performance of the obligation — regarded as a relevant jurisdictional basis for the contract disputes in many Civil Law countries.

- Art.3-3 (1) JCCP: For an action based on a contract, Japanese court has international jurisdiction, "in cases where the place of performance of the obligation provided for in the contract is located in Japan".

- Creditor has legitimate expectation that the debtor performs his duty there.

  → If not, lawsuit can be filed there.
4 Place of Tort

- "Place of tort" jurisdiction — accepted in most legal systems
- Art.3-3 (8) JCCP: An action relating to a tort may be brought in Japanese court, if "the place where the tort was committed is located in Japan (excluding cases where a harmful act was committed in a foreign state but where the occurrence of consequence of said act in Japan was not normally foreseeable)".
Ratio legis of the Place of Tort Jurisdiction

① Place of tort is the only factor which connects plaintiff and defendant
② Most evidences or witnesses of the accident are located there
③ Victims of the tort are residing there → This jurisdiction will promote protection of the victim
What is "Place of Tort"?

- Usually place of tort is easy to determine
- In PL Cases, the place of tortious act and place of injury may be different

Company Y (State A) \(\leftrightarrow\) Victim X (Japan)

- manufactured a medicine which had harmful ingredients
- bought and took medicine in Japan and suffered damage

(Place of tortious act = place of production) \(\leftrightarrow\) (Place of Injury)

→ Both State A and Japan are the "place of tort"
In some exceptional cases, place of injury is unpredictable for manufacturer

Company Y (State A) ← Victim X (Japan)

- manufactured a medicine which was sold only in State A
- bought medicine in State A and suffered damage in Japan

→ Should Japanese Courts have Jurisdiction?
→ No (unpredictable for the manufacturer)
→ Art.3-3 (8) JCCP provides in parenthesis:
5  Protection of the weaker party

- Considering the disparity of power between juridical person and natural person, protection of the weak is crucial for determining international jurisdiction

→ Japanese Lawmaker made a new rule on protection of consumers and labors
Art.3-4(1) (Consumer Contract)

- “An action brought by a consumer…against a business operator …… with respect to a contract concluded between the consumer and the business operator …… may be filed with the courts of Japan, if the domicile of the consumer …… is located in Japan”.
- THE CONSUMER may bring suit in his/her domicile against the business operator
- THE BUSINESS OPERATOR has to file a lawsuit in the domicile of the consumer
Art.3-4(2) (Labor Contract)

- "An action brought by an individual employee against an employer in relation to a civil dispute arisen between them …… may be filed with the courts of Japan, if the place of performance of his/her labor under the labor contract …… is located in Japan".

- "The place of performance of labor" is in most cases the same as the labor's domicile

→ The weaker party is favored
Art.3-4(3)

- "The preceding article shall not apply to an action brought by a business operator against a consumer …… and an action brought by an employer against an employee”.

- "The preceding article": Art.3-3 (jurisdiction of defendant's assets, place of performance, place of tort etc.)

→ BUSINESS OPERATOR may not make use of this Article, but CONSUMER may

→ The weaker party is strongly favored
Protection of the weaker party

- Action brought by Business Operator
- Action brought by Consumer or Labor
- Defendant's Domicile (Art.3-2)
- Consumer's Domicile (Art.3-4(1))
- Place of Performance of Labor (Art.3-4(2))
- Place of Defendant's Asset, Place of Tort etc. (Art.3-3)
Ⅲ "Special Circumstances" Test

- There's no rule without exception
- Common Law: "Forum Non Conveniens" Doctrine
- Even if jurisdictional basis exists, in some exceptional cases, judge may refrain from exercising jurisdiction
- Judges have broad discretion to apply this doctrine
Tokyo District Court, Decision of 1986 (Far Eastern Air Transport Case)

FEAT (Taiwanese Airline) ——— Japanese Victims

United Airlines
(Seller)

Boeing Company
(Manufacturer)

Successors

PL Suit in Japan
Decision

- Jurisdictional basis was located in Japan
- But there are "exceptional circumstances", which make the exercise of the Japanese court jurisdiction difficult
- Most evidences are located in Taiwan
- "As there's no diplomatic relationship between Japan and Taiwan, judicial cooperation to investigate these evidences cannot be expected"
  → "Virtually impossible to litigate in Japan"
Sup. Court Decision of 1997
("Family" Corporation Case)

Contract (Purchase of Secondhand Car)

X (Jap. Company)  →  Y (Japanese living in Germany)

Claim (Restitution of Deposit Money)

X: "Place of Performance is located in Japan"
Y: "Special Circumstances' exist"
Decision: Jurisdiction Denied

- Contract was concluded in Germany
- Purpose of contract was purchase of car in Germany
- No agreement on the place of performance as to the restitution of deposit money
- No agreement on applicable law
- Y lived in Germany more than 20 years
- Y's principal place of business was located in Germany
- Important evidences are located there
- "Special Circumstances" exist, which lead to the denial of Japanese Court Jurisdiction
Art.3-9 JCCP

"Even where the courts of Japan have jurisdiction over an action......the court may dismiss the whole or a part of such action when it finds special circumstances under which a trial and judicial decision by the courts of Japan would undermine equity between the parties or disturb realization of a proper and prompt trial, taking into consideration the nature of the case, the degree of the defendant’s burden of submitting defense, the location of the evidence and any other circumstances".