I Introduction

1. General Principle on the Jurisdiction over a Civil Case in Korea.

The general rules on the jurisdiction by civil courts are provided in the Civil Procedure Act (“CPA” hereinafter) in Korea. The CPA has 39 provisions in its...
Section 1 under the title of "Jurisdiction." These articles give the rules and

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1) Act # 10373, Jul. 23, 2010
2) The provisions are the Article 2-40 of the CPA. The context of several provisions which are relevant in terms of this article are as follows:
- Article 2. A lawsuit is subject to the jurisdiction of a court at the place where a defendant's general forum is located.
- Article 3. General forum of a person shall be determined by his/her domicile: Provided, that where the person has no domicile in the Republic of Korea or his/her domicile is unknown, it shall be determined pursuant to his/her residence, and if the residence is unfixed or unknown, it shall be determined pursuant to his/her last domicile.
- Article 5. (1) General forum of a juristic person or any other association or foundation shall be determined pursuant to the place where its principle office or business place is located, and in cases where there exists no office or business places, it shall be determined pursuant to the domicile of the person principally in charge of its duties. (2) In cases where the provisions of paragraph (1) are applies to a foreign juristic person or any other foreign association or foundation, their general forums shall be determined pursuant to their offices, business places, or the domiciles of the persons in charge of their duties, in the Republic of Korea.
- Article 7. A lawsuit against a person who works continuously in an office or business place may be brought to the court having the jurisdiction over the seat of such office or business place.
- Article 8. A lawsuit concerning a property right may be brought to the court having the jurisdiction over the place of residence or the place of obligation performance.
- Article 11 (Special Forum of Location of Property). A lawsuit concerning a property right against a person who has no domicile in the Republic of Korea or against a person whose domicile is unknown, may be brought to the court located in the place of the objects of a claim or those of the security, or any seizable property of a defendant.
- Article 12 (Special Forum of Location of Registry of Ship). A lawsuit concerning the affairs of an office or business place against a person who keeps such an office or business place may be brought to the court located in the place of such an office or business place.
- Article 13 (Special Forum of Place of Registry of Ship). A lawsuit concerning a ship or voyage against the ship-owner or any other person utilizing the ship may be brought to the court located in the place of the ship’s registry.
- Article 14 (Special Forum of Location of Ship). A lawsuit concerning a claim on a ship and other claims secured on a ship may be brought to the court in the place of a ship’s location.
- Article 15 (Special Forum for Company Employees, etc.). (1) A lawsuit by a company or any other association against its employee or by an employee against another employee may be brought to the court in the place of the general forum of such a company or such other association, if such lawsuit is attributable to the qualification of such an employee.
(2) The provisions of paragraph (1) shall apply mutatis mutandis to a lawsuit to a lawsuit by an association or foundation against its officer or a lawsuit by a company against its promoter.
- Article 26 (Computation of Value of Subject-Matter of Lawsuit). (1) In case where any jurisdiction is determined by the value of a subject-matter of a lawsuit in the Court Organization Act, such value shall be determined by calculating on the basis of the benefits as alleged by the lawsuit. (2) In case where the value under the paragraph(1) is not calculable, such value shall be governed by the provisions of the Act on the Stamps Attached for Civil Litigation, etc.
standards with which civil courts decide if they have jurisdiction over such civil cases as are set forth in those provisions. Another statute with the title of Court Organization Act\(^3\) also works together with the CPA in deciding the jurisdiction between courts. Viewing the core contexts of these provisions in the CPA, the rules of jurisdiction by Korean courts over civil cases can be summarized that (1) civil courts have general jurisdiction and special jurisdiction with some special exceptions including the exclusive jurisdiction for special matters: (2) The general jurisdiction is decided primarily by the person’s domicile (in case of a corporation, by its place of registration) ; (3) Some special jurisdiction may be exercised based on the person’s work place (in case of a corporation, by its place of business); (4) Special jurisdictions may be exercised on the basis of the location of property including the real estate in lawsuits concerning a property right, and on the basis of the place of an act in lawsuits concerning a tort: (5) Jurisdiction can be decided by the value of the subject-matter of a lawsuit to be decided under the rules of Court Organization Act. In sum, as is derived from the underlined words in the above statement, the most predominant principle imbedded in the rules of jurisdiction over civil case is the place (or location) of the person (including the corporation) or the place of the conduct or of the property. In other words, the jurisdiction is primarily governed by the place (a certain part of the land) and thus this rule is called “land governing doctrine” (In Korean, generally known as “토지관할의 원칙.”).\(^4\) Of course, CPA makes available some special jurisdictions based upon the agreement\(^5\) between the parties to a dispute and by the party’s appearance at the court (in other words, jurisdiction by pleading)\(^6\) like the courts have jurisdiction on the same bases in the US.

