The Place of Tort as a Basis for International Judicial Jurisdiction (summary)

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With regard to "an action relating to a tort," "the place where the tort was committed" is generally recognized as one of the useful territorial competences (*see* Article 5(ix) of the *Code of Civil Procedure*), under the Japanese well-established case law determining Japan's international judicial jurisdiction, so-called as "exceptional circumstances" theory. Specific jurisdiction based on the place of tort is also widely recognized under the laws of various foreign countries and in international instruments, such as Article 5(3) of the "*Brussels I Regulation*," and Article 10 of the *1999 Hague Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters*.

It is often pointed out that the grounds or reasons for the place of tort are (1) convenience of the taking of evidence, (2) convenience for a victim when bringing an action, (3) predictability for a tortfeasor, and (4) the public policy implications for the country where the tort was committed. But, in Japan, there is a trend toward giving relatively greater weight to the reason (1) than the others.

There have been some reported cases by Japanese courts dealing with defamation and product liability. But it should be noted that not a few tort cases have arisen out of business transactions; fraud, wrongful cancellation of contract, wrongful exercise of attachment or a security interest, and liability for lost and damaged cargo under a transport contract or for defective manufactures under a sales contract.

Japanese courts have decided that "an action relating to a tort" includes a product liability claim for reimbursement between joint tortfeasors, claims for damages based on liability in tort in a case for breach of contract, an action for declarations of no obligation, *etc.*

"The place where the tort was committed" has been interpreted as including the place of acting and the place of injuring. According to court cases and scholars' view, both places are qualified as the place of tort, like in the interpretation of Article 5(3) of the "*Brussels I Regulation*.

In this point, it seems that two questions are considered as crucial in the present work for new legislation on international judicial jurisdiction of Japanese courts in civil litigation. One is whether jurisdiction will lie at the place of the injury only if the injury in that place could reasonably have been foreseen from the act of the person alleged to be responsible. And the other is whether the place where consequential damage or economic loss caused by the injury accrued is also qualified as the place of tort. As to the first question, although such requirement is attractive from the viewpoint of the protection of expectation of the person alleged to be responsible, it should not be imposed as an independent and decisive factor because predictability for a tortfeasor is just one of the grounds for the place of tort and it is difficult to demonstrate the reasons for attaching greater importance to the predictability than other three grounds or reasons mentioned above; rather convenience of the taking of evidence is generally regarded most important.

The latter question is answered in the negative by the prevailing view in Japan, because of the predictability for a tortfeasor. However, there would be little sense in drawing a sharp line between the injury and the consequential damage or economic loss from the viewpoint of the predictability, because sometimes the situation may occur where even the injury in that place is not reasonably foreseen. I think that it is still necessary, for example, for the family of the victim killed abroad due to a defective product or a crash of an airplane of a foreign corporation to bring a suit for compensation at their domicile as the place where they have lost the chance to be maintained, against that corporation.