



# International Comparative Law

One-Day Course of  
The Hague Academy of International Law

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## 2. Jurisdiction

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# Overview

- A. Sources of Law
- B. Jurisdiction in Civil Law
- C. Jurisdiction in Common Law
- D. Choice-of-Court Agreements

# Sources of Law

## Sources of Law

- rules on jurisdiction are unilateral
  - states only determine the jurisdiction of their own courts
  - they never decide on the jurisdiction of foreign courts
  - states are free how to shape the limits of jurisdiction
- same for rules on recognition and enforcement

## Sources of Law

- different national rules on conflict of jurisdiction may lead to
  1. positive conflicts of jurisdiction (= several courts claiming to be competent)
  2. negative conflicts of jurisdiction (= no court accepting the case)
- different approaches between civil and common law

# Sources of Law

## (1) International Conventions

- Hague Choice of Court Convention 2005 (EU, Mexico, Montenegro, Singapore)
- Hague Judgments Convention 2019 (EU, Ukraine)
- Bilateral conventions

# Sources of Law

## (2) Supranational Law

- EU: Brussels Ia Regulation

## Sources of Law

### (3) National Law

- in civil law systems: codifications (e.g. French Code civil)
- in common law systems: precedent (*stare decisis*)



# Jurisdiction in Civil Law

# Jurisdiction in Civil Law

- relies on codified rules
- 1. General rule = competence of the court at the domicile of the defendant
  - actor sequitur forum rei*
  - Art 4(1) Brussels Ia
  - for companies: domicile is either
    - a) statutory seat,
    - b) central administration or
    - c) principal place of business
  - (Art 63(1) Brussels Ia)

# Jurisdiction in Civil Law

## 2. Exclusive jurisdiction

- Art 24 Brussels Ia
- **derogates any other jurisdiction in certain cases**
- e.g. rights *in rem* in immovables

### example:

A German seller and a Chinese buyer quarrel about the ownership of a villa situated at Lake Como (Italy).

### solution:

exclusive jurisdiction of the Italian court, Art 24(1) Brussels Ia

# Jurisdiction in Civil Law

## 3. Special jurisdiction

- Art 7 Brussels Ia
- **gives the plaintiff an option**
- in contract cases: place of performance
- in tort cases: place of harm

### example:

A tourist from Hong Kong collides with B in Paris (France). B lives in Madrid (Spain). Where can A sue B?

### solution:

A can choose between

1. Madrid, Art. 4(1) Brussels Ia
2. Paris, Art. 7(2) Brussels Ia

## Jurisdiction in Civil Law

4. Weaker party jurisdiction
  - insurance policy holders, consumer and employees
  - Art 10-23 Brussels Ia
  - gives weaker party an option to sue at his domicile
  - provides exclusive jurisdiction for claims against consumer at his domicile

## Jurisdiction in Civil Law

### Case:

South Korean company A has agreed with company B from Venice (Italy) to deliver television sets to B's stores in Stockholm (Sweden), Vienna (Austria) and Rome (Italy). The bulk of the TVs, however, shall go to B's flagship store in Paris (France).

A fulfills the contract, but B does not pay the price. Where can A bring its claim?

# Jurisdiction in Civil Law

## Solution:

1. courts in Sweden, Austria, Italy and France
  - bound by Brussels Ia Regulation
2. general rule = Art 4(1) with Art 63 Brussels Ia: Venice (Italy)
3. special jurisdiction, Art 7(1)(b) Brussels Ia
  - “the place where the goods were delivered”
  - in the case of more than one destination, “principal place of delivery” (CJEU C-386/05, *Color Drack*)
  - here: Paris (France)

# Jurisdiction in Common Law



## Jurisdiction in Common Law

- relies on “personal jurisdiction”
- defendant has to be present within the court’s district when he is duly served
- historical roots in English law  
King rode “circuit”, had jurisdiction only about defendants that were present

## Jurisdiction in Common Law

- difficulties in applying “presence” to corporations
- in the US, distinction between
  1. general jurisdiction
  2. specific jurisdiction

# Jurisdiction in Common Law

## 1. General jurisdiction

- arises when defendant is essentially at home in forum State
- allows to bring **any** claim against the defendant  
U.S. Supreme Court Daimler AG v. Bauman, 571 U.S. 117 (2014)

# Jurisdiction in Common Law

## 1. General jurisdiction

- arises when defendant is essentially at home in forum State
- allows to bring **any** claim against the defendant

## 2. Specific jurisdiction

- arises when defendant has more sporadic contacts with the forum State
- allows to bring claims that are **related** to the defendants activities in that State

# Personal Jurisdiction

S.Ct., *International Shoe*, 326 U.S. 310 (1945)

## Facts:

- company engaged in manufacture of shoes
- incorporated in Delaware; principal place of business in St. Louis, Missouri
- employs salesmen in state of Washington without authority to enter into contracts
- state sues company in Washington for contributions to unemployment fund



# Personal Jurisdiction

## Issue:

Is the exercise of jurisdiction over non-resident company compatible with the due process clause of the 14<sup>th</sup> Amendment?

