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A Japanese Perspective on the Jurisdiction Project

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A Case Study

A Japanese Company sold machines to a Korean Company through its Tokyo branch, found one of them broken in Seoul with devastating results.

KC filed a suit for damages in Seoul (Claim A).

JC later sought a negative declaratory judgment (Claim B) and filed another suit of fraud by the KC's branch on the whole transaction (Claim C) in Tokyo.

What should the Japanese court do for Claim B and C?

Current Japanese Law

Code of Civil Procedure (CCP)

Article 3-9 Even when the Japanese courts have jurisdiction over an action (except when an action is filed based on an agreement that only permits an action to be filed with the Japanese courts), the court may dismiss the whole or part of an action without prejudice if it finds that there are special circumstances because of which, if the Japanese courts were to conduct a trial and reach a judicial decision in the action, it would be inequitable to either party or prevent a fair and speedy trial, in consideration of the nature of the case, the degree of burden that the defendant would have to bear in responding to the action, the location of evidence, and other circumstances.

Current Japanese Law

- ▶ Case number: 2014(Ju)1985, the Supreme Court
- ▶ Date of the judgment (decision): 2016.03.10

A Japanese defamation action was dismissed for “special circumstances” of Article 3-9 of CCP, as it derived from a dispute between the parties, already pending in an American court, and volume of evidence taken there.

⇒The scope of Article 3-9 is NOT limited to *lis pendens* cases, but it allows judges to choose to either proceed or dismiss the case, taking foreign proceedings into account.

⇒Japanese Court may dismiss Claim B and/or C.

Impact of the New Convention

Claim A & B: Article 3(1)(a) “Parallel Proceedings”

Connection

Claim A: Article 8(2)(d)(g)

Claim B: Article 8(2)(c)(g)

⇒ Article 9: Japanese Court will suspend the proceedings of Claim B.

○ Judges cannot invoke their discretion for dismissal under Article 3-9 of CCP anymore.

○ Elements to be considered are still under discussion.

Impact of the New Convention

Claim A & C: Article 3(1)(b) “Related Actions”

⇒Japanese Court may proceed with, suspend or dismiss Claim C through the Article 11 & 12 procedure.

○Communication mechanism of Article 16 shall play a role, but language problems remain.

○Elements to be considered are provided in Article 11(2).



Thank you
for your
attention.