Though the CPA does not provide any specific rule on the international jurisdiction or the jurisdiction over a case where there is foreign element, the above-said general rules on the jurisdiction in the CPA are also part of the basis of the international jurisdiction as is stated in the cases and in the recently amended private international law in Korea (the Act on Private International Law,

\(^3\)Act No.9940,Jan.25,2010


In the US, the "territorial jurisdiction principle"(which seems similar to the "land-governing principle" to a certain extent) exists in the US Constitution (Art. 1 Sec.8 Cl.17), and Federal Rules of Civil Procedures (Rule 4), and the long-arm statutes of each states.

\(^5\) -Article 29 (Jurisdiction by Agreement) of CPA:
(1) Parties to a lawsuit may decide by agreement the competent court of the first instance.
(2) The agreement referred to in paragraph (1) shall be valid only when it is made in writing with respect to a lawsuit based on a specific legal relationship.

\(^6\) Article 30 (Jurisdiction by Pleading) of CPA:
If a defendant pleads as to the merits of a case without putting in a demurrer against any lack of jurisdiction of the court of the first instance, or makes statements during the preparatory date for pleading, the said court shall have the jurisdiction thereof.
as wholly revised on April 7, 2001 as the Act # 6465, amended thereafter on May 19, 2011 by the Act # 10629, and referred to as the “PIL” hereafter) in Korea.

2. Establishment of the Private International Law in Korea

Before the enactment of the “PIL”, there was no statutory provision regarding the international jurisdiction over a civil case by the Korean courts except the cases related to family law. Here the “international jurisdiction (In Korean: 국제재판관할 권)” over a civil case is a state court’s authority to hear the case arising out of such legal relations as are stated in the article 1 of the PIL (When the dispute is substantively related to the Republic of Korea) and it should be exercised in the way as stated in the article 1 of PIL (obeying reasonable principles, compatible to the ideology of the allocation of international jurisdiction in judging the existence of the substantive relations) and as stated in the article 2 of the PIL (in light of jurisdictional provisions of domestic laws and taking a full consideration of the unique nature of international jurisdiction in light of the purpose of the paragraph 1 of the article 2 of the PIL).

However there is no description or explanation of the “legal relations which contain foreign elements” as is stated in the article 1 of the PIL or the “dispute substantially related to the Republic of Korea” as is stated in the article 2 of the PIL itself. Thus they should be found in the cases where the Korean courts actually exercised its jurisdiction applying these provisions of the PIL. According to the courts’ opinions in the cases, it can be said that the legal relationship with foreign elements are such relationship between the parties when a party or both of the parties thereto come from a foreign country or countries or


8) See the Article 1 of PIL:
The purpose of this Act is to determine general principles and governing laws on the international jurisdiction regarding any legal relations which contain foreign elements. and see also Article 2 of PIL:
(1) In case a party or a case in dispute is substantively related to the Republic of Korea, a court shall have the international jurisdiction. In this case, the court shall obey reasonable principles, compatible to the ideology of the allocation of international jurisdiction, in judging the existence of the substantive relations.
(2) A court shall judge whether or not it has the international jurisdiction in the light of jurisdictional provisions of domestic laws and shall take a full consideration of the unique nature of international jurisdiction in light of the purport of the provision of paragraph (1).

9) Regarding the Court’s definition of these terms, see the cases cited infra note 22.
the subject matter of the disputes has something to do with a foreign country or countries. Therefore, as stated above, the legal theory in this international jurisdiction in Korea has been developed mainly through the cases although Korea is a state with the continental legal system (or in other words the "civil law system").

"In a case where the parties are located in different states from each other, a party or both of the parties can have severe hardship to participate in the proceedings in the state where the court is located because of the court’s remote location, the language to be used in the proceedings, the law to govern the case, and the availability of enforcement of the judgement. Therefore the issue whether Korean courts have the international jurisdiction over a case is such one as to require inquiry about its impact on the parties not only theoretical aspects but also the practical aspects as stated above."10) This logic is similar to the one underlying internationally recognized "Forum Non-Conveniency" doctrine though it was once considered but was not adopted by the legislators at the time the PIL was revised to bring in the article 1 and 2 (the international jurisdiction provisions) and the one underlying the "Minimum Contact Principle in the US in many aspects.11) The "Minimum Contact Principle" will be explained in more detail regarding its concept and its implication to Korean courts’ international jurisdiction in the following section 3 of the part III of this article hereunder.

As is noted in the footnote 11, each of the 50 states in the US is like an independent sovereign state with its own separate constitution and judicial system, the theories and practices developed in the US in terms of inter-state jurisdiction will also be of good reference to those of international jurisdiction in Korea. The


11) In the US, each of the 50 states has its own constitution and judicial system and thus it can be said that the jurisdiction by a state court or a federal district court in a state over the civil case related to other state (inter-state dispute) can be viewed in the same as the international jurisdiction by a Korean court. In the sense that there are many interstate disputes, the US courts have a lot more practical experience in international jurisdiction than the courts in Korea. Thus it is relevant to refer to the principles the US courts apply to decide the interstate jurisdiction. In the US, for a court to hear a case it should have not only the statutory base but the common law base. The statutory base is the rules of federal civil procedure and each state’s rules of civil procedure. These statutory rules mostly deals with the subject matters of the dispute for the jurisdiction and the venue of the forum. The common law rules deal with the personal jurisdiction and in-rem jurisdiction for which the most important "minimum contact principle" and "forum non convenience principle” apply. These two principles are basically seems to have the identical purposes and ideology embedded in the Korean PIL and in the Court’s decisions as is stated in the above.
purpose of this article is to provide not only the Korean scholars and practitioners but the foreigners with the understanding and way of application of the PIL with respect to the international jurisdiction through the review of the cases and academic writings before the PIL and up to this date putting the focus on the cases related to the property rights.

