UNIT - 4

CONCEPT OF JURISDICTION

STRUCTURE

4.1 INTRODUCTION

'Jurisdiction' is the concept where by in any legal system, the power to hear or determine a case is vested in an appropriate court. The justice delivery system of any legal system operates through structures called 'courts' and the starting point of such functionality is that of 'jurisdiction' by which the verdict of the court becomes validated as a proper 'judgment' to be carried in accordance with law. The system of 'Courts of Law' needs to be understood to understand the principle of jurisdiction. Statutes create the institutions of Courts, which clothes them with appropriate power and jurisdiction. The Courts adjudicate and administer justice based on such powers conferred on them. A court's general authority to hear and/or

"adjudicate" a legal matter is referred to as its "jurisdiction." In the United States, jurisdiction is granted to a court or court system by statute or by constitution. A court is competent to hear and decide only those cases whose subject matter fits within the court's jurisdiction. A legal decision made by a court that did not have proper jurisdiction is deemed void and nonbinding upon the litigants.

Jurisdiction may be referred to as "exclusive," "original," concurrent, general, or limited. Federal court jurisdiction may be "exclusive" over certain matters or parties (to the exclusion of any other forum) or may be "concurrent" and shared with state courts. In matters where both federal and state courts have concurrent jurisdiction, state courts may hear federal law claims (e.g., violations of **civil rights**), and parties bringing suit may choose the forum. However, when a plaintiff raises both state and federal claims in a state court, the **defendant** may be able to "remove" the case to a federal court.

4.2 OBJECTIVES

After reading this unit you will be able to understand:

- Meaning of jurisdiction
- Principles of Jurisdiction
- Theories of jurisdiction in international law
- The Theory of the Up loader and the Downloader
- Pecuniary jurisdiction
- Subject matter jurisdiction
- Territorial matter jurisdiction
- Uniform and varied jurisdiction
- Jurisdiction by consent
- Jurisdiction issues in international perspective
- The Consequences of Global Enforcement of Non Harmonized Laws

4.3 SUBJECT

4.3.1 MEANING OF JURISDICTION

Jurisdiction is a word with many meanings.*Abelleira v. District Court of Appeal, 17 Cal.2d 280*[1] says, "We now proceed to a consideration of the meaning of the term "jurisdiction" in its relation to the granting of a writ of prohibition. The term, used continuously in a variety of situations, has so many different meanings that no single statement can be entirely satisfactory as a definition. At best it is possible to give the principal illustrations of the

[1]http://login.findlaw.com/scripts/callaw?dest=ca/cal2d/17/280.html

situations in which it may be applied, and then to consider [17 Cal.2d 288] whether the present case falls within one of the classifications."

Jurisdiction is a term that refers to whether a court has the power to hear a given case. Jurisdiction is important because it limits the power of a court to hear certain cases. If courts did not exercise appropriate jurisdiction, every court could conceivably hear every case brought to them, which would lead to confusing and contradictory results. The concept of jurisdiction is a little easier to understand in state courts. Every state in the United States has its own court system to hear cases arising from that state. Suppose that a citizen of Mississippi sued a citizen of Alabama in a case involving a real estate transaction that took place in Georgia. The case could be brought in state court in Mississippi, or Alabama, because of where the parties live, or in Georgia, because of where the property at issue is located. However, such a case could not be brought in the state of Alaska, because none of the parties live there, and the state of Alaska has no attachment to the case at all. The Alaska court would dismiss any claims in this example because it would not have the appropriate jurisdiction.

A federal court, on the other hand, has more extensive jurisdiction than a state court. While the jurisdiction of state courts are limited by their boundaries, the federal court system covers the entire nation. For example, the Supreme Court can hear cases from any state. Federal Courts of Appeal can hear cases from any of the states in their region (except for the D.C. Circuit, which only hears cases from the District of Columbia). The federal courts also have jurisdiction on some cases where one party is outside of the United States of America.

