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Private International Law: Which Court May Exercise Its International Jurisdiction When A Wrongful Act Takes Place In One Jurisdiction While The Resulting Damage Is Suffered In Another Jurisdiction?

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In most jurisdictions, there exists a rule of international jurisdiction according to which the Courts of the jurisdiction, before which a lawsuit is filed, have jurisdiction for damage that has occurred in that jurisdiction.

However, it has been observed that from one jurisdiction to another, and sometimes within the same jurisdiction the word prejudice is interpreted in a more or less restrictive way. In other words, that the same damage may give jurisdiction in one jurisdiction while in the other it does not.

The question may thus be: which Court may exercise its international jurisdiction when a wrongful act takes place in one jurisdiction while the resulting damage is suffered in another jurisdiction?

THE PROVINCE OF QUEBEC

In Quebec, until the decision of the Supreme Court of Canada of October 31, 2013, there was a jurisprudential conflict within the Quebec Court of Appeal on this question. The majority had given a restrictive interpretation to the notion of damage, the purely economic damage being excluded systematically.

The relevant provision is paragraph 3 of Art. 3148 of the *Civil Code of Quebec* which reads (in part), as follows:

> *« Art. 3148. In personal actions of a patrimonial nature, a Quebec authority has jurisdiction where*
>
> *(...)*
>
> *(3) a fault was committed in Quebec, damage was suffered in Quebec, ... »*

In many cases, the Quebec Court of Appeal had to interpret the word « damage » used in Art. 3148. The majority had given a restrictive interpretation to the word.

It started with the case of *Québecor Printing Memphis Inc. v. Regenair Inc.* [2001] R.J.Q. 966, delivered on April 30, 2001. A Quebec company had agreed to supply and install machinery in the United States. The American company to which the machinery was to be supplied and where it was to be installed was dissatisfied and refused to pay. The Quebec company filed suit for payment

before the Quebec Courts. The American company had the lawsuit dismissed for lack of jurisdiction of the Quebec Courts. The Court of Appeal granted the appeal. According to the Court of Appeal, the refusal of the American company to pay cannot be considered as a damage occurring in Quebec and the fact that the Quebec company which had its head office in Quebec, had not received payment of its claim which was payable in the United States, does not constitute a damage suffered in Quebec. According to the Court even if the concept of *forum non conveniens* exists in Quebec, it does not justify interpreting Art. 3148 broadly.

In the case of *Foster v. Kaycan Ltd.* REJB 2001-27353, a few months after the *Québecor* case, the Court of Appeal adopted the same restrictive interpretation.

In the case of *Sterling Combustion Inc. v. Roco Industrie Inc*. [2005] QCCA 662, two of the three judges on the panel came to the conclusion that the simple economic damage suffered by a Quebec company could give jurisdiction to the Courts in Quebec. The dissident judge would have applied the reasoning in the Québecor case to the effect that the simple economic damage suffered by a resident of Quebec cannot create, in and of itself, a real and substantial connection with Quebec.

This is where the conflict started within the Court of Appeal on the interpretation of the word « damage ».

Another judgment of the same Court on the same provision was delivered on June 16, 2006, in the case of *Richelieu Projects Inc. v. Western Rail Inc.* [2006] QCCA 840. A Quebec company with its head office in Montreal sold merchandise to a Chilean buyer. The goods sold were in the United States and the American company charged with the delivery to Chile failed to deliver two cargos in accordance with the agreed upon specifications. The Quebec company having suffered a loss as a result of this omission, filed suit against the American company before the Quebec Courts. The American company sought the dismissal of the lawsuit for lack of jurisdiction and its application was granted. The Quebec company filed an appeal. The Court of Appeal dismissed the appeal. The Court came to the conclusion that the fact that the monetary loss would be booked in Quebec cannot give jurisdiction and that the delivery by the American company to the Chilean company does not make it such that the damage was suffered in Quebec. The same restrictive interpretation of the word « damage ».