II Statutory International Jurisdiction

1. Background

In Korea, Act of Conflict of Laws (In Korean: 설외사법, "ACL") which had been valid through 2001 dealt with variety of issues regarding the governing law but did not have any provision on the international jurisdiction by Korean courts. The reason for this was partly because there were not so many international suits requiring the solution of this jurisdictional issue and partly because there were not enough studies on the same issue as to enable the enactment for the same issue in Korea. The article 2 of the PIL is made in consideration of then existing decisions\(^\text{12}\) of the Supreme Court (the “Court” hereinafter) up to the new enactment on the issues of international jurisdiction. These decisions required reference to the rules governing the courts’ jurisdiction over domestic cases\(^\text{13}\) together with the

\(^{12}\) One of the seminal case regarding the issue is Supreme Court 1995.11.21., 93Da39607 (In Korean: 대법원 1995.11.21., 93다39607)

\(^{13}\) Regarding the jurisdiction over a property right case, the Korean Civil Procedure Act (Act # 10373, Jul. 23, 2010) provides as follows:

Article 11 (Special Forum of Location of Property):
A lawsuit concerning a property right against a person who has no domicile in the Republic of Korea or against a person whose domicile is unknown, may be brought to the court located in the place of the objects of a claim or those of the security, or any seizable property of a defendant. (The english translation of the above provision is made by Korea Legislation Research Institute.)

Article 3 (General Forum of Person):
General forum of a person shall be determined by his/her domicile: Provided, That where the person has no domicile in the Republic of Korea or his/her domicile is unknown, it shall be determined pursuant to his/her residence, and if the residence is unfixed or unknown, it shall be determined pursuant to his/her last domicile.

Article 5 (General Forum of Juristic Person, etc.):
(1)General forum of a juristic person or any other association or foundation shall be determined pursuant to the place where its principal office or business place is located, and in cases where there exists no office and business place, it shall be determined pursuant to the domicile of the person principally in charge of its duties.

(2) In cases where the provisions of paragraph (1) are applied to a foreign juristic person and any other foreign association or foundation, their general forums shall be determined pursuant to their offices, business places, or the domiciles of the persons in charge of their duties in the Republic of Korea.
reference to the special features of the international jurisdiction.

2. Review of Pre-PIL cases

In 1972, the Court made the first decision on the international jurisdiction. It decided that Korean courts had the international jurisdiction over a case where the claim was for a non-paid remuneration for the services (finance arrangement) rendered. The reason for this decision was because the place for the obligation to perform was in Korea. The Court based its decision on the article 6 of the former Civil Procedure Act (valid as of the decision) which is corresponding to the article 8 of current Civil Procedure Act of 2010, which provided that the jurisdiction over this case lies in the court having the jurisdiction over the place where the obligation should be performed. In another Supreme Court case, the court based its decision on the article 9 of the then valid ACL which is corresponding to the article 11 of the current CPA which provides for the jurisdiction based on the place of the subject matter property. These cases reflect the fact that the Court maintained the same position in deciding the jurisdiction as it had in deciding the jurisdiction over domestic cases by primarily relying on the place of obligation to perform or the place of the property.

In 1989, noticeable change can be found in the Court’s manner in deciding the jurisdiction through two cases. There, the Court adopted the “sound reasoning” as a standard or a test with which the court can decide the jurisdiction in international lawsuit involving the claim for property right. In both of the two cases, one of the parties was foreign corporation. In one case, the Court recognized its jurisdiction based upon the fact that the defendant foreign corporation had its office in Korea. In the other case, the Court based its decision denying the jurisdiction of a Florida (in the US) state court on the “special circumstance.” The Court used these bases as a tool of specific coordination to avoid unreasonable (unjustifiable) conclusion. In other words, the Court added one more standard i.e., “the special circumstance test” to the “place test” in deciding the jurisdiction over an international case. This test is also called, in other words, “sound reasoning test” as adopted by the Court.

