

Damages for Breach of Jurisdiction Agreement (summary)

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The question whether damages are recoverable for the breach of jurisdiction agreement has not been given much attention until recently. Though the case law of some common law jurisdictions has started to award damages or indicate the availability of such a remedy, the relevant cases and academic analyses are still few and far between. This article begins with defining the concept of “breach of jurisdiction agreement”, a task often neglected in prior works on this subject notwithstanding that jurisdiction agreement may be considered to be both valid and exclusive in one country whereas the same agreement may be considered to be either invalid or non-exclusive in another country. This article then divides the situations which may give rise to claims for damages for the breach of jurisdiction agreement into two types. It moves on to consider whether such a claim should be allowed in those situations by asking a series of questions, such as whether the claim should be classified as procedural or substantive, whether the claim is precluded by decisions rendered in the country where the action had been brought in breach of the jurisdiction agreement, whether allowing the claim would breach international comity, how awarding damages would compare with antisuit injunction in its implication for international comity and its effectiveness, how the damages are to be calculated, what are the legal bases of the claim, what law governs those different bases of the claim, what are the bases of jurisdiction of the claim, and how likely a judgment allowing the claim is to be enforced in another country. This article seeks to answer those questions from comparative viewpoints by examining the law of common law countries and Japan as a country representing the civil law jurisdictions. It highlights the differences between those two legal camps which are material to the recoverability of damages. It concludes with a summation of the above analysis and points out that there are fewer difficulties with awarding damages in one of the two types of the situations. With respect to the other situation, it suggests acknowledging the possibility of awarding damages as an exceptional measure to deal with the case where a litigant’s interest embodied in jurisdiction agreement has been

flouted. It argues that such exceptional measures to cope with the reality of the world are necessary if idealistic rules are to be maintained as the principal rules of conflict of laws.