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Jurisdictional Issues in Cross-Border Litigation

Article History:

Name of Author:

Katherine Todd¹, Jacqueline Black², Timothy Davis³, Kimberly Dixon⁴ and Nancy Stephenson⁵

Affiliation: ¹Research Associate, Department of Marketing, Oceanic Research University, Australia

²Lecturer, Department of Business Analytics, Oceanic Research University, Australia

³Associate Professor, Department of Banking and Insurance, Eastbridge University, Canada

⁴Associate Professor, Department of Marketing, Zenith Institute of Technology, India

⁵Research Associate, School of Retail Management, Cape Innovation Institute, South Africa

Corresponding Author: Katherine Todd

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Abstract: In today's interconnected global economy, cross-border litigation is increasingly common but fraught with complex jurisdictional challenges. Determining which court has authority over transnational disputes affects not only where litigation occurs, but also how judgments are enforced and whether outcomes are respected internationally. This article examines the evolving legal principles surrounding jurisdiction—including personal, subject-matter, and territorial jurisdiction—along with doctrines such as forum selection, forum non conveniens, and comity of courts. Through analysis of major treaties like the Hague Choice of Court Convention, the Brussels I Regulation, and landmark cases across jurisdictions, this study highlights persistent difficulties in forum determination, recognition of foreign judgments, and enforcement. Particular attention is given to rising challenges in digital and e-commerce disputes, where traditional legal frameworks are increasingly tested. Practical recommendations are offered for contract drafting, dispute strategy, and navigating multi-jurisdictional legal environments. In a world of legal plurality and digital globalization, harmonization and cooperation among national courts remain vital to enhancing fairness, certainty, and access to justice in cross-border disputes.

Keywords: Cross-border litigation, jurisdiction, personal jurisdiction, subject-matter jurisdiction, territorial jurisdiction, forum selection clause,

INTRODUCTION

The surge of international business, digital interconnectedness, and global migration has dramatically increased cross-border disputes. Determining which country's courts have the authority—or jurisdiction—to hear these disputes is a central, often contentious, issue in cross-border litigation. Jurisdiction determines not only where litigation may occur, but also the practical effectiveness, speed, and enforceability of any judgment rendered. This research article examines the legal complexities, evolving doctrines, and practical challenges in the field, drawing on leading cases, international conventions, and comparative law.

1. CONCEPTUAL FOUNDATIONS: WHAT IS JURISDICTION?

Jurisdiction in cross-border litigation refers to a court's legal power to adjudicate disputes involving parties, events, or assets spread across different states. Jurisdiction is often divided into:

- **Personal jurisdiction:** Over the parties
- **Subject-matter jurisdiction:** Over the nature of the dispute
- **Territorial jurisdiction:** Over the place where events occurred

Each form must be satisfied for a court's decision to have legal force and to ensure judgments can be recognized and enforced internationally^{[1][2]}.

2. KEY JURISDICTIONAL PRINCIPLES AND RULES

Forum Selection and Choice-of-Court Agreements

One major way parties address jurisdiction is through **forum selection clauses** in contracts, allowing them to predetermine which court will hear any dispute. Such clauses are generally recognized internationally (e.g., under the Hague Choice of Court Agreements Convention) but may be overridden where public policy or consumer protection is at issue^{[3][4]}.

The “Closest Connection” and “Minimum Contacts” Doctrines

Courts often use “closest connection” or “minimum contacts” standards, examining the links between the dispute and the possible forum. Factors include where contracts were performed, harmful acts occurred, or assets are located. For example, the Brussels I Regulation in the EU prefers the courts of defendant's domicile but includes exceptions for contract and tort claims^{[3][5][6]}.

Doctrine of Forum Non Conveniens

If more than one forum is appropriate, courts may decline jurisdiction in favor of a more suitable forum, based on convenience or the interests of justice. This doctrine is particularly well-developed in common law jurisdictions^{[2][7]}.

Parallel Proceedings and Comity of Courts

Concurrent cases in different jurisdictions risk conflicting judgments. Many systems apply rules on **comity** to defer to foreign proceedings, provided procedural fairness is respected and the foreign judgment is recognizable domestically^[7].

Conflict of Laws and Recognition of Foreign Judgments

Once a forum takes or declines jurisdiction, questions arise about which law to apply (conflict of laws), and whether any resulting foreign judgment will be recognized and enforced elsewhere—a major source of complexity and risk^{[2][7]}.

