

Jurisdiction of Court in E-Commerce Consumer Contracts: Malaysia, Singapore and Thailand

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Abstract: The penetration of internet has instigated the development of electronic commerce (hereinafter referred to as “e-commerce”) transactions. However, the borderless nature of internet has brought confusion into determining the issues on conflict of laws, i.e. choice of law, jurisdiction of court and enforcement of foreign judgement, in cross borders e-commerce transactions. By adopting a doctrinal research method, this article evaluate the adequacy of the laws in Malaysia, Singapore and Thailand in dealing with the issue on jurisdiction of court in business to consumer (hereinafter referred to as “B2C”) contracts in the perspective of electronic consumer (hereinafter referred to as “e-consumer”) protection. This article will also further discuss on European Union (hereinafter referred to as “EU”) efforts in dealing with the issue on jurisdiction of court for lessons to be learnt.

Key words: *Conflict of Laws, E-Commerce, Consumer Protection, Jurisdiction of Court, Brussels I Regulation*

INTRODUCTION

Conflict of laws is the private law of a particular country which deals with cases having a foreign element. Foreign element means that, the case involves contracts with some system of law other than that of the forum. [1] Conflict of law jurisprudence recognises the application of foreign laws in deciding a case even though those laws are different from the law of the forum court where it is appropriate to do so. [2] A clear illustration on the meaning of conflict of laws could be viewed when, a contract was made in Austria between a Malaysian company and an Austrian company, and was to be performed in France. In the event of dispute, the court will have to use its “choice of law” rules to decide whether to apply Malaysia, French or Austrian law. In doing so, the court will have to decide on whether, the Malaysia, French or Belgian elements are the most significant. [3] In the event where the court chooses one of the countries’ laws to decide the case, the court will thereafter decide on the proper jurisdiction of court to hear the case. By referring to the example given above, if the court decides that the proper choice of law that governs the contract is Malaysian law, the court will than choose Malaysian court to hear the dispute. Subsequently, the decision made by the Malaysian court will be enforceable only in Malaysia if Austria and France do not allow the judgments from

Malaysian court to be enforced in their respective jurisdictions. Thus, the parties will have to restart the process of litigation to enforce their rights in Austria and France. The existence of clear law and rules on conflict of laws, specifically on the issues of choice of law, jurisdiction of courts and enforcement of foreign judgment is pertinent to avoid grave injustice to be done to the contracting parties. The present world is an era of information technology, which allows any computer connected with the Internet to access into any websites. Businesses, through the use of the Internet, can enter into electronic contracts with other businesses located in different countries. [4] This results to an immense figure of borderless contractual transactions engaged into by Malaysian and other Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”) regions, [5] the increased amount of complaints received from dissatisfied Malaysian consumers who enters into online transactions, [6] the growth of trade relations between Malaysia and European Union [7] (hereinafter referred to as “EU”), and evolution of the usage of e-commerce platform as a mean for traders to utilise and conduct sale transactions. [8] At present, the legislature in Malaysia and other ASEAN regions has enacted several regulations to govern e-commerce transactions and ensure online sale activities are conducted in a safe and secured environment to promote security in sale of goods and services via online, however, there has yet to be any legislations

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enacted by any of the ASEAN member countries to develop and enact any laws which addresses the issues on conflict of laws in the context of consumer protection in cross borders e-commerce transactions. Unlike in Malaysia and other ASEAN member states, various efforts and discussions had been carried out by the European Commission (hereinafter referred to as "the EC") to protect the rights and built the confidence in consumers to enter into cross border contracts. It is to be noted that series of efforts have been made by the EU to provide solutions to the three issues and harmonise its practice into all EU member states. This includes the enforcement of Brussels Convention, [9] Brussels I Regulation, [10] the Rome Convention, [11] and the Rome I Regulation. [12] Considering that Malaysia and other ASEAN regions do not possess a specific law to protect e-consumers in dealing with conflict of law issues, this research propounds to utilise a doctrinal research method to compare the adequacy of methods employed by Malaysia, Singapore and Thailand in dealing with the issue of jurisdiction of court issue, in cross borders e-commerce contracts, with Brussels I Regulations in business to consumer (hereinafter referred to as "the B2C") transactions.

METHODOLOGY

Adopting a doctrinal legal research, data collection of this article deliberates on the discovery of the laws on jurisdiction of court, and its interpretations from various researchers.

