



THE LEGAL NATURE OF FORUM SHOPPING IN INTERNATIONAL CIVIL PROCEDURE LAW

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ABSTRACT

Globalization increase transnational legal relations, which in turn gives rise to multinational disputes. In these circumstances, parties try to choose the court of the country whose favorable legislation gives a preference. By comparing potentially available courts, a plaintiff can determine where to begin litigation process. From a simple, rational choice perspective, it will select a forum whose substantive and procedural legal rules will produce the appropriate result. Forum shopping is an attempt to gain a tactical advantage that will contribute to the successful conclusion of the plaintiff's case. The existence of forum shopping depends on there being more than one court potentially available to the claimant. If the legal systems are similar to each other, obviously, on the side will have little reason to choose either. The heterogeneity of legal systems means that a plaintiff may have a better chance of winning a case in one court than in another. Forum shopping is a form of strategic behavior based on the law system characteristics that influence the formation of plaintiffs' expectations of court proceedings. Sometimes, substantive legal differences dictate the choice of party. Often, the choice of parties is dictated by the relevant procedural characteristics of the court (low costs, the possibility of receiving high compensation, etc.). Forum Shopping is not a negative legal phenomenon. It is a fact that different legal systems allow parties to determine where to initiate proceedings for a transnational dispute of any complexity. Forum shopping is a strategic behavior based on a party's perception of an advantage in the substantive and procedural law of a particular legal system.

Litigation involves strategic choice, as game theory illustrates.

One of those strategic choices includes the plaintiff's initial selection of the forum, which the defendant may attempt to counter through transfer strategies of its own. Criticizing and trivializing forum selection through the label of forum "shopping" Misapprehends the forum game by treating forum selection as a parlor trick-as Unfair and abusive – rather than as a lawful, authorized strategy. "Forum shopping is not a form of 'cheating' by those who refuse to play by the rules. Playing by the rules includes the ability of plaintiff's counsel to select – and the ability of defendant's counsel to attempt to counter-the set of rules by which the litigation 'game' will be played.¹

INTRODUCTION

In an ever shrinking world, in which trade and commerce flow across all national boundaries, it is no surprise that the number of cross-border disputes continues to rise. Civil litigation has itself become to some extent a commodity which prospective claimants shop for amongst the potentially available national legal systems. In this environment, the scope for conflict between the courts of different countries is much increased.² In a world where every aspect of human affairs is increasingly international, it is only natural that opportunities for private litigants should be correspondingly globalized. This phenomenon has led, in fact, to frequent complaints in the latter half of the twentieth century that private litigation has become too internationalized, and that plaintiffs are seeking justice in courts outside their own 'natural' jurisdictions in order to gain procedural or substantive advantages in a way that is at least vexatious, at worst oppressive. The term to describe this is, of course, 'forum-shopping' (also sometimes referred to as 'law-shopping').³ The most famous form of positive conflicts of jurisdiction is Forum Shopping.⁴ In international civil procedural law, the

term refers to the right of the claimant to choose the preferred court in which the dispute litigation is most favorable, taking into account the relevant factual, procedural, and substantive consequences. It is the legitimate right of the claimant to file the claim where wishes based on pleading strategy, taking into account that the international procedural law of the respective countries allows such a choice.⁵ Domestic forum shopping occurs when a plaintiff chooses between two or more courts within a single country's legal system, whereas transnational forum shopping occurs when the choice is between the courts of two or more countries' legal systems.⁶ Global (transnational) forum shopping may lead to disharmony of decisions. In order to harmonize decisions, similar cases should be decided in the same way, regardless of which state's court hears it.⁷

Forum shopping depends on two conditions: First, as the foregoing definition implies, more than one court must be potentially available for resolving the plaintiffs claim. Second, the potentially available legal systems must be heterogeneous! If all legal systems were the same, plaintiffs would have little reason to prefer one court instead of another! In contrast, the heterogeneity of legal systems means that a plaintiff may be more likely to win (and likely to recover more) in some legal systems than others, thus creating an incentive to forum shop.⁸

to decide a case, the technique of the so-called 'torpedo'. In combination with the impossibility of the other party to sue elsewhere, torpedo action literally torpedoes the possibility for the bona fide party to seek timely settlement of his action. Calster, G.V., (2016). *European Private International Law*, Second Edition, Hart Publishing, 8.