3. MAJOR CHALLENGES IN CROSS-BORDER JURISDICTION

A. Forum Shopping

Parties sometimes engage in “forum shopping,” seeking the most advantageous court (for law, procedures, speed, or cost), which can result in duplicative or abusive litigation^[2].

B. Recognition and Enforcement

Even after winning a judgment, enforcing it in the defendant's home country or where their assets are held can be uncertain or slow due to legal, procedural, or public policy barriers^{[2][8]}.

C. Divergent Legal Standards

Variations in how countries define and accept jurisdiction complicate strategy—especially in regions lacking harmonized legal structures like the EU^{[9][10]}.

D. Technological and Data-Driven Complexity

Digital contracts or e-commerce disputes often involve parties, servers, transactions, and evidence stored in multiple locations, raising additional jurisdictional pitfalls^[11].

E. Legal Costs and Delays

Engaging counsel in multiple countries, managing translations, and addressing unfamiliar legal systems increases costs and delays for parties in cross-border disputes^[2].

4. Evolving Legal Frameworks and International Treaties

- **Hague Convention on Choice of Court Agreements (2005):** Facilitates recognition of exclusive forum selection clauses and judgments among signatory states, though its adoption outside the EU remains limited^[2].
- **Brussels I Regulation (Recast):** EU-wide regulation standardizing jurisdiction, recognition, and enforcement rules for civil and commercial matters^{[3][5]}.
- **New York Convention on Arbitration (1958):** Enables wide international enforceability of arbitral awards, making arbitration a preferred mechanism to bypass some court-based complexities^[6].

5. Case Trends and Landmark Judgments

Example 1: Spiliada Maritime Corp v. Cansulex Ltd (UK, 1987)

Established the two-stage “forum non conveniens” test—courts assess whether another forum is clearly more appropriate, and whether there are special circumstances why the case should remain^[2].

Example 2: Shiju Jacob Varghese v. Tower Vision Limited (India, 2024)

Delhi High Court dismissed a parallel suit in India already litigated in Israel, reflecting evolving respect for comity and avoidance of duplicate judgments, despite the Civil Procedure Code technically allowing parallel actions^[7].

Example 3: EU and US Approaches

While the EU now provides coordinated regulation, the US relies on common law doctrines of “minimum contacts” and personal jurisdiction, resulting in greater variability and potential for parallel actions^{[3][12][5]}.

6. Practical Strategies for Litigants

- **Draft clear jurisdiction and choice-of-law clauses in international contracts**
- **Use arbitration where enforceability is critical**
- **Consider the practicality and likelihood of enforcement at the outset**
- **Consult experienced local and international counsel to navigate procedural hazards**
- **Monitor pending foreign proceedings to avoid actions barred by comity or res judicata**

Graphs and Images

Figure 1: Summary of Major Jurisdictional Doctrines in Cross-Border Litigation

[image:1]

Illustrates the scope and overlap of forum selection, forum non conveniens, and comity in choosing or defending litigation forums.

Figure 2: Pathways for Recognition and Enforcement of Foreign Judgments

[image:2]

Flowchart showing key hurdles and requirements in a multi-state enforcement process.

Figure 3: Reported Case Trends in Cross-Border Jurisdiction Litigation (2010–2025)

[image:3]

A line graph showing increasing numbers of reported cases and the growing complexity (measured by the number of involved jurisdictions or duration) over time.

CONCLUSION

Jurisdictional issues in cross-border litigation remain a substantial barrier to predictable and efficient dispute resolution. While international conventions and case law have created new tools—forum selection clauses, coordinated enforcement rules, and expanded use of arbitration—variations in domestic law, competing proceedings, and evolving e-commerce realities keep the field complex and dynamic. Harmonizing legal standards and fostering judicial cooperation—both through international treaties and pragmatic court practices—are vital for reducing uncertainty and promoting confidence in international business and personal relationships.

Citations:

- ^[1] Jurisdictional Challenges In Cross-Border Disputes^[1]
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- ^[8] International Litigation and Cross-Border Disputes^[8]
- ^[6] Guest blog: Legal insights on cross-border disputes^[6]
- ^[9] International jurisdiction – what is possible and what is ...^[9]
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Graphs and images as described are to be created or sourced with appropriate usage permission from legal education institutes or compiled based on aggregate litigation statistics and doctrine summaries as referenced above.

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