The sources referred to consist of primary sources, such as statutes, and the secondary sources, such as books and online articles.

Subsequent to analysing the laws and exertion of other researchers, the author of this article thereafter propound recommendations in solving the problem on jurisdiction of court in e-commerce B2C transactions.

RESULT ANALYSIS AND DISCUSSIONS

JURISDICTION OF COURT IN MALAYSIA, SINGAPORE AND THAILAND

The position of jurisdiction of courts in Malaysia in handling cross border electronic contracts was discussed by Julian Ding [13] and J Sheela. [14] Both of the authors, referred to order 11 rule 1(c) of the Rule of High Court 1980, which is currently known as Rule of Court 2012 (hereinafter referred to as "ROC"). [15] According to Order 11 rule 1 (C) of the ROC, the courts in Malaysia will have the jurisdiction to try cases where the defendant is either ordinarily resident within the jurisdiction of the court, or, domiciled within the jurisdiction of the court or, carrying on business within the jurisdiction

of the court. [16] J Sheela proceed to highlight the amendment made to the statutes mentioned, and indicated that, besides order 11 rule 1 (c), reference on jurisdiction shall be made to order 11 rule 1 (f) of the ROC, that conclusively allow the courts in Malaysia to assume jurisdiction if, the website is located within a server in Malaysia or, defendant is carrying on business or is a resident in Malaysia. The author is also of the opinion that, the amendment to the ROC did not consider the trans-border nature of e-commerce contracts. [17] It shall be noted that, the ROC or any other written laws, do not provide explanation on the method of application of the elements of "carrying on business within jurisdiction of the court" in Order 11(1) (C), into cross borders online contracts as such contract appears to be borderless in nature.

The Singapore courts has jurisdiction against a defendant who is served with originating process when he is present in Singapore, or agreed to be submitted to the jurisdiction of Singapore through an agreement made with the plaintiff, or agreed to be served the originating process in Singapore and the said service is affected accordingly, or when the defendant demonstrated that he has accepted the court's jurisdiction unequivocally. [18] In addition, according to Dr Yeo Tiong Min, if parties to the contract had made choice of court in the contract, the contract shall be given full effect, unless its enforcement would be unreasonable and unjust. In the middle 20th century, the action was stayed in order to give effect to the parties' agreement. Today, both English and Singapore law recognise that a contractual exclusive choice of court agreement will be given effect to unless strong cause amounting to exceptional circumstances can be demonstrated otherwise. [19] Joel Lee Tye Beng in his writing provided that, parties to the contract could stipulate exclusive or non-exclusive jurisdiction clause. Consequently, the party who would like to enforce the jurisdiction clause where the other fail to follow it, could seek to apply for a stay of proceeding. [20]

The Thailand courts have jurisdiction to hear cases where the cause of action arose in the territorial jurisdiction of the court, where the defendant has a domicile in the territorial jurisdiction of the court, or where the plaintiff is a Thai national or domiciled in Thailand. Consequently, foreigners who are not Thai national, or domiciled in Thailand could not make an application to try the case in Thailand, unless it could be proven that, the cause of action arose in Thailand, and the contract involves in the case does not contravene the public order and good morals of Thailand. Moreover, Thailand courts do not allow foreign judgements to be enforced and registered within the jurisdiction. [21]

EUROPEAN UNION EFFORTS ON JURISDICTION OF COURT

In the EU, the jurisdiction of court in e-consumer contracts is governed by the Brussels Convention and Brussels I Regulations. Hence, the related rules shall be analysed in order to understand the EU efforts in scrutinising the rules on conflict of law pertaining to electronic commerce in EU.

Brussels Convention and Regulation

The Brussels Convention is an agreement negotiated amongst the member states of European Community to produce a uniform law on jurisdiction and enforcement of judgments. Subsequently, the Brussels Convention was amended and enforced in 2001, and has been recognised as Brussels I Regulation. It shall be noted that, the Brussels I Regulation, is based on the Brussels Convention. According to Article 23(2) of the Brussels I Regulation;

“any communication by electronic means which provides a durable record of, the agreement shall be equivalent to writing”.

