

Japanese Court Jurisdiction Over International Cases

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Introduction

International transactions with the Japanese or with Japanese corporations have expanded in various fields. A person who enters into a dispute with a Japanese person or entity, may bring it to a court of the person's own country or to a Japanese court. While the courts of the plaintiff's own country would usually be less expensive, more convenient, and otherwise favorable for the plaintiff, there may be times when the home courts are not available due to lack of jurisdiction or for reasons of inconvenience, and Japanese courts are therefore the best resort. In addition, even if the courts of the plaintiff's own country are available, the person is sometimes required to obtain the assistance of Japanese courts in enforcing the domestic court's judgment in Japan.

Given this state of affairs, this chapter discusses the two primary issues of the jurisdictional rules of Japanese courts, and the rules on execution of judgments by Japanese courts. It also discusses ancillary issues, particularly the court system of Japan, and the time and cost required in Japanese court proceedings.

Japanese Rules on Personal Jurisdiction

Established Case Law

The Japanese Code of Civil Procedure has some statutory venue rules for domestic cases,¹ but none for international cases. For international cases, the Supreme Court of Japan has established the following case law doctrine:

¹ Code of Civil Procedure, Articles 4 to 12.

"It should not be denied that even in a case where a defendant has no domicile in Japan, Japanese courts shall have jurisdiction over such cases that have some legal connection with Japan. As there is no generally recognized international doctrine or no well developed international customary law as to under what circumstances Japanese courts should have jurisdiction, however, it is appropriate to decide on this matter under the rule of reason from the viewpoint of the fairness between the parties and the notion of just and prompt court proceedings [citation omitted].

"Accordingly, it is generally appropriate to subject to a Japanese court's jurisdiction a defendant in any case filed with a Japanese court where any jurisdictional basis for the case is found under the venue rules of the Code of Civil Procedure. However, a Japanese court's jurisdiction should be exceptionally denied if there are found any exceptional circumstances under which the Japanese court's jurisdiction would be against the fairness between the parties and the notion of just and prompt court proceedings."²

Accordingly, there are two requirements for a Japanese court to exercise jurisdiction in an international case:

- (1) The jurisdictional basis under the venue rules of the Code of Civil Procedure (Articles 4 to 12); and
- (2) No exceptional circumstances against fairness between the parties and the notion of just and prompt court proceedings.

Statutory Forum Rules

The general basis for jurisdiction for any claim is the domicile of an individual defendant, or the principal place of business or domicile of the representative of a corporate defendant.³

The specific bases for jurisdiction in Japanese courts under the venue rules of the Code of Civil Procedure are as follows:

² The *Family Car Dealer* case, Judgment of the Supreme Court on 11 November 1997, *Minshu* 51-10-4055.

³ Code of Civil Procedure, Article 4.

- (1) For property claims, the place where the relevant duty will be performed;⁴
- (2) For money claims under a promissory note or a check, the place of payment on the promissory note or the check;⁵
- (3) For property claims against a seaman⁶, and for claims against a ship owner or operator concerning the ship or its voyage, the place of registration of the ship;⁷
- (4) For any property claim against a person whose domicile or principal place of business is not in Japan or is unknown, the present place of defendant's property claimed, pledged for the claim, or seizable for the claim;⁸
- (5) For a claim related to office business, the place of any office of the defendant;⁹
- (6) For ship claims or claims secured by a ship, the present location of the ship;¹⁰
- (7) For lawsuits between a corporation and its shareholders, between a corporation and its officers, or for lawsuits brought by a creditor of a corporation against its shareholders, in the principal place of business of the corporation;¹¹
- (8) For tort claims arising from tortious conduct, the place of the tortious conduct;¹²
- (9) For jurisdiction for tort claims arising from a ship's collision or another accident involving a ship, the place where the collision occurred or the damage was caused;¹³
- (10) For claims concerning a maritime salvage, the place of the salvage or the place of initial contact;¹⁴

⁴ Code of Civil Procedure, Article 5(1).

⁵ Code of Civil Procedure, Article 5(2).

⁶ Code of Civil Procedure, Article 5(3).

⁷ Code of Civil Procedure, Article 5(6).

⁸ Code of Civil Procedure, Article 5(4).

⁹ Code of Civil Procedure, Article 5(5).

¹⁰ Code of Civil Procedure, Article 5(7).

¹¹ Code of Civil Procedure, Article 5(8).

¹² Code of Civil Procedure, Article 5(9).

¹³ Code of Civil Procedure, Article 5(10).

¹⁴ Code of Civil Procedure, Article 5(11).

- (11) For claims concerning real property, the place where the real property is located;¹⁵
- (12) For claims concerning registration or recordation, the place of registration or recordation;¹⁶
- (13) For lawsuits concerning succession, or contracts which come into effect on a person's death,¹⁷ and for claims against that person's estate, the last domicile of the deceased;¹⁸
- (14) For any joined claim, the court having a jurisdiction over any one of those claims (provided that the original claim and the joined claim are between the same parties, or as long as the joined claim by or against a third party is based on the same factual or legal basis as the original claim, and in accordance with the preceding jurisdictional bases);¹⁹
- (15) For a consented suit, by the defendant's consent;²⁰
- (16) For a suit in which the defendant appears, when the defendant makes an appearance at the court of first instance or at a preliminary hearing, without claiming wrong jurisdiction ;²¹ and
- (17) For claims related to the original claim or any defense against it, a counterclaim.²²

There are some other venue rules for domestic relation suits.²³ The defendant's physical presence in Japan alone may not be a jurisdictional basis under Japanese law. Consequently, a Japanese court may have no jurisdiction against a foreign individual or a foreign corporation, even if the foreign individual or any officer of the foreign corporation is on a trip to Japan and, during the stay, a service of process is delivered to that individual for a suit filed in a Japanese court.