1 Bassett, D. L., (2006). THE FORUM GAME, *North Carolina Law Review*, 1.

2 International Law Association London Conference, (2000). Committee on International Civil and Commercial Litigation, Third Intern Report: Declining & Referring Jurisdiction in International Litigation, 1.

3 Guthri, N., (1995). "A Good Place to Shop": Choice of Forum and the Conflict of Laws, *Ottawa Law Review*, 203.

4 Forum shopping is by no means a negative or suspect phenomenon. It arguably only takes on an abusive nature, in those instances where a litigant selects a forum purely on the basis of 'qualities' of the forum which do not serve the rule of law. This would include for a selected for the time they take

5 Svanadze, G., (2016). Negotiation and conclusion of international business agreements against the background of international sales law, presentation at the National Business Law Conference, Tbilisi, 50.

6 Whytock, C. A., (March 2011). The Evolving Forum Shopping System, *Cornell Law Review*, 485.

7 In the 2010 case of *Shady Grove Orthopedic Assocs. v. Allstate Ins.Co.* The court noted: "Forum shopping is the inevitable (indeed, one might say the intended) result of a uniform system of federal procedure." Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, *Notre Dame Law Review*, Vol 92, Issue 2, 597, 601.

8 Whytock, C. A., (March 2011). The Evolving Forum Shopping System, *Cornell Law Review*, 486.

FOR THE DEFINITION OF FORUM SHOPPING

Forum shopping behavior is based not only on a plaintiff's preference for a particular legal system's substantive and procedural law but also on the court access and choice-of-law decisions of courts.⁹

The English Court of Appeal held in a famous case that Dutch plaintiffs whose barge was damaged in the river Scheldt by Belgian defendants could bring an action for location of the thing against a vessel which was due to enter Liverpool and which was the property of the defendants. Lord Denning made this famous comment about the right to justice of all comers in the courts of England: This right to come here is not confined to Englishmen. It extends to any friendly foreigner. He can seek the aid of our courts if he desires to do so. You may call this 'forum shopping' if you please, but if the forum is England, it is a good place to shop in, both for the quality of the goods and the speed of service.¹⁰

The exact definition of Forum Shopping is ambiguous. In common understanding, the term refers to the choice of the most favorable jurisdiction or court in which to bring an action.¹¹ By this definition, it means that plaintiffs sometimes choose a forum for forum-shopping reasons, defendants also may move for dismissal under the doctrine of forum non conveniens.¹²

The legal system within which Forum Shopping is conducted affects its definition, making a uniform definition difficult. The decision of the Court of Rimini of November 26, 2002 attracted a lot of attention as an Italian court interpreted Forum shopping for the first time. Court compares forum shopping to the "activity which aims at reaching the most favorable jurisdiction for the interests of

the plaintiff".¹³ It is clear from this definition that the understanding in Italy, but this holds true in many other Civil Law countries as well, is that only the plaintiff can forum shop. There is no space for forum shopping by the defendant. Once a case is pending, the defendant can object to the jurisdiction of the court seized, arguing that there is no head of jurisdiction that allows the court to hear the case.¹⁴ Unlike the definition proffered by some U.S. courts, pursuant to which forum shopping amounts to a selection of a court with an eye towards gaining an advantage based on the forum's favorable substantive law or the avoidance of unfavorable law in an alternative forum.¹⁵

Piper Aircraft Co. v. Reyno,¹⁶ which involved several domestic and transnational forum choices, illustrates the difference between domestic and transnational forum shopping as well as the definitional problem. A Pennsylvania-manufactured airplane with Ohio-made propellers crashed in Scotland, killing the passengers. The California lawyer hired by the passengers' Scottish next-of-kin asked the court to appoint his legal assistant, Gaynell Reyno, to administer the deceased passengers' estates. Reyno, a California resident, filed wrongful death actions in California state court on the estates' behalf against the manufacturers, alleging that mechanical problems with the plane or the propellers caused the crash. The plaintiffs decided to sue in the United States, rather than Scotland (a transnational forum choice); in California, rather than the defendants' home states of Ohio or Pennsylvania; and in state rather than federal court (two domestic forum choices). The defendants removed the case to federal court and then had the case transferred from the Northern District of California to the Middle District of Pennsylvania. The defendants then

9 Whytock, C. A., (March 2011). The Evolving Forum Shopping System, Cornell Law Review, 488,489.

10 Atlantic Star 1973, Guthrie, N., (1995). "A Good Place to Shop": Choice of Forum and the Conflict of Laws, Ottawa Law Review, 209.