Another form of jurisdiction is what is known as "subject matter jurisdiction" - whether a given federal court can rule on the subject matter of the case in question. For example, no federal court has "subject matter jurisdiction" to probate a will. The probate process has, traditionally, always been left up to the individual state courts. In contrast, cases involving patents are always in the "subject matter jurisdiction" of federal courts. Because the Constitution gives Congress the specific power to regulate the patent system, state courts do not have the appropriate jurisdiction to hear patent cases. Federal courts also have "exclusive" subject matter jurisdiction over copyright cases, admiralty cases, lawsuits involving the military, immigration laws, and bankruptcy proceedings.

4.3.2 PRINCIPLES OF JURISDICTION

There are three types of jurisdiction generally recognized in international law. These are:

(1) The jurisdiction to prescribe;

(2) The jurisdiction to enforce; and

(3) The jurisdiction to adjudicate.

The jurisdiction to prescribe is the right of a state to make its law applicable to the activities, relations, the status of persons, or the interests of persons in things.

Under international law, there are six generally accepted bases of jurisdiction or theories under which a state may claim to have jurisdiction to prescribe a rule of law over an activity. They are:

1. Subjective Territoriality

2. Objective Territoriality

3. Nationality

4. Protective Principle

5. Passive Nationality

6. Universality

As a general rule of international law, even where one of the bases of jurisdiction is present, the exercise of jurisdiction must be reasonable.

Subjective territoriality is by far the most important of the six. If an activity takes place within the territory of the forum state, then theforum state has the jurisdiction to prescribe a rule for that activity. The vast majority of criminal legislation in the world is of this type.

Objective territoriality is invoked where the action takes place outside the territory of the forum state, but the primary effect of that activity is within the forum state. The classic case is that of a rifleman in Canada shooting an American across Niagara Falls in New York. Theshooting takes place in Canada; the murder-the effect-occurs in the United States. The United States would have the jurisdiction to prescribe under this principle. This is sometimes called "effects jurisdiction" and has obvious implications for cyberspace.

Nationality is the basis for jurisdiction where the forum state asserts the right to prescribe a law for an action based on the nationality of the actor. Under the law of the Netherlands, for example, a Dutch national "is liable to prosecution in Holland for an offence committed abroad, which is punishable under Netherlands law and which is also punishable under the law of the country where the offence was committed."[2] Many other civil law countries have similar laws.

Passive nationality is a theory of jurisdiction based on the nationality of the victim. Passive and "active" nationality are often invoked together to establish jurisdiction because a state has more interest in prosecuting an offense when both the offender andthe victim are nationals of that state. Passive nationality is rarely used for two reasons. First, it is offensive for a nation to insist that foreign laws are not sufficient to protect its citizens abroad. Second, the victim is not being prosecuted. A state needs to seize the actor in order to undertake a criminal prosecution.

The Protective principle expresses the desire of a sovereign to punish actions committed in other places solely because it feels threatened by those actions. This principle is invoked where the "victim" would be the government or sovereign itself. For example, in *United States v.Rodriguez*[3], the defendants were charged with making false statements in immigration

[2]*Public Prosecutor/Y., HR May and September 1957, 24 Int'l L. Rep. 264, 265 (1957)*.
[3]*United States v. Rodriguez, 182 F. Supp. 479 (S.D. Cal. 1960)*

applications while they were outside the United States. This principle is disfavoured for the obvious reason that it can easily offend the sovereignty of another nation.

The final basis of jurisdiction is universal jurisdiction, sometimes referred to as "universal interest" jurisdiction. Historically, universal interest jurisdiction was the right of any sovereign to capture and punish pirates. This form of jurisdiction has been expanded during the past century and a half to include more of *jus cogens*: slavery, genocide, and hijacking (air piracy). Although universal jurisdiction may seem naturally extendable in the future to Internet piracy, such as computer hacking and viruses, such an extension is unlikely given the traditional tortoise-like development of universal jurisdiction. Just as important, universal jurisdiction traditionally covers only very serious crimes.

As a result, all nations have due process type problems with convictions under this principle.

4.3.3 THE THEORY OF THE UP LOADER AND THE DOWNLOADER

The public interacts with cyberspace in two primary ways: either putting information into cyberspace or taking information out of cyberspace. At law in cyberspace, then, there are two distinct actors: the up loader and the downloader. Under this theory, the up loader and the downloader act like spies in the classic information drop—the up loader puts information into a location in cyberspace, and the downloader accesses it at a later time. Neither need be aware of the other's identity. Unlike the classic information drop, however, there need not be any specific intent to communicate at all. Some areas of the Internet are accessed by hundreds of thousands of people from all over the world, while others languish as untrodden paving stones on the seemingly infinite paths of cyberspace.

