

PART 5

JURISDICTION AND VENUE OF THE COURT

CHAPTER 2

ALLOCATION OF CASES BASED ON GEOGRAPHY

Peter C H Chan

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TABLE OF CONTENTS

1 Introduction	1
2 The Role of Geography in Case Allocation Generally	1
3 Common Law System: Geographic Jurisdiction/ Personal Jurisdiction	2
3.1 Introduction.....	2
3.2 In Personam Jurisdiction	3
3.3 In Rem Jurisdiction	6
3.4 Quasi In Rem Jurisdiction	7
3.5 Specific Jurisdiction vs General Jurisdiction	8
3.6 Parties' Consent?	11
3.7 Long-Arm Jurisdiction	14
3.8 Limitation of the Personal Jurisdiction.....	18
3.9 Discussion	20
4 Civil Law System: Geographic Jurisdiction	21
4.1 Introduction.....	21
4.2 General Territorial Jurisdiction – Defendant Domicile.....	21
4.3 Specific Territorial Jurisdiction – Conduct and Property.....	25
4.4 Consensual Jurisdiction – Parties' Choice or Consent.....	28
4.5 Exclusive Jurisdiction	31
4.6 Limits of Territorial Jurisdiction.....	33
4.7 Discussion	35
5 Concluding Remarks.....	38
Abbreviations and Acronyms.....	41

Legislation	43
National.....	43
Cases	46
International/Supranational	46
National.....	46
Bibliography	48

1 INTRODUCTION

- 1 This chapter provides an analysis of the jurisdictional allocation of cases based on geography. The allocative heuristics based on geography allow a court to exercise its authority within a defined geographic territory and hear cases involving events and persons that fall within that jurisdiction. However, if a court lacks geographic jurisdiction over the events or persons involved in a case, it cannot impose any legal obligations on the defendant or adjudicate any rights with respect to them. It is important to note that this type of jurisdiction is distinct from subject-matter jurisdiction, which confers upon a court the power to render a judgment concerning a particular legal subject matter.
- 2 The scope and method for determining geographical jurisdiction vary between civil law and common law systems. In common law systems, the scope of jurisdiction is broader and includes most civil matters concerning the defendants' property, debts, and contracts. By contrast, civil law systems have a narrower scope of jurisdiction, limited to specific legal matters. In common law systems, jurisdiction is determined by the principle of minimum contacts: ensuring that the defendant is sufficiently connected to the jurisdiction to prevent any violation of the principles of justice. Conversely, civil law systems rely on express provisions enacted by the legislature to determine jurisdiction. The method for exercising jurisdiction differs as well, with common law courts have the discretion of exercising jurisdiction based on equitable principles. On the other hand, civil law systems require jurisdiction to be exercised strictly in accordance with the law, without any room for judicial discretion.
- 3 This chapter intends to provide a comprehensive overview of the allocation of cases based on geography in civil and common law jurisdictions. Given the impracticality of conducting an exhaustive study of every jurisdiction, the chapter will focus on illustrative jurisdictions such as the United States, England and Wales, Canada, Australia, Singapore, India, South Africa, Mainland China, Taiwan, Hong Kong, Macau, France, Germany, Norway, Poland, Estonia, Italy, Russia, Belgium, Egypt, Algeria, Tunisia, Dubai, Iran, Turkey, Brazil, Argentina, Colombia, Venezuela, Costa Rica, Cuba, Mexico, Japan and South Korea. Additionally, the chapter will include supplemental commentary on other jurisdictions that provide interesting contrasts. The chapter will proceed thematically rather than by jurisdiction and will analyze geographic jurisdiction along various dimensions. This chapter proposes that geographical jurisdiction is influenced by three key factors, (1) national sovereignty; (2) the balance of plaintiff and defendant interests; (3) forum interests.

2 THE ROLE OF GEOGRAPHY IN CASE ALLOCATION GENERALLY

- 4 Geographic jurisdiction originated with early English legal customs, which prohibited the king from exerting authority over individuals or property situated beyond the confines of his kingdom. Any infringement of this default rule by royal members carried the risk

of military conflict with other nations. As time progressed, this custom gradually transformed into law.¹

- 5 During the early stages of common law, judges and scholars established *actual control* as a prerequisite for a legally binding judgment. This was particularly evident in criminal cases, where the courts were unable to enforce their rulings without obtaining direct and physical control over the individual or property in question. As a result, a valid judgment in the past necessitated the court to gain control of the defendant's person or property. Typically, the defendant was brought to court through a warrant and detained until they posted a bail amount that satisfied the plaintiff's claims and associated costs.²
- 6 The evolution of personal jurisdiction in common law and territorial jurisdiction in civil law systems was influenced by two key factors: (1) the origin of the court's authority, and (2) the actual control over the defendant.

3 COMMON LAW SYSTEM: GEOGRAPHIC JURISDICTION/ PERSONAL JURISDICTION

3.1 Introduction

- 7 Personal jurisdiction refers to a court's adjudicatory authority over a party.³ The conventional definition of this concept considers a court's authority to summon a defendant for trial within a particular legal framework that operates within a specific geographic jurisdiction.⁴ There are several categories consisting of personal jurisdiction: (1) principles of *in personam*, *in rem*, and *quasi in rem* jurisdictions are founded upon rigid territorial regulations; (2) general jurisdiction and specific jurisdiction reflect a novel approach that is centred on a comprehensive analysis of contacts; (3) the doctrine of consent of parties represents an independent category; (4) long-arm jurisdiction empowers courts to exercise authority over non-resident defendants. The subsequent sections will delineate the intricate contours of this multifaceted concept across various categories.

¹ J W Gough, *Fundamental Law in English Constitutional History* (The Clarendon Press 1955).

² *McDonald v. Mabee*, No 343 (Supreme Court, US) [243 US 90 (1917)].

³ S Dodson, 'Personal Jurisdiction and Aggregation' (2018) 113 *Northwestern University Law Review* 1, 9.

⁴ A Rahman, 'Personal Jurisdiction on the Internet: A Global Perspective' (2015) 14 *Journal of Internet Commerce* 114, 117-119.

3.2 In Personam Jurisdiction

- 8 *In personam* jurisdiction empowers the court to make decisions to bind a particular defendant concerning his personal rights and obligations.⁵
- 9 In the United States, the jurisdiction *in personam* exhibits a dynamic pattern that has evolved over time. This section will trace the historical development to demonstrate the variations in geographic considerations that have influenced jurisdiction *in personam*. Under the Due Process Clause,⁶ the regulations governing jurisdiction *in personam* were initially established in *Pennoyer v. Neff*,⁷ which distinguished *in personam* as power over the person and *in rem* which is power over the property or thing. Furthermore, *Pennoyer* emphasized the concept of territoriality in the authority of courts over individuals and property within the boundaries of the state. This seminal case underscored the capacity of the state's courts to exert jurisdiction over individuals and things within geographic boundary. With increasing industrialization and increased mobility, the stringent geographical restriction cannot adapt to emerging cases and the US Supreme Court articulated a new doctrine under *International Shoe Co. v. Washington*. The new method extends the exercise of personal jurisdiction over an out-of-state defendant if there are 'certain minimum contacts' between the defendant and the forum if the litigation arises out of or is related to that minimum contact.⁸ Since that time, jurisdiction has not been confined to considerations of the territorial borders of the states, but has also been extended to ensure the provision of 'due process for the defendant'. Concurrently, the theoretical underpinnings of jurisdiction have shifted from a power-based approach to one centred on the principle of procedural fairness.⁹ For several decades, the minimum contacts framework established by *International Shoe* served as the dominant approach to jurisdictional analysis in the United States. Furthermore, the landmark case of *McGee v. International Life Insurance Co.* played an important part in the expansion of the personal jurisdiction doctrine and exemplified the ongoing influence of *International Shoe*. Under *McGee*, a contract with a substantial connection to the forum state can be regarded as minimum contacts sufficient for the court to assert jurisdiction over litigation relating to the contract, even though the defendant company was not physically located in the forum state.¹⁰ But a resurgence of the *Pennoyer* approach to jurisdictional analysis was reaffirmed in *Burnham v. Superior Court*. In *Burnham*, the

⁵ See P M North, G C Cheshire and J J Fawcett, 'Cheshire and North's Private International Law' (1999) Oxford University Press, 296.

⁶ Constitution of the United States [Amendments V and XIV] (US).

⁷ *Pennoyer v. Neff*, No 720 (Supreme Court, US) [95 US 714 (1878)].

⁸ *International Shoe Co. v. Washington*, No 107 (Supreme Court, US) [326 US 310 (1945)].

⁹ M Vitiello, 'Limiting Access to U.S. Courts: The Supreme Court's New Personal Jurisdiction Case Law' (2015) 21 UC Davis Journal of International Law and Policy 209, 212.

¹⁰ *McGee v. International Life Insurance Co.*, No 223 (Supreme Court, US) [355 US 220 (1957)].

Supreme Court relied on a historical interpretation of ‘physical presence’ to validate jurisdiction on the simple basis of in-person service within the state, even if the litigation was unrelated to the defendant’s contacts with the state.¹¹ Indeed, a growing body of literature has emphasized *Pennoyer’s* revival and questioned the continued significance of the minimum contacts doctrine.¹²

- 10 The approach in Canada shows a unique picture, which is based on both statutory law and case law.¹³ Noticeably, British Columbia, Nova Scotia, Saskatchewan, and Yukon have enacted the Court Jurisdiction and Proceedings Transfer Act (CJPTA). In Canada, this statutory provision has a broad impact on the analysis of jurisdiction and outlines the territorial considerations that govern jurisdiction *in personam*. The clause represents five occasions of territorial competence.¹⁴ Since the initial promulgation of CJPTA, the common law on jurisdiction has evolved,¹⁵ indicating that criteria established by CJPTA are instructive to judicial practice in Canada. From the perspective of case law, under *Club Resorts Ltd. v. Van Breda*, the Canadian Supreme Court adopted a ‘real and substantial connection’ test, which relies on four presumptive factors. These factors bear some resemblance to the minimum contacts standard utilized in certain states in the US.¹⁶ In cases involving presence-based jurisdiction, the Canadian Supreme Court in *Chevron Corp v Yaiguaje* concluded that the defendant’s physical presence within the jurisdiction could constitute sufficient evidence of jurisdiction, without the need for additional tests.¹⁷ Despite the implementation of the CJPTA in only certain jurisdictions, there are no tremendous differences from others that rely on common law rules. While CJPTA jurisdictions are not required to adhere to the tests identified in *Van Breda*, these rules have nonetheless influenced the interpretation of the CJPTA.¹⁸

¹¹ *Burnham v. Superior Court*, No 89-44 (Supreme Court, US) [495 US 604 (1990)].

¹² R M Bloom and J A Hanrahan, ‘Back to the Future: The Revival of *Pennoyer* in Personal Jurisdiction Doctrine and the Demise of International Shoe’ (2019) 56 San Diego Law Review 581, 598.

¹³ For historical reasons, Canada has two legal systems: the statutory system followed in Québec and the common law system applied in all other provinces and territories. This part concerning common law will only discuss Canada except for Québec and the civil law system of Québec will be introduced in the next part.

¹⁴ See Uniform Court Jurisdiction and Proceedings Transfer Act 2021 [Part 2,3] (Canada).

¹⁵ J Blom, ‘The Court Jurisdiction and Proceedings Transfer Act and the Hague Conference’s Judgments and Jurisdiction Projects’ (2018) 55 Osgoode Hall Law Journal 257, 261-263.

¹⁶ See *Club Resorts Ltd. v Van Breda*, (Supreme Court of Canada, Canada), judgment 2012 [2012 SCC 17]. The four presumptive factors include: (a) the defendant is domiciled or resides in the province; (b) the defendant conducts business within the province; (c) a tort was committed within the province; (d) a contract related to the dispute was concluded in the province.

¹⁷ *Chevron Corp v Yaiguaje*, (Supreme Court of Canada, Canada), Judgment 2015 [2015 SCC 42] para 81.

¹⁸ V Black, ‘Simplifying Court Jurisdiction in Canada’ (2012) 8 Journal of Private International Law 411, 423-427.

- 11 In England and Wales, *in personam* jurisdiction is governed by a combination of statutory provisions and common law rules. The Civil Jurisdiction and Judgments Act 1982 (CJJA 1982) offers a comprehensive framework for the allocation of jurisdiction, as detailed in Part II and Schedule 4. The legislation highlights the significance of territorial considerations in several provisions. For instance, the persons domiciled in a part of the country shall be sued in the courts of that part,¹⁹ indicating that the domicile of the individual is a critical factor in determining jurisdictions. Other common law jurisdictions, including Hong Kong, Australia, New Zealand, India, and Malaysia, follow a similar format.
- 12 Hong Kong, Australia, and New Zealand generally adhere to the historical common law principles governing territorial jurisdiction. In Hong Kong, the courts may exercise jurisdiction *in personam* under the following three conditions: (1) the defendant is in Hong Kong, and the originating process can be served in Hong Kong; (2) the defendant voluntarily accepts the jurisdiction; (3) the defendant is outside of Hong Kong, with the originating process might be served out of the jurisdiction.²⁰ In the subsequent phase of judicial analysis, the court possesses discretionary authority to decide whether to assert its jurisdiction.²¹ As for Australia, the personal jurisdiction is based on the Federal Court of Australia Act 1976 and Federal Court Rules 2011.²² To sum up, the principles governing personal jurisdiction in Australia are as follows: (1) whether the defendant has domicile or property inside or outside of Australia; (2) whether the case is related to facts that occurred in Australia, and (3) whether the defendant voluntarily accepts the jurisdiction of Australian courts.²³ New Zealand's approach to personal jurisdiction is unique in that it relies on two distinguishing principles. Firstly, under the domicile principle, the courts in New Zealand possess exclusive jurisdiction over permanent residents of the country, irrespective of their nationality or region of origin. This principle also applies to individuals who hold legal residency in New Zealand but are not citizens. Secondly, under the ancillary jurisdiction principle, if a case involves a party or issue that the New Zealand court already has jurisdiction over, the court may exercise ancillary jurisdiction to ensure that the case can be fully adjudicated.²⁴ In conclusion, these three jurisdictions share two common principles when it comes to detecting personal

¹⁹ See Civil Jurisdiction and Judgments Act 1982 [Part II Schedule 4] (England).