¹⁵ Code of Civil Procedure, Article 5(12).

¹⁶ Code of Civil Procedure, Article 5(13).

¹⁷ Code of Civil Procedure, Article 5(14).

¹⁸ Code of Civil Procedure, Article 5(15).

¹⁹ Code of Civil Procedure, Article 7.

²⁰ Code of Civil Procedure, Article 11.

²¹ Code of Civil Procedure, Article 12.

²² Code of Civil Procedure, Article 146.

²³ Code of Procedure Concerning Casesw Relating to Personal Status, Articles 4 and 5.

So also, Japanese nationality or citizenship alone may not be a jurisdictional basis under Japanese law. Consequently, a Japanese court may have no jurisdiction against a Japanese person because of his nationality or citizenship. In the *Family Car Dealer* case, the plaintiff, a Japanese corporation, sued a Japanese individual who lived in Germany over a transaction in Germany. The Supreme Court denied the Japanese court's jurisdiction in spite of the Japanese nationality of both parties.²⁴

Exceptional Circumstances

In General

Under the established case law as discussed above, the second requirement for a Japanese court's jurisdiction over an international dispute is the lack of exceptional circumstances with relation to the concept of "fairness between the parties", and the notion of just and prompt court proceedings. These aspects are discussed below, along with the rule of exclusive jurisdiction over local property.

Fairness between the Parties

In court cases discussing exceptional circumstances, the concept of "fairness between the parties" has denied a Japanese court's jurisdiction unless the defendant had agreed or expected court proceedings in Japan, or at least should have expected it under the circumstances of the transaction between the parties.

In the *Family Car Dealer* case, the Supreme Court denied the Japanese court's jurisdiction, as the transaction was made in Germany and neither party expected court proceedings in Japan, even though both parties were Japanese nationals.

In the *Aloha Motors* case,²⁵ the defendant apparently should have expected court proceedings in Japan. Although the defendant was an American and had a domicile in the United States, he had strong legal connection with

²⁴ Judgment of the Supreme Court on 11 November 1997, *Minshu* 51-10-4055.

²⁵ Interlocutory Judgment of the Tokyo District Court on 22 May 1991, *Hanrei Taimuzu* 755-213.

Japan through holding office as a director on the boards of some Japanese corporations, frequent visits to Japan, a residence in Japan, fluent and frequent communication in Japanese with Japanese people in Japan, as well as being party to a transaction that involved a contract with a Japanese to find a purchaser in Japan.

Just and Prompt Court Proceedings

In court cases discussing exceptional circumstances, the notion of "just and prompt court proceedings" has denied the Japanese court's jurisdiction if the essential evidence was not available in Japanese courts, and an alternative foreign court was available for the parties.

In the *Far Eastern Air Transport* case,²⁶ the Tokyo District Court found the circumstances against the notion of just and prompt court proceedings because all the evidence regarding the key issue existed in Taiwan, the evidence was not available in Japanese courts (as Japan and Taiwan had no diplomatic relationship), and the plaintiff had no great difficulty in suing the defendants in Taiwan.

Rule of Exclusive Jurisdiction over Local Property

In some cases, the defendant may contend that claims over local property should be exclusively subject to the courts of the place where the property is located.

In a case involving a claim over real property located in a foreign country, a Japanese court denied this contention.²⁷ In this case, the defendant, a Japanese individual, was hired in the United States by the plaintiff, an American subsidiary of a Japanese corporation. In the course of the employment, the plaintiff agreed to sell his house, located in the United States, to the defendant. The plaintiff later filed a suit against the defendant with a Japanese court, for a judgment declaring the non-existence of an obligation to sell the house.

Although the defendant alleged that under the international customary law any claim over local property should be exclusively subject to the courts of

²⁶ Judgment of the Tokyo District Court on 20 June 1986, *Hanrei Jiho* 1196-87.

²⁷ Judgment of the Shizuoka District Court on 15 July 1991, *Hanrei Jiho* 1401-98.

the place where the property is located, the Shizuoka District Court denied the defendant's contention, because such international customary law was not established and because even claims over real property may be subject to a Japanese court's jurisdiction, as long as the claim had a reasonable nexus with Japan.

In a case where the infringement of a United States patent committed in the United States was disputed between Japanese corporations in a Japanese court, the Tokyo District Court admitted the Japanese court's jurisdiction over the suit, holding that the principle of territoriality of patents did not apply to jurisdiction, but only to the choice of applicable law.²⁸

Jurisdiction over International Cases

In General

Even if there is a statutory basis for jurisdiction in an international dispute under the forum rules of the Code of Civil Procedure, Articles 4-12, Japanese courts may deny or admit their jurisdiction over an international dispute from the viewpoint of fairness between the parties and the notion of just and prompt court proceedings. Discussed below are typical jurisdictional bases and some related court cases.