This means that, a contract stored in a computer as a secured word, or concluded by email and click-wrap agreement are acknowledged by the Brussels I Regulation to be a valid contract as they fall within the ambit of Article 23(2). Subsequent to determining the validity of electronic form of agreement, the Brussels I Regulations has stipulated that the courts will determine jurisdiction of the online contract according to 3 main types of jurisdiction rules known as the, general, special and exclusive jurisdictions.[22]

Due to the objective to harmonise jurisdictions, the general jurisdiction rule under the Regulation states that defendants, who are domiciled in one of the Contracting states, shall be sued at the place of their domiciles. Article 2 of the Brussels I Regulation explains that persons domiciled in a member state shall, be sued in the courts of that state regardless of their nationality. However, Article 2 is only applicable where it could be proven that the trader directs its activities’ to the Member State in which the consumer is domiciled. [23] Thus, an English consumer who domicile in Belgium, enters into an online contract with a trader from German, could only sue and can be sued in the courts in Belgium for breach of contract if it could be proven that, the online trader directs its activities to the place of domicile of the consumer, i.e. Belgium. [24] It is for the national courts to ascertain whether such evidence exists. On the other hand, the mere accessibility of the trader’s or the intermediary’s website in the Member State in which the consumer is domiciled is insufficient. The same is true of

mention of an email address and of other contact details, or of use of a language or a currency which are the language or currency generally used in the Member State in which the trader is establish. [25]

According to Dr Faye Fangfei Wang, the domicile rules within the Brussels I Regulation govern the domicile of individuals and domicile of corporations. However, it is difficult to determine the place of domicile of the parties in contracts which are entered into over the Internet even though the plaintiff can identify the party and locate the transaction. [26] Article 59(1) of the Brussels I Regulation provides that, as regards natural persons, in order to determine whether a party is domiciled in a particular member state, the court shall apply the law of that state. Article 60(1) lays down that a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat or, its central administration or, its principal place of business. Nevertheless, since the decision of the e-transaction might be made through video conferencing between persons who reside on different states, it is difficult to ascertain the location of the central administration. [27]

Besides that, according to the UN Convention on the Use of Electronic Communications in International Contracts (hereinafter referred to as “the UN Convention”), “the location of the parties” is defined as “a party’s place of business”. If a natural person does not have a place of business, the person’s habitual residence should be deemed as a factor to determine jurisdiction. Furthermore, according to the UN Convention, if a party does not indicate his place of business and has more than one place of business, then the place of business is that which has the closest relationship to the relevant contract. The closest connecting factors are those that occur before or at the conclusion of the contract. The UNCITRAL Model Law on Electronic Commerce is the same as the UN Convention, providing that “if the originator or the addressee does not have a place of business, reference is to be made to its habitual residence”. [28]

Special jurisdiction could be viewed from Article 5(1) (a) of the Brussels I Regulation which states that;

“A person domiciled in a Member State may, in another Member State, be sued in matters relating to a contract, in the courts for the place of performance of the obligation in question”.

According to Morris, McClean & Beevers, [29] the “obligation in question” means the basis for the claim. Furthermore, the place of performance, according to Article 5(1) (b), is the place of delivery of goods or where it should have been delivered or

the place where the services were provided or should have been provided. [30] The place of delivery must have the closest linking factor between the contract and the court. The closest linking factor will, as a general rule, be at the place of the principal delivery, which must be determined on the basis of economic criteria". The plaintiff could sue in the court for the place of delivery of its choice only if all places of delivery are "without distinction", and "have the same degree of closeness to the facts in the dispute. [31]

An exclusive jurisdiction applies when parties to enter into an agreement designated the court to determine, try and hear the dispute occur from the contract. However, Article 23(1) applies when at least the party, one or more of whom, is domiciled in a member state have agreed that the courts of a member state shall to have jurisdiction over disputes arising in connection with a particular legal relationship. Parties can choose courts or specific courts of a country. The parties to the contract under the said Article could choose a court which is not related to their country of domicile, as Article 23 does not require any objective connection between the parties or the matter of the dispute and the territory of the court chosen. [32]

It shall be noted that the revised Brussels I Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters comes into force on 9 January 2013, but will only apply to court proceedings in the European Union from 10 January 2015. The key changes are, exclusive jurisdiction agreements will be easier to enforce in the EU. This means that, the court nominated by the parties will have priority over another court first seized; and member state courts will have jurisdiction over exclusive jurisdiction agreements entered into between non-EU domiciled parties nominating an EU court. Articles 33 and 34 of the revised Regulation provides that courts with jurisdiction under the Brussels I Regulation will be able to stay and dismiss their proceedings in favour of the courts of a non EU state where they consider that the courts of that state would be better placed to hear the case. [33] There are a small number of instances under the revised Regulation where member state courts will have jurisdiction regardless of the domicile of the parties including cases concerning consumer contracts. [34]