14) Supreme Court 1972.4.20., 72Da248 (In Korean: 대법원 1972.4.20., 72다248)
15) Article 8 (Special Forum of Place of Residence or Place of Obligation to Perform): A lawsuit concerning a property right may be brought to the court having the jurisdiction over the place of residence or the place of obligation performance.
17) id., supra note 1.
19) Supreme Court 1992.7.28., 91Da41897 (In Korean: 대법원 1992.7.28., 91다41897)
20) Supreme Court 1995.11.21., 93Da39607 (In Korean: 대법원 1995.11.21., 93다39607)
3. Review of the Post-PIL Cases and the New Trend

After the PIL became effective, a series of Supreme Court cases dealing with the Korean courts’ jurisdiction over the international lawsuits seems to have followed a legal theory set up by one seminal case decided by the Court in 2005. In the case, the plaintiff, a corporation doing business with its address in Korea, filed a lawsuit against the defendant, an American corporation, claiming for the transfer of a domain name back to the plaintiff and for the damages. Before this lawsuit, the plaintiff had held the domain name registered under its name with a registering institute in the US. However a dispute on the domain name occurred between the two in the US and a decision was made under the Uniform Domain Name Dispute Policy (“UDRP”) and the Rules for UDRP by an administrative panel of arbitrators ordering the transfer of the domain name to the defendant. The high court in Korea decided that the plaintiff’s assertion on Korean courts’ jurisdiction has no ground because the place of the tort, the place of transfer of the domain name, and the place of the property (the right to the domain name) are all in the US even though it was the main issue whether the alleged tort or unjust enrichment occurred in Korea. However, the Court reversed the lower court’s decision and opined in essence as follows: “In deciding the international jurisdiction, (1)the court should follow the basic ideology that a court shall

21) The Court, in the case at supra note 18, expressed the following logic: “There was not yet established international rule such as the international treaties or generally accepted international rules on the international jurisdiction, and there is neither any statute on this matter in Korea; thus the jurisdiction should be decided by the sound reasoning under the ‘basic ideology of fair, swift and adequate trial’; and for this reason, the land-governing rule on deciding the court’s jurisdiction is also established under the above-said basic ideology, thereby making Korean court have jurisdiction if the forum exists according to the land-governing rule: but Korean courts nevertheless should not have jurisdiction if there is special circumstance making such jurisdiction under the preceding reason be against the sound reasoning.”

22) Supreme Court 2008.5.29., 2006Da71908 (In Korean: 대법원 2008.5.29., 2006다71908);
   Supreme Court 2010.7.15., 2010Da18355 (In Korean: 대법원 2010.7.15., 2010다18355); Supreme Court 2012.5.25., 2009Da22549 (In Korean: 대법원 2012.5.25., 2009다22549); Supreme Court 2013.7.12., 2006Da17539 (In Korean: 대법원 2006다17539); Supreme Court 2014.4.10., 2012Da7571 (In Korean: 대법원 2012다7571)


24) The National Arbitration Forum founded in 1986 and based at Minneapolis, Minnesota USA with its headquarters and offices in New Jersey USA.

25) Actually the trial court originally admitted the jurisdiction for the reasons that: the plaintiff alleging its ownership of the domain name is located within its jurisdiction; the UDRP and its Rules also acknowledge the jurisdiction of the courts of the place where the alleged domain-name owner is located; and thus it is not against the sound reasoning in view of the fairness between the parties, the procedural justice, and the adequacy of judgment. However, the high (appellate) court reversed the decision and the Court reversed the high court’s decision basically for the same reasons stated by the trial court.
endeavor to have the litigation procedures progress fairly, swiftly and economically and (2) should consider not only the parties’ individual interests such as fairness, convenience and foreseeability but the interests of the state and courts such as the adequacy, swiftness, effectiveness of the trial and the enforceability of the judgement, and (3) the court should judge, reasonably under the objective standard made of the substantial relationship between the forum and the parties and the substantial relationship between the forum and the subject matter of the dispute in each individual case, which interest is necessary to protect among these variety of interests.” With this opinion, the Court decided that the dispute has substantial relationship (“nexus”) with Korea so as to justify the Korean court’s jurisdiction over this case in view of the following key factors to be considered (the essence of the judgment) in the case are: first, one of the main issues here is whether the plaintiff’s registering and usage of the domain name constitutes a tort violating the defendant’s pre-existing off-line intellectual property; second, the fact that the plaintiff’s main place of business was in Korea running service business via the website with the subject domain name in mainly Korean language; third, the place where plaintiff’s damage in the business occurred is also in Korea; and lastly, all the evidence as to if its usage of the domain name is infringement of the defendant’s right or if there actually exists any damages. In sum, the Court did not applied the land-governing test at all but considered purely the context of the article 2 of the PIL. In other words, the Court set up a new legal theory by doing this and this theory got sufficient authority binding the following cases.

Now there are still some cases adopting the land-governing test as a main test in deciding the Korean courts’ jurisdiction. However, reflecting the decisions in the above-said cases, the recent trend seems to move toward how to interpret the article 2 of the PIL and how to set forth the specific rules or tests to decide the Korean courts’ international jurisdiction.