In both civil and criminal law, most actions taken by up loaders and downloaders present no jurisdictional difficulties. A state can forbid, on its own territory, the uploading and downloading of material it considers harmful to its interests. A state can therefore forbid anyone from uploading a gambling site from its territory, and can forbid anyone within its territory from downloading, i.e. interacting, with a gambling site in cyberspace. Interacting may involve considerably more than downloading, but it always involves the act of downloading. Two early American cases demonstrate how this theory would be manifest.

The *Schooner Exchange*[4] held that a French war vessel was not subject to American law, although it was in an American port. Similarly, a webpage would be ascribed the nationality of its creator, and thus not be subject to the law of wherever it happened to be downloaded.

The *Cutting Case*[5] provides an example of how an up loader should be viewed in a foreign jurisdiction that is offended by material uploaded into cyberspace. Mr. Cutting published an article in Texas which offended a Mexican citizen. When Mr. Cutting visited Mexico he

[4]*The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116 (1812)*
[5]See Letter, Secretary of State to United States Ambassador to Mexico. Department of State, Washington, November 1, 1887 (reprinted in part in, Joseph Sweeney, et al., The International Legal System 90–93)

wasincarcerated on criminal libel charges. The United States Secretary of State instructed the U.S. ambassador in Mexico to inform the Mexican government that, "[T]he judicial tribunals of Mexico were not competent under the rules of international law to try a citizen of the United States for an offense committed and consummated in his own country,"

As a general proposition, where uploading certain material is a crime, it is an offense "committed and consummated" in the state where the up loader is located.[6]

4.3.4 CLASSIFICATION OF JURISDICTION WITHIN A COUNTRY'S LEGAL SYSTEM

The legal system of a country operates through the process of jurisdiction, which can be classified as:

a. Pecuniary jurisdiction
b. Subject matter jurisdiction
c. Territorial matter jurisdiction

a. Pecuniary jurisdiction: Pecuniary jurisdiction denotes to the monetary limits involved in the dispute. Here the jurisdiction operates on a set monetary limit of the value of dispute and accordingly courts have to be approached. If the dispute is for a set amount the court to be approached will be the district courts and above such limits it will be the High Court of the State.

b. Subject matter jurisdiction: The subject matter jurisdiction specifies the nature of the jurisdiction based on the type of disputes that are involved. A company winding up procedure can be dealt only in the High Court and not a district court is an example. A family court will be place for initiating a dispute on divorce.

c. Territorial matter jurisdiction: The territorial matter of jurisdiction involves the geographical factor where the dispute can be brought before a particular type of court.

Such criteria is based on the hierarchy of court structures of a legal system clothing power based on territory in its initial stages of contention of a dispute with rights of appeal gradually moving upwards towards the apex court. And again on criteria are set for magnitude and seriousness of the disputes to approach appropriate courts. Even if a court by oversight or wrong interpretation admits a contention to be dealt by the court there are provisions to challenge the same and render such a verdict null and void based on the principle of 'jurisdiction'? In essence immaterial of the merits of a case, the process of resolving the dispute and enforcing the same will depend on the correct 'jurisdiction'.

The concept of jurisdiction, having explained in the context of 'cyber space' the territorial jurisdiction assumes the importance in terms of challenges posed by Internet operations. Such jurisdiction is determined by the relevant civil procedure code where various possibilities depending the subject matter in which the issue of 'jurisdiction' has to be decided. For example if it is a property issue, the question of applying jurisdiction will be part of the civil procedure code enumerating the various options of courts to be approached based on the complexity of

[6]JURISDICTION IN CYBERSPACE:A THEORY OF INTERNATIONAL SPACES; *Darrel C. Menthe*

the property involved in terms of its location. Similarly the issue of 'jurisdiction' of a contract drawn can be decided on the options of: a. particular choice of legal action decided by the parties themselves or b. based on the principles of 'cause of action' or the where the plaintiff resides.

