

## **PART V**

### **JURISDICTION AND VENUE OF THE COURT**

#### **INTRODUCTION CHAPTER**

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- 1 Within each country, the allocation of judicial authority among courts represents a fundamental feature of any civil justice system. Allocations can be viewed through different lenses. Structurally, allocations can be vertical, dividing courts within a single system into hierarchical levels; or horizontal, dividing courts of the same hierarchical level into geographic regions or subject-matter specializations. Valistically, allocations can reflect normative goals of efficiency, competence, and access to justice. Developmentally, judicial allocations are often a product of historical, socio-economic, and political influences that have evolved, and sometimes ossified, over time.
- 2 This segment focuses on the domestic allocation of civil cases through the legal divisions of jurisdiction and venue. It offers a rich descriptive landscape of the varied and multifaceted ways different jurisdictions have approached case allocation. The following jurisdictions are discussed, with focus jurisdictions highlighted in bold:

#### AFRICA

Algeria  
Egypt  
Ghana  
Kenya  
Nigeria  
**South Africa**  
Sudan  
Tunisia

#### ASIA

**China (Mainland)**

Dubai  
Hong Kong  
India  
Iran  
Israel  
Japan  
Lebanon  
Macau  
Russia  
Saudi Arabia  
Singapore  
South Korea  
Taiwan  
Turkey  
UAE

AUSTRALIA, NEW ZEALAND, AND PACIFIC ISLANDS

Australia  
New Zealand  
Samoa

EUROPE

Austria  
Belgium  
Croatia  
Denmark  
Estonia  
Finland  
**France**  
**Germany**  
**Italy**  
Norway  
Poland  
Spain  
**United Kingdom**

## NORTH AND CENTRAL AMERICA

Canada  
Costa Rica  
Cuba  
Jamaica  
Mexico  
**United States**

## SOUTH AMERICA

Argentina  
Brazil  
Chile  
Colombia  
**Peru**  
Venezuela

- 3 This descriptive contribution should serve as a resource for those who wish to better understand both the details of individual judicial systems and contrasts among individual systems. The Part offers, where appropriate, assessments and critiques of countries' case allocations—where some have succeeded in their aspirations, where others have failed, and where some are still developing. The Part also offers analytic insight into understanding case allocations in multinational ways by categorizing common features of case allocation across countries, pointing out cross-border influences, and contemplating domestic case allocation in an increasingly globalized legal community.
- 4 Issues of case allocation necessarily are interconnected to other Parts of this Compendium, including Judicial Organization and Independence (Part II), Access to Justice and Costs of Litigation (Part III), Due Process (Part IV), Structure of Civil Litigation (Part VI), Final Judgment, Appeals and Review (Part VIII), and Special Subject Matters (Part XII), among others. Some overlap with this Part is therefore inevitable. Yet that overlap is enriching, rather than repetitive. This Part focuses on the core questions of jurisdiction and venue, while other Parts show how those core questions have broad implications for many other aspects of civil justice. It is an essential feature of the interconnectedness of procedure and civil justice that a full picture of all the influences and inflections of case allocation necessarily requires consideration of those Parts.
- 5 The segment is divided into six chapters. Chapter 1 sets the stage by describing, analysing, and categorizing constitutional allocations of judicial authority. It also asks, and answers, why countries would constitutionalize certain allocations of judicial authority rather than

leave those allocations to the legislative, executive, or judicial branches of government.

- 6 Chapter 2 begins with a deeper exploration of various doctrinal categories of allocation by detailing approaches to territorial jurisdiction. Allocative heuristics based on geography empower a court within the bounds of a particular geographic territory to hear cases over events and persons. If a court does not have geographic jurisdiction over the events or persons within it, the court cannot bind the defendant to an obligation or adjudicate any rights involving them. This kind of jurisdiction is to be distinguished from subject-matter jurisdiction, which is the power of a court to render a judgment concerning a certain subject matter. The chapter compares and contrasts different regulations arising from allocations of cases based on geography, exploring both commonalities and divergences across nations, as well as legal traditions (civil law, common law, and mixed jurisdictions).
- 7 Chapter 3 provides a description of the various systems and rules governing the determination of jurisdiction by objective criteria: the nature of the case, and the economic value of the matter in dispute. It also analyses the quantitative and qualitative aspects of these criteria. The chapter will compare the different criteria across the globe in allocating cases according to the case type and financial aspect of the case. The chapter analyses the objective criterion as a basis for establishing the jurisdictional organization of a State, how is the 'nature of the case' criterion determined and its relation with the judicial specialization and its rules and the relation between the nature of the case and access to justice. Also, this chapter explains the criteria to establish the venue according to the financial aspect of the case, its rules, its problems, and its relations to the 'nature of the case criterion'.
- 8 Chapter 4 describes the different solutions adopted by legal systems to deal with parallel proceedings, depending on their jurisdictional background. The general purpose of jurisdiction in civil law systems is to ensure the proper administration of justice. This means ensuring the predictability and certainty of the rules of jurisdiction so that each citizen can know in advance before which court he or she can sue (or be sued), depending on the specific characteristics of the dispute. The historical development of the legal orders of this system, which is based on codes (a set of systematically organized written rules, that may be of a general and abstract nature), has led to the primacy of law. Within parallel litigation, in addition to the objectives of predictability and certainty, the main objective is to avoid conflicts of judgments, especially where the pending actions are identical (i.e. *lis pendens* in the strict sense). The civil law approach to the issue of parallel proceedings has been adopted in the European Union, within the framework of the constitutional traditions of the Member States, where the legislature and the case-law have developed solutions capable of harmonizing the different frameworks of the various responses to parallel litigation. In common law countries, there are legal provisions that list criteria of territorial connection in order to determine the competent court. However, the common law

is characterized by the considerable discretion of the judges in modifying the rules for staying or dismissing the case (doctrine of *forum non conveniens*) and by the specific remedies developed (anti-suit injunction) in order to achieve the best result. The chapter also looks at the mixed system, where the civil and common law traditions have found (or are seeking) a balance.

- 9 Chapter 5 examines the topic of special jurisdictional courts. To explore this topic, the chapter addresses several questions, such as the following ones. In jurisdictions covered by the chapter, which specialized courts seem most important to those national systems? Which criteria are used to assign a case to a specialized court, rather than to a general jurisdiction court? Does specialization of a court come as an exception to the common jurisdiction of courts? Are there difficulties in assigning the case to specialized courts? If a conflict arises regarding jurisdiction amongst specialized courts or between specialized and general-jurisdiction courts, is there a mechanism and/or a special court to resolve those conflicts?
- 10 Chapter 6 delves into the subject of transferring a case from one venue to another within a country and analyses the factors that can influence a court's decision to do so. The chapter looks at both civil law and common law jurisdictions to identify similarities and differences between them.
- 11 As this Part shows, domestic case allocation reveals both stark differences and surprising commonalities among countries' approaches to the design and implementation of judicial systems. The chapters that follow show just how fundamental jurisdiction and venue are to civil justice around the globe.