²⁰ See the Rules of the High Court [Orders 10 and 11] (HK).

²¹ N H Wah, 'Hong Kong Courts' Jurisdiction to Enforce Intellectual Property Rights Infringed by Internet Contents' (2005) 35 Hong Kong Law Journal 367, 370-372.

²² Federal Court of Australia Act [19A-19D] (Australia); Federal Court Rules [6.01-6.05] (Australia).

²³ *Voth v Manildra Flour Mills Pty Ltd*, No 236 (High Court, Australia), Judgment 13 December 1990 [171 CLR 538]; *John Pfeiffer Pty Ltd v Rogerson*, No 278 (High Court, Australia), Judgment 21 June 2000 [203 CLR 503].

²⁴ High Court Rules [6.27-6.37] (NZ); District Court Rules [4.3-4.14] (NZ); New Zealand International Private Law Act [8-11] (NZ).

jurisdiction: (1) the defendant's connection with the jurisdiction, eg, domicile, residence, and property; (2) the defendant's voluntary consent to submit to jurisdiction.

- 13 In India's civil procedure, the residence of the defendant constitutes one of the principal factors in determining jurisdiction. The Code of Civil Procedure points out that the residence and the place of business activities of the defendant are important factors for identifying the proper court.²⁵ Similar regulations can be found in Malaysia. The Courts of Judicature Act specifies that the court shall have jurisdiction to hear any civil case in which the defendant or one of several defendants resides or has a place of business within the jurisdiction.²⁶

3.3 *In Rem* Jurisdiction

- 14 *In rem* jurisdiction constitutes a type of personal jurisdiction that coexists with *in personam* jurisdiction. Compared with *in personam* jurisdiction, jurisdiction *in rem* confers power over a thing rather than an individual.²⁷
- 15 In the US, as mentioned above, *Pennoyer* introduced the distinction between *in personam* jurisdiction and *in rem* jurisdiction. Under *Pennoyer's* framework, the court exercises jurisdictional authority over property situated within its territorial borders.²⁸ However, with the changing society, the frequent movement of property has rendered the territorial principle to property no longer viable. In the landmark case of *Shaffer v. Heitner*, the United States Supreme Court established that the authority over property must comply with constitutional requirements, such as the Due Process Clause. The U.S. Supreme Court determined that obtaining personal jurisdiction over a non-resident defendant by seizing property within the state that is unrelated to the lawsuit would violate due process. This ruling marks a significant departure from the traditional principle of strict territorial jurisdiction.²⁹ In the Internet era, principles of *in rem* jurisdiction continue to be significant in the realm of cyberspace,³⁰ particularly in cases

²⁵ The Code of Civil Procedure 1908 [Sec 20] (India).

²⁶ Courts of Judicature Act 1964 [23(b)] (Malaysia).

²⁷ M E Cohn, 'Jurisdiction in Actions in Rem and in Personam' (1929) 14 St. Louis Law Review 170, 170-173.

²⁸ T R Lee, 'In Rem Jurisdiction in Cyberspace' (2000) 75 Washington Law Review 97, 111.

²⁹ *Shaffer v. Heitner*, 197 (Supreme Court, US) [433 US 186 (1997)].

³⁰ With the emergence of multiple methods of judging jurisdiction, the straight geographical approach fades out of use when the minimum contact was prevailing. However, in the latest years, *in rem* jurisdiction showed potential to deal with cyberplace-related jurisprudence.

involving Internet domain names. For example, in *NBC Universal v. NBCUniversal.com*, a domain name dispute the plaintiff sued directly under the *in rem* jurisdiction.³¹

- 16 In Canada, *in rem* jurisdiction is frequently invoked in cases involving admiralty law. Under the *Federal Courts Act*, the Federal Courts have *in rem* jurisdiction over ships, aircrafts, and other properties that are within the jurisdiction.³² A similar provision is also found under CJPTA.³³
- 17 In England, CJA 1982 sets forth provisions regarding *in rem* jurisdiction in Schedule 4, with a primary focus on immovable property. CJA 1982 stipulates that the court where the property is located has exclusive jurisdiction over the immovable property and immovable property tenancies.³⁴
- 18 In Hong Kong, *in rem* litigation primarily encompasses cases that seek to determine ownership or other rights in relation to a *rem*, maritime litigation, and cases related to identity acts. In the first two types of cases, the principle of *effectiveness* is typically employed to determine jurisdiction. With respect to identity act-related lawsuits, Hong Kong courts generally consider whether the party's domicile or habitual residence is located in Hong Kong when determining jurisdiction.³⁵ Looking at the case law, *in rem* jurisdiction is determined on the basis of whether there is effective control over the disputed property.
- 19 Similar provisions are also found in Australia, New Zealand,³⁶ India³⁷ and Malaysia.³⁸

3.4 Quasi In Rem Jurisdiction

- 20 This part will illustrate the concept of *quasi in rem* jurisdiction, which distinguishes itself from *in rem* jurisdiction. It means the court has jurisdiction to adjudicate the right of a

³¹ *NBC Universal v NBC Universal.com*, Judgment 14 July 2005 (United States District Court, E. D. Virginia, US), [378 F. Supp. 2d 715 (E.D. Va. 2005)].

³² Federal Courts Act 1985 [R.S.C., c. F-7, 22] (Canada).

³³ Uniform Court Jurisdiction and Proceedings Transfer Act (n 14) Part2, 5.

³⁴ Civil Jurisdiction and Judgments Act (n 19) Schedule 4, F13 (a).

³⁵ Merchant Shipping (Jurisdiction and Judgments) Ordinance [Art 17, 18] (HK); High Court Ordinance [Art 22(2)(a), 22(2)(b)] (HK).

³⁶ Federal Court of Australia Act 1976 (n 22) Art32, 39; High Court of Australia Act 1979 [Art75] (Australia); Admiralty Act 1988 [Art18, 19] (Australia); District Court Act 2016 [Art 7] (NZ); Judicature Act 1908 [Art12] (NZ); Maritime Transport Act 1994 [Art39, 40, 50] (NZ).

³⁷ The Code of Civil Procedure (n 25) Sec 17.

³⁸ Courts of Judicature Act (n 26) 23(d).

person who has property located within the borders of the court.³⁹ Noticeably, historically, *quasi in rem* jurisdiction not only empowers the court to adjudicate on the property, but to seize and use it as a basis to subject its owner to the court's authority for any claims. This terminology refers to the jurisdiction over a person rather than a piece of property, but based on the person's interest in the property.⁴⁰ For instance, mortgage foreclosure is *quasi in rem* action since it focuses on the relationship between the lender and the borrower, not the property. This approach was often invoked when *in personam* jurisdiction was unavailable.⁴¹ In keeping with the evolving trends of *in personam* jurisdiction and *in rem* jurisdiction, the absolute territorial doctrine, for *quasi in rem* jurisdiction has been overruled.

- 21 In the US, the *Shaffer v. Heitner* applied the minimum contacts standard established in *International Shoe Industry* to constrain the use of *quasi in rem* jurisdiction.⁴² The case involved a shareholder's derivative suit challenging the fiduciary duties of corporate officers. Plaintiff, a shareholder, based jurisdiction by the Delaware court on defendant's corporate officer's ownership of stocks deemed to be in Delaware. The US Supreme Court ruled that the Delaware court could not establish jurisdiction based on the *quasi in rem* jurisdiction over the defendant's ownership of stocks in Delaware, when the litigation was unrelated to the property, and the defendant's connections to the jurisdiction were extremely limited. This ruling clarified the scope of *quasi in rem* jurisdiction, requiring plaintiffs to demonstrate that the defendant's connections (apart from the ownership of in state property) in the jurisdiction were sufficient to satisfy constitutional requirements for due process if the litigation is unrelated to the defendant's interest in the property.⁴³

3.5 Specific Jurisdiction vs General Jurisdiction

- 22 Under the *International Shoe* framework, the concept of *in personam* jurisdiction has developed into two distinct types: general jurisdiction and specific jurisdiction. These two categories have distinctive rules, but both are based on the principle of 'certain minimum contacts' and the doctrine of basic fairness.⁴⁴ This section aims to clarify the

³⁹ M E Cohn (n 27).

⁴⁰ E J Cabraser, 'In Rem, Quasi in Rem, and Virtual in Rem Jurisdiction Over Discovery' (2009) 10 Sedona Conference Journal 253, 260-262.

⁴¹ J F Finston, 'New York's Attachment Statute and Seider V. Roth Held Valid under Shaffer V. Heitner (Intermeat, Inc. V. American Poultry Inc.; O'Connor V. Lee-Hy Paving Corp.)' (2012) 53 St John's Law Review 9, 15.

⁴² *Shaffer v. Heitner* (n 29).

⁴³ Ibid.

⁴⁴ *International Shoe Co. v Washington* (n 8).

specific requirements of this bifurcated jurisdiction while elucidating the implicit geographic considerations involved.

- 23 The concept of general jurisdiction stipulates that a court can exercise jurisdiction over a defendant in any matter related to the defendant. On the other hand, specific jurisdiction enables a court to exercise jurisdiction over a defendant only as to a specific litigation if the defendant has a specific connection with the forum state and the cause of action is related to this connection. These jurisdictional categories are grounded on the principle of 'certain minimum contacts' and the doctrine of basic fairness, indicating a departure from the strict territorial approach to jurisdiction.⁴⁵ Thus, it can be observed that the new paradigm of jurisdictional categories is centred on a comprehensive analysis of all *relevant contacts*.
- 24 The United States Supreme Court, in *International Shoe*, differentiated between general and specific jurisdictions on the basis of the minimum contacts principle: (1) General jurisdiction applies when the connection between the defendant and the forum is so substantial such that the forum state can adjudicate all claims against the defendant. General jurisdiction is usually asserted over citizens of the forum state; (2) Specific jurisdiction focuses on the nature of the disputes in the case. The court has specific jurisdiction over the defendant if the defendant is sued in the state for a cause directly related to his activities in the state and it is reasonable to exercise jurisdiction over the defendant.⁴⁶
- 25 After *International Shoe*, subsequent court decisions provided further clarification on the requirements for both general and specific jurisdictions. In particular, *Perkins v. Benguet Consolidated Mining Co.* established a clear example of the exercise of general jurisdiction. Under this case, the court was entitled to exercise general jurisdiction over the company on the basis of systematic, continuous, and substantial contacts.⁴⁷ The location of company activities and its headquarters are essential factors in evaluating whether there is sufficient contact. A similar test could be found in *Helicopter*, though the US Supreme Court rejected general jurisdiction due to the lack of sufficient contact.⁴⁸ The *Helicopter* case also required a 'continuous and systematic connection' with the forum state under the general jurisdiction test.⁴⁹ The 'continuous and systematic

⁴⁵ C W Rhodes, 'Clarifying General Jurisdiction' (2003) 34 Seton Hall Law Review 807, 842-846.

⁴⁶ A T von Mehren, D T Trautman, 'Jurisdiction to Adjudicate: A Suggested Analysis' (1966) 79 Harvard Law Review 1121, 1127.

⁴⁷ *Perkins v Benguet Consolidated Mining Co. Et Al.*, No 414-415 (Supreme Court, US) [342 US 437 (1952)].

⁴⁸ *Helicopteros Nacionales de Colombia, S.A. v Hall*, No 411 (Supreme Court, US) [466 US 408 (1984)].

⁴⁹ *Ibid* No 420-427.

connection' test prevailed in the last century but has been superseded by new tests in past years.

- 26 In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the US Supreme Court established a new standard for general jurisdiction for corporations. It has effectively constricted the scope of general jurisdiction and put forward a new doctrine, 'essentially at home'.⁵⁰ This doctrine emphasized the scope and degree of substantial contact stipulated by *International Shoe*. Under this approach, it is difficult to imagine that a corporation with only a minimal physical presence in the forum could be considered 'at home' in that forum.⁵¹ Thus, geographical factors have regained importance in limiting the scope of substantial contacts. As a result, a stable domicile and business location are more likely to give rise to general jurisdiction. Furthermore, *Daimler AG v. Bauman* elaborated on the 'at home' principle.⁵² In this case, *Daimler*, a German corporation, was sued in California. Since the accident happened outside of California and *Daimler's* contacts in California is unrelated to the litigation, specific jurisdiction could not be established. *Daimler* could only be subject to California's jurisdiction if general jurisdiction can be established. The plaintiffs contended that the subsidiary of *Daimler* maintained substantial contact with California, which is sufficient to establish general jurisdiction for the state. However, the court ultimately rejected this argument. The 'at home' principle was reiterated as the standard for evaluating general jurisdiction several times throughout the case. Furthermore, compared to *Goodyear*, *Daimler* clarified the concept of 'at home'. The court characterized an 'at home' corporation as one that is akin to a domestic corporation within that State. In this instance, there was no principal place of business in California, and therefore, *Daimler* was not subject to general jurisdiction. This suggests that general jurisdiction could only be invoked for a corporation under a limited set of circumstances.
- 27 Pre-twentieth-century US judicial theory focused on the state's authority, without any consideration given to the nexus between the forum and the cause of action.⁵³ However, the advent of specific jurisdiction shifted the focus to the location of the dispute itself, rather than the defendant.⁵⁴ In *Helicopter*, the court highlighted the significance of the cause of the lawsuit in determining specific jurisdiction.⁵⁵ Similarly, in *Goodyear*, the court emphasized the connection between the forum state and the underlying

⁵⁰ *Goodyear Dunlop Tires Operations, S.A. v Brown*, No 131 (Supreme Court, US) [2846 US (2011)].

