

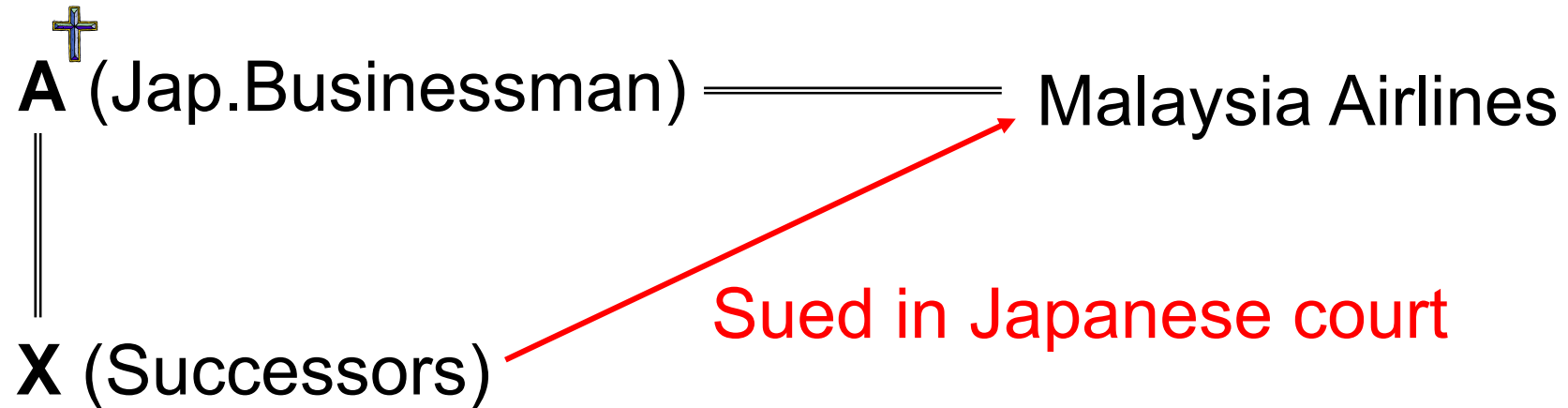
New Rules of International Civil Jurisdiction in Japan

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I 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



- 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

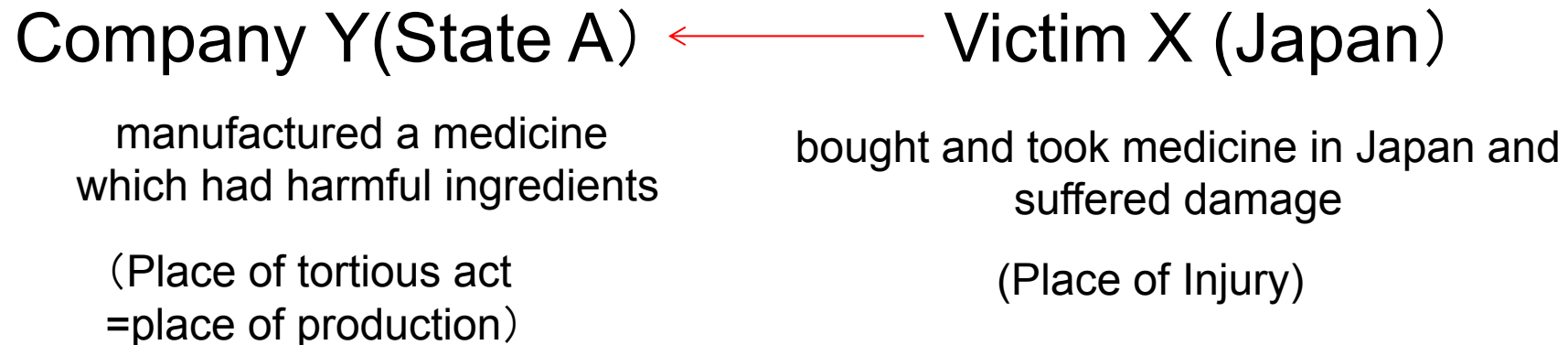
- "Place of tort" jurisdiction — accepted in most legal systems
- Art.3-3 (8) JCCP: An action relating to a tort may be brought in Japanese court, if "the place where the tort was committed is located in Japan (excluding cases where a harmful act was committed in a foreign state but where the occurrence 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