Here 'cause of action' means of a bundle of rights to the plaintiff to prove the place where the 'cause of action' arose for him or her to seek judicial remedy on which the courts can assume jurisdiction. On the other hand if the plaintiff fails to prove such fact however partial, the defendant will succeed in the judgment on the grounds of jurisdiction of such effort by the plaintiff. Such 'cause of action' to be proved is based on the facts of the individual case.

Such concept of 'jurisdiction' assumes greater importance on the fate of the case in the legal system like United States where each state has its own sets of laws itself complicating the efforts of the plaintiff, whereas in the Indian context it is less cumbersome as the laws are uniform through the length and breadth of the country and only issue being approaching the appropriate courts. The issue of jurisdiction will assume complex proportions in case of multiple parties a part of the plaintiff with multiple defendants and the dispute involving different places of operations. Here the courts will have to look carefully to assume jurisdiction or to abandon the same.

4.3.5 UNIFORM AND VARIED JURISDICTION

In Indian context, the jurisdiction issue is uniform as the statutes are enacted for the entire country and for all states. But in countries like United States of America which is also a federal set up like India, each state has its own laws and hence jurisdiction assumes importance. In situation of conflict on the issue of jurisdiction, United States Courts apply various principles based on the claim of property, tort, contract etc. In case of the tort cases the courts apply the principle of *lex loci deliciti* or the "the law of the place of the wrong". In case of the claim for a property, the jurisdiction issue is approached based on the first restatement principle of lex situs- "the law of the physical location" later enlarged by the principle of second restatement of law in 1971 - "when faced with the choice between jurisdictions court should apply the law of the jurisdiction with the significant relationship to the litigation." On contractual claims the courts apply the principle of "minimum contacts" for corporations as well as individuals. This principle is based on the obligations arising out fair play and substantial justice on the transaction and its relationship to the forum state. Thus the issue of jurisdiction has varied interpretations and expansions based on developments in industrial transactions affected by the technological revolution.

4.3.6 INTERNET JURISDICTION

In the context of internet or cyber transactions, jurisdictions pose a major challenge in interpretations in countries like United States where there is a conflict of laws as it is not uniform throughout the country and States having their own laws. The transactions happening

through the Internet has multiple parties residing in various territories. For example the Police in Hyderabad come across objectionable material in a website which is launched by someone in Pakistan but hoisted from Italy through a server. In this situation the question arises that, under which jurisdiction can the offence be brought?

Thus jurisdiction is seen a major issue in the Cyber Space and Internet and the traditional method of assessing such jurisdiction is complicated in Internet transactions. In a traditional contract, the jurisdiction is arrived at 1. The place the defendant resides and 2. Where the cause of action arose? In the above illustrations it is complex to understand jurisdiction. Especially in those cases which run in commerce through Internet may land up in different jurisdictions when sued by the consumers around the world. On the other hand it is also argued that the hapless consumer will also be left without any defence in cases where the service providers and intermediaries in cyberspace are spread out in various jurisdictions.

In this situation many jurists and cyber law experts argue that the complications of jurisdictions are blown out of proportions and can be resolved by simpler yardsticks of existing principles of jurisdiction. They argue that issue of jurisdiction is either mistakenly or mischievously exaggerated, as whatever transactions are taking place it takes place on physical locations with physical sellers and buyers and only the links are more in such transactions. They argue that firstly, most complications are avoided if there are explicit provisions among the contracting parties on their choice of law governing such contracts. Secondly, in cases of contracts which are silent in respect of the choice of the law, the courts have come to grips with the situation and thus the intent, purpose and other factors of the websites will decide the jurisdiction rather than anywhere or everywhere jurisdiction phobia.

Some other jurists and cyber law experts argue that it is finally left to the pattern of judgments of the courts which will decide the issue of jurisdiction where the private international law cannot play any meaningful and constructive role. In this background the international efforts of jurisdiction assumes significance in cyberspace, which will be dealt in the subsequent modules.