CONCLUSIONS

As a conclusion, the laws in Malaysia, Singapore, and Thailand do not provide guidelines on jurisdiction of court in e-commerce transactions. From the discussions above, it was highlighted by the researchers that the meaning of carrying on

business within jurisdiction in the Rules of Court 2012 was not explained and caused confusion as to its application into cross borders e-contracts. As discussed, there are also absence of specific laws which explained on the jurisdiction of courts in cross borders e-contracts in Singapore and Thailand. This, as a result will cause detrimental effect to the e-consumers in ASEAN as the transaction they enter into might be subjected to foreign court's jurisdiction that undoubtedly will incur extensive costs of litigation. On the other hand, the discussions above has highlighted the EU efforts in dealing with the issue on jurisdiction of court. All EU member states are subjected to adhere to the rules on jurisdiction of court as stated in the Brussels I Regulations for the purpose of consumer protection. Therefore, this doctrinal research recommends that the ASEAN region shall harmonised the laws on conflict of laws, especially the law that deals with jurisdiction of court for the purpose of e-consumer protection.

REFERENCES

- [1] Mcclean, David and Beevers, Kisch, *The Conflict of Laws* (Sweet Maxwell London 2009) p. 2
- [2] Kuwait Airways Corp. v Iraqi Airways Co (No 4 and 5)[2002] 2 A.C.883
- [3] See, note 1
- [4] Dr. Wang, Faye Fangfei, "Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws", (2008) Vol. 3, Issue 4 Journal of International Commercial Law and Technology, accessed on 6/8/2014, available at www.jiclt.com
- [5] According to the Pos Malaysia's Head of Corporate Communication and Customer Care, Datuk Rohaiza Hashim, in Malaysia, online purchases delivered to consumers increases from 29 million in 2011 to 40 million in 2013. Besides that, the numbers of online consumers from other Associations of Southeast Asian Nations (hereinafter referred to "ASEAN") regions have also increased in these recent years; retrieved from Malay Mail Online, "Avoiding Pitfalls in online shopping", 7/7/2014, accessed on 6/8/2014, available at www.themalaymailonline.com and United Nations Conference on Trade and Development, "Review of E-Commerce Legislation Harmonisation in the Association of Southeast Asian Nations", United Nations Publications, accessed on 6/8/2014, available at <http://unctad.org/>
- [6] According to the Chairman of National Consumer Complaint Centre, Datuk Dr. Martimuthu Nadason, the third highest