⁵¹ A M Trammell, 'A Tale of Two Jurisdictions' (2015) 68 Vanderbilt Law Review 501, 504-506.

⁵² *Daimler AG v Bauman*, No 760 (Supreme Court, US) [34 US 746 (2014)].

⁵³ C W Rhodes (n 45).

⁵⁴ M Twitchell, 'The Myth of General Jurisdiction' (1988) 101 Harvard Law Review 610, 613.

⁵⁵ *Helicopteros Nacionales de Colombia, S.A. v Hall* (n 48).

controversy.⁵⁶ In *Walden v. Fiore*, the defendant's conduct was identified as the necessary factor to constitute specific jurisdiction.⁵⁷ In this case, the defendant conducted a search and seized a significant amount of cash from the plaintiffs in Georgia. Subsequently, the plaintiffs filed a lawsuit against the defendant in their residence state, Nevada. However, the US Supreme Court ruled that Nevada was not an appropriate forum state, given that the search and seizure took place within Georgia. The Court reaffirmed that the assertion of specific jurisdiction over a defendant hinges on the relationship between the defendant's actions, the litigation and the forum state.

- 28 Recent US judicial practice emphasizes the systematic analysis of personal jurisdiction, encompassing both general and specific jurisdictions. In *Bristol-Myers Squibb Co. v. Superior Court of California*, the court conducted a comprehensive assessment, taking into account the Due Process Clause and assessing the contact between the defendant and the forum state. Regarding general jurisdiction, the court stated that a corporation must be incorporated or headquartered in the forum state. As for specific jurisdiction, the lawsuit had to arise out of the defendant's contacts with the state.⁵⁸
- 29 It is evident that in both general and specific jurisdictions, courts prioritize the relationship between the defendant and the forum over the traditional territorial principle. Nevertheless, geographical factors have not diminished in significance. Domicile, headquarters location, and business location remain crucial considerations for courts to assess general jurisdiction. Although some scholars have claimed that the widespread adoption of specific jurisdiction would lessen the importance of general jurisdiction,⁵⁹ judicial practices have not supported this assertion. The systematic application of both types of jurisdiction is widely used, and the significance of geographical considerations continues to persist.

3.6 Parties' Consent?

- 30 Consent is the voluntary and subjective assent to a court's jurisdiction.⁶⁰ As personal jurisdiction is a sort of individual right, it can be consented to, utilized, or waived.⁶¹ Furthermore, consent operates as an independent basis for jurisdiction that does not

⁵⁶ *Goodyear Dunlop Tires Operations, S.A. v Brown* (n 50).

⁵⁷ *Walden v Fiore*, No 134 (Supreme Court, US) [571 US (2014)].

⁵⁸ *Bristol-Myers Squibb Co. v Superior Court of California*, Judgment 2017 [137 S.Ct. 1773, 1777-78].

⁵⁹ A T von Mehren and D T Trautman (n 46) 1144, 1164.

⁶⁰ J L Rensberger, 'Consent to Jurisdiction Based on Registering to Do Business: A Limited Role for General Jurisdiction' (2021) 58 San Diego Law Review 309, 328-330.

⁶¹ *Ins. Corp. of Ir. v Compagnie des Bauxites de Guinee* (Supreme Court, US) [456 U.S. 694, 703 (1982)].

require to go through the due process and minimum contact tests.⁶² Consent can be expressed in diverse ways, including through explicit terms or indirect methods that reflect the parties' agreement as to the most appropriate forum.⁶³ This section will examine the different forms of consent and the varying attitudes of different states toward them.

- 31 The United States has long recognized jurisdiction by consent. In the early years, the concept of consent to jurisdiction was denied due to the belief that it offended the courts' authority. However, with the jurisprudential shift from sovereignty to fairness, the courts have come to accept parties' consent as a factor in jurisdiction evaluation. A state has the authority to assert judicial jurisdiction over an individual or a corporate that has consented to such jurisdiction. The court has jurisdiction when the individual enters an appearance as a defendant. If a foreign corporation has authorized an agent or a public official to accept service of process of proceedings in a state, the court of that state has jurisdiction over this corporation.⁶⁴
- 32 The clearest form of consent is manifested in a forum selection clause contained in contracts.⁶⁵ In the case of *Carnival Cruise Lines, Inc. v. Shute*. In that case, the defendants who suffered accidental injuries on the cruise tried to take the case to the California state court, but the cruise line argued that the case should be heard in Florida under the terms of the contract. When the defendants purchased the cruise tickets, they signed a contract where any disputes related to the cruise should be resolved in a federal court in Florida. The US Supreme Court held that the contract was valid and allowed the plaintiff to bring the case before the Florida court. This case clarified the importance of the defendant's consent in determining the jurisdiction, especially in contractual disputes.⁶⁶
- 33 Implied consent is another form of consent, which means the defendant consents to the jurisdiction of the court by actions. However, this approach is deemed as high-risk and ought to be used stringently.⁶⁷ Consent by registration, a form of implied consent, is a controversial approach. It means a corporation's registration to do business in the forum state as required under a state statute also constitutes the corporation consents to the

⁶² T J Monestier, 'Registration Statutes, General Jurisdiction, and the Fallacy of Consent' (2015) 36 Cardozo Law Review 1343, 1375.

⁶³ *Stewart Org. v Ricoh Corp.* (Supreme Court, US) [487 U.S. 22, 31 (1988)].

⁶⁴ Restatement of the Law, Second, Conflict of Laws [§33, 34, 44, 45] (US).

⁶⁵ M E Solimine, 'Forum-Selection Clauses and the Privatization of Procedure' (1992) 25 Cornell International Law Journal 51, 58-59.

⁶⁶ *Carnival Cruise Lines, Inc. v Shute*, No 593 (Supreme Court, US) [499 US 585 (1991)].

⁶⁷ R A Epstein, 'Consent, Not Power, as the Basis of Jurisdiction' (2001) University of Chicago Legal Forum 1, 5.

court's jurisdiction.⁶⁸ However, different states have distinctive attitudes towards this approach. For example, Minnesota requires every non-Minnesota corporation to have a registered office and agent,⁶⁹ and registering to do business implies submission to the jurisdiction of Minnesota.⁷⁰ In contrast, some states deny mere registration as the basis of personal jurisdiction.⁷¹ In judicial practice, different Circuit Courts hold differing views regarding the significance of registration in determining jurisdiction.⁷²

- 34 In Canada, the CJPTA provides three methods by which a defendant may consent to the court's jurisdiction: (1) by invoking the court's jurisdiction as plaintiff; (2) by submitting to the court's jurisdiction during the proceedings; and (3) by agreeing that the court shall have jurisdiction.⁷³
- 35 Consent-based jurisdiction is also recognized in England⁷⁴ and Hong Kong.⁷⁵ Similar provisions are found in New Zealand.⁷⁶
- 36 The Singapore courts also give effect to the choice of forum clause in an agreement.⁷⁷ Jurisdictional agreement is classified into exclusive and non-exclusive jurisdictional agreements. Under *Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala*, the court opined that the jurisdiction agreement is an essential factor in determining jurisdiction.⁷⁸
- 37 In the US, plaintiffs' consent also plays a role in establishing personal jurisdiction, as exemplified by *Adam v. Saenger*.⁷⁹ In this case, the plaintiff initiated litigation against the

⁶⁸ T J Monestier (n 62).

⁶⁹ See MINN. STAT. 2021 [§303.10] (US).

⁷⁰ See *Knowlton v A Allied Van Lines, Inc.*, (8th circuit Court, US) [900 F.2d 1196, 1200 (1990)].

⁷¹ See Ark. Code Ann. 2021 [§4-20-115]; Idaho Code 2021 [§30-21-414]; Mont. Code Ann. 2021 [§35-7-115].

⁷² For example, under *Daimler*, the registration only was regarded as a factor to count contacts. See *Daimler AG v Bauman*, No 760 (Supreme Court, US) [34 US 746 (2014)]. The different opinion can be found in the expression of the court under *DeLeon v. BNSF Railway Co.* The court insisted that registration is equal to consent general personal jurisdiction in Montana. See *DeLeon v BNSF Ry. Co* [426 P.3d 1 (2018)].

⁷³ See Uniform Court Jurisdiction and Proceedings Transfer Act (n 14) Part 2,3 (a)(b)(c).

⁷⁴ The Civil Procedure Rules 1998 [6.3 (1) (b)] (England).

⁷⁵ High Court Rules [Order 22] (HK); District Court Rules [Order 30] (HK).

⁷⁶ High Court Rules (n 24) 5.49 (1).

⁷⁷ See Supreme Court of Judicature Act [section 16(1)(b)] (Singapore).

⁷⁸ *Orchard Capital I Ltd v Ravindra Kumar Jhunjhunwala* (Court of Appeal, Singapore) Judgment 24 February 2012 [SGCA 16, 2 SLR 519].

⁷⁹ *Adam v. Saenger*, No 197 (Supreme Court, US) [303 US 59 (1938)].

defendant in California. There was a counterclaim filed by the defendant. The US Supreme Court affirmed that the plaintiff's action of filing consent inherently extends to counterclaims levied by the defendant against the plaintiff within the same case and jurisdiction.⁸⁰ This underscores that the plaintiff's consent serves as an underpinning for the principle of personal jurisdiction.

3.7 Long-Arm Jurisdiction

- 38 The US has a comprehensive long-arm jurisdiction constitutional framework, which emanates from the *International Shoe* case,⁸¹ the landmark case that established the constitutional principles and limitations on a state's assertion of jurisdiction over non-residents. However, a court may subject a non-resident defendant to the court's jurisdiction only if the forum state provides a statutory basis for exercising jurisdiction. Therefore, many states have codified laws that enabled courts to exercise personal jurisdiction over out-of-state residents.⁸²
- 39 In the US, the long-arm jurisdiction jurisprudence is based on several-prong criteria. Fundamentally, the exercise of long-arm jurisdiction must fulfil the requirement of the Constitution and the principles established by the US Supreme Court. Meanwhile, the doctrines of 'minimum contact' and 'fair play and substantial justice' established by *International Shoe* are still significant. In *World-Wide Volkswagen Corp. v. Woodson*, it was established that foreseeability is essential in the due process analysis.⁸³
- 40 In addition to the underlying principles, the determination of long-arm jurisdiction should be based on regulations of states. State long-arm statutes fall into two categories: (1) Single-act statutes, such as in Illinois and New York.⁸⁴ The long-arm statute of Illinois was the first statute to adopt this enumeration method, which lists specific acts that can subject a non-resident to the forum court's jurisdiction.⁸⁵ (2) 'Go to the limit' statutes, which allow courts to exercise jurisdictions under the due process standard in any

⁸⁰ Dodson, S, 'Plaintiff Personal Jurisdiction and Venue Transfer' (2013) 117 Michigan Law Review 1463, 1468.

⁸¹ *International Shoe Co. v. Washington* (n 8).

⁸² D R Ullian, 'Retroactive Application of State Long-Arm Statutes' (2013) 65 Fla L Rev 1653, 1657-1658.

⁸³ *World-Wide Volkswagen Corp. v. Woodson* (Supreme Court, US) [444 U.S. 286 (1980)].

⁸⁴ *Ibid.*

⁸⁵ ILCS 2010 [5/2-209(c)] (US).

circumstances.⁸⁶ Utah, for example, states that ‘jurisdiction shall be exercised within the maximum limits permitted by the Due Process Clause of the Fourteenth Amendment’.⁸⁷

- 41 State statutes are the fundamental basis of jurisdiction jurisprudence. To date, every state either has a thorough long-arm regulation or case law that has similar effect.⁸⁸ Illinois’ long-arm jurisdiction statute has been a reference point for many states, and the *Uniform Interstate and International Procedure Act* also draws heavily from Illinois’ long-arm statute on torts.⁸⁹ For example, if the tort occurs outside the state, the court can exercise jurisdiction provided that the defendant has a continuing business connection within the state.⁹⁰ Specific rules vary among different states. For instance, on the issue of contract disputes, the long-arm statutes of some states only target contracts signed with residents of that state, and these contracts must be partially or fully performed by the parties in the forum state.⁹¹ In contrast, Illinois only requires that the commercial transactions related to the contract take place in the state, and that the lawsuit arises from the relevant commercial activities.⁹² *Bowman v. Curt G. Joa, Inc.* in North Carolina further clarified that the long-arm jurisdiction of contract disputes required substantial performance within the state, although North Carolina’s long-arm statute only required that the contract is ‘partially or wholly’ to be fulfilled in the state.⁹³
- 42 In terms of the long-arm jurisdiction of the federal court, Article 4 of the *Federal Rules of Civil Procedure* provides the basis of the authority. It confers jurisdiction on the federal courts in three fundamental ways. First, it empowers federal courts to use long-arm statutes of the states.⁹⁴ Second, it clarifies that federal courts can obtain authorization to exercise long-arm jurisdiction from all applicable federal statutes, including antitrust laws, securities laws, etc.⁹⁵ Third, in certain types of federal cases, courts may obtain a

⁸⁶ Ullian (n 82).