Plaintiff's Nationality

As discussed above, Japanese nationality or citizenship alone may not be a jurisdictional basis under Japanese law.

However, there is an exception for divorce: a Japanese court may have jurisdiction over a divorce suit filed by a Japanese plaintiff when a non-Japanese defendant has disappeared and his domicile is unknown.²⁹

Defendant's Domicile/Principal Place of Business

If the domicile of an individual defendant or the principal place of business or domicile of a representative of a corporate defendant is in

²⁸ Judgment of the Tokyo District Court on 16 October 2003, *Hanrei Jiho* 1874-23.

²⁹ Judgment of the Supreme Court on 25 March 1964, *Minshu*, 18-3-486.

Japan, it may be a general basis for jurisdiction regarding any claim against the defendant,³⁰ unless the circumstances conflict with the concept of fairness between the parties and the notion of just and prompt court proceedings. There are two airplane crash cases that provided different conclusions.

In the *Malaysia Airlines* case,³¹ regarding members of a Japanese family who died in the Malaysia Airlines air crash in Malaysia, the Supreme Court admitted the Japanese court's jurisdiction over a suit for tort damages against Malaysia Airlines, which had a business branch and a representative officer in Japan.

In the *Far Eastern Air Transport* case,³² where some Japanese died in the Far Eastern Air Transport air crash in Taiwan, the Tokyo District Court denied the Japanese court's jurisdiction over a suit for tort damages against the Boeing Company (the American manufacturer of the aircraft) and United Airlines (the American seller of the aircraft to Far Eastern Air Transport).

Although United Airlines had a business branch and a representative officer in Japan, the Tokyo District Court found the circumstances contrary to the concept of fairness between the parties and the notion of just and prompt court proceedings. This was because, first, all the evidence regarding the key issue, the cause of the crash, existed in Taiwan and was not available to the Japanese court, as Japan and Taiwan had no diplomatic relationship. Second, the plaintiff had no great difficulty in suing the defendants in Taiwan.

Concerning the *Far Eastern Air Transport* case, the author doubts whether the court correctly applied the notion of just and prompt court proceedings to the facts of the case. As the defendants had easier access to the key evidence in Taiwan than the plaintiff did, the non-availability of evidence at a Japanese court could have resulted in a less favorable conclusion for the plaintiff and a correspondingly more favorable one for the defendants.

The plaintiff voluntarily selected the Japanese court in spite of the non-availability of evidence and the expected unfavorable consequences. Therefore, the author does not believe that the notion of just and prompt

³⁰ Code of Civil Procedure, Article 4.

³¹ Judgment of the Supreme Court on 16 October 1981, *Minshu* 35-7-1224.

³² Interlocutory Judgment of the Tokyo District Court on 20 June 1986, *Hanrei Jiho* 1196-87.

court proceedings should have impeded the personal jurisdiction over the defendants in the case.

Place of Performance of Duty

If the place where a specific duty must be performed is in Japan, then it may be a specific basis for jurisdiction in a property claim,³³ unless the circumstances conflict with the concept of fairness between the parties and the notion of just and prompt court proceedings.

This jurisdictional basis applies to property claims involving contractual obligations. However, it does not apply to claims arising from domestic relations or property claims arising by operation of law.

The place of performance that gives rise to this jurisdictional basis must be expressly or implicitly agreed on, or at least be expected by the defendant. In the *Family Car Dealer* case,³⁴ the plaintiff and the defendant entered into a contract in Germany under which the defendant agreed to purchase cars in Germany for the plaintiff, after which the plaintiff paid a deposit. The plaintiff sued the defendant in Japan for refund of the deposit.

In this case, the Supreme Court denied the Japanese court's jurisdiction, finding the circumstances against the concept of fairness between the parties and the notion of just and prompt court proceedings, on three grounds. First, jurisdiction of Japanese courts had not been agreed, and it was beyond the defendant's expectation that Japan would be considered as the place where the duty should be performed, even though both parties were Japanese. Second, all the evidence was located in Germany. Third, the plaintiff had no great difficulty in suing the defendant in Germany.

On the other hand, in the *HAWB* case,³⁵ the defendant, an American corporation, was obligated under a contract with the plaintiff, a Japanese corporation, to collect money from the plaintiff's customers in the United States and to remit the money to the plaintiff in Japan. As the defendant did not remit the collected money, the plaintiff filed a suit for the payment with the Tokyo District Court in Japan.

The Tokyo District Court admitted the Japanese court's jurisdiction over the suit on two grounds. First, the place where the payment obligation was

³³ Code of Civil Procedure, Article 5(1).

³⁴ Judgment of the Supreme Court on 11 November 1997, *Minshu* 51-10-4055.

³⁵ Judgment of the Tokyo District Court on 14 November 1989, *Hanrei Jiho* 1362-74.

to be performed was Tokyo, the destination of the obligated remittance. Second, as the service of process was lawfully delivered to the defendant under a treaty, and the defendant was, in fact, assisted by its Japanese subsidiary in the court proceedings, there was no circumstance against the concept of fairness between the parties and the notion of just and prompt court proceedings.

Place of the Defendant's Claimed, Pledged, or Seizable Property

If the present place of the defendant's property claimed, pledged for the claim, or seizable for the claim is established as being in Japan, then it may be a specific basis for jurisdiction in property claims against a person whose domicile or principal place of business does not exist in Japan, or is unknown.³⁶

Once the judgment is obtained in a case under this jurisdictional basis, it may be enforced not only against the property but also against any other property, regardless of whether the property is located in Japan or not. Accordingly, one court admitted this jurisdictional basis in an international case, finding that the defendant had a strong legal connection with Japan.