III Current Attitudes of Korean Courts in Interpretation and Application of the Rules set forth in the PIL and at the Decisions by the Court

1. The Problems of the Courts’ Decisions after the PIL

Even after the PIL is made containing the provisions for the international jurisdiction, the Court has not given or explained sufficiently enough through its opinions in the decisions made so far about such key elements as “the substantial relation to Korea”; “how to refer to the domestic jurisdiction rule”; “the ideology in
the allocation of the international jurisdiction”: “the special nature of the international jurisdiction” for the lower courts to take reference or follow though these terms are expressly stated in the article 1 and 2 of the PIL as the guidelines to the international jurisdiction. It seems so partly because of the lack of enough cases\(^{26}\) so far and partly because of the lack of sufficient study of this area of law. A presiding judge in a Korean court opined in her article that the Court had only provided an abstract guidelines for the application of the same provisions in her article written in 2013.\(^{27}\)


From since the PIL, there have been variety of cases where the international jurisdiction was exercised by the courts in Korea. Because the lower court cases don’t have to be published as a matter of law, there is no official statistics or records on these cases and it seems also true that the number of the cases are not so many either.\(^{28}\) Therefore it is difficult to categorize the cases into several relevant groups in order to find the way of interpreting and applying the rules set forth in PIL or by the courts.

Despite the existence of the Courts' cases and the efforts of the scholars and practitioners to have well settled rules on international jurisdiction, the lowers courts still have not yet fully reached a common understanding of the rules on the international jurisdiction in view of the cases they decided because: some courts still find the international jurisdiction based on the out-dated land governing doctrine and sound reasoning ignoring the statutory provisions in the PIL; some courts only focus on the PIL without any regard to the possibility of the jurisdiction based on land governing doctrine under the CPA; some courts examine the applicability of the land governing doctrine first and then find the substantial relation under the PIL only if the land governing doctrine recognizes the jurisdiction; some courts limited the scope of application of international


\(^{28}\) So far some judges including the one at supra note 26 says that there are about 100 civil cases where the international jurisdiction was at issue.
jurisdiction based on the principles compatible to the ideology of the allocation of international jurisdiction or the special nature of the international jurisdiction.

In sum, the general attitudes of the lower courts can be summarized that: Most of the courts consider or refer to the land-governing doctrine first under the article 2 (2) of the PIL and review the circumstances which may affect the substantial relation between the case and Korea. However, in the course of this review, the courts are more likely to expand the applicability of their international jurisdiction because the courts tend more likely to include the review of circumstances whether they are on the side of the plaintiff’s or defendant’s or even the courts themselves but are more cautious to narrow its applicability.

In some cases, the lower courts ignore the Court’s opinions regarding the consideration of special circumstances by taking them into their decisions despite the Court no longer has set forth the “special circumstances” as a criteria for judgment. They put in the words “special circumstances” at the end of their opinions as if it is their customary rule. In their decisions they stated that:

"---considering that the substantial relationship is recognized, and considering the fairness to the parties, the appropriateness of the trial, and the convenience in collecting evidence and the trial expenses, the court sees that there is not any special circumstance which will lead to very unreasonable result to enforce the defendant to respond to the lawsuit---."


In order to set forth more definitive and unified standard upon which the Korean courts may exercise their international jurisdiction in line with the spirit as stated in the current article 1 and 2 of the PIL, it is suggested by this article that the Korean lawmakers and courts consider the elements considered by the US courts under the theory of “Minimum Contact” which is a term or a name of a principle established by the US courts in terms of the law of civil procedure to determine when it is appropriate for a court in one state to assert personal jurisdiction over a defendant from another state. The United States Supreme Court has decided a number of cases that have established and refined this principle stating that: it is unfair for a court to assert jurisdiction over a party unless that party's contacts with the state in which that court sits are such that the party "could reasonably expect to be haled into court" in that state: the jurisdiction must "not offend

29) These cases include such cases as Seoul High Court 2009.6.19., 2006Na30737; 2008.2.14, 2007Ns21508; 2008.1.30. 2008Na9374; 2010.2.19., 2009Na20608; Busan District Court 2009.6.17., 2008Na3908, etc.
traditional notions of fair play and substantial justice\textsuperscript{31}; The court also stated that: a non-resident defendant has minimum contacts with the forum state if they
1) have direct contact with the state; 2) have a contract with a resident of the state;\textsuperscript{32} 3) have placed their product into the stream of commerce such that it reaches the forum state;\textsuperscript{33} 4) seek to serve residents of the forum state;\textsuperscript{34} 5) have satisfied the Calder effects test;\textsuperscript{35} or 6) have a non-passive web-site viewed within the forum state.\textsuperscript{36} Of course, the US courts also can have jurisdiction based upon the location of property over property-right cases (in-rem jurisdiction)\textsuperscript{37} for special cases like the Korean courts can have jurisdiction on the same basis.

