

Investigation Report on Jurisdiction of Online Shopping Contract Disputes

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Abstract

With the continuous expansion of the market scale of online shopping, the contradiction between merchants, platforms and consumers has gradually become prominent, which is manifested in the increasing number of online shopping disputes in the courts. The determination of jurisdiction is the starting link before the dispute enters the litigation, which involves the orderly conduct of civil litigation and is related to the interests of the parties. This paper attempts to analyze the causes of the jurisdictional issues of online shopping contract disputes through the investigation of the jurisdictional decisions, explore the shortcomings of existing jurisdictional provisions in online shopping contract disputes, improve the jurisdictional system of online shopping contract disputes, and explore possible legal optimization paths, so as to provide theoretical support for legislation and justice.

Keywords: jurisdiction, online shopping contract disputes, online shopping

1. Introduction

Since the end of the last century, online shopping has gone through 25 years in China. Compared with the convenience of traditional shopping malls, this form of consumption has developed into an important part of people's daily consumption, which has greatly affected people's lives. However, in this process, the contradictions among merchants, platforms and consumers are prominent, and the frequency of online shopping dispute lawsuits is significantly increased. According to the judicial big data report on online shopping contract disputes, there were 49,000 online shopping contract disputes in the first half of 2017-2020 and 133,000 cases in 2017; the number of cases in 2018 was 121,000, down 9.02 per cent; the number of cases in 2019 was 156,000, an increase of 28.93 per cent; the number of cases in the first half of 2020 is 80,000, showing an upward trend.

Compared with the tradition, online shopping has extended the performance of the contract in time and space, and there is subject uncertainty, which is prone to disputes into litigation. Jurisdiction is the beginning of litigation, involving the normal exercise of the jurisdiction of courts at all levels and the orderly conduct of civil litigation, which is related to the exercise of litigation rights of the parties. Through the investigation of cases, this paper analyzes the causes of jurisdiction problems in online shopping contract disputes, the shortcomings of existing laws, and tries to explore possible legal regulation paths, so as to provide theoretical reference for legislation and justice.

In this paper, the method of investigation is used to collect data for the literature. The content of the literature is the civil ruling of jurisdiction published by Xi'an courts at all levels from 2016 to 2021. Xi'an is the starting point of the Silk Road, the central city of northwest China, relying on frequent economic and trade.

2. Analysis of the Jurisdictional Status of Online Shopping Contract Disputes in Xi'an

2.1 Type of Parties to an Online Shopping Contract Dispute

Through the type analysis of the survey samples, it is found that the main types of the parties are usually natural persons and legal persons, and only 5 cases are natural persons. Specific to the subject of transactions, consumers as plaintiff online shopping contract disputes litigation 50 cases, up to 100%; as the subject of the defendant, compared with the single composition of the plaintiff, the defendant is characterized by multiple identities and consistent status. Statistics on the number show that there are 37 cases of defendants as merchants, 7 cases of platforms, and 8 cases of merchants and platforms, as shown in the following figure:

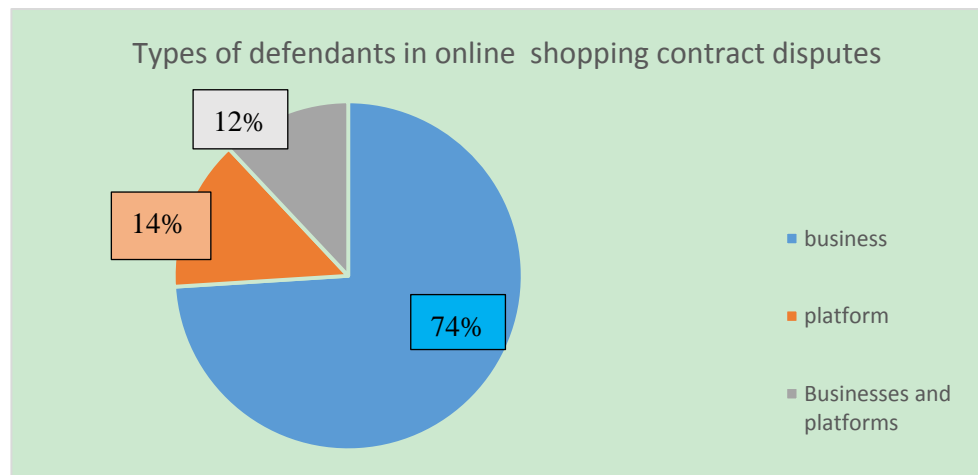


Figure 1. Types of defendants in online shopping contract disputes

From the perspective of data, consumers are more inclined to list merchants as objects of separate lawsuits, and pay less attention to the platform. On the one hand, there are few subjects with similar platforms in traditional transactions. Transactions occur directly between consumers and merchants, and habitual concepts still affect people. On the other hand, the bilateral mechanism of the platform makes it focus on the matching function, not directly trade, whether it bears responsibility in the transaction, which responsibility, are easy to make consumers question, affect the judgment of the object of action. However, 14% of consumers listed platforms as defendants, and 12% of consumers listed platforms and businesses as defendants. Is the platform responsible for shopping contract disputes? If undertaken, what responsibility? In what position? The defendant is the premise of the existence of the jurisdictional ruling. Is the different choice of the defendant type the source of jurisdictional disputes?

2.2 The Proposer and Focus of Online Shopping Contract Dispute Jurisdiction Objection

The survey found 17 cases of jurisdictional objections initiated by consumers, 32 cases initiated by businesses or platforms, and 1 case of designated jurisdiction. Unlike lawsuits, the sponsors of jurisdiction objections are mainly merchants or platforms. This reflects the game process between the two sides. When merchants and consumers establish a contractual relationship, they are in a remote state, which prolongs the online shopping contract in time and space. When consumers file lawsuits, they tend to choose courts with closer space. For merchants and platforms, they are not the optimal courts. What does this phenomenon mean?

The dispute between the plaintiff and the defendant focuses on three aspects. One is the jurisdiction dispute between the defendant's residence and the contract execution place, namely the legal jurisdiction dispute; the second is the dispute over whether the agreement jurisdiction is established, mainly about the effectiveness of the standard terms made by the platform. The former is based on Article 20 of the Supreme People's Court's Interpretation on Application, while the latter is based on Article 34 of the Civil Procedure Law of the People's Republic of China. The third is the controversy over whether the online shopping contract can be established. There were 22 cases of legal jurisdiction as the focus of controversy, 25 cases of agreement jurisdiction as the focus of controversy, 2 cases of controversy over the establishment of online shopping contracts, and 1 case of designated jurisdiction. The statutory jurisdiction should have been determined correctly, but there are frequent objections in the survey samples. Does this mean that there are omissions in the terms of statutory jurisdiction? The main objection to the jurisdiction of the agreement comes from whether the format terms agree or not, and what is the position of the platform? Need legal definition?

2.3 Results and Legal Basis of Jurisdiction Objection Ruling

The investigation found that the main rulings adopted by the people's court included the defendant's residence, the place of contract execution and the jurisdiction of the agreement. The following figure:

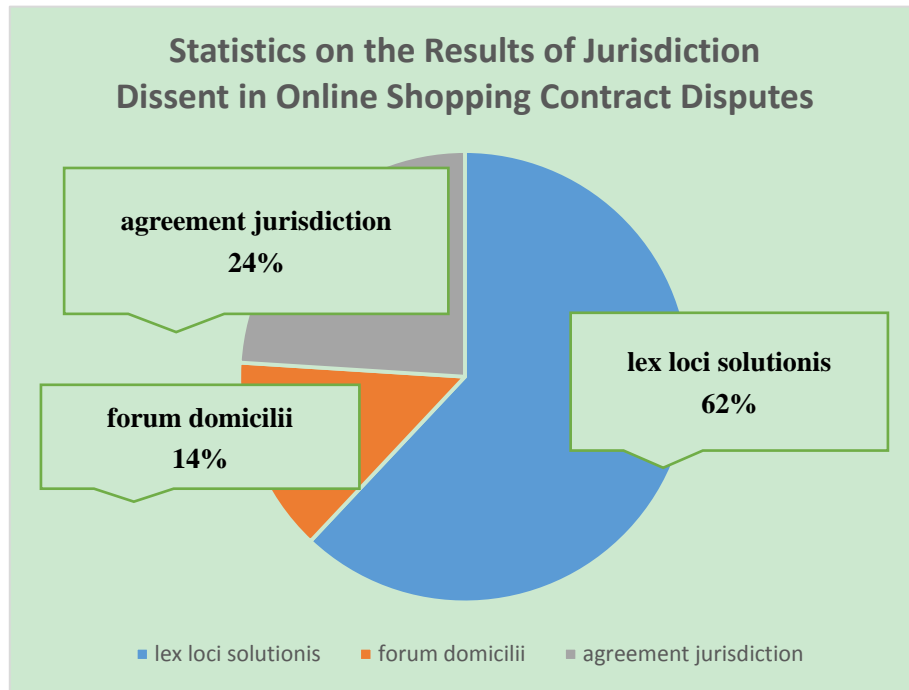


Figure 2. Statistics on the results of jurisdiction dissent in online shopping contract disputes

Among the results of jurisdiction objections, the performance of the contract is the most applicable, accounting for 62 %. The applicable rate of agreement jurisdiction is 24%, and the applicable rate of defendant residence is 14 %. The current jurisdiction system provides three jurisdictions, but in the jurisdiction of online shopping contract disputes, the application of contract execution is far more than the other two. Is this the reason of online shopping contract dispute jurisdiction objection?

The validity of the ruling comes from the content of the law, and the rationality comes from the agreement with the law. By investigating the provisions cited by the court to make the jurisdiction ruling, it can help to find the problems and causes of jurisdiction objection in online shopping contract disputes. The law cited by the people's court in the survey sample is as follows:

Table 1. Legal basis for judgment of dispute cases of online shopping contract

Name	Clause	Content	Reference Times
Law of Civil Procedure	Article 22	Supplement of the defendant ' s residence	2
	Article 23	Jurisdiction of Contract Disputes	7
	Article 34	Agreement Jurisdiction	6
	Article 35	Jurisdiction of the Court of First Instance	1
	Article 36	Transfer of jurisdiction	4
Judicial Interpretation	Article 18	Judgment standard of contract performance	7
	Article 20	Judgment criteria for the place of performance of a contract concluded by information network	38
	Article 31	The legal consequences of the standard clauses that are not properly reminded	5
	Article 36	Supplement of transfer jurisdiction	5
Consumer Rights and Interests Protection Law	Article26	form contract terms of the user obligations	4
Contract Law	Article 40	Invalid Form Contract Clause	

Note: The civil procedure law in the above table is the civil procedure law of the People ' s Republic of China; judicial interpretation is the judicial interpretation of the Civil Procedure Law of the People ' s Republic of China.

As shown in the above chart, the court's jurisdiction objections to make decisions according to the law includes the "Civil Procedure Law" judicial interpretation of the Civil Procedure Law "Consumer Protection Law of the People's Republic of China" Contract Law of the People's Republic of China, covering the current multiple procedural law, substantive law and judicial interpretation, citing 11 articles. The applicable law includes not only general provisions such as agreement jurisdiction and contract dispute jurisdiction, but also special rules. The terms of the format quoted the most, article 3. The most cited is the judicial interpretation of the Civil Procedure Law Article 20, 38 times. The legal application of online shopping dispute contract is characterized by many contents, various types and cross-sectoral law. Whether this kind of law is too scattered will affect the application of law? Will it affect people 's online shopping?

2.4 Special Cases

When analyzing the survey sample, the author found that many special case samples, compared with other cases, there is a big difference, but the ruling results did not take into account this kind of special situation, the author thinks that these special samples for cognitive jurisdiction objection problems and explore the causes have an important role, should be paid attention to.

Case 1 (西安中级人民法院 (2020) 陕 01 民辖终 165 号). The plaintiff Mingzhou Liang told the defendant Xianben Chen in the online shopping contract dispute case. The defendant Chen Xianben argued that the plaintiff Mingzhou Liang was a professional counterfeiter, and the receipt provided by the plaintiff was Weiyang District of Xi'an. However, it failed to provide the residence certificate of Xi'an, and there was a fictitious receipt address, so that the court without jurisdiction could obtain the purpose of jurisdiction, which was contrary to the legislative purpose of facilitating the determination of jurisdiction and litigation, harming the legitimate rights and interests of the defendant, and could not identify Weiyang District as the place of contract execution. The court of second instance, citing article 20 of the 'judicial interpretation', held that the consignment agreed by both parties on Taobao was not a central area and therefore had jurisdiction. The special case is that the plaintiff fictionalized the receiving address, changed the place of performance of the contract, and then changed the jurisdictional court. Is there a problem of actively choosing the court? Can the current jurisdiction system reflect the legislative purpose?

Case 2 (西安中级人民法院 (2016) 陕 01 民辖终 568 号). The plaintiff Shen Wenchao v. Hangzhou Youke Cosmetics Co., Ltd. Online shopping contract dispute case. The defendant claims that the contract is not the place of receipt in this case. After the appellant purchases the goods, the appellant transports the goods to the appellant on his behalf. He believes that the appellant has completed the delivery obligation when the goods are delivered to the carrier, and the place of contract execution should be the location of the appellant. The court also cited the 'judicial interpretation of the Civil Procedure Law' Article 20, that both parties agreed to receive goods for Lianhu District, the court jurisdiction. In this case, there is a new subject. Is there a direct correlation between freight behavior and online purchase contract in consumers, third-party logistics companies other than merchants? Is this subject one of the reasons of online shopping contract jurisdiction objection?

3. The Problems and Causes of Jurisdiction Ruling Results of Online Shopping Contract Disputes

3.1 The Type of Choice of the Accused Affects the Outcome of the Ruling on Jurisdictional Issues

Only the merchant is the defendant's investigation sample a total of 37 cases, the court ruling results have 37 cases to support the plaintiff's jurisdiction request, up to 100%. Of the 13 cases in which the Platform was composed of defendants, 7 had court decisions in support of the defendant 's jurisdictional request and 6 had support for the plaintiff.

This reflects that the type of defendant has an impact on the ruling of online shopping contract dispute jurisdiction objection. When the defendant is a business, the court tends to support consumers, and the platform is different. The court chosen by consumers is usually the place where the contract is performed; the court chosen by the business or platform is the location of the business or platform. Consumers are the relatively weak party in the litigation. In order to reflect fairness, the court tends to protect consumer rights and interests. In the decision of platform participation, the court did not "prefer" as before. All 13 cases were objections to agreement jurisdiction, specifically whether the format terms of the platform constituted a contract agreement, leading to differences in the decision.

3.2 Disputes Over Agreement Jurisdiction

There are 25 cases of jurisdiction objections raised by the parties are focused on agreement jurisdiction, of which 4 cases are supported by the court, 21 cases take legal jurisdiction. The four cases supported were disputes over whether the format clauses constituted agreement jurisdiction.

The court recognized the validity of the standard clauses in these four cases. However, in such disputes, the same court has different judgments in the same case. In the same way, the reminder adopted by the aggravated font has different ruling results in two cases (西安中级人民法院(2020)陕01民辖终174号, 西安中级人民法院(2017)陕01民辖终1040号). The former believes that the reminder obligation is not fulfilled, and the latter believes that the reminder obligation has been fulfilled. The main reason is that 'the judicial interpretation of the Civil Procedure Law 'Article 31,' the standard terms must be a reasonable way to remind the obligation, which is unclear. The ambiguity of legal provisions leads to different courts and different judges have different understandings of the same provision in judicial practice. The validity basis of the ruling comes from the law. As the extension of the legal provisions, it plays the function of regulating people's behavior. If there is ambiguity, it will inevitably cause problems including jurisdiction.

3.3 The Third Party Logistics Company 's Involvement and Choice of Court Issues

In the process of online shopping, the seller cannot be delivered directly, and there is an intermediate link for another shipment. Consumers choose to trade with a seller, which means they agree to deliver the freight to a third-party logistics company. Shopping contracts are signed between sellers and consumers, and freight contracts are vague. This leads to the objection of jurisdiction, when the merchant delivers the goods to the logistics company, the delivery is completed, and the shopping contract relationship is ended, or the goods are delivered by the logistics company to the consumer. At present, there is no regulation on this issue in the existing law. When disputes occur due to damage and loss of goods, consumers also face similar problems.

Article 20 of the Judicial Interpretation of the Civil Procedure Law stipulates that the contract signed in the form of network is the place of delivery. However, when consumers choose the fictitious receiving place of the court, they still determine whether it is appropriate for the court to perform the contract. The purpose of jurisdiction system is to save judicial resources, follow the principle of two conveniences and fair trial principle. The principle of large jurisdiction is the plaintiff on the defendant, on the one hand, in order to improve the defendant's response rate, on the other hand is to prevent the plaintiff choose to benefit the court to the defendant caused unfair trial. Fairness is relative, not only to consumers, but also to the other side. Although in the online shopping contract relationship, consumers are the weak side, and the law is necessary to protect the weak for fairness, a court whose temporal and spatial distance is inconsistent with the plaintiff's residence and the defendant's residence cannot play the principle of convenience, nor is it conducive to fair trial.

3.4 Legal Fragmentation

The legal provisions cited in the survey sample as many as 11, across the multi-sectoral law, both the content of substantive law and procedural law; there are both general legal provisions and special legal provisions. The content of legal provisions governing jurisdiction is so scattered that its position in the statutory law system is so transgressive. This has caused confusion and inconvenience in the application of law by judicial organs in judicial practice, and is not conducive to consumers signing online shopping contracts according to law. The jurisdiction of online shopping contract is a multi-faceted issue. In addition to the procedural law of superficial jurisdiction, it also includes a series of substantive laws such as the place of residence and the place of contract execution. It is necessary to establish a system of jurisdiction legal norms, so as to solve the increasing and showing more changes in online shopping disputes.

4. Improving the Jurisdiction System of Online Shopping Contract

4.1 Application of the Principle of Limited Plaintiff's Residence and Centralized Legislation

The current statutory jurisdiction only provides two options, namely, the place of contract execution and the place of defendant's residence. The interference of the place of contract execution actually leads to the frustration of the principle of convenience, which is not conducive to the real protection of consumer rights. When the place of performance of the contract is inconsistent with the place of residence of the plaintiff and the defendant, the parties shall be permitted to choose the place of residence of the plaintiff as the jurisdictional court on the basis of the actual situation and the principle of convenience. Consumers can choose to sue in their residence, is undoubtedly more convenient; at the same time, restricting consumers to abuse the rules of the place of performance of the contract can also prevent them from choosing the court.

The provisions of the jurisdiction of online shopping contract disputes are scattered in the current law, which is not conducive to the application and accurate understanding of the judiciary, but also not conducive to the needs of the people's lives. The jurisdiction of online shopping contract disputes should be treated as a special jurisdiction, and similar rules should be centralized legislation. Based on the principle of protecting consumers' rights and interests, a normative system with positive correlation between rules and principles is established.

Achieve consistency between rules without conflict; principles and rules can be mutually established and the system is self-consistent; legislation reflecting the same value concept.

4.2 Normative Agreement Jurisdiction Format Clauses

In addition to presenting too scattered features, format terms also have the problem of vague provisions. The dispute of format terms constitutes the main problem in the agreement jurisdiction objection. The format terms are not decided by consumers' negotiation with the platform, but formulated by the platform unilaterally. Consumers only agree and disagree with the choice, which deprives consumers of the right to equal negotiation and has the problem of forced trading. Standard clauses should be strictly regulated to reduce the negative impact.

In the text, the platform should set the key content of the complete format clause to show it to consumers, and mark the key content with bright colors for consumers to read and understand. Procedurally, the Platform shall add accreditation procedures for format terms. For example, when shopping, you can display format terms before the payment is completed to ensure that consumers clearly agree. In content, the standard clauses should provide multiple options to allow consumers to choose different jurisdictional courts when confirming the standard clauses, thereby guaranteeing consumers' equal right to consultation. Through the form, procedure and content of the provisions of the terms of the format, clearly in a reasonable way to fulfill the obligation to remind the content

4.3 Confirmation of the Responsibility of Third Parties

The modern transaction mode of online shopping contract determines the need to promote online transactions by multiple subjects. In addition to the buyer and seller, it also requires the participation of third-party logistics companies, whose legal responsibility and status are unclear, which leads to disputes over the jurisdiction of online shopping contract disputes.

The third-party contract is a logistics contract, and some scholars believe that it can be regarded as an independent contract. However, there are problems. When a contract dispute occurs, one party is a freight company, and how to define the other party is a business or a consumer, which will lead to new disputes. The author thinks that the third party contract is difficult to separate from the online shopping contract relationship. In terms of consumers, the third party actually undertakes the obligation to complete the delivery instead of the merchants. When the online shopping contract dispute occurs, the logistics company and the merchants as the same party cannot think that the merchants are irresponsible for the transportation process of the goods that have not been completed. The merchants should make the choice of the logistics company and the remind obligation of the goods, and should clarify the location of the freight until the delivery is completed. There is a subordinate contract attached to the online purchase contract between merchants and freight companies, and the content of the freight contract can be applied to adjust the relationship between merchants and freight companies.

5. Conclusion

With the continuous expansion of the market scale of online shopping, the contradiction between merchants, platforms and consumers has become prominent, and more and more online shopping disputes have occurred. The problem of jurisdiction is the pre-procedure of such litigation. Based on the investigation of 50 jurisdiction orders published by Xi'an people's courts at all levels, this paper finds that the relevant jurisdiction rules in China are not compatible with the characteristics of online shopping contract disputes, and there are difficulties in application. Jurisdiction is closely related to the content of substantive law. When adjusting the jurisdiction, we should pay attention to the performance of the contract, the third party contract relationship, format terms and so on, and establish a self-consistent and unified jurisdiction system of online shopping contract disputes. So as to affect the real economic life, realize the benign operation of the online shopping industry, promote the growth of the national economy and the happy life of the people.

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