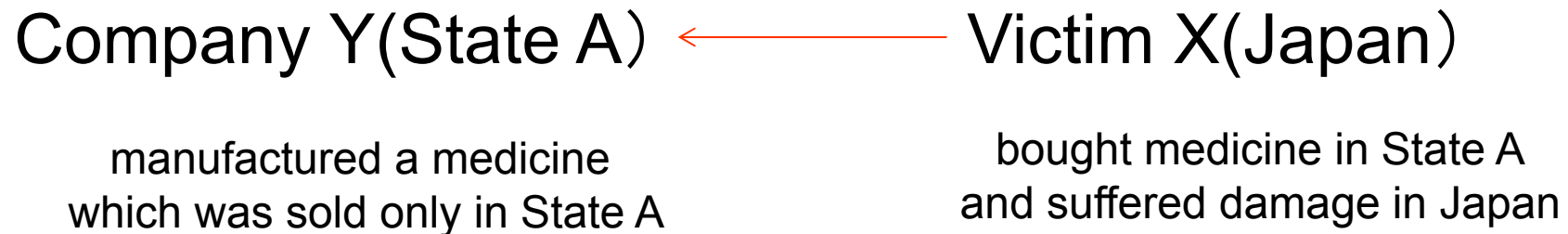
What is "Place of Tort"?

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



→Both State A and Japan are the "place of tort"

In some exceptional cases, place of injury is unpredictable for manufacturer



- 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

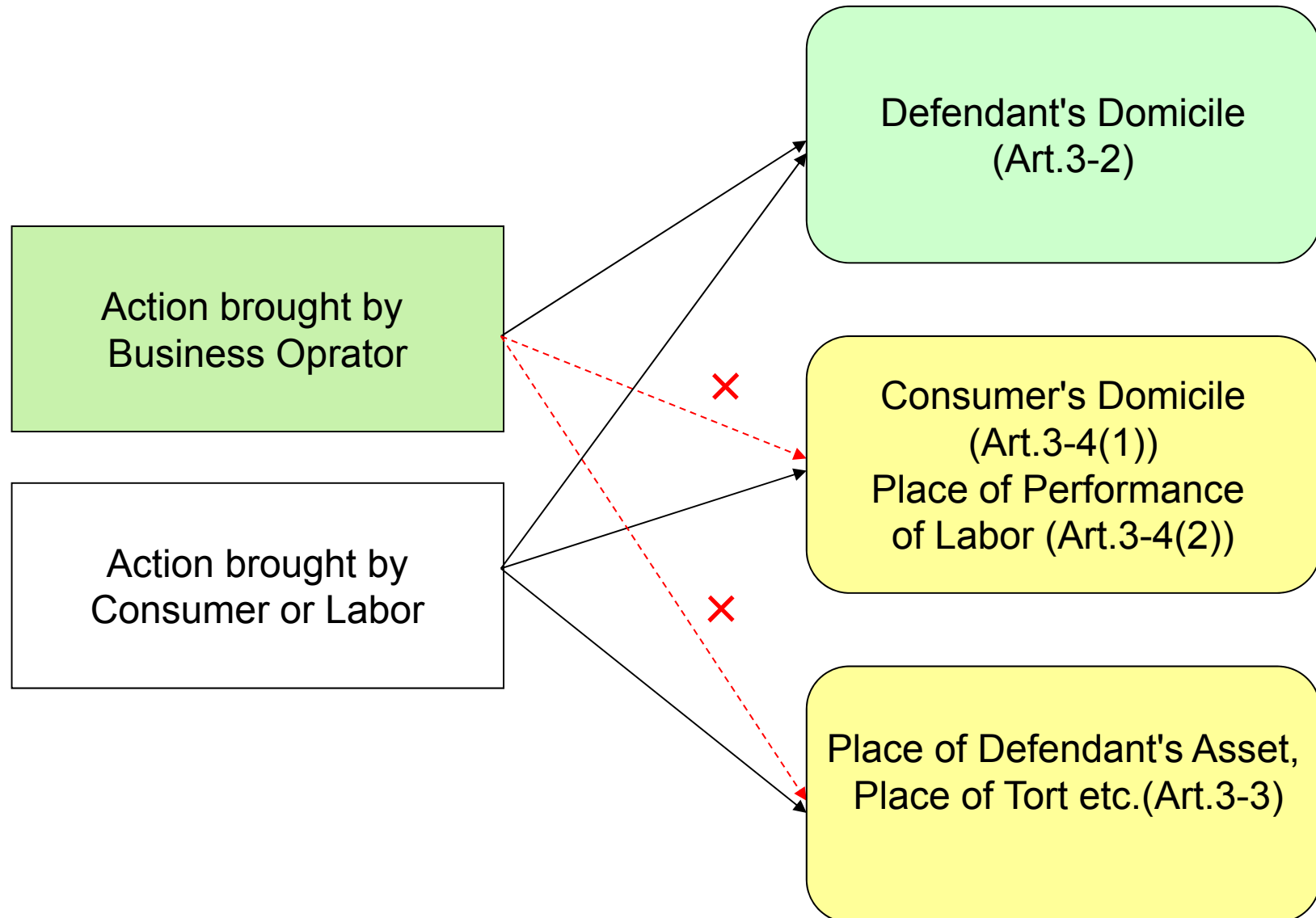
Art.3-4(2) (Labor Contract)