11 Juenger, F. K., (1989). Forum Shopping, Domestic and International, 63 TUL. Law Review, 553, 554.

12 Ferrari, F., (August 2014). Forum Shopping: A Plea for a Broad and Value-Neutral Definition, New York University School of Law, Public Law & Legal Theory, Research Paper Series, Working Paper, NO. 14-39, 21-23. <<https://ssrn.com/abstract=2474181>>

13 Tribunale di Rimini, 26 November 2002, Ferrari, F., (August 2014). Forum Shopping: A Plea for a Broad and Value-Neutral Definition, New York University School of Law, Public Law & Legal Theory, Research Paper Series, 15.

14 Tribunale di Rimini, 26 November 2002, Ferrari, F., (August 2014). Forum Shopping: A Plea for a Broad and Value-Neutral Definition, New York University School of Law, Public Law & Legal Theory, Research Paper Series, 15,16.

15 Tribunale di Rimini, 26 November 2002, Ferrari, F., (August 2014). Forum Shopping: A Plea for a Broad and Value-Neutral Definition, New York University School of Law, Public Law & Legal Theory, Research Paper Series, 15,16.

16 Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, Notre Dame Law Review, Vol 92, Issue 2,591.

moved for forum non conveniens dismissal, arguing that the case had closer ties to Scotland and should be heard there. Which of these choices qualifies as forum shopping? Under a broad definition, all of them. Under a contacts-based definition, the plaintiffs' pursuit of a U.S. forum would not be forum shopping, especially after the case was transferred to Pennsylvania, because under private international law it is typically considered legitimate to sue a defendant at home. But if forum shopping refers only to illegitimately motivated choices, which of these moves qualify? With each of these moves, the plaintiff and defendants were seeking the most advantageous forum, as is true of almost any forum decision. Nevertheless, the maligned forum choice in Piper was the plaintiffs' choice of U.S. court over Scottish court—not the choice of California over Pennsylvania, or state over federal court. Those latter choices—similarly strategically motivated—are broadly considered to be within the plaintiff's discretion. Likewise, the defendants' efforts to remove the case from state to federal court, from one district court to another, and out of the country are considered wise parts of a thoughtful litigation strategy.¹⁷

Some courts and scholars use the term “forum shopping” to refer to a narrower subset of has little connection to the dispute.¹⁸ Regardless of one's view of forum shopping, this is a common occurrence. As pointed out by what was formerly known as the House of Lords, “if you offer a plaintiff a choice of jurisdictions, he will naturally choose the one in which he thinks his case can be most favorably presented: this should be a matter neither for surprise nor for indignation.” Indeed, “every lawyer thinks about the best forum before filing a case or before answering a complaint.” Not only, “it is part and parcel of the litigator's job to explore the feasibility of bringing suit in the most advantageous forum, as part of an effective tactical strategy”. In effect, “lawyers ethically are compelled to seek the most favorable forum to further clients' interests.”¹⁹

17 Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, *Notre Dame Law Review*, Vol 92, Issue 2, 595.

18 *Amchem Prods. Inc. v. B.C. (Workers' Compensation Bd.)* 1993 Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, *Notre Dame Law Review*, Vol 92, Issue 2, 589.

19 Ferrari, F., (August 2014). Forum Shopping: A Plea for a

DISADVANTAGES AND ADVANTAGES OF FORUM SHOPPING

There is a negative attitude towards Forum Shopping, especially in the context of global litigation. The term is associated with unprincipled, worthless tactics and undeserved victories. It can lead to expensive and cumbersome litigation in a forum not ideally suited to hear the case, which inconveniences courts and parties alike. Finally, simultaneous or seriatim proceedings in multiple courts duplicate effort and further prolong litigation—creating waste from the point of view of both the courts and the parties.²⁰ There is an opinion that forum shopping contrasts with the idea of a “level playing field” in that it may distort the playing field, and that forum shopping may create a negative popular perception about the equity of the legal system.²¹

The general attitude of the House of Lords towards Forum shopping was formulated as follows: that forum-shopping is unfair to defendants, who may be put to unwarranted expense and inconvenience in defending actions brought somewhere other than the 'natural' forum of the dispute; that it is biased in favour of plaintiffs, who are likely to choose for a that will be sympathetic to their versions of events; that it is an inefficient use of judicial resources, tending to clog the courts of the selected jurisdiction with 'foreign' actions; that it creates doubts about the fairness of the justice system when opportunism, rather than justice, seems to be the determining factor in litigation; that it creates uncertainty of judicial result; and that, in a federal system of government or in an international context, it creates tensions between jurisdictions by undermining the policy choices of one of them in preference to those of the other.²²

Broad and Value-Neutral Definition, New York University School of Law, Public Law & Legal Theory, Research Paper Series, Working Paper, 14.