4.3.7 JURISDICTION BY CONSENT

In the cases where the contracting parties consent specifically to have a jurisdiction of a particular country, it would be binding on the parties and cannot later turn the argument that the court has no jurisdiction on general grounds. Connected to this is the general principle that the court cannot pass an ex- parte decree against a party who did not appear or contest in such litigation. This often leads to the notion that mere non-appearance will allow the defendant to get away with the proceedings. But there are various instances where Indian Courts have interpreted section 13(d) of CPC to uphold natural justice and thus mere procedural loopholes cannot be taken as excuse for violation of substantial aspects of natural justice to let the offender to get away and has enforced jurisdiction in such cases. The detail will be discussed in the unit 6.

4.3.8 JURISDICTION ISSUES IN INTERNATIONAL PERSPECTIVE

It is clear from above discussion that the issue is not mere jurisdiction and the issue the effect of such jurisdiction and enforcing the decrees needs reciprocal arrangements. The Foreign Awards (Recognition and Enforcement) Act of 1961, on issue of arbitration in Internet, is based on the New York Convention of 1958, by India allows arbitration and recognition of foreign awards.

The issue of jurisdiction in international private law currently is addressed by the Hague Convention on jurisdiction.

The general framework for the convention is as follows.

1. Countries which sing the convention agree to follow a set of rules regarding jurisdiction for cross-border litigation. Nearly all civil and commercial litigation is included.

2. So long as these jurisdiction rules are followed, every country agrees to enforce nearly all of the member country judgments and injunctive orders, subject only to a narrow exception for judgments that are "manifestly incompatible with public policy", or to specific treaty exceptions, such as the one for certain antitrust claims.

3. A judgment in one country is enforced in all Hague convention member countries, even if the country has no connection to a particular dispute.

4. There are no requirements to harmonize national laws on any topic, except for jurisdiction rules, and save the narrow Article 28(f) public policy exception, there are no restriction on the types of national laws that to be enforced.

5. All "business to business" choice of forum contracts are enforced under the convention. This is true even for non-negotiated mass-market contracts. Under the most recent drafts of the convention, many consumer transactions, such as the purchase of a work related airlines ticket from a web site, the sale of software to a school or the sale of a book to a library, is defined as a business to business transaction, which means that vendors of goods or services or publishers can eliminate the right to sue or be sued in the country where a person lives, and often engage in extensive forum shopping for the rules most favourable to the seller or publisher.

There are currently 49 members of the Hague Conference, and it is growing. They include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Luxembourg, Malta, Mexico, Monaco, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Suriname, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay

and Venezuela.
James Love of the CPT (Consumer Protection Technology) addresses certain issues on the efforts of the Hague Convention and the following excerpts are reproduced highlighting the salient features of the convention "negotiations for a new treaty that seeks to strengthen the global enforcement of private judgments and injunctive relief in commercial litigation. While the convention would clearly have some benefits, in terms of stricter enforcement of civil judgments, it would also greatly undermine national sovereignty and inflict far-reaching and profound harm on the public in a wide range of issues.[7]

The treaty is called the Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters, and is being negotiated under the little known Hague Conference on Private International Law. The treaty is complex and far reaching, but is effectively unknown to the general public.

4.3.9 THE CONSEQUENCES OF GLOBAL ENFORCEMENT OF NON HARMONIZED LAWS

The early discussions on the current convention began in 1992, largely in the context of judgments where businesses would be the defendants, for disputes involving physical goods or traditional services. Only recently has there been recognition of the far-reaching consequences of using the treaty framework for addressing disputes involving the Internet, or litigation involving intellectual property claims or information in general.

The Internet issues deserve special attention. The treaty gives nearly every member country jurisdiction over anything that is published on or distributed over the Internet. If the treaty (as written) is widely adopted, it will cripple the Internet. The reason is fairly straightforward. The Hague framework begins with the notion that there will not be harmonization of substantive law, only harmonization of rules regarding jurisdiction and enforcement of laws. So it is a fundamental part of the Hague treaty that laws that are very different from each other will be enforced, across borders.

For example, under the treaty, different national laws concerning libel or slander will give rise to judgments and injunctions, as will different national laws regarding copyright, patents, trademarks, trade secrets, unsolicited email, unfair competition, comparative advertising, parallel imports of goods, and countless other items. As a consequence, people well find that activities that are legal where they live are considered illegal in a different country and that under the treaty, the foreign country will likely have jurisdiction, and their laws will be enforceable in all Hague member countries.