To understand what factor(s) or facts satisfied the above-said 5 tests under the Minimum Contact theory, thereby giving the court jurisdiction over the interstate jurisdiction, the following specific facts will be of good reference to Korean courts as well:

1) The International Shoe Company’s several salesmen worked on commission basis to solicit customers but not actually negotiate or do any paperwork for the sale in the State of Washington. The company had its address in the State of Delaware and its main place of business was in the State of Missouri. The Supreme Court decided that the Washington state court had jurisdiction over the defendant International Shoe Co. for the reasons that the salesmen’s soliciting work in the state constitutes a minimum contact with the state.\textsuperscript{38}

2) Receipt of the service of process by a party while physically present in a state subjected him to the personal jurisdiction in that state.\textsuperscript{39}

3) The defendant’s marketing in the forum state or an effort purposefully availing himself of the resources of that state subjected it to the court’s personal jurisdiction\textsuperscript{40}

\begin{thebibliography}{99}
31) Id.
35) Calder v. Jones, 465 U.S. 783 (1984) [ In this case, the National Enquirer magazine (with a nation-wide distribution) and its editors were found to be aware that the magazine had a sufficient circulation in California even though the article was written and edited in Florida alleging that the plaintiff Shirley Jones was an alcoholic. The US Supreme Court decided that California court had jurisdiction over this case.]
36) In-rem jurisdiction is the jurisdiction over a case which the court can exercise because of the location of the subject matter property in the case is located in the state where the court is located.
39) Pennoyer v. Neff, 95 U.S. 714 (1878) [ Still effective long-standing case though the Justices are split as to the rational as is shown in Burnham v. Superior Court of California, 495 U.S. 286 (1980)]
\end{thebibliography}
4) The presence of an interactive web-site in a state permitting the exchange of information between the web-site owner and visitors with a certain level of interactivity and commerciality and the amount of contacts the web-site owner has developed with the forum state subjected the owner to the state court’s jurisdiction: The presence of commercial web-site in the forum state with a substantial volume of business and the customers in any location immediately can engage in business with the web-site owner also subjected the owner to the forum state’s jurisdiction\(^{41}\)

5) The ownership of a property in a state gives the state court the jurisdiction over the disputes relating to the ownership of the property or relating to injuries which occurred in the property. (In-rem jurisdiction)\(^{42}\)

As is noted in the footnote 11, each of the 50 states in the US is like an independent sovereign state with its own separate constitution and judicial system, the theories and practices developed in the US in terms of inter-state jurisdiction will also be of good reference to those of international jurisdiction in Korea. For this reason, the rulings established by the US courts regarding the interstate jurisdiction over variety of civil cases and the key factors considered by the courts in finding the jurisdiction deserve substantial reference by the Korean courts, practitioners, and scholars for the purpose of setting forth more specific statutory rules and standards considering the trend so far that the Court’s rulings have not yet successfully bound or unified the lower courts’ rulings in their decision on the international jurisdiction.

VI Conclusion

Given the fact that, there is a statute(PIL), which is now 13 years old, providing (in its article 1 and 2 for the international jurisdiction by Korean courts over a civil case and the fact that, even after this statute, there were not sufficient cases giving some guidelines to invoke the international jurisdiction, it is natural to say that there will be lots to be complemented and improved in Korean jurisprudence in terms of the international jurisdiction over a civil case. From the former “sound reasoning rule” ignoring the land-governing doctrine adopted by the Korean Civil Procedure Act as a general rule for the domestic jurisdiction to the still prevailing “modified reverse-land-governing rule” as a basis for finding the international jurisdiction, the Courts’ decisions seems to have evolved to accommodate the spirit


\(^{42}\) Shaffer v. Heitner, 433 U.S. 186 (1977)
of the PIL as much as possible.

However, despite the Court’s efforts, it seems that it does not provide for the well established specific rules for the international jurisdiction through its decisions partly because of the lack of enough cases and partly because of its non-consistent and non-clear position toward such key elements for invoking the international jurisdiction under the PIL as the “the substantial relation to Korea”: “reference to the domestic jurisdiction rule”: “the ideology in the allocation of the international jurisdiction”: “the special nature of the international jurisdiction.”

In light of the fact that Korea is not a common law country with the stare decisis\textsuperscript{43} rule and thus the Court’s ruling does not legally bind the lower courts though most of the rulings are actually affecting the lower courts’ decisions. Therefore basically the rules had better be set forth in the form of statutes in the future. The current provisions of PIL are not yet sufficiently specific and actually were not intended as final from its promulgation. Therefore Korea needs to have more elaborate provisions for the international jurisdiction. However, even in current situation, the Korean courts can do much better than now by making decisions consistent with the Courts’ decisions as much as practicable and making the decisions compatible to and consistent with one another in interpreting and applying the current rules though not yet perfect whether it is statutory or higher court’s ruling. Lastly, for the purpose of reference by the legislators, law practitioners and scholars, this article suggested that Korean jurisprudence take into consideration the standards and key factors the US jurisprudence have adopted and evolved under the Theory of Minimum Contact to invoke the interstate jurisdiction over civil cases.

<Key Words>

international jurisdiction, substantial relation with Korea, ideology of the allocation of international jurisdiction, land-governing doctrine, sound-reasoning doctrine, reverse land-governing doctrine, private international law (act), civil procedure act, section 2 of civil procedure act, article 1 and 2 of private international act, forum, forum-non convenience doctrine.