20 Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, *Notre Dame Law Review*, Vol 92, Issue 2, 603.

21 Ferrari, F., (August 2014). Forum Shopping: A Plea for a Broad and Value-Neutral Definition, New York University School of Law, Public Law & Legal Theory, Research Paper Series, 8,9.

22 Guthri, N., (1995). “A Good Place to Shop”: Choice of Forum and the Conflict of Laws, *Ottawa Law Review*, 208.

The negative attitude towards forum shopping is not unique to national legal systems. It can be defined at the European level. In this region, one of the justifications for efforts to unify private international law was to avoid forum shopping. At the international level, it is worth noting that one of the main goals of developing the 1980 UN Convention on the International Sale of Goods, when the UNCITRAL Secretariat stated: "Reduce the search for courts with the most favorable law."²³

A well-known, high-profile case of global forum shopping is the suit of Austrian law student Schrems against Facebook.²⁴ In 2013, the student filed complaints with an Irish privacy regulator against Facebook Ireland Limited, the company that contracts with all Facebook users outside of the United States and Canada. The student alleged that Facebook, through its participation in the U.S. government's Prism surveillance program, had violated European privacy laws. Unsatisfied with the slow pace of the Irish response, the student withdrew most of his complaints and refiled in Austria. The student also advertised online that Facebook users all over the world should assign their claims to him, and through a claim-assignment procedure already recognized in Austrian courts, he has created the largest putative class action in Europe, financed in part by crowd-sourced funding. This case, which the Austrian Supreme Court recently referred to the Court of Justice of the European Union (ECJ), may make Austria and its courts confront some of the most perplexing procedural issues in transnational litigation, including claim aggregation, litigation funding, and law's extraterritorial reach.

The Regional Civil Court dismissed his claim on the ground that, since he was also using Facebook for professional purposes, he could not rely on that provision regulating consumer contracts. Furthermore, the Regional Civil Court found that the jurisdiction to hear the assignors' claims could not be assigned to Mr. Schrems. The decision focused on the jurisdictional side of the case, looking at

whether Schrems shared the view that Austrian Facebook users were allowed to take legal action based on their place of residence under Austrian consumer rights legislation. The judge disagreed, stating that the plaintiff used the social media service both privately and professionally and had a commercial interest against Facebook. The court ruled that the lawsuit – involving German and Indian plaintiffs who chose Vienna as the venue – was legally problematic and inadmissible. Facebook's lawyer argued that Mr Schrems was not a user in the legal sense and that the Vienna court had no jurisdiction – either against the California firm or its Dublin-based international subsidiary. Shrems' lawyer denied the accusation that his client was conducting the case for commercial purposes.²⁵

25 The Regional Civil Court dismissed his claim on the ground that, since he was also using Facebook for professional purposes, he could not rely on that provision regulating consumer contracts. Furthermore, the Regional Civil Court found that the jurisdiction to hear the assignors' claims could not be assigned to Mr. Schrems. On appeal, the Higher Regional Court in Vienna upheld the claims related to the contract between Mr. Schrems and Facebook Ireland, but dismissed the appeal as it concerned the assigned claims on the ground that the forum of a consumer could only be invoked by an applicant relying on his own claims. The parties brought an appeal on a point of law (i.e. Revision) to the Supreme Court of Austria, which subsequently referred the following questions for preliminary ruling by the Court of Justice of the European Union. The Court first recalled the general principle under EU law that persons domiciled in a Member State must be sued in the courts of that Member State. It went on to note that derogations to this general principle were provided for in an exhaustive list, and had to be strictly interpreted. Therefore, the Court reasoned that the notion of "consumer" under Articles 15 and 16 of Regulation 44/2001 had to be strictly construed. Secondly, the Court explained that the special jurisdiction rules for "consumers" only apply to contracts "concluded outside and independently of any trade or professional activity or purpose, solely for the purpose of satisfying an individual's own needs in terms of private consumption. A social network user can only rely on the special rules on jurisdiction in bringing a case, in such circumstances, where they can show that their predominantly non-professional use of those services had not subsequently become predominantly professional. The Court clarified that the special rules on jurisdiction in cases concerning "consumers" was "inspired by the concern to protect the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other party to the contract, the consumer is protected only in so far as he is, in his personal capacity, the plaintiff or defendant in proceedings. Consequently, an applicant who is not himself a party to the consumer contract in question cannot enjoy the benefit of the ju-