The subsequent judgment on the question was delivered on March 22, 2007, in the case of *Hoteles Decameron Jamaica Ltd. v. D'Amours* [2007] R.J.Q. 550. Quebec tourists were staying in a hotel in Jamaica. The employees of the hotel had sprayed pesticides on the grounds of the hotel without notifying the guests of the hotel. The tourists in question became ill in Jamaica and flew back to Quebec where their illness continued to affect them. They sued the hotel for damages in Quebec. The hotel, pleading absence of jurisdiction, sought the dismissal of the lawsuit on the ground that since the illness had manifested itself in Jamaica, that is where the damage was suffered and that as a result, the Quebec Courts did not have jurisdiction.

A trial division judge rejected this argument and refused to dismiss the lawsuit. The Court of Appeal sided with the trial division judge. For the Court of Appeal, it did not matter that the illness of the Quebec tourists manifested itself in Jamaica, the illness having continued in Quebec with the

resulting economic repercussions in Quebec, there was a real and substantial connection with the seized jurisdiction, namely Quebec. According to the Court of Appeal, where there is bodily injury which necessarily will manifest itself at the place where the wrongful act was committed, damage as a factor would be included in the wrongful act which would then become the sole factor applicable and the damage would then lose its independent character as a connecting factor. In other words, the Court believed that damage is an independent connecting factor and that it must applied whether or not the damage started to manifest itself abroad, as long as it continues and causes a loss in Quebec. This is a liberal interpretation.

In the *Nosseir v. Sea Pro Divers S.A.* [2009] QCCA 2182 decision, delivered on November 11, 2009, the Court of Appeal, revisiting the question again, also takes the liberal approach in the interpretation of Art. 3148 of the *Civil Code of Quebec*. This time, Quebecers were vacationing in the Dominican Republic. One of them, while swimming in the ocean, was hit by a power boat. She suffered serious injuries. She filed suit in Quebec. The defendant, the Dominican owner of the boat, sought the dismissal of the lawsuit for lack of jurisdiction. The trial division judge granted the application and dismissed the lawsuit. The Court of Appeal overturned the judgment. As it had been done in the case of *Hoteles Decameron*¸ mentioned above, the Court opted once again, to give a broad interpretation by concluding that a large portion of the damage having occurred in Quebec, its courts had jurisdiction.

Even if there was an apparent conflict within the Court of Appeal in the interpretation of Art. 3148, we believe, however, that the Court of Appeal may have made a distinction between damage resulting from a wrongful act and that resulting from the breach of a contract, the Court adopting a restrictive interpretation in a contractual context but a broad and generous interpretation in cases of bodily injury resulting from a wrongful act.

In summary, the majority in the Court of Appeal was saying that a purely economic damage suffered by a resident of Quebec does not, in and of itself, constitute a real and substantial connection under paragraph 3 of Art. 3148 of the *Civil Code of Quebec.*

The Supreme Court of Canada, on October 31, 2013 put an end to this controversy in the case of *Infineon Technologies AG v. Option Consommateurs* [2013] 3 R.C.S. 600.

Since then, it is no longer necessary for the damage to be linked to the place where the wrongful act is committed, thereby endorsing the interpretation of the Quebec Court of Appeal, according to which the damage is an independent connecting factor. In doing so, the Supreme Court sided with those judges in the Quebec Court of Appeal who gave a broad interpretation to the word « damage » (see the cases of *Decameron Jamaica* and *Nosseir v. Sea Pro Divers*).

The Supreme Court, however, disagreed with the school within the Quebec Court of Appeal which refused to recognize the purely economic damage suffered by a Quebec resident as a sufficient connecting factor. Indeed, on this question, the Supreme Court states that paragraph 3 of Art. 3148 does not prevent purely economic damage from serving as a connecting factor.

EUROPE

In the European Union, the Brussels Rules I and II Bis contain the rules of jurisdiction common to the member states of the European Union. It facilitates the obtaining of judgments within the European Union.

Therefore, under Art. 5.3 of the Brussels I Rule, the Court having jurisdiction will be that of the place where "the wrongful act occurred or risks occurring".

The Cour de justice des communautés européennes (CJCE) in its judgment of November 30, 1976, in the case of *Handelskwekerij G.J. Bier BV v. Mines de potasse d'Alsace SA*, aff. C-21/76, ruled that the "place where the wrongful act occurred", means the place where the wrongful act occurred, as well as, the place where the damage was suffered. If these are two distinct places, the Plaintiff will have the choice to file his lawsuit in one or the other jurisdiction.