⁸⁷ Utah Code Ann. 2016 [§78B-3-201(3)] (US).

⁸⁸ See D D McFarland, ‘Dictum Run Wild: How Long-Arm Statutes Extended to the Limits of Due Process’ (2004) 84 Boston University Law Review 491, 493.

⁸⁹ Uniform Interstate and International Procedure Act [71] (US); Handbook Nat’l Conf. Commissioners on Uniform St. Laws and Proc. Ann. Conf. Meeting 1962 [219, 221] (US).

⁹⁰ Ibid.

⁹¹ Miss. Code Ann. 1991 [§13–3–57]; Tex. Civ. Prac. & Rem. Code Ann. 1985 [§17.042(1)].

⁹² ILL.–Smith-Hurd Ann. 2008 [735 ILCS 5/2–209(a)(1)]; N.Y.–McKinney’s CPLR 2008 [302(a)(1)].

⁹³ *Bowman v Curt G. Joa, Inc.*, No 710-711 (4th circuit Court of Appeals, US) [361 F.2d 706 (1966)].

⁹⁴ Federal Rule of Civil Procedure 2020 (US), 4(k)(1)(A).

⁹⁵ Ibid 4(k)(1)(C).

‘federal long-arm authorization’ within the limits of the Fifth Amendment’s Due Process Clause.⁹⁶

- 43 Similar to the United States, provincial statutes and court rulings in Canada regulate long-arm jurisdiction in civil proceedings. Section 3 Clause (e) of the CJPTA stipulates that jurisdiction over non-residents is based on a real and substantial connection between the jurisdictions in question and the facts on which the proceeding in question is based.⁹⁷ *Van Breda v. Village Resorts Ltd* (in 1987) established four basic principles of long-arm jurisdiction in Canada: (1) ‘the Real and Substantial Connection’ principle. Only cases that have a real and substantial connection with the province or territory can be adjudicated. (2) *Forum non conveniens* principle. Canadian courts should hear cases in a convenient, fair, and economical place, and should not be disadvantageous for either the plaintiff or the defendant. (3) Fairness principle. Canadian courts should provide parties with fair judicial procedures. (4) Comity principle. Canadian courts should follow the principles of international law and mutual respect for national jurisdiction and try to avoid undue interference with foreign sovereign states. These basic principles of long-arm jurisdiction in Canada have been further developed and applied in subsequent cases.⁹⁸
- 44 Hong Kong and England share similar principles when it comes to long-arm jurisdiction. Generally speaking, long-arm jurisdiction can be exercised in, but not limited to the following situations: (1) Contract disputes that are signed locally or stipulate that obligations to be performed locally, or where the contract is related to the locality.⁹⁹ (2) The fraud or misconduct is locally relevant or the consequences occur locally.¹⁰⁰ (3) The acts or consequences of copyright infringement occurred locally.¹⁰¹ (4) The debtor has property in the local area, or the place of performance of the debt is in the local area.¹⁰² (5) Locally relevant investment disputes or the outcome of investment disputes will

⁹⁶ Ibid 4(k)(2). See Fifth Amendment to the United States Constitution, which constrains jurisdiction to national borders.

⁹⁷ See Uniform Court Jurisdiction and Proceedings Transfer Act (n 14) Part 3 (e).

⁹⁸ *Van Breda v Village Resorts Ltd*, (Supreme Court, Canada), judgment 23 March 2012 [2012 SCC 17].

⁹⁹ *Soleymani v Nifty Gateway LLC* (England and Wales High Court), Judgment 24 March 2022 [773 UK (Comm)].

¹⁰⁰ *Adams v Cape Industries plc*, (Court of Appeal of England and Wales), Judgment 13 December 1990 [Ch UK 433].

¹⁰¹ *Lucasfilm Ltd. v Ainsworth*, (Supreme Court, UK), Judgment 27 July 2011 [39 UK].

¹⁰² *Deutsche Bank AG v Sebastian Holdings Inc & Anor*, (Commercial Court of England and Wales High Court) Judgment 15 July 2022 [2057 UK (comm)].

affect local interests.¹⁰³ (6) when it involves local private international law matters, such as divorce, custody and property division, etc.¹⁰⁴

- 45 In Australia, under certain circumstances, the court has jurisdiction over non-residents. The nature of the lawsuit and the defendant's ties to Australia may give the Australian court jurisdiction. In *Waller v. Freehills*, the court took the *Corporations Act* as a statutory resource to assume jurisdiction over a non-resident in Australia.¹⁰⁵ Different policy interests come into play when the long-arm jurisdiction applies. In corporate-related cases, the parliament places greater importance on safeguarding the interests of Australian creditors and contributors. The selective application of long-arm jurisdiction reflects the Australian government's policy orientation.
- 46 The long-arm jurisdiction regulation of India is relatively vague and requires a case-by-case evaluation based on specific circumstances. *Code of Civil Procedure* Article 20 (c) provides the statutory basis of this jurisdiction.¹⁰⁶ In the case of *(India TV) Independent News Service Pvt Limited Vs. India Broadcast Live LLC and Ors.*, the court established jurisdiction over foreign defendants. The defendants conducted business in India, earning a profit that adversely affected the plaintiff's business. Because the conflict arose in India, the court concluded that India's court had jurisdiction over the foreign defendants under the interpretation of Article 20 (c). In this case, the court established that there was minimum contact of the foreign parties with the forum state in exercising the long-arm jurisdiction.¹⁰⁷
- 47 The approach in Singapore for long-arm jurisdiction is similar to its common law counterparts.¹⁰⁸ A new approach, however, has been adopted by the Singapore International Commercial Court (SICC).¹⁰⁹ The SICC can exercise extraterritorial service based on the parties' jurisdiction agreement.¹¹⁰ Thus, it is easier for the SICC to exercise

¹⁰³ *AK Investment CJSC v Kyrgyz Mobil Tel Ltd*, (Commercial Court of England and Wales High Court), Judgment 25 October 2011 [3017 UK (comm)].

¹⁰⁴ *Agbaje v. Agbaje*, (Supreme Court, UK), Judgment 20 October 2010 [13 UKSC].

¹⁰⁵ *Waller v Freehills*, (Federal Court, Australia) Judgment 30 September 2009 [FCAFC 89] para 43.

¹⁰⁶ The Code of Civil Procedure (n 25) 20 (c).

¹⁰⁷ *(India TV) Independent News Service Pvt Limited v India Broadcast Live LIC and Others Versus Linda*, (Sanjay Kishan Kaul, India), Judgment 10 July 2007 [ILR 2 Delhi1231].

¹⁰⁸ Rules of Court 2021 [O 11, R 1] (Singapore).

¹⁰⁹ Supreme Court of Judicature Act (n 77) 18D (1).

¹¹⁰ M Yip, 'The Singapore International Commercial Court: The Future of Litigation' (2019) 12 Erasmus Law Review 82, 87.

long-arm jurisdiction in cases involving foreign defendants as compared to traditional courts.¹¹¹

3.8 Limitation of the Personal Jurisdiction

- 48 The Due Process Clause in the US establishes a fundamental legal principle that the government must follow due process to protect the fundamental rights of individuals, which is the most prominent constitutional limitation on personal jurisdiction. For courts, the Due Process Clause has gradually become a significant factor in exercising jurisdiction, especially personal jurisdiction.¹¹² Courts must examine the potential unfairness to the defendant under the requirement of the Due Process Clause if it decides to exercise jurisdiction.¹¹³
- 49 The initial geographical limitation of jurisdiction was established by *Pennoyer*. This territorial requirement restricted the jurisdiction of the court within the state's boundaries.¹¹⁴ However, *International Shoe*¹¹⁵ overruled the strict territorialism principle by establishing the minimum contacts doctrine. This doctrine sets a new rule for personal jurisdiction. Courts from then on must consider the connection between the defendant, the litigation, and the forum state.
- 50 The classification of general jurisdiction is also a limitation of personal jurisdiction. In *Goodyear*, the Supreme Court proposed the concept of 'essentially at home', limiting the scope of the general jurisdiction to the domicile of natural persons and the registered or principal place of business of legal persons.¹¹⁶ *Goodyear* generated two results on general jurisdiction in the US. First, it confirmed the standard of 'substantial connection' as a necessary condition for the application of general jurisdiction. Second, it limited the use of nationwide general jurisdiction. The US Supreme Court held that only in extremely special circumstances can a state court be considered to have nationwide general jurisdiction over a multinational company.¹¹⁷ Further, *Daimler* reaffirmed the 'at home' test. *Daimler* clearly pointed out that the company's 'home', except for exceptional circumstances, should be the registered place and principal place of business of the

¹¹¹ M Yip, 'The resolution of disputes before the Singapore International Commercial Court' (2016) 65 International & Comparative Law Quarterly 439, 468-471.

¹¹² Fourteenth Amendment of 9 July 1868 (US).

¹¹³ M Fullerton, 'Constitutional Limits on Nationwide Personal Jurisdiction in the Federal Courts' (1984) 79 Northwestern University Law Review 1, 41-44

¹¹⁴ *Pennoyer v Neff*, No 720 (Supreme Court, US) [95 US 714 (1878)].

¹¹⁵ *International Shoe Co. v. Washington* (n 8).

¹¹⁶ *Goodyear Dunlop Tires Operations, S.A. v Brown* (n 50).

¹¹⁷ *Ibid.*

company, that is to say, only the courts of these two places can exercise general jurisdiction over companies based outside the state.¹¹⁸

- 51 As for specific jurisdiction, in the *World-Wide Volkswagen Corp. v. Woodson* case, the court focused on whether there is 'a fair trial for the defendant', and held that the interests of 'the defendant's predictability' outweighed other considerations such as the convenience of the plaintiff's litigation.¹¹⁹ In the *Bristol* case, *Bristol* was accused of selling a prescription drug in California that caused injuries to hundreds of plaintiffs in California and other states. The plaintiffs attempted to sue the company in California, but *Bristol* argued that California lacked special jurisdiction in this case and that *Bristol* claimed that its sales in California were too small compared to its sales in other states. Therefore, it does not form a basis for bringing the case to that state.¹²⁰ The US Supreme Court held that in assessing the connection between the defendant and the jurisdictional court should not only consider the claims made by the plaintiff, but more importantly, the defendant's own activities within the forum and whether these activities are related to the litigation. The decision has had profound implications for the exercise of jurisdiction, especially in multistate cases in which the defendant's activities in a particular state may not be sufficient for the assertion of general jurisdiction and at the same time, are unrelated to the litigation such that specific jurisdiction also does not apply.¹²¹ The above cases are considered examples of limitations on specific jurisdictions.
- 52 Stricter restrictions and more concrete norms have refined the previous broad jurisdiction regulations. Some scholars have relied on strict personal jurisdiction rules to protect defendants from abuse.¹²² Some are of the view that such limits arose from the need to prevent the wrong state from exercising jurisdiction.¹²³ Nonetheless, the most noticeable impact of these limitations is that the US Supreme Court's effort to restrain the expansion of *in personam* jurisdiction. The court's action has drawn criticism that it is reviving the strict territorial jurisdictional doctrine of the past centuries.
- 53 Personal jurisdiction was designed as an assertion of state sovereignty, while venue takes a distinctive trajectory: aiming to bring the defendant into a fair forum. Typically, venue statutes mandate that proceedings take place where the controversy originates

¹¹⁸ *Daimler AG v Bauman* (n 52).

¹¹⁹ *World-Wide Volkswagen Corp. v Woodson*, No 300 (Supreme Court, US) [444 US 297 (1980)].

¹²⁰ *Bristol-Myers Squibb Co. v Superior Court of California* (n 58).

¹²¹ *Ibid.*

¹²² L Silberman, 'Can the State of Minnesota Bind the Nation? Federal Choice of Law Constraints After *Allstate Insurance Co. v. Hague*' (1981) *Hofstra Law Review* 103, 107-109.

¹²³ A Erbsen, 'Impersonal Jurisdiction' (2010) 60 *Emory Law Journal* 1.

or where the defendant resides.¹²⁴ Specifically, it is unfair to bring the defendant into a far-away forum. This doctrine, to some extent, operates as a restriction on personal jurisdiction which otherwise could impose an unreasonable burden on the defendant. In this capacity, it operates similarly to the reasonableness test that emerged in the post-*International Shoe* era.¹²⁵

- 54 In England, a defendant may be subject to a proceeding simply because of his brief presence in England, which can sometimes result in injustice. Later, courts tended to apply the doctrine of *forum non conveniens* to limit personal jurisdiction. The doctrine allows a court to decline jurisdiction over a case if another court may be a more appropriate forum for the case, considering factors such as convenience, costs, and the interests of justice. The doctrine aims to prevent a plaintiff from taking unfair advantage of the court's jurisdiction over a case.¹²⁶ It is apparent that the doctrine of *forum non conveniens* has proven effective in curbing the abuse of geographical jurisdiction in the English legal system.