- “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

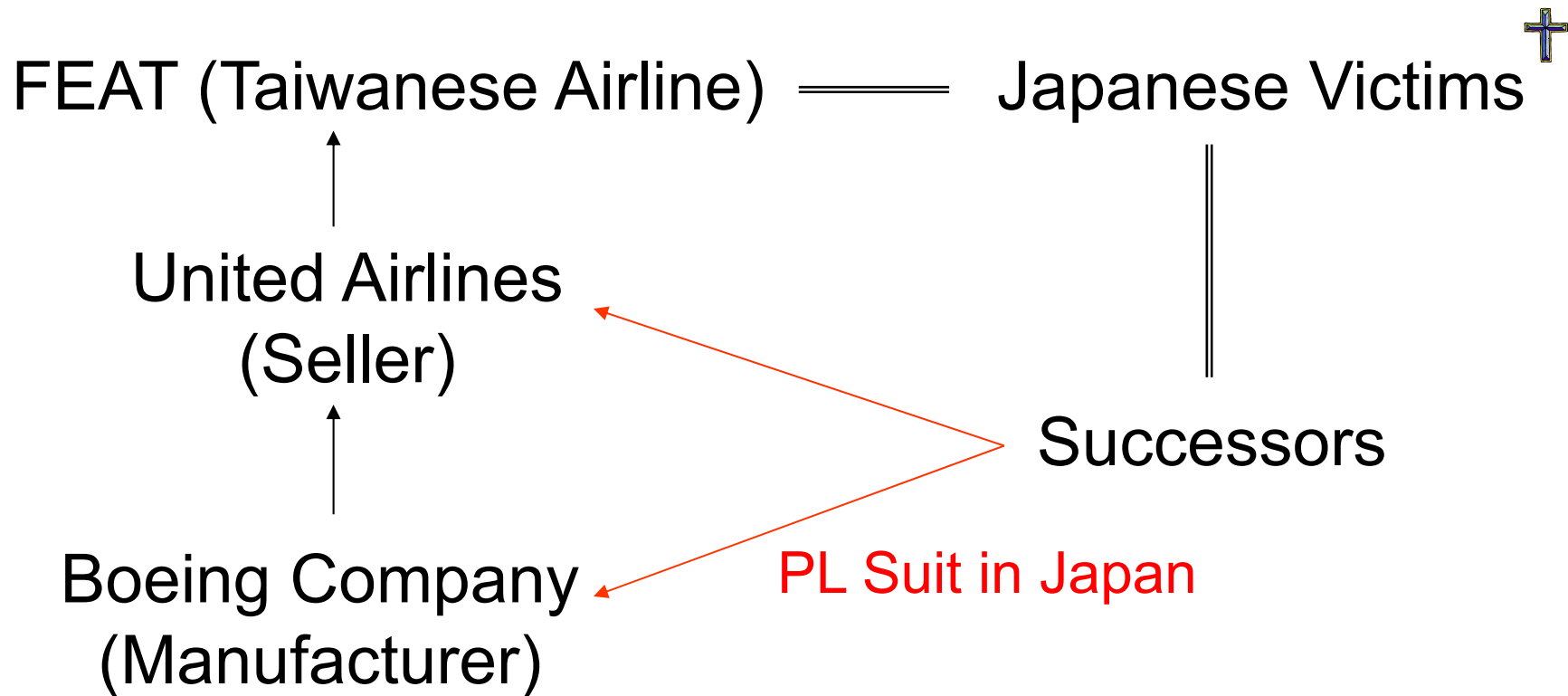
Protection of the weaker party



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)



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: "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".