The Lugano convention contains rules of jurisdiction between the member countries of the European Union and the member countries of the European free trade association (Switzerland, Norway, Iceland and Liechtenstein). Its article 5 stipulates: "in delictual or quasi-delictual matters, the defendant domiciled on the territory of a contractant State, may be sued before the Court of the place where the wrongful act occurred".

FRANCE

In France, where there is an international conflict of jurisdictions with a country outside of the European Union, the Courts have ruled that, by extrapolation the French territorial rules of jurisdiction are to be used to determine international jurisdiction. The First Civil Chamber of the Cour de Cassation in its judgment of October 30, 1962 (Case No 61-11.306), ruled that "the international jurisdiction is determined by extension of the internal rules of territorial jurisdiction".

The internal rules applicable to an international situation are as follows:

> Articles 14 and 15 of the *Civil Code* give a jurisdictional privilege to Plaintiffs and Defendants who are French citizens: "the foreigner even when he is not a resident in France can be sued before the French Courts for the execution of obligations agreed to in France with Frenchmen; he may also be sued before the French Courts for obligations contracted in a foreign country in favour of Frenchmen" and "A Frenchman may also be sued before a Court in France for obligations he contracted in a foreign country in favour of a foreigner". The two articles therefore give jurisdiction to a French judge.
>
> Article 42 of the Code of Civil Procedure stipulates that the Court having jurisdiction is the Court where the defendant has his domicile.

Paragraph 3 of Art. 46 of the Code of Civil Procedure stipulates an option with respect to jurisdiction:

"A Plaintiff may choose, in addition to the jurisdiction of the domicile of the Defendant:

> *–in contractual matters, the jurisdiction of the place of the effective delivery of the object or the place where the service was to be performed;*
> *–in delictual matters, the jurisdiction of the place where the wrongful act was committed or the jurisdiction of the place where the damage was suffered;*
> *–in mixed matters, the jurisdiction of the place where the immoveable is situated;*
> *–in alimony matters or obligations arising from marriage, the jurisdiction of the place where the creditor of the obligations resides."*

Therefore, in dilectual matters, the Plaintiff may choose either the Court of the place where the Defendant is domiciled or the Court of the place where the wrongful act was committed or the Court of the place where the damage is suffered.

GERMANY

German law doesn't contain any particular rule concerning international jurisdiction. It was left to the Courts to clarify the situation.

German jurisprudence has established that the rules of international jurisdiction are the transposition of the internal rules of jurisdiction. The principal internal rules applicable to an international situation are as follows:

> Art. 12 of the Code of Civil Procedure provides as a general rule, that the competent Court is the Court where the Defendant has his residence.
>
> Art. 29 of the Code of Civil Procedure provides that in a contractual relationship, the competent Court is that of the place where the obligation is to be performed.

According to Art. 32 of the Code of Civil Procedure, in case of extra-contractual liability, the competent Court is that where the wrongful act was committed. However, nothing in those rules gives jurisdiction to the Court of the place of the residence of the person who has suffered a damage.

THE UNITED KINGDOM

According to English law, the English Courts have jurisdiction over a foreign Defendant where the claim is based on a contract, if the contract was concluded in the United Kingdom, is governed by English law or was breached in the United Kingdom.

If the claim is the result of a wrongful act, the English Court will have jurisdiction if the wrongful act was committed in England or the damage or the loss resulting therefrom is suffered in the United Kingdom.

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In the two years following his graduation from law school, Mr. Robert had the chance to experience a wide practice and soon realized that litigation was his calling. The opportunity arose and Mr. Robert joined the firm in 1977 to fill a position in litigation. Although he initially did some work as a defence lawyer in corporate and white collar criminal matters, his practice has focused mainly in commercial litigation. The largest portion of the cases he handles involve cross-border litigation driven mostly by international and inter-provincial trade in goods and services, product liability disputes, wrongful dismissal, and estates. In addition, he is regularly called upon to enforce foreign court decisions and arbitration awards. He has also conducted rogatory commissions for foreign civil and criminal courts.

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Through his unique and long experience in the profession, Mr. Robert has acquired a broad knowledge of the law, focused on cross-border litigation.