In the *Aloha Motors* case, the American defendant contracted with the Japanese plaintiff for sale of Hawaiian real property to a third-party Japanese corporation, but did not pay commissions. The plaintiff filed a suit for payment of the commissions with the Tokyo District Court, as the defendant owned real property in Japan, although he had domicile in the United States. Admitting the Japanese court's jurisdiction under this jurisdictional basis,³⁷ the Tokyo District Court held that there were no special circumstances against the concept of fairness between the parties and the notion of just and prompt court proceedings.

The Court ruled that the defendant had a strong legal connection with Japan. First, the defendant held office as a board director in some Japanese corporations. Second, the defendant made frequent visits to Japan. Third, the defendant had a residence in Japan. Fourth, the defendant had fluent and frequent communication, in Japanese, with Japanese people in Japan.³⁸

³⁶ Code of Civil Procedure, Article 5(4).

³⁷ Code of Civil Procedure, Article 5(4).

³⁸ Interlocutory Judgment of the Tokyo District Court on 22 May 1991, *Hanrei Taimuzu* 755-213.

Place of Tortious Conduct

If the place of a tortious conduct is found to be in Japan, then it may be a specific basis for jurisdiction for tort claims arising from the conduct.³⁹

The meaning of the "place of tortious conduct" is construed as the place where the defendant conducted an illegal act, or where the plaintiff suffered any injury to his person, or where the plaintiff suffered any damage to his property or interest.⁴⁰ The meaning does not include the place where any incidental damage occurred.

In a product liability case, defective products were manufactured in Japan, and were imported and caused injuries in the United States. The Tokyo District Court found that the defendant conducted an illegal act in Japan, the place where the products were manufactured, although it denied the Japanese court's jurisdiction due to exceptional circumstances against the concept of fairness between the parties and the notion of just and prompt court proceedings.⁴¹

To establish this jurisdictional basis, must the plaintiff allege or prove the tortious conduct? Must any requirement other than the tortious conduct for a tort claim (e.g., negligence or intention, causation or lack of defense) be alleged or proved?

In the *Tsuburaya Productions case*,⁴² the Supreme Court held that the plaintiff was required to prove only the tortious conduct, reasoning that:

“...if such facts exist, there is a reasonable ground to subject the defendant to the court proceeding for the merit, and there is sufficient legal nexus to justify the exercise of judiciary power by Japan even from the viewpoint of allocation of the judicial function in the international society.”

Joined Claims

³⁹ Code of Civil Procedure, Article 5(9).

⁴⁰ Interlocutory Judgment of the Tokyo District Court on 27 March 1984, *Hanrei Jiho* 1113-26; Judgment of the Shizuoka District Court on 30 April 1993, *Hanrei Taimuzu* 824-241.

⁴¹ Judgment of the Tokyo District Court on 29 January 1991, *Hanrei Jiho* 1390-98.

⁴² Judgment of the Supreme Court on 8 June 2001, *Hanrei Jiho* 1756-55.

If a claim is joined with any claim for which a jurisdictional basis is found, then this maybe the specific basis for jurisdiction for the joined claim, as long as the original claim and the joined claim are between the same parties ("objective joinder"), or as long as the joined claim by or against a third party is based on the same factual or legal basis as the original claim ("subjective joinder").⁴³

For an objective joinder of international claims, the Supreme Court has found that the mere fact that they are "the same parties" is not enough, but that a "close relationship" between the original claim and joined claim also is required for the Japanese court to exercise jurisdiction under this jurisdictional basis. The reasoning is as follows:

“... it is not appropriate to consolidate claims which have no close relationship from the viewpoint of reasonable allocation of judicial function in the international society, and it may have court proceedings complicated and delayed.”

In the *Tsuburaya Productions* case, a close relationship was found between claims having the same substantial basis.⁴⁴

In international cases, a subjective joinder is generally considered to be against the concept of fairness between the parties and the notion of just and prompt court proceedings. However, a subjective joinder is permitted in cases that compel a joinder of parties to secure a unified resolution.⁴⁵ In addition, some cases permit the subjective joinder of joint tort claims.⁴⁶

Defendant's Consent

If a defendant consents to jurisdiction over a suit, then it may be a specific basis for jurisdiction for the claims in the suit.⁴⁷

The consent must be made in writing and must specify the legal

⁴³ Code of Civil Procedure, Article 7.

⁴⁴ Judgment of Supreme Court on 8 June 2001, *Hanrei Jiho* 1756-55.

⁴⁵ Judgment of the Tokyo District Court on 28 July 1987, *Hanrei Jiho* 1275-77.

⁴⁶ An example is Interlocutory Judgment of the Tokyo District Court on 8 May 1987, *Hanrei Jiho* 1232-40.

⁴⁷ Code of Civil Procedure, Article 11.

relationship that gives rise to or is connected with the suit.