To be more concrete, note that under different national copyright laws, authors can liberally use quotations from other authors in some countries, but not in others. Software engineers can decompile or use other reverse engineering techniques to find out how to make software programs work together (be interoperable) in some countries, but not in others. In some

[7] www.nalsarpro.org/CL/Modules/Module%201/Chapter2.pdf ·

countries school teachers can distribute newspaper stories and other copyrighted materials in class rooms as a fair use, but such distribution would be illegal in other countries. Some countries allow the use of parody as an exception to copyright or trademark laws, while other countries do not. In some countries it is permissible to disparage products or publish comparative price advertisements, while in other countries it is not. In some countries it is permitted to publish leaked memorandums and documents that embarrass governments or corporations, but in other countries this would be considered a violation of copyright laws (as in the *UK David Shayler case),* or a wrongful disclosure of proprietary business information. Rap music that legally uses "sampling" of music under US law will violate certain European copyright regimes where this is illegal. In some countries a failure to obtain permission to hyper-ling to a web page or use a meta-tag with the name of a business is considered an infringement of intellectual property, while in other countries it is not. There are so many example that have no end.

There are fundamental problems with enforcing every country's national trademark laws on the Internet, because different firms sometimes claim the same mark in different countries, and what may be a generic term in one country is a proprietary mark in another country. These are important and difficult conflicts and it is useful for policy makers to seek solutions to these jurisdictional disputes, but a "solution" that simple enforces everyone's laws on everyone is really no solution at all.

In the patent area, the Hague convention would force European governments to begin enforcing judgments and injunctive relief from US software and business methods patents, even though software and business methods cannot be patented in many European countries. As the rest of the world is forced to pay for US software and business methods patents, they will enact their own anti-competitive and poorly managed software and business method patent systems, and US citizens will have to pay for those too.

The Internet related cases are the most obvious areas where the Hague Convention will cause problems, but hardly the only cases.

As noted above, under all current drafts of the convention, "business to business" choice of court clauses must be enforced, even those involving mass marketed non-negotiated contracts. In the Edinburgh drafts, business to business contracts are defined as everything that does not involve personal work related purchase, will be considered business to business transactions, and even click on or shrink wrapped licenses with choice of court clauses must be honoured. This is spelled out in Article 4 of the proposed Convention.

In an earlier attempt to negotiate a treaty on jurisdiction, this choice of court provision was not mandatory in all contracts, and in particular, there was good language to exempt contracts that were abusive or unfair. The 1965text, which has notbeen used in the current treaty negotiations, read: "The agreement on the choice of court shall be void or voidable if it has been obtained by an abuse of economic power or other unfair means." With the elimination of the safeguards against unfair and abusive contracts, you now have a mandatory choice of court clause in Article 4. This will have a huge effect on national sovereignty, because any publisher or seller of any product can simply shift jurisdiction, by contract, to a different country.

One effect will be in the area of books or videos, where publishers can use contracts to shift jurisdiction to countries (there are many in Europe) that do not recognize the "first sale" doctrine which permits zero royalty lending by libraries or video stories. The South Africa victory over the pharmaceutical companies for parallel imports of medicines could be undermined by choice of forum contracts that select courts that did not recognize the first sale doctrine. Airlines, banks and any number of institutions can use these choice of court agreements to change the country where disputes are heard. Any seller can use Article 4 to shop for favourable national laws, and also to deny the public the opportunity to seek redress or defend actions in the countries where they live, which is a huge burden for most people and small businesses and non-profit organizations.

The contracts can also shift jurisdiction on software to countries that do not permit reverse engineering. Web pages that have terms of service agreements on such issues as hypertext linking or use of company or brand names in meta-tags, or that require prior approval for reviews of products, or any number of other clauses, all of which exist today, would be much stronger because companies could simply point the choice of court to the jurisdiction most likely to actually enforce these provisions. The free software movement would be particularly vulnerable to these provisions, as well as the expanded reach of overly broad national laws on software patents and trade secrets.

4.4 SUMMARY

'Jurisdiction' is the concept where by in any legal system, the power to hear or determine a case is vested in an appropriate court. The justice delivery system of any legal system operates through structures called 'courts' and the starting point of such functionality is that of 'jurisdiction' by which the verdict of the court becomes validated as a proper 'judgment' to be carried in accordance with law. Jurisdiction is a term that refers to whether a court has the power to hear a given case. Jurisdiction is important because it limits the power of a court to hear certain cases. If courts did not exercise appropriate jurisdiction, every court could conceivably hear every case brought to them, which would lead to confusing and contradictory results.

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jurisdiction or theories under which a state may claim to have jurisdiction to prescribe a rule of law over an activity.

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4. Passive nationality is a theory of jurisdiction based on the nationality of the victim.
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6. The final basis of jurisdiction is universal jurisdiction, sometimes referred to as "universal interest" jurisdiction. This form of jurisdiction has been expanded during the past century and a half to include more of *jus cogens*: slavery, genocide, and hijacking (air piracy).

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a major issue in the Cyber Space and Internet and the traditional method of assessing such jurisdiction is complicated in Internet transactions. In this situation many jurists and cyber law experts argue that the complications of jurisdictions are blown out of proportions and can be resolved by simpler yardsticks of existing principles of jurisdiction. Some other jurists and cyber law experts argue that it is finally left to the pattern of judgments of the courts which will decide the issue of jurisdiction where the private international law cannot play any meaningful and constructive role.

In the cases where the contracting parties consent specifically to have a jurisdiction of a particular country, it would be binding on the parties and cannot later turn the argument that the court has no jurisdiction on general grounds.

It is clear from above discussion that the issue is not mere jurisdiction and the issue the effect of such jurisdiction and enforcing the decrees needs reciprocal arrangements. The Foreign Awards (Recognition and Enforcement) Act of 1961, on issue of arbitration in Internet, is based on the New York Convention of 1958, by India allows arbitration and recognition of foreign awards.

The issue of jurisdiction in international private law currently is addressed by the Hague Convention on jurisdiction. The Internet issues deserve special attention. The treaty gives nearly every member country jurisdiction over anything that is published on or distributed over the Internet. If the treaty (as written) is widely adopted, it will cripple the Internet. The reason is fairly straightforward. The Hague framework begins with the notion that there will not be harmonization of substantive law, only harmonization of rules regarding jurisdiction and enforcement of laws. So it is a fundamental part of the Hague treaty that laws that are very different from each other will be enforced, across borders.

4.5 GLOSSARY

JUS COGENS: Jus *cogens*“ compelling law” means a peremptory norm of general international law from which no derogation is permitted.

4.6 SAQS

1. TICK THE CORRECT ANSWER:

(i) How many types of jurisdiction generally recognized in international law?

(a) One

(b) Two

(c) Three

(d) Four

(ii) Who puts information into a location in cyberspace?

(a) Up loader

(b) Downloader

(iii) In Indian context, the jurisdiction issue is……

(a) Uniform

(b) Varied

(iv) In the case of Cyber space the law apply is/are:

(a) Domestic law

(b) International law

(c) Special law

(d) Personal law

(v) Which of the following case is related with meaning of the jurisdiction?

(a) Cutting Case

(b) Schooner Exchange case

(c) United States v.Rodriguez

(d) Abelleira v. District Court of Appeal

2. True and false Statement:

(i) Pecuniary jurisdiction denotes to the monetary limits involved in the dispute. True/False

(ii) In countries like United States laws is not uniform throughout the country. True/False

(iii) India is not a member of the Hague Conference. True/False

(iv) Jurisdiction is a major issue under Internet jurisdiction. True/False

(v) Territoriality is not a major issue in Internet cases. True/False

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4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Write an essay on 'concept of jurisdiction'.

2. Explain 'law of server in brief.

3. Discuss the theories of jurisdiction under International law.

4. Enumerate Hague Convention on jurisdiction.

4.10 ANSWER SAQS

1. (i) (c) ; (ii) (a); (iii) (a); (iv) (d); (v) (d);
2. (i) True; (ii) True; (iii) False; (iv) True; (v) False;