<Key Words in Korean: 한글 주제어>

\textsuperscript{43} The policy or doctrine of courts in the common law system to stand by precedent and not to disturb settled point. For this definition in US, there are numerous cases and please refer to Neff v. George, 364 Ill. 306, 4 N.E.2nd 388, 390 as one of such cases.
국제재판관할권, 실질적 관련, 국제재판관할의 배분의 이념, 토지관할원칙, 조리설, 역추지설, 수정역추지설, 특수한 사정, 국제사법, 민사소송법 2조, 국제사법 2조. 부적절한 법정지

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Statutes

Korean Civil Procedure Act (민사소송법)
Korean Private International Act (국제사법)
Korean Court Organization Act (법원조직법)
US Constitution
US Federal Rules of Civil Procedure

Articles, Books and Academic journals

Gong Woong Choi, "International Jurisdiction and Land Governing Principle under the Civil Procedure Act", Trial and Cases Vol.4, Daegu Case Research Association [In Korean: 최공웅, 국제재판관할과 민사소송법의 토지관할규정”, 재판과 판례 제4집, 대구판례연구회(1996)]


Korean Cases

Supreme Court 1972.4.20., 72Da248 (In Korean: 대법원 1972.4.20., 72다248)
Supreme Court 1988.10.25., 87DaKa1728 (In Korean: 대법원 1988.10.25., 87다가1728)
Supreme Court 1992.7.28., 91Da41897(In Korean, 대법원 1992.7.28., 91다41897)
Supreme Court 1995.11.21., 93Da39607 (In Korean: 대법원 1995.11.21., 93다39607)
Supreme Court 2008.5.29., 2006Da71908 (In Korean: 대법원 2008.5.29., 2006다71908)
The general rules upon which Korean courts decide to exercise the jurisdiction over a civil case lie in Korean Civil Procedure Act. A principle which is a core of the rules is the “Land-Governing Principle.” On other words, the domicile or the residence of the party (especially the defendant) to the case has been the most important factor in deciding the court’s jurisdiction. The history of Korean courts’ international jurisdiction over a civil case is not so long. Until 2001, there was no statutory provision in Korea on the international jurisdiction over a case related to the property rights. Civil cases with the foreign elements started from the family law related disputes and, in 1972, the first Supreme Court (the “Court”) decision
on the international jurisdiction came out from a civil case related to property rights. However, even up to now, there are not so many Court cases dealing with the international jurisdiction. As international business transactions increase in Korea, the number of cases also increased. Now, about 100 civil cases where international jurisdiction was at issue were decided by multiple levels of the courts in Korea.

Together with the fact that the history of international jurisdiction is short and there are not sufficient number of cases, the statutes to govern the requirements and standards for the courts’ exercise of the international jurisdiction are not yet well settled or provide clear and detail descriptions thereof. In addition, it seems that well established directives of the cases regarding the requirements and standards are also lacking. Until 2001, without any statutory provision or reliable international treaty, the Court had set forth such standard for the international jurisdiction as is called the “Sound Reasoning Test.” Later the Court applied, mutatis mutandis, the ‘Land-Governing Principle” which is the governing principle on the jurisdiction over the domestic civil cases. Up to quite recent days, majority of the Court cases have applied the so-called “Modified Land-Governing Principle” to decide the international jurisdiction. Though the article 1 and 2 of the Private International Act effective since 2001 provide for the international jurisdiction as statutory rules for the first time, they seem to have made an abstract declaration rather than being specific rules or standards thereon by stating in sum that “the court shall follow reasonable principles compatible to the ideology of the allocation of international jurisdiction in judging the existence of the substantive relations and the court should judge whether or not it has the international jurisdiction considering the jurisdictional provisions of domestic laws and it shall take a full consideration of the unique nature of international jurisdiction in light of the purpose of setting forth the principle and governing law on the international jurisdiction over the legal relationship with foreign elements.”

So far the lower courts seemed to acknowledge more expansive scope of international jurisdiction in interpretation and application of the PIL provisions than the one generally accepted internationally. In addition, the standards for their decision were diversified and not consistent rather than being settled in unified direction. It seems that the main trend of the courts is to maintain the existing Modified Land-Governing Principle or even to further strengthen the same principle through their decisions even after the establishment of the PIL.

This article views that Korean courts, lawmakers, law practitioners, and scholars should make variety of efforts for the courts to exercise international jurisdiction based on the consistent and unified standards. In addition, this article suggests that Korean courts refer to the elements of the minimum contact theory and the
key facts constituting the elements of the theory established by the US courts. For there are 50 states with their own constitutions and judicial branches and the courts of each state have accumulated sufficient experience in deciding interstate jurisdiction cases for long time.