3.9 Discussion

- 55 The evolving nature of jurisdiction regulations has seen a shift away from strict geographical limitations to a focus on the various contacts between the defendant, the litigation and the forum state. However, this increased flexibility has also given rise to uncertainties, especially when multiple jurisdictions are deemed appropriate for the same case. Additionally, expanding the jurisdictional scope may potentially encroach upon the sovereignty of other states or countries. While disputes between states in the US can be resolved through the US Supreme Court by the full faith and credit clause, jurisdictional disputes that encroach upon the sovereignty of foreign countries are likely to elicit strong protests from such countries.
- 56 The principles of predictability, rationality, and the 'at home' concept have been instrumental in curbing the scope of personal jurisdiction, effectively safeguarding defendants' rights to a fair trial and ensuring justice in litigation. These principles have been particularly helpful to multinational companies in mitigating legal risks. In recent years, scholars observed a revival of *Pennoyer*.¹²⁷ For instance, in the *Bristol* case, the majority conceptualized restrictions on jurisdiction as stemming from the 'territorial

¹²⁴ See 28 U.S.C. § 1391(b) (Supp. V 2011).

¹²⁵ K M Clermont, 'Restating Territorial Jurisdiction and Venue for State and Federal Courts' (1980) 66 Cornell Law Review 411, 434-437.

¹²⁶ *MacShannon v Rockware Glass Ltd*, (House of Lord, UK), Judgment 26 January 1978 [10126-6 UK]; *Rio Tinto Zinc Corporation v Westinghouse Electric Corporation*, No 2 (House of Lord, UK), Judgment 1 December 1977 [1 All ER 434].

¹²⁷ *Ibid* 12.

limitations' inherent in state authority.¹²⁸ Likewise, the 'at home' test of *Daimler*, to some extent, is a form of geographical expression.

57 The complicated personal jurisdiction rules have been the subject of much criticism.¹²⁹ How to design a set of more predictable jurisdictional rules to balance the interests of parties and maintain the sovereignty of states continues to be a problem. Scholars tried to alleviate this problem by adopting multi-prong methods to evaluate the proper court and set forth some proposals.¹³⁰

58 In summary, geographical jurisdiction has been a fundamental aspect of personal jurisdiction. While the evolution of personal jurisdiction has shown fluctuations over time, geographical factors have played a crucial role in maintaining predictability. However, with the increasing prevalence of the internet and cyberspace, the role of geographical considerations in personal jurisdiction has become more complex.

4 CIVIL LAW SYSTEM: GEOGRAPHIC JURISDICTION

4.1 Introduction

59 In civil law jurisdictions, the allocation of jurisdiction is established through statutory provisions, which divides the jurisdiction into distinct territories. Consequently, each court exercises its jurisdiction solely within its respective territory. This legal principle is commonly described as *territorial jurisdiction*. This form of jurisdiction can be further classified into four subcategories: general territorial jurisdiction, specific territorial jurisdiction, consensual jurisdiction, and exclusive jurisdiction.

4.2 General Territorial Jurisdiction – Defendant Domicile

60 In civil law jurisdictions, the territorial jurisdiction is generally determined by the defendant's connection with the state, which serves as a geographic anchor through the defendant's domicile. This connection dictates the appropriate court for legal proceedings against the defendant and the enforceability of other procedural actions upon the defendant.

61 In Europe, civil law jurisdictions have similar provisions for determining a defendant's domicile. For example, in Germany and Norway, general territorial jurisdiction is determined by defendant's place of residence, while for legal persons, it is determined

¹²⁸ *Bristol-Myers Squibb Co. v. Superior Court of California* (n 58).

¹²⁹ R J Weintraub, 'A Map Out of the Personal Jurisdiction Labyrinth' (1994) 28 UC Davis Law Review 531, 537.

¹³⁰ R E Pfeffer, 'A 21st Century Approach to Personal Jurisdiction' (2015) 13 University of New Hampshire Law Review 65; M Fullerton (n 113) 65, 161-164.

by their registered seat.¹³¹ France also has similar provisions, where the jurisdiction is determined by the defendant's place of domicile or residence, and for legal persons, by their established place.¹³² In cases where the defendant's domicile is unknown, Germany and Poland use the defendant's last known residence to determine jurisdiction,¹³³ Estonia relies on the last known domicile,¹³⁴ while Italy and France permit legal proceedings to be initiated at the plaintiff's domicile.¹³⁵

- 62 A large number of African countries have legal systems that are a blend of different legal traditions, commonly known as mixed legal systems.¹³⁶ Algeria, Tunisia, and Egypt, for example, have legal systems derived from the French civil law tradition and Islamic legal tradition.¹³⁷ Algeria and Tunisia were former French colonies that incorporated French laws during the colonial period, while Egyptian leaders were influenced by the *French Civil Code* of 1875 and subsequently adopted it into their legal system.¹³⁸
- 63 Similar to civil law jurisdictions in Europe, Algeria, Egypt, and Tunisia utilize the domicile of the defendant as a means to establish general jurisdiction.¹³⁹ Despite their reliance on French legal traditions, Algeria and Egypt do not distinguish between legal and natural persons, while Tunisia departs from French practice by using the term *domicile* to refer to a person's place of residence rather than their place of establishment.¹⁴⁰ In cases where the defendant's domicile is unknown, Algeria employs the defendant's place of

¹³¹ Zivilprozessordnung (Code of Civil Procedure) 2021 [§ 13 and 17] (Germany) (GCCP 2021); Tvisteloven (The Dispute Act) 2005 [S 4-4(2)-(3)] (Norway) (TVL-Norway 2005).

¹³² FRCCP 2023 [Arts 42-43] (France) (FRCCP 2023).

¹³³ GCCP (n 131) § 16; Kodeks postępowania cywilnego (Code of Civil Procedure) 1964 [Art 28] (Poland) (PLCCP 1964).

¹³⁴ tsiviilkohtumenetluse seadustik (the Code of Civil Procedure) 2005 [§79] (Estonia) (TsMs-Estonia).

¹³⁵ Codice di procedura civile (Code of Civil Procedure) 1865 [Art 18] (Italy) (ITCCP); FRCCP (n 132) Art 42.

¹³⁶ W Tetley, 'Mixed jurisdictions: Common law v. civil law (codified and uncoded)' (1999) 60 La. L. Rev 677, 701-702.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ قانون الإجراءات المدنية والإدارية (Code of Civil and Administrative Procedure) 2008 [Art 37] (Algeria) (CCAP-Algeria); قانون المرافعات المدنية والتجارية (Civil and Commercial Procedure Law) 1994 [Art 49] (Egypt) (CCPL-Egypt); قانون المرافعات المدنية والتجارية (Code of Civil and Commercial Procedure) 2018 [Art 30] (Tunisia) (CCCP-Tunisia).

¹⁴⁰ Ibid Art 30.

domicile as a means of establishing jurisdiction,¹⁴¹ Egypt utilizes the defendant's place of residence to establish jurisdiction,¹⁴² and Tunisia has no provision for this situation.

- 64 The territorial jurisdiction system in Asia can be divided into two parts. Firstly, in West Asia, Dubai (where the federal law of the *United Arab Emirates* (UAE) is applicable) and Iran have been influenced by both Shariah law and the civil law system. In Turkey, the secularization reforms of the twentieth century abolished the application of Islamic laws. These three countries place a significant emphasis on the domicile of the defendant in establishing general jurisdiction.¹⁴³ In Dubai, if the defendant does not have a domicile, their residence or workplace is typically presumed to serve as their domicile for jurisdictional purposes.¹⁴⁴ In Iran, the plaintiff is provided with a procedural option to proceed with the case. If the defendant has neither a fixed nor temporary domicile, nor any immovable property, then the court having jurisdiction over the plaintiff's domicile may adjudicate the case.¹⁴⁵ Additionally, in cases where there are multiple defendants, the plaintiff in Turkey has the option to choose the court in which one of the defendants is domiciled.
- 65 Secondly, major East Asian jurisdictions have been significantly influenced by German legal theories,¹⁴⁶ so the principle of the defendant's domicile applies to general jurisdiction across East Asia, although there are variations from region to region. In mainland China, general jurisdiction applies to the courts located in the defendant's domicile, regardless of whether the defendant is a legal or natural person. In cases where the defendant's domicile does not correspond to their permanent residence, the courts located in the place of permanent residence shall have jurisdiction over natural persons.¹⁴⁷ Unlike Mainland China, Taiwan grants jurisdiction to both the court of residence and the court of domicile in cases where the cause of action arises in the defendant's place of residence.¹⁴⁸ Japan considers the principal office or business office as the domicile of a legal person, and this provision has been transplanted by Taiwan

¹⁴¹ Ibid Art 37.

¹⁴² CCPL-Egypt (n 139) Art 49.

¹⁴³ قانون آيين دادرسي مدني (The Civil Procedures Law) 2018 [Art 31(1)] (UAE) (CPL-UAE); قانون الاجراءات المدنية (The Civil Procedure Law) 1970 [Art 21] (Iran) (CPL-Iran); HUKUK MUHAKEMLERİ KANUNU (Code of Civil Procedure) 2011 [Art 6(1)] (Turkey) (TCCP).

¹⁴⁴ Ibid.

¹⁴⁵ CPL-Iran (n 143) Art 21.

¹⁴⁶ T-F Chen, 'Transplant of civil code in Japan, Taiwan, and China: With the focus of legal evolution' (2011) 6 National Taiwan University Law Review 389, 342.

¹⁴⁷ □ □ □ □ □ □ □ □ □ □ (The Civil Procedure Law) 2021 [Art 22] (Mainland China) (CNCPL).

¹⁴⁸ □ □ □ □ □ (Code of Civil Procedure) 2021 [Art 1(1)] (Taiwan) (TWCCP).

(which was once colonized by Japan) and South Korea.¹⁴⁹ Macau, a former colony of Portugal and currently a special administrative region of China, also adopts the principle of the defendant's domicile. Macau courts have jurisdiction when the plaintiff is a resident of Macau while the defendant is not. However, this provision applies only if the defendant files the same lawsuit in the court of its own residence, and the plaintiff would be sued there.¹⁵⁰

- 66 In Québec, the general territorial jurisdiction is governed by two key elements: (1) the domicile principle of the defendant and (2) in instances where the defendant does not have a domicile in Québec, jurisdiction is determined by the court of the defendant's residence or, in the case of a legal entity, the court where the defendant's establishment or property is located.¹⁵¹
- 67 As a result of Spanish (and in certain cases, Portuguese) influence, several Latin American countries have adopted the principle of general jurisdiction on the basis of the defendant's domicile. For instance, Colombia adheres to this principle, whereby the court of the defendant's domicile has jurisdiction. If the defendant does not have a domicile, then the court of their residence assumes jurisdiction. Similarly, if the defendant does not have a residence in the country, the court of the plaintiff's domicile takes jurisdiction.¹⁵² In Argentina, individuals without a permanent residence fall under the jurisdiction of the court of the place of their location or last known residence.¹⁵³ Additionally, Venezuela stipulates that if the defendant's domicile or residence is unknown, the court in any location where the defendant may be found will assume jurisdiction.¹⁵⁴ In Brazil, the principle of general jurisdiction is based on the defendant's domicile,¹⁵⁵ and when the defendant's domicile is uncertain or unknown, the court's jurisdiction is decided by their location or the plaintiff's domicile. Specifically, when the defendant does not have domicile or residence in Brazil, the court of the plaintiff's domicile has jurisdiction.

¹⁴⁹ □ □ □ □ □ (Code of Civil Procedure) 2022 [Art 3(3)] (Japan) (JCCP); *ibid* Art 2(2); □ □ □ □ □ (The Civil Procedure Act) 2020 [Art 5(1)] (South Korea) (CPA-Korea).

¹⁵⁰ □ □ □ □ □ (Code of Civil Procedure) 2022 [Art 15] (Macau) (CCP-Macau).

¹⁵¹ FRCCP 2023[Art 41] (Québec).

¹⁵² Código de Procedimiento (Code of Procedure) 2014 [Art 23(1)-(3)] (Colombia) (CCCP-COL).

¹⁵³ Código de Procedimiento Civil y Comercial (Code of Civil and Commercial Procedure) 2015 [Art 76] (Argentina) (ANCCPC).

¹⁵⁴ Código de Procedimiento Civil (Code of Civil Procedure) [Art 40] 1990 (Venezuela) (VCCP).

¹⁵⁵ Código de Processo Civil (Code of Civil Procedure) 2015 [Art 46] (Brazil) (BRCCP).

4.3 Specific Territorial Jurisdiction – Conduct and Property

- 68 The determination of specific territorial jurisdiction is contingent on the nature of the contact among the defendant, the relevant legal proceedings, and the court.¹⁵⁶ Under the concept of specific jurisdiction, a court has jurisdiction because of a particular activity, such as conduct or property, taking place within its territorial jurisdiction. In cases where such activities occur in multiple locations, there may be several courts with jurisdiction over the matter. Unlike general jurisdiction, in specific jurisdiction, the plaintiff can choose a court outside of the defendant's domicile. The specifics of specific jurisdiction may vary from one civil law jurisdiction to another, as they are determined by applicable statutes.
- 69 Across most European civil law jurisdictions, provisions for specific jurisdiction are in place, although their contents may vary. In France, for example, there are four categories of specific jurisdiction, including contractual disputes, tort disputes, mixed cases, and disputes related to the costs of marriage.¹⁵⁷ In Germany, there are ten established categories of specific jurisdiction,¹⁵⁸ including contractual disputes which may be heard in either the court located at the place of the defendant or the court located at the place of performance.¹⁵⁹ In cases of tort, the court located in the place where the tort occurred holds jurisdiction.¹⁶⁰ Additionally, in asset management disputes, the court located in the place where the asset is managed has jurisdiction.¹⁶¹ Spain's system outlines 15 activities that fall under specific jurisdiction, such as real estate disputes, intellectual property disputes, contractual disputes, and others.¹⁶² Estonia has an extensive list of 17 cases of specific jurisdiction, including real estate disputes, consumer rights disputes, contractual disputes, and others.¹⁶³ In addition to the aforementioned cases, Estonia, Poland, Russia, Belgium, and Croatia also include labour disputes as a specific jurisdiction

¹⁵⁶ L Brilmayer, J Haverkamp, B Logan and L Lynch, 'General look at general jurisdiction'(1987) 66 Tex. L. Rev 721, 741-742.