**Holding:** “minimum contacts” necessary for court to exercise jurisdiction

## Reasoning:

- corporations do not have a presence like natural persons
- company that conducts activities in a state enjoys the benefits and protections of its laws
- exercise of jurisdiction must be fair and reasonable
- requires systematic and continuous contacts with the forum

# Personal Jurisdiction

- two types of personal jurisdiction:

## 1. general jurisdiction

- arises when defendant is essentially at home in forum State
- allows to bring **any** claim against the defendant

## 2. specific jurisdiction

- arises when defendant has more sporadic contacts with the forum State
- allows to bring claims that are **related** to the defendants activities in that State

# Personal Jurisdiction

S.Ct. *Daimler v. Bauman* 134 S.Ct. 746 (2014)

## Facts:

- Daimler AG headquartered in Germany
- has subsidiary in California (“Mercedes Benz USA”), sells cars throughout US
- Daimler AG sued in US for alleged human rights abuses in Argentinian subsidiary

**Issue:** Is the parent company subject to **general** jurisdiction in the state of the subsidiary?





# Personal Jurisdiction

**Holding:** no

**Reasoning:**

- subsidiary is not the agent of parent company
- continuous and systematic contacts are not sufficient for the exercise of **general** jurisdiction
- **general** jurisdiction requires in addition that parent company is “at home” in a state

# Personal Jurisdiction

S.Ct. *Asahi Metal Industry* 480 U.S. 102  
(1987)

## Facts:

- Japanese company manufactures valves in Japan and sells them to Taiwanese company
- Taiwanese company that puts them into tires and sells them around the world
- motorcycle accident in California allegedly caused by defect of valve in one of these tires



# Personal Jurisdiction

## Issue:

Is putting a product in the stream of commerce sufficient for establishing minimum contacts with the forum in the context of **specific** jurisdiction?

**Holding:** no

## Reasoning:

- some justices: no minimum contacts
- other justices: exercise of jurisdiction in this case would not comply with notions of fair play and substantial justice because defendant was not aware of sale to California residents

## Jurisdiction in Common Law

- long-arm statutes of certain US states
  - jurisdiction where company is **doing business** in the state
  - limits under the due process clause (14<sup>th</sup> amendment to US Constitution)
  - allowed only where systematic and continuous contacts with the forum

## Jurisdiction in Common Law

- the comparatively wide concept of jurisdiction is mitigated by the doctrine of *forum non conveniens*  
= the court that is not the appropriate forum to hear the case
- introduces flexibility

# Jurisdiction in Common Law

crucial factors for convenience of forum:

- ease of access to sources of proof
- availability of compulsory process
- all other aspects that make trial easy, expeditious and inexpensive
- enforceability of judgment

# Jurisdiction in Common Law

example *Piper Aircraft v. Reyno*, 454 U.S. 235 (1981):

An aircraft made by a US company crashes in Scotland. A British company owned the aircraft, and all the victims are British. On behalf of passengers, proceedings are brought in a US district court against the plane's manufacturer.

## US Supreme Court

- dismissed the case on the basis of *forum non conveniens*
- held that British courts are better placed to decide
- it does not matter that a US court would apply US law which is more favorable to plaintiffs

# Choice-of-Court Agreements



# Choice-of-Court Agreements

- are usually binding on the parties
- sources:
  1. Hague Convention on Choice of Court Agreements (2005)
    - has been ratified inter alia by EU, UK, Mexico, Singapore, Ukraine
    - entry into force in 2015
  2. Art 25 Brussels Ia
    - for 27 EU Member States
    - extended to e.g. to Switzerland and Norway by Lugano Conv.

# Choice-of-Court Agreements

- requirements: needs to be
  - in writing or
  - ‘by any other means of communication which renders information accessible so as to be usable for subsequent reference’ (e.g. e-mail)
- effects
  - exclusive jurisdiction of chosen court