The purpose of this article is to arrange the current problems in a way of illustration for Korean courts to exercise the international jurisdiction over a civil case according to the rules compatible to the internationally accepted rules and to properly interpret and apply the article 2 of PIL. Thereby it aims to contribute to enhancing the predictability and legal stability not only domestically but internationally and achieving the status of internationally recognized and reliable forum in the world. Especially, This article is written in English to be of good reference for not only Korean scholars and practitioners but the foreign scholars and practitioners with good interest in Korea citing and reviewing as many foreign cases and theories as possible in comparative way of study.

< Abstract in Korean: 한글 초록 >

김용의

민사사건에 대한 한국 법원의 국제재판관할에 관한 연구

한국법원의 민사사건 재판관할에 대한 일반 기준은 한국의 민사소송법에 있으며 그 기준의 한 중심되는 원칙은 토지관할의 원칙이다. 즉, 소송당사자(특히 피고)의 주소지 또는 거주지가 재판관할 결정의 가장 중요한 요소가 되어 왔다는 것이다. 한국법원이 민사사건에 관련하여 국제재판관할권을 행사한 역사에는 그려 길지 않다. 2001년까지는 재산권과 관련한 국제재판관할에 대한 설문법규도 없었다. 외국적 요소를 가진 민사사건은 먼저 가족관계의 사건들로부터 시작하였고 1972년에 처음으로 재판관과 관련한 사건에 대하여 국제재판관할권을 다룬 대법원 판결이 나왔으나 그 이후로도 그렇게 많은 판례가 있는 것은 아니다. 하지만, 국제거래의 증가에 따라 지금까지 100여건에 달하는 국제재판관할권을 다룬 사건들이 한국의 각급 법원들에서 다루어 졌다.

이렇게 국제재판관할에 관한 역사가 짧고 판례가 많지 않은 사실과 더불어 우리나라에서는 아직도 재판관과 관련된 사건들에 대한 국제재판관할권의 행사요건을 다룬 법령도 명확하고 자세하게 정비되어 있지 않다. 또한 그에 대한 확립된 판례의 방향도 아직은 부족한 것으로 보인다. 2001년까지는 법령에 정한 규정이나 근거할 국제조약의 규정도 없이 대법원이 조리로서 국제재판관할의 요건을 설시(조리설)한 적이 있었고 그 이후에는 국내민사소송의 일반 기준인 토지관할을 유추적용(역추지설)하기도 하였으며 최근까지는 그러한 토지관할기준에 특수한 사정을 고려한 수정역추지설을 따르는 판례가 주류를 이루고 있다. 2001년 발효된 국제사법 제2조가 처음으로 성문법 규정으로 국제재판관할을 규정하고 있지만, 그 것은 국제재판관할에 대한 구체적인 기준이라고보다는 법원이 국제재판관할을 행사하기 위하여 요구되는 기본적 방향을 "한국과 실질적으로 관계된 사안에 대하여 국제재판관할 배분의 이념에 부합하는 합리
적인 원칙을 따르고, 국내관할규정을 참조하되 국제재판관할의 특수성을 고려한다.”라는 어휘들로 추상적 선언을 한 것에 지나지 않는 것으로 보인다. 실제사건들에 있어서 하급법원들은 이 규정을 해석하고 적용함에 있어서 국제적으로 통용되는 기준보다 관할의 범위를 넓게 인정한 경우가 많았다. 또 그 판단기준도 한 방향으로 정립되기 보다는 다양하고 일관성이 없는 것으로 보인다. 큰 경향은 국제사법 제정 후에 법원들이 오히려 기존의 수정역추지설적인 논리를 그대로 전개하거나 혹은 판례를 통하여 그 수정역추지설을 더욱 강화하는 경향까지 보이고 있다.

한국의 법원 및 입법자들이나 법률 실무가 및 법학자들은 한국법원들이 일관되고 동일적인 국제재판관할권 행사를 위한 다양한 노력을 해야 한다고 본다. 또한 이 논문은 앞으로 한국이 그 국제재판관할의 법률 규정을 보충하여 좀 더 구체적이고 통일된 기준을 제정하기 위하여 각각의 현법과 사법부를 가진 50개의 주가 있고 그 법원들이 타주와 관련된 사건들에서 재판관할권문제에 대하여 오랜 기간 많은 판례를 축적한 미국의 법원들이 형성한 “minimum contacts” 이론의 요소들과 그 요소를 이루는 핵심적 사실관계들을 참고할 것을 제안하였다.

본 논문은 한국의 법원들이 국제적으로 통용되는 합리적인 기준에 따라 국제재판관할권을 행사하기 위하여 기존의 문제점을 보완하기하려 하였다. 공제사법 제 2조의 규정을 올바로 해석하고 적용해서 국내외적으로 예측가능성과 법적안정성을 향상시켜 국제사회에서 신뢰 받고 인정받는 법정지로서의 위상을 갖도록 하자는 목적이 기여하고자 이 논문을 썼다. 특별히 국내의 학자와 실무가뿐만 아니라 한국과 관련이 많은 외국의 학자와 실무가들에게도 참고가 되고자 본 논문을 영문으로 쓰고 가능한 범위 내에서 외국의 판례와 이론을 비교법적으로 검토하고 인용하였다.