The defendant's consent to be subject to the exclusive jurisdiction of a foreign court (therefore excluding a Japanese court's jurisdiction) also is valid, if the suit is not subject to a Japanese court's exclusive jurisdiction by statute, and if the consented foreign court does not exclude its jurisdiction over the suit.⁴⁸

Defendant's General Appearance

If a defendant makes an appearance in the hearing and argues on the merit of the suit without raising any jurisdictional defense, then it may be a specific basis for jurisdiction for the claims in the suit.⁴⁹

Special appearance, or the defendant's appearance to raise jurisdictional defense, as well as to argue on the merit of the suit, is allowed in Japanese courts. It cannot be a jurisdictional basis for claims in the suit where the defendant appears.

Recognition and Enforcement of Foreign Judgments

In General

The effect of a non-appealable judgment of a foreign court is automatically recognized under Japanese law, if it satisfies four requirements.⁵⁰

These requirements are:

- (1) The foreign court must have jurisdiction under Japanese law or under any treaty that the foreign country and Japan are parties to;
- (2) A summons or a court order necessary for commencement of the court proceedings has been served to the defendant (except via service of process by public notification or the like), or the defendant appears without such summons or court order;
- (3) The contents of the judgment or the court proceedings are not against public policy in Japan; and
- (4) There are mutual guarantees on crediting foreign judgments.

⁴⁸ Judgment of Supreme Court on 28 November 1975, *Minshu* 29-10-1554.

⁴⁹ Code of Civil Procedure, Article 12.

⁵⁰ Code of Civil Procedure, Article 118.

Japanese courts will, without reviewing whether a foreign court judgment is right or wrong, grant an execution judgment so that the foreign court judgment may be executed in Japan.⁵¹ The execution judgment orders the execution of the foreign court judgment and declares that it has the same effect as a non-appealable judgment of a Japanese court.⁵² The concept of a non-appealable foreign court judgment and the four requirements are each discussed below.

Definition of a Foreign Judgment

To be recognized under Article 118 of the Code of Civil Procedure and Article 24 of the Civil Execution Act, a non-appealable foreign court judgment must be issued by a foreign court, and must be non-appealable.

In the *Hong Kong High Court Order* case, the Supreme Court defined the meaning of "foreign court's judgment". In this case, the plaintiff, who had won his suit in the Hong Kong High Court and obtained an ancillary court order awarding court fees, requested a Japanese court to grant an execution judgment for the court order awarding court fees against the defendant, who lived in Japan.

The Supreme Court found the order "a foreign court's judgment", reasoning that:

“... the term `foreign court's judgment' as provided in Article 24 of the Civil Execution Act denotes a final judgment rendered by a foreign court on private law relations by providing procedural guarantee to both parties, regardless of the name, procedure, or form of judgment. Even if the judgment is called a decision or order, or otherwise named, insofar as it possesses the characteristics of the above, it should be regarded as the `foreign court judgment' as provided in the Article.”⁵³

As the judgment must be final, a provisional remedy does not qualify as a

⁵¹ Civil Execution Act, Article 24.

⁵² Civil Execution Act, Article 22.

⁵³ Judgment of Supreme Court on 28 April 1998, *Minshu* 52-3-853.

"foreign court's judgment". In addition, as the judgment must be to settle issues concerning private law relations, a criminal or an administrative judgment does not qualify as a "foreign court's judgment".

The non-appealability of a judgment must be established by evidence; however, it may be supported by a certificate issued by the foreign court, or by any other means.

Foreign Jurisdiction

The first requirement for crediting a foreign court's judgment is that the foreign court must have jurisdiction under Japanese law, or under any treaty which the foreign country and Japan are parties to.⁵⁴

The issue here is not whether the foreign court has jurisdiction over the suit under the laws of the foreign country, but whether the foreign court's jurisdiction may be approved even under Japanese law or under any treaty which the foreign country and Japan are parties to.

Therefore, the jurisdictional rules for international cases, as discussed above, apply here exactly. The leading case is the *Hong Kong High Court Order* case discussed above.

In this case, the Supreme Court held:

"... the phrase 'the foreign court has jurisdiction under Japanese law or any treaty which Japan is a party to' set forth in Article 118(1) of the Code of Civil Procedure should be construed to require that the country to which the foreign court belongs be positively acknowledged to have international jurisdiction over the case under the jurisdictional rules in the international civil procedure law of Japan.

"As there is no generally recognized international doctrine or no well developed international customary rules on such jurisdictional question, it shall be resolved under the rule of reason from the viewpoint of the fairness between the parties and the notion of just and prompt court proceedings.

⁵⁴ Code of Civil Procedure, Article 118(1).

"Accordingly, whether the judgment country has international jurisdiction shall be decided principally under the venue rules of the Code of Civil Procedure and applying the rule of reason from the viewpoint of whether it is appropriate to approve the foreign court judgment under the circumstances of the specific case."⁵⁵

Service of Process

The second requirement for crediting a foreign court judgment is that a summons or a court order necessary for commencement of the court proceedings is served to the defendant (except via service of process by public notification or the like), or that the defendant appears without such summons or court order.⁵⁶

According to the case law (the *Hong Kong High Court Order* case), the service of process from the foreign court to a defendant in Japan must be made in the manner permitted under any treaty which the foreign country and Japan are parties to. In the *Hong Kong High Court Order* case, service of process was made by an agent of the plaintiff directly to the defendant, by delivery in person, under the law of the United Kingdom.

This service of process was not permitted under treaties on judicial cooperation between the United Kingdom and Japan, such as the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, or the Japan-United Kingdom Consul Treaty. The Supreme Court held that the service of process was illegal, and did not satisfy the second requirement of Article 118(2).

As to the defendant's appearance, there is a question whether not only a general appearance but also a special appearance satisfies the second requirement of Article 118(2). In the *Hong Kong High Court Order* case, the defendant appeared at the Hong Kong High Court to raise a jurisdictional defense (special appearance). The Supreme Court held:

"... the term 'Appearance' as provided by Article 118(2) of the Code of Civil Procedure, unlike the appearance in determining the jurisdiction based on appearance, means that the

⁵⁵ Judgment of Supreme Court on 28 April 1998, *Minshu* 52-3-853.

⁵⁶ Code of Civil Procedure, Article 118(2).

defendant was given the opportunity of defense and effected defensive measures in court, and therefore, includes a case where the defendant raised jurisdictional defense."⁵⁷

Public Policy

The third requirement for recognizing a foreign court judgment is that the contents of the judgment or the court proceedings are not against public policy in Japan.⁵⁸

It is established by case law that punitive damages are against public policy in Japan. There was a case where an Oregon partnership sought to enforce, in Japan, a California judgment that ordered a Japanese corporation to pay both compensatory and punitive damages for fraudulent conduct in execution of a certain lease agreement.

The Supreme Court held:

“... the part of foreign judgment before us which ordered the Appellee corporation the payment of the amount as exemplary and punitive damages in addition to the compensatory damages and cost of litigation, is against the public policy of our country and therefore is invalid.”⁵⁹

The Court reasoned that the function of punitive damages, which is to punish the tortfeasor and to prevent a similar act in the future, was left for criminal or administrative sanctions in Japan and was not what Japanese civil relief intended.

In the *Hong Kong High Court Order* case, the Hong Kong High Court Order awarding court fees included an award of attorney's fees paid by the plaintiff. The Supreme Court held that the court-ordered award of attorney's fees is not against public policy in Japan, reasoning that the award did not exceed recovery of actual expenses, and therefore had no characteristics of punitive damages.

Mutual Guarantee

⁵⁷ Judgment of Supreme Court on 28 April 1998, *Minshu* 52-3-853.

⁵⁸ Code of Civil Procedure, Article 118(3).

⁵⁹ Judgment of Supreme Court on 11 July 1997, *Minshu* 51-6-2573.

The fourth requirement for recognizing a foreign court judgment is that the foreign country and Japan mutually guarantee to recognize the judgments of the other's courts.⁶⁰

In the *Hong Kong High Court Order* case, the Supreme Court held that it was appropriate to conclude that, between Hong Kong and Japan, there was a mutual guarantee on recognition of foreign judgments as provided by Article 118(4) of the Code of Civil Procedure. It found that the principles of English common law were applicable in Hong Kong in relation to the recognition of foreign judgments, that the common law recognized judgments of a foreign court ordering payment of money in accordance with the requirements of the original judgment, and that the requirements for the recognition of foreign judgments under the common law could be regarded as not substantially different from the requirements of the subparagraphs of Article 118 of the Code of Civil Procedure.

Court cases have admitted or denied that the following countries have mutual guarantees on the recognition of foreign judgments with Japan.

Countries that have been admitted as having mutual guarantees with Japan on the recognition of judgments are Australia, Brazil, Canada (except Quebec), France (with exception), Germany, Italy (with exception), Philippines, South Korea, Switzerland, Taiwan, the United Kingdom, and the United States.

Countries that have been denied being party to mutual recognition of foreign judgments with Japan are Austria, Belgium, China, Luxemburg, Netherlands, and Thailand.

The Japanese Court System

In General

Japan has a unitary national court system. The highest court in Japan is the Supreme Court. Below the Supreme Court, there are eight High Courts. Below the High Courts, there are fifty district courts and fifty family courts. Finally, there are summary courts below the district courts.

⁶⁰ Code of Civil Procedure, Article 118(4).

Supreme Court

The Supreme Court (*Saiko Saibansho*) is the highest court in Japan and is in Tokyo. It is composed of the Chief Justice (designated by the Cabinet and appointed by the Emperor) and fourteen Justices (appointed by the Cabinet). It has appellate jurisdiction over appeals from the High Courts. Proceedings are held either before the Grand Bench (composed of all fifteen Justices) or the Petty Bench (composed of five Justices).

In addition to judicial functions, the Supreme Court also has functions to establish the rules concerning judicial proceedings, attorneys, internal discipline of the courts, and administrative matters of courts.

High Courts

The High Courts (*Koto Saibansho*) have appellate jurisdiction over judgments of the district, family, and summary courts, and original jurisdiction over some administrative cases. Proceedings are held before a panel of three judges (or a panel of five judges, in some cases).

The High Courts are located in Fukuoka, Hiroshima, Nagoya, Osaka, Sapporo, Sendai, Takamatsu, and Tokyo. In addition, there are six branch offices (Miyazaki and Naha for Fukuoka High Court, Okayama and Matsue for Hiroshima High Court, Kanazawa for Nagoya High Court, and Akita for Sendai High Court).

In addition, the Intellectual Property (IT) High Court (*Chiteki Zaisan Koto Saibansho*) was established as a branch of the Tokyo High Court in April 2005. The IP High Court has exclusive subject matter jurisdiction over patent and other industrial property law cases and is expected to perform the same function as the United States Court of Appeals for the Federal Circuit. On the other hand, it has non-exclusive subject matter jurisdiction over copyright cases.

District Courts

Each prefecture in Japan has one district court (*Chiho Saibansho*). Hokkaido has four. There also are 203 branch offices. The district courts have original jurisdiction in most cases (civil, criminal, and administrative), except those belonging to the original jurisdiction of the other courts. They also have

appellate jurisdiction over civil judgments of the summary courts. Proceedings are held before a single judge or before a panel of three judges.

Each district court has jurisdiction over the cases whose jurisdictional basis is found in the prefecture where the court has its seat. There is, however, a special rule for intellectual property suits. Under Articles 6 and 6(2) of the Code of Civil Procedure, the Tokyo District Court has jurisdiction if jurisdictional basis is located in eastern Japan (the judicial district covered by the Nagoya High Court, the Sendai High Court, the Sapporo High Court, and the Tokyo High Court), and the Osaka District Court has jurisdiction if the jurisdictional basis is located in western Japan (the judicial district covered by the Fukuoka High Court, the Hiroshima High Court, the Osaka High Court, and the Takamatsu High Court).

The jurisdiction of the Tokyo District Court or the Osaka District Court is exclusive for suits involving infringement of patents, utility models, design patents, trade marks, and copyright of computer programs, and non-exclusive jurisdiction for suits involving infringement of copyright in works other than computer programs.

Family Courts

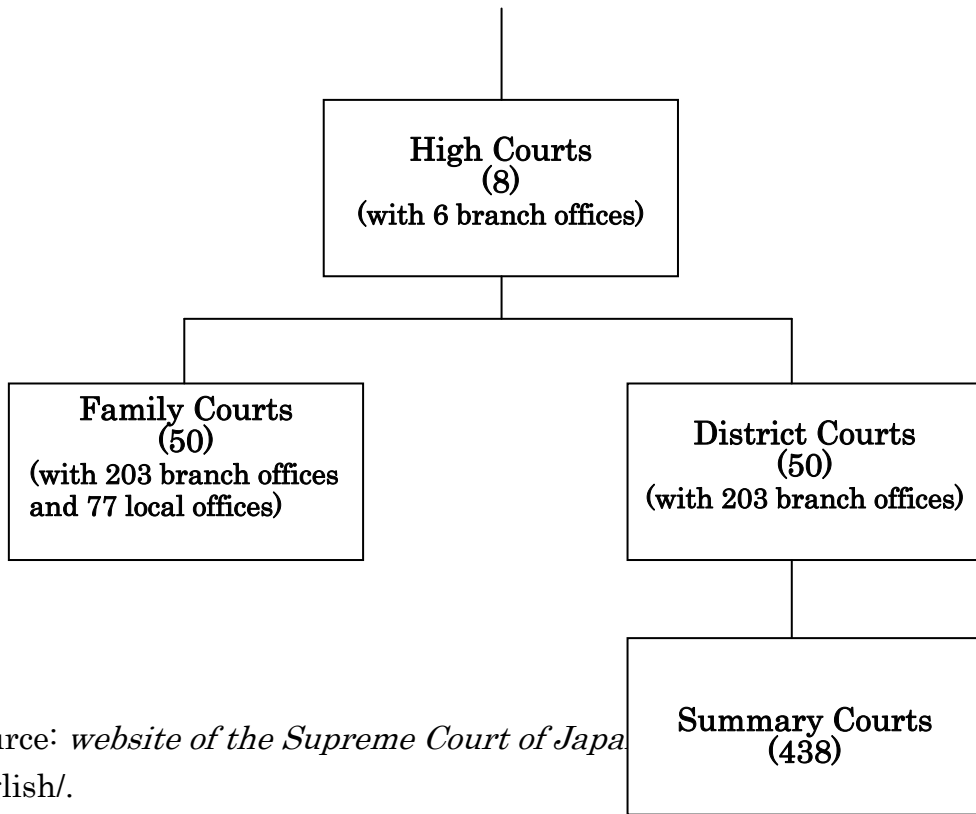
The family courts (*Katei Saibansho*) and their branch offices are located in the same places as the district courts (and their branch offices). There also are seventy-seven local offices located in the same place as seventy-seven of the summary courts.

As their name indicates, the family courts specialize in family affairs (e.g., adoption, divorce, appointment of guardians) and juvenile delinquency cases. Proceedings are held before a single judge.

Summary Courts

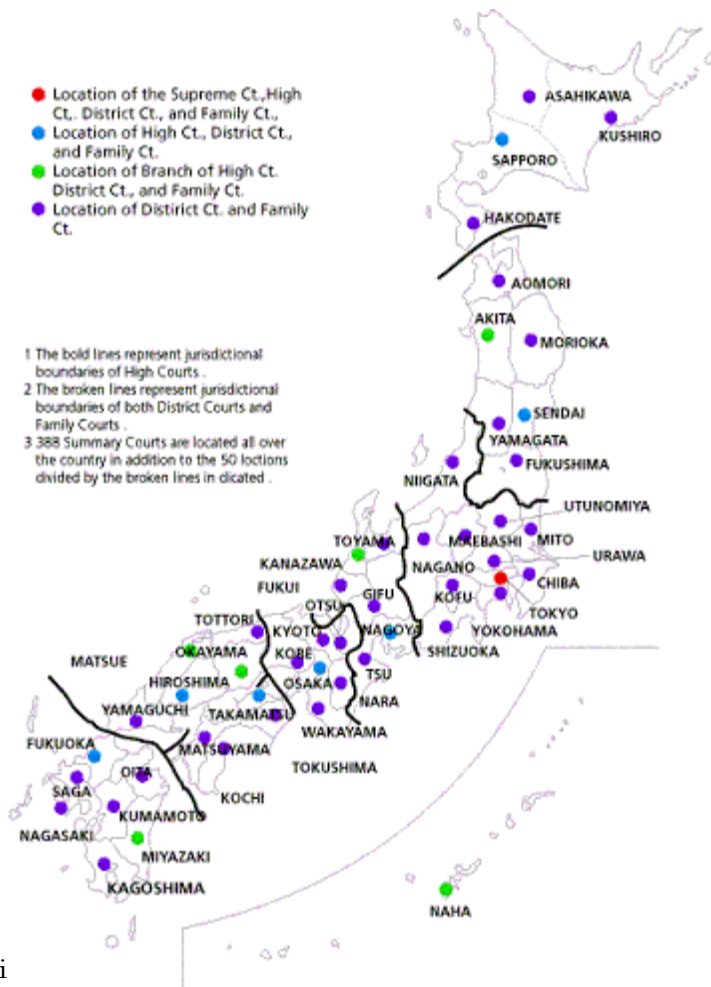
There are 438 summary courts (*Kan'i Saibansho*) in Japan. They have original jurisdiction over civil claims not exceeding JPY 1,400,000, and over criminal cases concerning petty offenses.

**Supreme Court
(Tokyo)**



Source: *website of the Supreme Court of Japan*
 english/.

Summary Courts
 (438)



Source: *website of the Supreme Court of Japan*, at <http://www.courts.go.jp/english/>.

Length of Court Proceedings

Japan is, or at least used to be, somewhat notorious for lengthy court proceedings (which may have contributed to the preference for out-of-court resolution of disputes). In the past, it took an average of two years from filing a complaint with a court to obtaining a judgment. If the case was appealed, the time could be trebled or quadrupled, depending on the complexity of the case.

Today, because of faster court procedures under the new Code of Civil Procedure, and the increased expertise of the judges in intellectual property cases, judgment may typically be obtained in approximately one year.

Litigation Costs

Court Fees

When a person files a complaint with the court, he also must affix certain amounts of revenue stamps as a filing fee. The amount of the filing fee depends on the type of claim and the amount claimed by the plaintiff. As a rule of thumb, the following formulae (as revised on 1 January 2004) may be useful:

Table 1: Filing fee for amount claimed at district courts

Amount Claimed	Filing Fee
Less than JPY 1 million	$n^* \times$ one per cent
JPY 1 million to JPY 5 million	$n \times$ 0.5 per cent + JPY 5,000
JPY 5 million to JPY 10 million	$n \times$ 0.4 per cent + JPY 10,000
JPY 10 million to JPY 1 billion	$n \times$ 0.3 per cent + JPY 20,000
JPY 1 billion to JPY 5 billion	$n \times$ 0.2 per cent + JPY 1,020,000
More than JPY 5 billion	$n \times$ 0.1 per cent + JPY 6,020,000

*Where n is the amount of the claim.

Some other expenses may be necessary, depending on the course of the proceedings. For example, a party that requests examination of witnesses during the proceedings must pay travel and other expenses for the witnesses.

Attorney's Fees

Until 31 March 2004, attorney's fees were regulated by the Rules of Standards of Attorney's Fees of the Japan Federation of Bar Associations, as adopted by the local bar associations.⁶¹ The following was the schedule of attorney's fees for civil matters, which, in fact, still work as the standard:

Table 2: Schedule of attorney's fees

Amount of Economic Benefit Sought	Initial Fee (<i>chakushu-kin</i>)	Success Fee (<i>hoshu-kin</i>)
Less than JPY 300,000	$n^* \times$ eight per cent (Minimum initial fee is JPY 100,000)	$n \times$ sixteen per cent
JPY 300,000 to JPY 3 million	$n \times$ five per cent + JPY 90,000	$n \times$ ten per cent + JPY 180,000
JPY 3 million to JPY 300 million	$n \times$ three per cent + JPY 690,000	$n \times$ six per cent + JPY 1,380,000
More than JPY 300 million	$n \times$ two per cent + JPY 3,690,000	$n \times$ four per cent + JPY 7,380,000

* Where n is the amount claimed or awarded.

The prevailing party may recover the "cost of proceedings" (*sosho hiyo*) when the judgment is so entered.⁶² However, the recoverable cost of proceedings is limited to the filing fee, and does not include the attorney's fees.

Conclusion

⁶¹ Rules of Standards of Attorney's Fees of the Japan Federation of Bar Associations, Rule 17(1).

⁶² Code of Civil Procedure, Article 61.

Japan has been under the rule of law, the basis of the modern law, since 1868. The independence of the judiciary has been established in Japan. The judges are immune to political influence or bribery, while it may be a matter for concern that they also are immune to public opinion or public welfare. Japanese courts never discriminate against parties because of nationality, but they may be hard on parties because of arrogant or disrespectful behavior toward the courts. In accordance with the jurisdictional rules of Japan discussed above, Japanese courts may well be included as a viable forum when applicable in international cases.