¹⁵⁷ FRCCP (n 132) Art 46.

¹⁵⁸ For details of these 10 cases, please refer to the GCCP (n 131) §§ 19, 20-23, 27, 29, 29c, 31, 32 and 33-35.

¹⁵⁹ *Ibid* § 29.

¹⁶⁰ *Ibid* § 32.

¹⁶¹ *Ibid* § 31.

¹⁶² For details of these 15 cases, please refer to Ley de Enjuiciamiento Civil (Civil Procedure Act) 2015 [Art 52] (Spain) (SCCP).

¹⁶³ For details of these 17 cases, please refer to TsMs-Estonia 2005 (n 139) Chap 13.

category.¹⁶⁴ In some of these countries, labour disputes fall under exclusive jurisdiction, which means that only one court has the authority to hear and decide such cases.

- 70 In Africa, Algeria, Egypt, and Tunisia have established provisions for specific jurisdiction relating to property and conduct. In Algeria, specific jurisdiction includes property in mixed actions, property in proceedings for criminal and administrative damage, the conclusion or enforcement of agreements, commercial acts other than insolvency and judicial liquidation, and disputes relating to postal operations.¹⁶⁵ Tunisia, like Algeria, includes damage caused by crime in its specific jurisdiction. However, the two countries stipulate different competent courts: Algeria prescribes the jurisdiction of the court where the property is located,¹⁶⁶ whereas Tunisia prescribes the jurisdiction of the court where the damage occurred in the case of misdemeanours or quasi-misdemeanours and the court where the offender was arrested in the case of criminal offenses.¹⁶⁷ In addition to damage caused by crimes, Tunisia's specific jurisdiction extends to contractual disputes, disputes over movable property, disputes over bills of exchange or promissory notes, and alimony disputes.¹⁶⁸ Egyptian law provides for specific jurisdiction in various matters, such as commercial affairs, contractual disputes, labour disputes, expenses disputes, insurance disputes, provisional measures, and enforcement disputes.¹⁶⁹
- 71 Dubai's specific jurisdiction pertains exclusively to contractual and insurance disputes, as well as actions related to existing or liquidated companies, associations, or private institutions.¹⁷⁰ Specific jurisdiction does not extend to tort disputes in Dubai. On the other hand, Turkey has a more comprehensive list of specific jurisdictions for conduct and property, encompassing contract disputes, counterclaims, insurance contract disputes, and tort disputes.¹⁷¹ One potential explanation for this disparity is that Turkey has fully implemented secularization reforms in its legal system, leading to the incorporation of specific jurisdiction over property and conduct in line with civil law conventions.
- 72 Similarly, East Asian regions adopt a specific enumerated approach for determining jurisdiction. Mainland China, for example, outlines 10 types of actions that fall under

¹⁶⁴ Ibid §92; PLCCP (n 133) Art 461; Грамадзянска-працэсуальны кодэкс (Code of Civil Procedure) 2003 [Art 29(6.3)] (Russia) (RCCP); *Gerechtelijk Wetboek* (Judicial Code) 2017 [Art 627(9)] (Belgium) (GW-Belgium); *Zakon o parničnom postupku* (Code of Civil Procedure) 2003 [Art 65] (Croatia) (HRCCP).

¹⁶⁵ CCAP-Algeria (n 139) Art 39.

¹⁶⁶ Ibid Art 39(2).

¹⁶⁷ Ibid Art 36(3).

¹⁶⁸ Ibid Art 36.

¹⁶⁹ CCPL-Egypt (n 139) Art 55-59.

¹⁷⁰ CPL-UAE (n 143) Art 33.

¹⁷¹ TCCP (n 143) Arts 10 and 13-16.

specific jurisdiction, including contract disputes, insurance disputes, negotiable instruments disputes, company-related disputes, transport disputes, tort disputes, accident disputes, maritime damage disputes, maritime salvage disputes, and general average disputes.¹⁷² South Korea also includes specific jurisdiction over conduct and property, such as real property actions, succession, tort actions, and other related disputes.¹⁷³ Macau outlines a total of twelve specific jurisdiction actions,¹⁷⁴ while Taiwan has 15 specific jurisdiction actions, all of which pertain to property and conduct as well. Japan has a comprehensive set of provisions, which encompass various types of actions, such as those related to contractual obligations, consumer contracts, and labour relations.¹⁷⁵

- 73 In Québec, there exist three distinct categories of specific jurisdiction, namely: (1) applications for enforcing contractual obligations, (2) applications pertaining to extracontractual civil liabilities, and (3) applications dealing with immovable property as the subject matter.¹⁷⁶
- 74 The specific jurisdiction in Brazil encompasses actions where the government, the Federal District, or the State is the defendant, along with actions concerning conduct and creditor's rights.¹⁷⁷ Other countries in Latin America have a very different enumeration of specific jurisdictions. Specific jurisdictions in Venezuela include actions related to debt, immovable property, succession, partnership, and guardianship.¹⁷⁸ Colombia's exclusive jurisdiction covers a range of actions, including those related to family matters, both contractual and non-contractual disputes, company-related matters, as well as property rights and immovable property matters.¹⁷⁹ Costa Rica's exclusive jurisdiction encompasses disputes regarding immovable property, intellectual property, unfair competition, consumer protection, as well as debt-related matters.¹⁸⁰

¹⁷² CNCPL (n 147) Arts 24-33.

¹⁷³ CPA-Korea (n 149) Arts 7-24.

¹⁷⁴ □ □ □ □ □ (Code of Civil Procedure) (n 150) Art 16; TWCCP (n 148) Arts 3-9, and 11-18.

¹⁷⁵ JCCP (n 149) Art 3-3-3-4.

¹⁷⁶ FRCCP 2023 (n 151) Art 42.

¹⁷⁷ BRCCP (n 155) Arts 51-53.

¹⁷⁸ VCCP 1990 (n 154) Arts 41-45.

¹⁷⁹ CCCP-COL (n 152) Art 23(4)-(9).

¹⁸⁰ Código de Procedimiento (Civil Code of Civil Procedure) 2015 [Arts 8.3.1-8.3.2 and 8.3.4] (Costa Rica) (CCP-Costa).

4.4 Consensual Jurisdiction – Parties' Choice or Consent

- 75 In European civil law jurisdictions, parties are typically allowed to choose the appropriate court through mutual consent. The key distinction lies in whether the parties can attribute jurisdiction to a court that would not have had competence otherwise. Most jurisdictions permit parties to agree to proceed before a particular court already has jurisdiction over the subject matter. In Spain, the jurisdiction agreement is only considered valid if it is submitted to a court with objective competence over the case.¹⁸¹ In Croatia and Italy, if a court has exclusive jurisdiction over a particular matter, parties have the option to arrange for an initial hearing before another court that has relevant subject matter jurisdiction.¹⁸² In France, any contractual clause that violates the rules of territorial jurisdiction and allocation is generally considered void, except in the case of contracts between two traders, where the clause is unambiguous.¹⁸³ The requirements for jurisdiction agreements in Germany are similar to those in France. Such agreements must always relate to a specific legal relationship and the resulting legal dispute, otherwise, they are considered invalid. However, an exception exists if the parties to the agreement are merchants, legal persons under public law, or special assets under public law. In such cases, if there is an express or implied agreement by the parties, the court of first instance without jurisdiction may become the forum for resolving the dispute.¹⁸⁴
- 76 In Russia, parties who are subject to exclusive jurisdiction are allowed to alter the territorial cognizance for a particular case before it is accepted by the court, without requiring subject matter jurisdiction.¹⁸⁵ Norway takes the concept of consensual jurisdiction to an extreme level, where the parties are afforded unrestricted ability to exclude or supplement both general and specific jurisdiction.¹⁸⁶ It is important to note, however, that in the majority of European civil law systems, consensual jurisdiction remains subordinate to exclusive jurisdiction.
- 77 In most African jurisdictions, parties' consent to a civil relationship is also valued, and consensual jurisdiction is regulated. Algeria, for instance, has provisions that are nearly identical to those of France, where any clause that assigns territorial jurisdiction to a court that lacks jurisdiction shall be deemed null and void unless agreed between the traders involved.¹⁸⁷ The main difference in consensual jurisdiction between Algeria and

¹⁸¹ SCCP 2015 (n 162) Art 54(3).

¹⁸² HRCCP (n 169) Art 70; ITCCP (n 135) Art 29.

¹⁸³ FRCCP (n 132) Art 48.

¹⁸⁴ GCCP (n 131) Arts 38(1) and 40(1).

¹⁸⁵ RCCP (n 164) Art 32.

¹⁸⁶ TVL-Norway (n 131) S 4-6(1).

¹⁸⁷ CCAP-Algeria (n 139) Art 45.

is limited to a specific legal relationship and requires a written agreement, while not infringing on exclusive jurisdiction.¹⁹⁵

- 80 Consensual jurisdiction in South Korea is limited to the court of first instance and requires a written agreement to be valid.¹⁹⁶ However, it should be noted that South Korea's legal framework does not specify whether consensual jurisdiction may potentially contravene exclusive jurisdiction or require a connection to the dispute. In contrast, in Japan, for consensual jurisdiction to be recognized, two conditions must be satisfied: the action must arise from a specific legal relationship, and the agreement must be in writing.¹⁹⁷ Japan accepts electronic records as legitimate methods for executing the agreement.¹⁹⁸ In addition, Japan has established provisions for consensual jurisdiction in consumer agreements and labour contracts, aimed at preventing the abuse of unequal power imbalances by business operators and employers, and protecting disadvantaged consumers and employees from being denied their rights and interests through standard-form contracts.¹⁹⁹
- 81 Unlike most civil law jurisdictions, which places constraints on consensual jurisdiction (including exclusive jurisdiction and subject matter jurisdiction), Québec takes a different approach and considers consensual jurisdiction valid as long as it does not violate public order.²⁰⁰
- 82 The concept of consensual jurisdiction holds significant importance in numerous Latin American jurisdictions, with some even placing it in the first article of the jurisdiction chapter of their civil procedure codes. In Cuba, for instance, the court chosen by the parties, whether explicitly or implicitly, holds territorial jurisdiction.²⁰¹ However, in Cuba, consensual jurisdiction must not conflict with exclusive jurisdiction, and there is no requirement for the designated court to have a connection with the subject matter of the case. Similarly, in Mexico, territorial jurisdiction can be extended through express or implied mutual consent,²⁰² suggesting the absence of the requirements a real connection between the designated court and the case. In Venezuela, the designation of courts has different requirements: territorial jurisdiction may be waived in favour of consensual jurisdiction by agreement of the parties, except in cases where the public

¹⁹⁵ TWCCP (n 148) Art 24, Art 26.

¹⁹⁶ CPA-Korea (n 149) Art 29.

¹⁹⁷ TWCCP (n 148) Art 3-7(1)-(2).

¹⁹⁸ *Ibid* Art 3-7(3).

¹⁹⁹ *Ibid* Art 3-7(5)-(6).

²⁰⁰ FRCCP 2023 (n 151) Art 41.

²⁰¹ Código de procesos (Code of Procedure) [Art 28] (Cuba) (CCP-Cuba).

²⁰² Código de Procedimiento Civil (Code of Civil Procedure) [Art 23] (Mexico) (MXCCP).

prosecutor's office must intervene, or cases that are expressly excluded by law.²⁰³ Consensual jurisdiction in Argentina is only enforceable if it is documented in writing.²⁰⁴

4.5 Exclusive Jurisdiction

- 83 When a statute expressly designates exclusive jurisdiction, it takes precedence over all other forms of territorial jurisdiction. Consequently, parties must proceed with their civil case in the court with exclusive jurisdiction. This designation determines the sole court with authority to preside over the case.
- 84 In the majority of European jurisdictions, there are provisions for exclusive jurisdiction regarding immovable property, as well as matters pertaining to succession, family affairs, marriage, and judicial enforcement procedures. As an illustration, according to the *French Code of Civil Procedure*, exclusive jurisdiction over immovable property rests with the court located where the property is situated, while issues of succession, such as partition, fall within the jurisdiction of the court with competence over such matters.²⁰⁵ Poland's exclusive jurisdiction encompasses property rights, inheritance, membership of legal entities, marriage, and matters related to parents and children.²⁰⁶ Regarding judicial procedures, Belgium governs exclusive jurisdiction over insolvency, judicial reorganization, disputes relating to the application of tax law, as well as claims for preventive attachment and enforcement measures.²⁰⁷ In addition to exclusive jurisdiction over immovable property, Estonia, Russia, and Germany also provide for exclusive jurisdiction in some less common situations. For instance, Estonia has exclusive jurisdiction over petitions,²⁰⁸ Russia provides exclusive jurisdiction over transportation agreements as well as the protection of groups of persons,²⁰⁹ and Germany provides exclusive jurisdiction over a range of matters, including housing leases, environmental pollution caused by factories, capital markets, debt collection and enforcement proceedings, as well as certain labour disputes.²¹⁰
- 85 The provisions governing exclusive jurisdiction in certain African jurisdictions bear strong resemblance to their European counterparts. Notably, in Algeria, the types of cases

²⁰³ VCCP (n 154) Art 47.