23 International Law Association London Conference, (2000). Committee on International Civil and Commercial Litigation, Third Interm Report: Declining & Referring Jurisdiction in International Litigation, 6.

24 Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, Notre Dame Law Review, Vol 92, Issue 2, 584,585.

Sometimes, scholars applaud when parties designate a forum for disputes. Some scholars argue that forum shopping through contractual forum selection clauses is essential to encourage governments to develop better laws. Because the parties' choices reflect their joint agreement, some scholars contend that through these clauses, individuals and firms seek out the best regulatory regimes, and that interested states may be encouraged to compete for the parties' presence and business. Interested governments, in turn, will seek to provide those legal "products."²⁶

FORUM SHOPPING IN COURT PRACTICE

Forum Shopping was born out of American case law. It is now widely believed that the United States is experiencing an explosion of transnational litigation-litigation involving foreign parties or foreign activity. The United States has substantive and procedural laws that are more advantageous to plaintiffs than the laws of other countries. According to the conventional understanding, two features of the U.S. legal system encourage plaintiffs to bring transnational disputes to the United States by promising access to these advantages. First, the United States employs a permissive approach to personal jurisdiction, giving plaintiffs-both domestic and foreign-broad access to U.S. courts. Second, U.S. judges have a strong tendency to apply the U.S. substantive law that plaintiffs often prefer, even in lawsuits arising out of events occurring in foreign countries.²⁷ Lord Den-

risdiction relating to consumer contracts. The Court disagreed with the argument put forward by Mr. Schrems and found that the fact that he was bringing claims on his consumer rights before the courts where he was domiciled that were similar to those which were assigned to him did not, as such, bring those assigned claims within the jurisdiction of the courts where he was domiciled. The Court also stated that the jurisdiction of courts could not be established through the concentration of several claims in the person of a single applicant. JUDGMENT OF THE COURT (Third Chamber) 25 January 2018 <<https://globalfreedomofexpression.columbia.edu/cases/maximilian-schrems-v-facebook-ireland-limited/>>

26 Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, *Notre Dame Law Review*, Vol 92, Issue 2, 586, 587.

27 Many observers assume that transnational litigation in U. S.

ning characteristically described Forum shopping in one of his cases: „As a moth is drawn to the light, so is a litigant drawn to the United States."²⁸

In September 2015, Volkswagen announced it had rigged diesel emissions tests to make its "Clean Diesel" cars seem to comply with U.S. environmental regulations while they were being tested.²⁹ In fact, the cars emitted pollutants up to forty times more than U.S. law permits. After that announcement, which affected 11 million cars worldwide, Volkswagen's market value dropped by about \$ 25 billion, or thirty percent. Volkswagen owners, car dealerships, and shareholders around the world started wondering how they could hold Volkswagen accountable. Outside the United States, affected consumers, car dealerships, and shareholders are suing Volkswagen. Aggregate litigation is pending in countries from Canada, to Australia, to South Korea. In Europe, Volkswagen is facing litigation in many different countries on civil, criminal, and regulatory fronts. Litigation funding firms and U.S. law firms are leading many of these efforts. In Germany, Volkswagen faces private securities fraud litigation. Consumer suits are in the works. Within the United States, groups of Volkswagen owners sued in many different state and federal courts, seeking the best forum under different criteria. These efforts were examples of domestic forum shopping. Volkswagen shareholders around the world have also sought out the best possible forum for their securities litigation. Some who bought American Depositary Receipts (ADRs) on U.S. exchanges have

courts is increasing. As one observer puts it, "certain facts on the ground are clear: in recent decades, litigation in U.S. courts with a foreign or international component has been growing in volume and It is now widely believed that the United States is experiencing an explosion of transnational litigation-litigation involving foreign parties or foreign activity, Also in complexity." According to another, "the last thirty years have seen a growing torrent of cases with international and foreign issues." Although both U.S. plaintiffs and foreign plaintiffs can forum shop transnational claims into U.S. courts, some commentators focus specifically on the latter. For example, one scholar describes a "tide of foreign plaintiffs against United States shores." Whytock, C. A., (March 2011). *The Evolving Forum Shopping System*, *Cornell Law Review*, 482,483, 496,497.