- amount of complaints in 2013, with 5,763 complaints were received from consumers on retail services and e-commerce industry; retrieved from The Sun Daily, "More Receptive to Consumers' Complaint", 27/6/2014, accessed on 6/11/2014, available at <http://www.nccc.org.my>
- [7] Prime Minister of Malaysia, Datuk Seri Najib Tun Razak has recently expressed his intention to restart negotiations on the stalled ASEAN and EU Free Trade Agreement when he takes up the chairmanship of ASEAN in 2015, retrieved from The Star Online, "Malaysia to work towards reviving Asean-EU FTA talks, says Najib", 17/10/2014, accessed on 6/11/2014, available at <http://www.thestar.com.my>
- [8] Prime Minister of Malaysia has also recently launched the world's first global lifestyle marketplace e-commerce platform, called "zilzar.com" to capture USD2.5 trillion Muslim lifestyle market which includes halal goods i.e. from foods to pharmaceutical products, retrieved from News Straits Times Online, "PM Najib launches World's first global Muslim lifestyle business website, Zilzar.com", 29/10/2104, accessed on 6/11/2014, available at <http://www.nst.com.my>
- [9] Brussels Convention on Jurisdiction and Enforcement of judgments in Civil and Commercial Matters 1968
- [10] The amended Brussels Convention in 2001 through council Regulation (EC) 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgment in Civil and Commercial Matters (2001) OJL 12/1
- [11] The Rome Convention on the Law Applicable to Contractual Obligations 19/6/1980
- [12] The amended Rome Convention known as, Regulation (EC) 593/2008 of the European Parliament and of the council of 17/6/2008 on the law applicable to contractual obligations [2008] OJ L177/6
- [13] Julian Ding, E commerce Law and Practice, (Sweet & Maxwell Asia Selangor 1999) p92-99
- [14] J Sheela, "Cyber Paranormal: Conflict of Law Issues in E-Commerce Consumer Contracts," (2014) Vol 11(1), Journal of Administrative Science, accessed on 10/6/2015 available at <http://www.myjournal.my/public/article-view.php?id=79541>
- [15] Julian Ding, E commerce Law and Practice, (Sweet & Maxwell Asia Selangor 1999) p 92-99 and J Sheela, "Cyber Paranormal: Conflict of Law Issues in E-Commerce Consumer Contracts,"(2014)Vol 11(1), Journal of Administrative Science, accessed on 10/6/2015 available at <http://www.myjournal.my/public/article-view.php?id=79541>
- [16] According to Julian Ding, the element of carrying on business connotes the interactive nature of a website, whereby, the website shall be active and has repetitious activities with Malaysian e-consumers, which result into profit. Besides that, in ascertaining the second element, the author suggested a liberal approach, whereby in the circumstance where the websites enables the creation of contractual rights and liabilities of Malaysian e-consumers, than it should be considered as being within the jurisdiction of the courts in Malaysia; Julian Ding, E commerce Law and Practice, (Sweet & Maxwell Asia Selangor 1999) p92-99
- [17] J Sheela, "Cyber Paranormal: Conflict of Law Issues in E-Commerce Consumer Contracts,"(2014)Vol 11(1), Journal of Administrative Science, accessed on 10/6/2015 available at <http://www.myjournal.my/public/article-view.php?id=79541>
- [18] Dr Yeo Tiong Min, "The Conflict of Laws", accessed on 11/10/2014, available at <http://www.singaporelaw.sg>
- [19] Dr Yeo Tiong Min, (2008) 20 SA CLJ
- [20] Joel Lee Tye Beng (2012) 13 SAL Rev
- [21] Baker Baker & Mckenzie, "Dispute Resolution Around the World: Thailand", accessed on 12/10/2014, available at http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw_thailand_2011.pdf
- [22] Dr. Faye Fangfei Wang, "Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws", (2008) Vol. 3, Issue 4 Journal of International Commercial Law and Technology, assessed on 12/10/2014, available at www.ijclt.com/index.php/ijclt/article/download/65/64
- [23] Article 15(1) (c) of the Brussels I Regulation, and Court of Justice of the European Union Press Release No. 118/10, Judgment in Joined Cases C-585/08 and C-144/09 **Peter Pammer v Reederei Karl Schlüter GmbH & Co. KG and Hotel Alpenhof GesmbH v Oliver Heller**, Luxembourg 2010, accessed on, 12/10/2014, available at europa.eu/rapid/press-release_CJE-10-118_en.pdf
- [24] This principle could be viewed in the case of **Peter Pammer v Reederei Karl Schlüter**

GmbH & Co. KG [C- 585/08] and **Hotel Alpenhof Ges.m.b.H v Oliver Heller [C-144/09]**. In the first case, Peter Pammer, who resides in Austria, wished to travel by freighter from Trieste (Italy) to the Far East. He booked a voyage with the German company Reederei Karl Schlüter, through a German travel agency specialising in the sale on the internet of voyages by freighter. Mr. Pammer refused to embark on the ground that the conditions on the vessel did not correspond to the description which he had received from the agency and he sought reimbursement of the sum that he had paid for the voyage. Since Reederei Karl Schlüter reimbursed only a part of that sum, Mr. Pammer brought proceedings in the Austrian courts, before which that German company raised a plea that they lacked jurisdiction on the ground that it did not pursue any professional or commercial activity in Austria.

In the second case, Oliver Heller, a German resident, reserved a number of rooms, for a period of a week, at Hotel Alpenhof, Austria. The reservation was made by email, the hotel's website which Mr. Heller had consulted indicating an address for that purpose. Mr Heller found fault with the hotel's services and left without paying his bill. The hotel then brought an action before the Austrian courts for payment of the bill. Mr Heller raised a plea of lack of jurisdiction, submitting that, as a consumer resident in Germany, he could be sued only in the German courts.

In both cases, the court held the list of which are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the member of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other member states for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the member state in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other member states, use of a top-level domain name other than that of the member state in which the trader is established, such as '.com' or '.eu' and mention of an

international clientele composed of customers domiciled in various member states.