²⁰⁴ ANCCPC (n 153) Art 2607.

²⁰⁵ FRCCP 2023 (n 132) Arts 44-45.

²⁰⁶ PLCCP (n 133) Arts 38-42.

²⁰⁷ GW-Belgium (n 164) Arts 631-633.

²⁰⁸ TsMs-Estonia 2005 (n 134) Chap 14, Chap 16.

²⁰⁹ RCCP (n 164) Art 30.

²¹⁰ GCCP (n 131) §§ 24, 29a(1)-29a(2), 32a-32b, 689(2), 764(2), 802, 828(2), 869; Arbeitsgerichtsgesetz (Labour Court Act) [§ 82(1)] (Germany).

falling under exclusive jurisdiction are almost twice as those under specific jurisdiction.²¹¹ In Tunisia, exclusive jurisdiction applies to a variety of proceedings, including those involving the state participants, disputes relating to associations and companies, succession disputes, and insolvency disputes.²¹² In Egypt, the law specifies exclusive jurisdiction for real estate litigation, summary proceedings, disputes within companies and associations, succession, and insolvency.²¹³ However, the distinction between exclusive jurisdiction and specific jurisdiction in Egypt's legislation is not well defined, as there is no explicit language to differentiate between them. This lack of clarity can be attributed to the fact that Egypt's *Civil and Commercial Procedure Law* has not undergone substantial revisions since its implementation in 1968.

- 86 In West Asia, the jurisdictions of Dubai, Iran, and Turkey all apply exclusive jurisdiction to disputes concerning succession and immovable property.²¹⁴ Dubai's exclusive jurisdiction also includes insolvency.²¹⁵ In Iran, exclusive jurisdiction extends beyond succession and immovable property disputes to encompass other types of property actions.²¹⁶ Exclusive jurisdiction in Iran is somewhat intricate, as it is tailored to the country's distinctive cultural and social norms.
- 87 Exclusive jurisdiction over immovable property is also present in East Asian jurisdictions, albeit with some regional variations. For example, Taiwan limits exclusive jurisdiction to disputes concerning immovable properties only.²¹⁷ In Mainland China, another two types of exclusive jurisdiction are port operation disputes, and succession and inheritance disputes.²¹⁸ In addition to immovable property rights, Macau's exclusive jurisdiction encompasses the declaration of insolvency for legal persons domiciled in the territory.²¹⁹ Meanwhile, Japan's exclusive jurisdiction covers corporate and legal person actions, as well as disputes related to intellectual property.²²⁰ The *Civil Procedure Act* of South Korea does not explicitly define exclusive jurisdiction. Nonetheless, the Act's provisions excluding the application of general jurisdiction, specific jurisdiction, and

²¹¹ CCAP-Algeria (n 139) Art 40.

²¹² CCCP-Tunisia (n 139) Arts 32-35.

²¹³ *قانون المرافعات المدنية والتجارة* (Civil and Commercial Procedure Law) (n 139) Arts 50-54

²¹⁴ CPL-UAE (n 143) Art 32, Art 34; *قانون آيين دادرسي مدني* (The Civil Procedure Law) (n 143) Art 23, Art 32; TCCP (n 148) Arts 11-12.

²¹⁵ CPL-UAE (n 143) Art 35.

²¹⁶ *قانون آيين دادرسي مدني* (The Civil Procedure Law) (n 143) Arts 24-25, Arts 33-35, Arts 38-39.

²¹⁷ TWCCP (n 148) Art 10.

²¹⁸ CNCPL (n 147) Art 34.

²¹⁹ CCP-Macau (n 151) Art 20.

²²⁰ TWCCP (n 149) Art 3-5.

consensual jurisdiction under certain circumstances imply the existence of exclusive jurisdiction.²²¹

- 88 Québec's exclusive jurisdiction encompasses a variety of disputes, including those related to employment or consumer contracts, insurance contracts, personal integrity, status or capacity, family matters, and successions.²²²
- 89 In Brazil, exclusive jurisdiction covers personal property actions, real property actions, succession disputes, actions where the defendant is absent, and cases involving an incompetent defendant.²²³ Moreover, Brazil's constitution has established exclusive jurisdiction over Indian rights actions, which must be heard in the court of the defendant's location if the plaintiff is a trade union.²²⁴
- 90 While Spain has had a significant influence on civil law countries in Latin America, these countries do not necessarily replicate Spain's exclusive jurisdictional provisions. In Colombia, for example, exclusive jurisdiction covers eleven subjects, including property, insolvency, succession, enforcement procedures, and others.²²⁵ Not all Latin American jurisdictions have established provisions for exclusive jurisdiction, as is the case with Venezuela. On the other hand, Cuba's exclusive jurisdiction is extensive, covering a total of 11 actions, including neighbouring rights actions, work execution contract actions, the seizure of transports moored and parked in Cuban ports and airports, and labour and social security actions.²²⁶

4.6 Limits of Territorial Jurisdiction

- 91 Firstly, discrepancies in the provisions and interpretation of domicile or permanent residence across different jurisdictions can easily lead to conflicts of jurisdiction regarding general territorial jurisdiction. For instance, if Individual A is domiciled in mainland China but has a residence in Germany and becomes a defendant in legal proceedings, both Chinese and German courts may claim jurisdiction. Likewise, Company B, established in France but conducting business in South Korea, may encounter a situation where the courts of both countries have jurisdiction, resulting in conflicting claims.

²²¹ CPA-Korea (n 149) Art 31.

²²² FRCCP 2023 (n 151) Arts 43-46.

²²³ BRCCP (n 155) Arts 46-50.

²²⁴ Constituição (Constitution) 1988 [Art 109 XI Para 1] (Brazil).

²²⁵ CCP-COL (n 152) Art 23(10)-(11).

²²⁶ CCP-Cuba (n 201) Arts 31-32.

- 92 Secondly, another issue that may give rise to conflicts of jurisdiction is the varying scope of actions falling under specific jurisdiction and exclusive jurisdiction across different regions. For instance, succession may be classified as an exclusive jurisdiction matter in some jurisdictions and a specific territorial jurisdiction matter in others. These differences in legal provisions governing exclusive jurisdiction can create obstacles in the recognition and enforcement of judgments. For instance, if Decedent A is domiciled in Japan and has left an inheritance in mainland China, while Chinese courts may claim exclusive jurisdiction over the case, under Japanese law, it is within the special jurisdiction of Japanese courts. If the Japanese court accepts the case, the Chinese court may refuse to recognize and enforce the decision of the Japanese court, arguing that the case falls under their exclusive jurisdiction. Similar situations may arise in actions concerning tort, immovable property, and other matters.
- 93 Thirdly, it is important to note that the civil law system primarily relies on statutory law, which means that legal provisions are generally codified by statute and require prompt adaptation to changing economic and social conditions. In regards to territorial jurisdiction in torts, many civil law jurisdictions follow the general rule that the court with jurisdiction over the case is where the tortious conduct occurred. However, the development of technology has led to situations where determining the place of infringement can be challenging. For instance, cases involving internet-based infringements may present controversial issues regarding the place where the infringement occurred.²²⁷ It can be challenging to ascertain the location of infringement when a website's server is situated in one place, but the website violates the rights of a person located in another place, since it is uncertain whether the place of infringement is where the server or the affected person is located.²²⁸ In essence, the practical implementation of territorial jurisdiction may be hindered by civil law systems that fail to adapt to the evolving social, cultural and technological norms.
- 94 Fourthly, consensual jurisdiction is a common feature in most civil law regions, albeit with some variations. Although some special circumstances may limit consensual jurisdiction, such as the protection of consumers and workers, many countries have only a few requirements for jurisdictional agreements, rarely restrict the scope of consensual jurisdiction, and adopt a more lenient standard for written form. This approach is aimed at respecting the parties' autonomy and enabling them to choose the competent court. Dubai, for instance, does not require the court to have a connection to the subject matter.²²⁹ Consensual jurisdiction in Norway may even exclude both general jurisdiction

²²⁷ D J B Svantesson, 'Solving the Internet Jurisdiction Puzzle' (Oxford University Press 2017).

²²⁸ D J Gerber, 'Beyond Balancing: International Law Restraints on the Reach of National Laws' (1984) 10 Yale J. Int'l L. 185, 191-192.

²²⁹ CPL-UAE (n 143) Art 31(5).

and specific jurisdiction.²³⁰ Additionally, the Japanese regulations on consensual jurisdiction address the use of the Internet, acknowledging that a valid electronic agreement holds the same legal weight as a physical document.²³¹ However, the lack of consistency or clarity in defining the elements of consensual jurisdiction in different regions can lead to conflicts in practice. For instance, South Korea does not provide clear guidelines on whether consensual jurisdiction can override the provisions of exclusive jurisdiction or whether the court shall be relevant to the dispute.²³² Conversely, Mainland China requires that the court chosen for consensual jurisdiction shall have a connection to the subject matter.²³³ In practice, it is possible for a Chinese court to invalidate a jurisdictional agreement with a Korean or Norwegian party because they were unaware of the Chinese requirements regarding consensual jurisdiction and did not choose a court that has a connection to the subject matter.

4.7 Discussion

- 95 It is crucial that the rules for determining the appropriate venue are clear and objective to guarantee that the parties have a fair opportunity to present their case in the appropriate forum. A few points need to be highlighted when discussing territorial jurisdiction in civil law systems.
- 96 Firstly, regarding general jurisdiction, the principle of the defendant's domicile aims to facilitate the court's investigation of cases and verification of evidence in the defendant's location.²³⁴ In the majority of civil law systems, the principle of the defendant's domicile serves as the foundation of territorial jurisdiction, granting the court in the defendant's domicile the authority to hear the case. This principle offers several advantages: (1) It streamlines the court's ability to summon the defendant to appear in court and to take measures to safeguard property and advance enforcement. (2) It facilitates the court to enforce a judgement against the losing defendant by using the defendant's assets within its jurisdiction.²³⁵ (3) It prevents the plaintiff from abusing his right to sue,²³⁶ meaning that the plaintiff cannot select a court outside the defendant's domicile in an attempt to secure a more favourable judgment in another jurisdiction.

²³⁰ TVL-Norway (n 131) Sec 4-6(1).

²³¹ TWCCP (n 148) Arts 3-7(3).

²³² CPA-Korea (n 149) Art 29.

²³³ CNCPL (n 147) Art 35.

²³⁴ M Twitchell (n 54) 610.

²³⁵ C Albiston, 'The Rule of Law and the Litigation Process: The Paradox of Losing by Winning' (1999) *Law and Society Review* 869, 888.

²³⁶ E L Barrett Jr, 'The Doctrine of Forum Non Conveniens' (1947) 35 *California Law Review* 380, 392.

- 97 Nevertheless, the principle of the defendant's domicile does have its limitations. In a civil dispute, the plaintiff is often the party whose legal rights and interests have been violated. Therefore, it may seem unjust that the law grants the defendant 'home advantage' of responding to litigation, while the plaintiff is compelled to bear the time and financial costs of litigation and the risk of uncertainty.²³⁷ For instance, a plaintiff may need to undertake lengthy travel and retain legal counsel in another jurisdiction, resulting in substantial litigation expenses.²³⁸ These expenses make it challenging for plaintiffs to assert their legal rights, potentially dissuading them from pursuing a lawsuit. In addition, a defendant may be able to 'forum shop' by changing its domicile.²³⁹ For instance, a defendant (a legal person) may adjust their registration seat, established place, principal office, and other locations to alter its domicile. In these scenarios, the defendant's domicile may not be the most proficient or equitable jurisdiction to consider the case.
- 98 Colonization obviously played a role in shaping the jurisdictional rules of a number of countries and regions. As an illustration, the regulations in Algeria and France concerning consensual jurisdiction are remarkably similar. They both state that any provision conferring territorial jurisdiction to a court lacking jurisdiction will be considered invalid, except when mutually agreed upon by traders.²⁴⁰ Additionally, a significant portion of the German legal system is evident in East Asia. While countries like Spain, Portugal, Germany, and France influenced the legal frameworks of many regions through colonization, it did not imply that the former colonies adopted these legal provisions entirely. Instead, numerous regions merged former colonial laws with their own legal systems to guarantee that these frameworks were more attentive to the demands and aspirations of the local population.²⁴¹ For example, although the Algerian and French provisions on consensual jurisdiction may be remarkably similar, there are differences in their use of language, and Algeria does not mandate the consensual clause to be 'very clear' as France does.²⁴²

²³⁷ A T von Mehren and D T Trautman (n 46); C J Jacobs, 'In Defense of Territorial Jurisdiction' (2018) 85 University of Chicago Law Review 1589, 1621-2622.

²³⁸ D Klerman, 'Rethinking personal jurisdiction' (2014) 6.2 Journal of Legal Analysis 245, 288-291.

²³⁹ F K Juenger, 'Forum Shopping, Domestic and International' (1988) 63 Tulane Law Review 553, 561.

²⁴⁰ CCAP-Algeria (n 139) Art 45.

²⁴¹ S E Merry, 'Law and Colonialism' (1991) 25 Law & Society Review 889, 892-894.

²⁴² The French article reads: 'Any clause which directly or indirectly derogates from the rules of territorial jurisdiction shall be deemed to be unwritten unless it has been agreed between persons who have all contracted in a commercial capacity and it has been made very clear in the undertaking of the party to whom it is opposed', translated from the French version, see Code de procédure civile (Code of Civil Procedure of France) (n 132) Art 48. The Algerian article reads: 'Any clause attributing territorial competence to a non-competent jurisdiction shall be deemed null and void unless it has been agreed between traders', translated from the French version, see CCAP-Algeria (n 139) Art 45.

- 99 Thirdly, there are substantial variations in the specific regulations that govern territorial jurisdiction between common law and civil law systems. One critical distinction is that common law systems acknowledge territorial jurisdiction beyond the defendant's domicile principles, while civil law systems typically only recognize the defendant's domicile, and the dispute must arise within the territory of the civil law system. The common law system adopts *in personam* jurisdiction, meaning that the court can assert jurisdiction over a case if the defendant resides within the court's territorial area, maintains communication with the court, or receives legal notice.²⁴³ Even in situations where both the plaintiff and defendant are not domiciled within the court's territorial area and the cause of action is not relevant to that area, the court can still obtain *in personam* jurisdiction over the individual defendant through the actual service of process.²⁴⁴ In addition to the *in personam* jurisdiction, the common law system also recognizes other territorial jurisdiction such as parties' consent, *in rem* jurisdiction, and *quasi in rem* jurisdiction.²⁴⁵ Consent of the parties pertains to scenarios in which the defendant has contractually or otherwise agreed to submit to the jurisdiction of the court. On the other hand, *in rem* or *quasi in rem* jurisdiction pertains to cases in which the court has jurisdiction over the object or property in a particular location, rather than having jurisdiction over the parties involved.²⁴⁶ Within civil law systems, the regulations regarding territorial jurisdiction are more stringent and grounded on the principle of the defendant's domicile.²⁴⁷ This implies that the jurisdictional power of the court is limited to cases that have arisen within its territorial boundaries, encompassing matters such as properties located, contracts entered into, or torts committed within its jurisdictional purview. If a dispute occurred outside the territory of the court, it would fall outside its jurisdictional authority. However, there are a few civil law regions where, through consensual jurisdiction, parties may agree to submit a case to the jurisdiction of a court that would not otherwise have jurisdiction.²⁴⁸
- 100 The clarity of statute laws and codes in the civil law system further reinforces its predictability, providing judges, legal professionals, and parties with unambiguous guidelines for resolving legal disputes. This predictability is particularly valuable to

²⁴³ L Brilmayer, J Haverkamp, B Logan, and L Lynch, S Neuwirth, J O'Brian, 'General look at general jurisdiction' (1988) Texas Law Review, 66, 721, 791-792; J Weinstein, 'The federal common law origins of judicial jurisdiction: Implications for modern doctrine' (2004) Virginia Law Review 169, 224-227.

²⁴⁴ A A Ehrenzweig, 'The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens' (1956) Yale Law Journal 289, 292-293.

²⁴⁵ J J Kalo, 'Jurisdiction as an Evolutionary Process: The Development of Quasi In Rem and In Personam Principles' (1978) Duke Law Journal 1147, 1162-1164.

²⁴⁶ Ibid.

²⁴⁷ R Michaels, 'Two Paradigms of Jurisdiction' (2005) 27 Michigan Journal of International Law 1003, 1032.

²⁴⁸ For instance, Consensual jurisdiction in Norway can exclude or supplement both the general jurisdiction and the specific jurisdiction, which gives the parties complete consensual freedom. See lov om mekling og rettergang i sivile tvister (TVL-Norway) (n 131) Sec 4-6(1).

businesses and individuals who must make decisions based on the law, such as whether to engage in a contract or how to pursue a legal claim.²⁴⁹

5 CONCLUDING REMARKS

- 101 Geographic jurisdictional rules vary across different legal systems. Under the common law system, geographical jurisdiction is prominently manifested through the principles of jurisdiction *in personam* and jurisdiction *in rem*. Jurisdiction *in personam* refers to the court's jurisdiction over the defendant, and it typically depends on the defendant's residence or the location of the conduct in question, while jurisdiction *in rem* refers to the jurisdiction of the court over the object or property in litigation, usually depending on the location of the properties. In contrast, civil law geographical jurisdiction is primarily based on the defendant's domicile. Under this system, courts usually have jurisdiction only if the defendant's domicile is within their jurisdiction, without regard to the location of the property.
- 102 Under the common law system, jurisdiction over foreign parties generally follows the contact principle, which allows a competent court to govern a case as long as it has a substantial connection or certain contact with the matter at hand. The civil law system, on the other hand, applies the principles of nationality, domicile, and *de facto* jurisdiction, which are relatively strict and conservative when it comes to jurisdiction over foreign parties. Moreover, with the advancement of the Internet, cross-border civil cases are becoming increasingly common. To meet the demands of these cases, both common law and civil law systems are actively exploring and enhancing their jurisdictional rules for cross-border Internet civil cases. In common law systems, courts determine jurisdiction based on factors such as the subject matter of the website and the location of its primary activity.²⁵⁰ In the civil law system, jurisdiction is determined based on factors such as the defendant's domicile, server location, and the number of users involved.²⁵¹
- 103 The advent of the Internet and the rapid development in communication and transaction capabilities present numerous challenges to the concept of territorial jurisdiction.²⁵² Domicile, commonly defined as a defendant's permanent or physical residence in civil law, can become ambiguous on the internet. For instance, an individual or entity may

²⁴⁹ R A Leflar, 'Choice-Influencing Considerations in Conflicts Law' (1966) 41 New York University Law Review 267, 271.

²⁵⁰ Z Niesel, 'Personal Jurisdiction: A New Age of Internet Contacts' (2019) 94 Indiana Law Journal 103, 124-126.

²⁵¹ C Kuner, 'Data Protection Law and International Jurisdiction on the Internet' (Part 2) (2010) 18.3 International Journal of Law and Information Technology 227, 238.

²⁵² D R Johnson and D Post, 'Law and Borders: The Rise of Law in Cyberspace' (1996) Stanford Law Review 1367, 1382-1384.

physically reside in one country, while their online presence and operations are centralized in another country with servers located in yet another country.

- 104 Another challenge is the involvement of multiple parties in different jurisdictions in online disputes.²⁵³ For instance, in online purchasing, the buyer, seller, and transaction platform may each be located in a different country. Consequently, many courts may have jurisdiction over the dispute simultaneously, leading to difficulties in determining which court should preside over it. As legal provisions differ significantly across regions and conflicts may arise even within the same region due to multiple jurisdictions, the same case may have vastly different outcomes if heard in different jurisdictions.
- 105 A further challenge is that online acts are frequently replicated and disseminated multiple times, making it challenging to identify the defendant.²⁵⁴ As cyberspace comprises of numerical values, data, graphics, and other forms of information, the participants' identities are virtual.²⁵⁵ The virtualization of online identities is primarily evidenced through the electronic textualization of identities, which entails utilizing a variety of information, primarily textual and graphical symbols, to depict a person's identity.²⁵⁶ In other words, the use of anonymous identities is widespread, and in many cases, the website operator cannot disclose information about the unknown person's identity and location,²⁵⁷ making it exceedingly difficult to ascertain an individual's genuine identity, domicile, or residence on the Internet.²⁵⁸ Identifying the physical location of a computer becomes less valuable in instances of infringement where the infringing activity occurs in a publicly accessible computer, such as an internet café or a

²⁵³ A Mefford, 'Lex Informatica: Foundations of Law on the Internet' (1997) 5 *Indiana Journal Global Legal Studies* 211, 220-221; A Shah, 'Using ADR to Resolve Online Disputes' (2004) 10 *Richmond Journal of Law & Technology* 25, 30-31.

²⁵⁴ K F King, 'Personal Jurisdiction, Internet Commerce, and Privacy: The Pervasive Legal Consequences of Modern Geolocation Technologies' (2011) 21 *Albany Law Journal of Science and Technology* 61, 75-77.

²⁵⁵ M E Katsh, 'Software Worlds and the First Amendment: Virtual Doorkeepers in Cyberspace' (1996) *University of Chicago Legal Forum* 335, 340-342.

²⁵⁶ H J Schau and M C Gilly, 'We Are What We Post? Self-Presentation in Personal Web Space' (2003) 30 *Journal of Consumer Research* 385, 396.

²⁵⁷ M Finck and F Pallas, 'They Who Must Not Be Identified—Distinguishing Personal from Non-Personal Data under the GDPR' (2020) 10 *International Data Privacy Law* 11, 26-28.

²⁵⁸ J Rothchild, *Protecting the Digital Consumer: The Limits of Cyberspace Utopianism* (1998) 74 *Indiana Law Journal* 893; S Grazioli and S L Jarvenpaa, 'Perils of Internet Fraud: An Empirical Investigation of Deception and Trust with Experienced Internet Consumers' (2000) 30 *IEEE Transactions on Systems, Man, and Cybernetics-Part A: Systems and Humans* 395, 400.

library.²⁵⁹ If the defendant's identity and domicile is hard to be determined, the plaintiff is unlikely to be able to initiate legal proceedings against the defendant.

- 106 It's crucial for individuals to have the ability to seek legal redress and protect their rights, and territorial jurisdiction must be structured to prevent any party from gaining an unfair advantage within the jurisdiction through improper tactics.²⁶⁰ The level of certainty and predictability of territorial jurisdiction is of paramount importance, as it provides citizens with the assurance that the legal system will enable them to exercise their rights and settle disputes in a reliable and consistent manner.²⁶¹

²⁵⁹ C E George and J Scerri, 'Web 2.0 and User-Generated Content: Legal Challenges in the New Frontier' (2007) *Journal of Information, Law and Technology* 2, 10-11.

²⁶⁰ R Maloy, 'Forum Shopping-What's Wrong with that' (2005) 24 *Quarterly Law Review* 25, 32-33.

²⁶¹ S Holmes, 'Lineages of the Rule of Law' (2003) 19 *Democracy and the Rule of Law* 35, 36.

ABBREVIATIONS AND ACRONYMS

ACCP	Code of Civil Procedure (Argentina)
ADR	Alternative Dispute Resolution
ANCCPC	Argentine National Civil and Commercial Procedural Code (Argentina)
Art	Article/Articles
BRCCP	Code of Civil Procedure (Brazil)
CCAP-Algeria	Code of Civil and Administrative Procedure (Algeria)
CCCP-COL	Code of Procedure (Columbia)
CCCP-Tunisia	Code of Civil and Commercial Procedure (Tunisia)
CCP-Costa	Code of Civil Procedure (Costa Rica)
CCP-Cuba	Code of Civil Procedure (Cuba)
CCPL-Egypt	Civil and Commercial Procedure Law (Egypt)
CCP-Macau	Code of Civil Procedure (Macau)
cf	<i>confer</i> (compare)
ch	chapter
CJJA	Civil Jurisdiction and Judgments Act 1982 (UK)
CJPTA	Court Jurisdiction and Proceedings Transfer Act (Canada)
CNCPL	The Civil Procedure Law (Mainland China)
CPA-Korea	The Civil Procedure Act (South Korea)
CPL-Iran	The Civil Procedure Law (Iran)
CPL-UAE	The Civil Procedures Law (UAE)
ed	editor/editors
edn	edition/editions
eg	<i>exempli gratia</i> (for example)
etc	et cetera
EU	European Union
ff	following
fn	footnote (external, ie, in other chapters or in citations)
FRCCP	Code of Civil Procedure (France)
GCCP	Code of Civil Procedure (Germany)
GDPR	General Data Protection Regulation (EU)
GW-Belgium	Judicial Code 2017 (Belgium)
HRCCP	Code of Civil Procedure (Croatia)
ibid	<i>ibidem</i> (in the same place)
ICPR	Civil Procedure Regulations (Israel)
ie	<i>id est</i> (that is)
ILCS	Illinois Compiled Statutes 2010 (US)

ITCCP	Code of Civil Procedure (Italy)
JCCP	Code of Civil Procedure (Japan)
MXCCP	Code of Civil Procedure (Mexico)
n	footnote (internal, ie, within the same chapter)
no	number/numbers
NZ	New Zealand
para	paragraph/paragraphs
PD	Practice Direction
PDPACP	Pre-Action Conduct and Protocols
PLCCP	Code of Civil Procedure (Poland)
pt	part
RCCP	Code of Civil Procedure (Russia)
RSC Order	Rules of the Supreme Court (UK)
SCC	Supreme Court Canada
SCCP	Civil Procedure Act (Spain)
Sec	Section/Sections
SICC	Singapore International Commercial Court
supp	supplement/supplements
TCCP	Code of Civil Procedure (Turkey)
trans/tr	translated, translation/translator
TsMs-Estonia	Code of Civil Procedure (Estonia)
TVL-Norway	The Dispute Act (Norway)
TWCCP	Code of Civil Procedure (Taiwan)
UAE	United Arab Emirates
UK	United Kingdom
UKCPR	Civil Procedure Rules (UK)
UP	University Press
US / USA	United States of America
USFRCP	Federal Rules of Civil Procedure (US)
v	versus
VCCP	Code of Civil Procedure (Venezuela)
vol	volume/volumes

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