28 Smith Kline & French v. Bloch 1983 Guthrie, N., (1995). "A Good Place to Shop": Choice of Forum and the Conflict of Laws, *Ottawa Law Review*, 206.

29 Bookman, P. K., (2016). The Unsung Virtues of Global Forum Shopping, *Notre Dame Law Review*, Vol 92, Issue 2, 580-582.

sued in federal district court. But many shareholders have filed suit in Germany, Volkswagen's home forum. These choices are examples of transnational or global forum shopping. From one perspective, these lawsuits represent efforts of scheming, opportunistic lawyers searching worldwide for the best forum for extorting the highest possible judgment or settlement out of Volkswagen. From another perspective, however, Volkswagen's actions harmed parties all over the world; since many different nations empower private citizens to sue Volkswagen under such circumstances, it is only natural for those parties to hold Volkswagen accountable anywhere they can.

Airbus Industrie v Patel,³⁰ in which the courts of India, Texas and England became embroiled. The facts are instructive on a number of levels. On 14 February 1990, an Indian Airlines flight took off from Bombay on a domestic flight to Bangalore. The aircraft was an Airbus A320, manufactured in Toulouse, France. There was a full complement of passengers. Almost all of them were Indian. But there were also two British families and three Americans. During its final approach to land in Bangalore, the aircraft struck the ground short of the runway. Ninety-two persons died. No-one escaped uninjured. An Indian Board of Enquiry found that the principal cause of the accident was pilot error. But it also found that the Bangalore airport company was at fault in failing to have adequate safety procedures in place. In India, litigation against the airline and the airport company resulted in a total award for all claimants of US\$75,000 (after costs). The English claimants then brought an action in Texas against a number of parties who may have had some connection to the aircraft or its operation. One such party was the manufacturer, Airbus. Airbus applied successfully to the Indian court for an injunction to restrain the English claimants from suing it anywhere other than India. But the injunction had no effect because the English claimants were outside India, and thus not amenable to the process of the Indian court. Airbus therefore came to England and sought an injunction in the home courts of the English claimants to stop them

from continuing the Texas action against it. In the Court of Appeal, Airbus succeeded. But the House of Lords thought otherwise. Lord Goff held that the English court had to have a "sufficient interest" in the matter in order to justify the indirect interference with the foreign court which an antisuit injunction entails.

Manufacturers Life Insurance Co. v. Guarantee Co. of North America, where judge was willing to accept that forum-shopping is a valid way for a party to pursue legitimate interests, but who intervened when the conduct of the shopping expedition began to work unfairness on the defendant. Both parties to the action were Ontario companies. The plaintiff had sued in California and Utah to recover losses under a life insurance company's blanket bond. When the defendant disputed the jurisdiction of the American courts, the plaintiff commenced proceedings in Ontario. The plaintiff then moved to stay its own proceedings in Ontario, until the determination of the jurisdictional questions in California and Utah. Judge in dismissing the motion to stay proceedings, held that while the plaintiff was entitled to shop for favourable law, it was unfair "to put the defendant 'on hold' until the plaintiff has shopped the world."³¹

CONCLUSION

Forum Shopping is not a negative legal phenomenon. It is a fact that different legal systems allow parties to determine where to initiate proceedings for a transnational dispute of any complexity. Forum shopping is a form of strategic behavior based on the law system characteristics that influence the formation of plaintiffs' expectations of court proceedings. Sometimes, substantive legal differences dictate the choice of party. Often, the choice of parties is dictated by the relevant procedural characteristics of the court (low costs, the possibility of receiving high compensation, etc.), as Forum shopping is an attempt to gain a tactical advantage that will contribute to the successful conclusion of the plaintiff's case.

30 International Law Association London Conference, (2000). Committee on International Civil and Commercial Litigation, Third Interm Report: Declining & Referring Jurisdiction in International Litigation, 2,3.

31 *Manufacturers Life Insurance Co. v. Guarantee Co. of North America* 1987 Guthri, N., (1995). "A Good Place to Shop": Choice of Forum and the Conflict of Laws, *Ottawa Law Review*, 206,207.

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