In the case of **Muhlleitner v Usufi**, [C-190/11, [2012] All ER (D) 74 (Sep)] the plaintiff who domiciled in Austria, wanted to purchase a German make car. She logged on the internet and connected to the German search platform by typing "www.mobile.de", entered the type of vehicle she wanted and thereafter obtained a list of vehicle corresponding to the characteristics specified. She selected the vehicle from the list, and was directed to the offer advertised by the defendants. The defendants operated a vehicle retail business with partnership established in Hamburg, called Autohaus Yusufi. The plaintiff contacted the defendants using the telephone number and international dialling code available on the website and was informed that the vehicle she wanted to purchase was no longer available. However, she was offered another vehicle and the details of the other vehicle were sent to her by email. Subsequently, the plaintiff went to Germany and bought the said car by a contract signed on 21/9/2009 for 11,500 euro. Unfortunately, on her return to Austria, the plaintiff found that the vehicle purchased was defective and seek for repair of the vehicle from the defendant. On the refusal of the defendant, the plaintiff brought an action in the court of her domicile, the Austrian Regional Court to rescind the contract for the sale of the vehicle. The defendants alleged that the action should have been brought into the German court, and submitted that they had not directed their trade activities to Austria. The Austrian Regional Court dismissed the action on the ground of lack of jurisdiction. However, in appeal, the Austrian Supreme Court held that, the establishment of contract at a distance, reservation of goods or services at a distance or the conclusion of a consumer contract at a distance were indications that the contract was connected with commercial or professional activity directed to the state of the consumer's domicile. Hence, since the plaintiff was able to consult the defendants through the website in Austria, and the existence of contracts at a distance between the parties to the contract, by telephone and email, the court held that the defendants had directed their trade activities in Austria. Therefore, plaintiff could bring an action against the defendant at the court in Austria for the breach of contract.

- [25] Peter Pammer v Reederei Karl Schlüter GmbH & Co. KG [C- 585/08] and Hotel Alpenhof Ges.m.b.H v Oliver Heller [C-144/09]
- [26] Dr. Wang, Faye Fangfei, "Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws", (2008) Vol. 3, Issue 4 Journal of International Commercial Law and Technology, accessed on 6/8/2014, available at www.jiclt.com
- [27] Dr. Wang, Faye Fangfei, "Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws", (2008) Vol. 3, Issue 4 Journal of International Commercial Law and Technology, accessed on 6/8/2014, available at www.jiclt.com
- [28] Dr. Wang, Faye Fangfei, "Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws", (2008) Vol. 3, Issue 4 Journal of International Commercial Law and Technology, accessed on 6/8/2014, available at www.jiclt.com
- [29] David McClean and Kisch Beevers, *The Conflict of Laws*, (Sweet & Maxwell London 2009) p80-81
- [30] In **Viskase Ltd v Paul Kiefel GmbH** [1999]3 All E.R. 362 eight machines were to be supplied for a particular purpose. In the case of seven of the eight machines, delivery had taken place in Germany, but in the case of one machine, delivery was at National Exhibition Centre in Birmingham, England. The Court of Appeal held that, the place of obligation to deliver goods fit for the purpose was the place of delivery. The English court had jurisdiction only in respect of that one machine. The difficulty to apply Article 5(1) only occurs in the event where there are multiple places of delivery of goods and there are more than one place of performance of services. In **Color Drach GmbH v Lexx International Vertriebs GmbH**, [C-386/05] the European court held that, where there are several places of delivery, all within the same member state, the principal place of delivery is the relevant one, failing which the plaintiff could sue at any delivery place.
- [31] Dr. Wang, Faye Fangfei, "Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws", (2008) Vol. 3, Issue 4 Journal of International Commercial Law and Technology, accessed on 6/8/2014, available at www.jiclt.com
- [32] Dr. Wang, Faye Fangfei, "Obstacles and Solutions to Internet Jurisdiction: A Comparative Analysis of the EU and US laws", (2008) Vol. 3, Issue 4 Journal of International Commercial Law and Technology, accessed on 6/8/2014, available at www.jiclt.com
- [33] Freshfields Bruckhaus Deringer, "Litigation in the EU following the revised Brussels I Regulation", assessed on 12/10/2014, available at <http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/Litigation%20in%20the%20EU%20following%20the%20revised%20Brussels%20I%20Regulation.pdf>
- [34] Article 18.1 of the revised Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter