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Personal Jurisidiction Based on the Presence of Property in German Law: Past, Present, and Future

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This article is dedicated to my wife, Graziella.

All translations are by the author, unless otherwise noted.

I. INTRODUCTION

Is it possible, in a civil suit brought by a Kuwaiti citizen for war-related property damage, that a German court might base jurisdiction over the government of Iraq on the fact that an Iraqi diplomat mistakenly left behind an article of underwear following a stay at the Hotel Intercontinental in Frankfurt? Until recently, the answer might very well have been "yes." Under the doctrine of Vermögensgerichtsstand, which is codified in section 23 of the German *Zivilprozeβordnung* (ZPO) or Code of Civil Procedure,[1] the ownership of property within the district of a German court by a defendant not domiciled in Germany allows the court to assert *in personam* jurisdiction[2] over that person. While improbable, the above example is actually not as far-fetched as it might seem. Following the Islamic revolution in Iran, section 23 proved to be a powerful incentive for foreign plaintiffs with claims against Iranian state enterprises owning property in Germany to bring suit there.[3] The same might prove true during the 1990s for plaintiffs with claims

1. In this article "§ 23" and "Vermögensgerichtsstand" are used synonymously unless otherwise indicated.

2. In this article the term "jurisdiction" signifies jurisdiction to adjudicate, that is, jurisdiction of a state "to subject persons or things to the process of its courts or administrative tribunals . . . ." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 401(b) (1987) [hereinafter RESTATEMENT (THIRD)].

3. Lawrence W. Newman, *Dealing with Claims Arising out of the Gulf Crisis*, J. INT'L ARB., Dec. 1990 at 49, 50-51.

against Iraq. Moreover, a forgotten article of underwear has actually been used to establish jurisdiction over a prominent foreigner.[4]

Section 23's expansive nature has caused it to be considered "unwelcome in international legal relations,"[5] as stated by the *Bundesgerichtshof* (German Federal Supreme Court).[6] Nevertheless, it has been used in a number of infamous cases in recent years. One was a suit brought by a Liechtenstein cement vendor against the Central Bank of Nigeria, in which attachment of the bank's accounts in Frankfurt was allowed by the Frankfurt *Landgericht*[7] under section 23.[8] The only connection to Germany, in that case, was that payment to the vendor was guaranteed by a letter of credit payable in Frankfurt. In another case, the Essen *Amtsgericht*[9] granted a petition by New York-based Morgan Guaranty Trust and ordered attachment of the holdings of the State of Iran in Krupp Steel GmbH, a major German company.[10] This decision caused so much consternation that the German government released a statement declaring that it hoped to maintain good relations with Iran.[11]

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4. An Austrian provision similar to § 23 was used to gain jurisdiction over the French skier Jean-Claude Killy, based on having left underwear in his hotel room. Jan Kropholler, *Internationale Zuständigkeit, in* 1 HANDBUCH DES INTERNATIONALEN ZIVILVERFAHRENSRECHTS 183, 320 n.681 (1982).

5. Judgment of Sept. 30, 1964, Bundesgerichtshof [BGH] [Supreme Court], 42 Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 194, 199-200 (1965) (F.R.G.) (referring to Vermögensgerichtsstand as "einen im internationalen Rechtsverkehr unerwünschten Gerichtsstand"). *See* Kurt H. Nadelmann, *Jurisdictionally Improper Fora in Treaties on Recognition of Judgments: The Common Market Draft*, 67 COLUM. L. REV. 995 (1967) [hereinafter Nadelmann I]; Kurt H. Nadelmann, *Jurisdictionally Improper Fora, in* CONFLICT OF LAWS: INTERNATIONAL AND INTERSTATE 222 (David F. Cavers et al. eds., 1972) [hereinafter Nadelmann II].

6. The *Bundesgerichtshof* is the highest court of ordinary jurisdiction in Germany. NORBERT HORN ET AL., GERMAN PRIVATE AND COMMERCIAL LAW 31 (1982).

7. The *Landgericht* [LG] is a low-level trial court which in certain circumstances can hear appeals from the *Amtsgericht* [AG], another type of trial court. HORN ET AL., *supra* note 6, at 29-30.

8. Judgment of Dec. 2, 1975, Landgericht [LG] Frankfurt, 1976 Neue Juristische Wochenschrift [NJW] 1044. *See* Ekkehard Schumann, *Aktuelle Fragen und Probleme des Gerichtsstands des Vermögens*, 93 ZEITSCHRIFT FÜR ZIVILPROZEß 408, 412-14 (1980); Christof von Dryander, *Jurisdiction in Civil and Commercial Matters under the German Code of Civil Procedure*, 16 INT'L LAW. 671, 681 (1982) (discussing this case).

9. *See* HORN ET AL., *supra* note 6 (regarding the *Amtsgericht*).

10. *See* Schumann, *supra* note 8, at 414-415; von Dryander, *supra* note 8, at 682 (discussing this case).

11. Schumann, *supra* note 8, at 414 n.16.

Controversial cases such as these have now become less likely, owing to a July 1991 decision of the *Bundesgerichtshof* which represents the first real limitation on Vermögensgerichtsstand in over 100 years.[12] Nevertheless, the frequency with which plaintiffs rely on section 23,[13] together with unresolved questions concerning its scope, make Vermögensgerichtsstand a topic of continuing significance which can shed new light on important questions of international adjudicative jurisdiction.

II. HISTORY AND OPERATION OF VERMÖGENSGERICHTSSTAND

A. History of Section 23

The development of Vermögensgerichtsstand is intimately connected with that of two rules of ancient Germanic common law. The first rule, *forum arresti* (foreign attachment jurisdiction),[14] allowed a court in whose district assets of a non-resident defendant were located to establish jurisdiction by attaching those assets, thereby giving the successful plaintiff the opportunity to execute a judgment against the attached assets only.[15] The second rule allowed the court to attach a non-resident alien's property as the basis for *in personam* jurisdiction (jurisdiction not limited to the value of the attached assets).[16] These two rules gradually developed into a form of jurisdiction similar to modern Vermögensgerichtsstand which was adopted in all the great German civil procedure codes of

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12. Judgment of July 2, 1991, BGH, 1991 NJW 3092; *see* Judgment of Aug. 6, 1990, Oberlandesgericht [OLG] Stuttgart, 1990 Recht der internationalen Wirtschaft [RIW] 829.

13. *See* Jan Kropholler, *Möglichkeiten einer Reform des Vermögensgerichtsstandes*, 1982 ZEITSCHRIFT FÜR RECHTSVERGLEICHUNG 1, 1 (finding that it has been used so often as to practically supersede other jurisdictional forms). *But see* Haimo Schack, *Vermögensbelegenheit als Zuständigkeitsgrund--exorbitant oder sinnvoll?*, 97 ZEITSCHRIFT FÜR ZIVILPROZEß 46, 47 n.4 (1984) (rejecting suggestions that Vermögensgerichtsstand is often used).

14. Nadelmann II, *supra* note 5, at 231.

15. Nadelmann I, *supra* note 5, at 1004. In American terms, *forum arresti* jurisdiction is *quasi-in-rem* since it allows a court to apply a "property interest in things that are within its borders to the satisfaction of a claim unrelated to the thing." EUGENE SCOLES & PETER HAY, CONFLICT OF LAWS 212 (1982).

16. *See* Nadelmann I, *supra* note 5, at 1010.

the 18th century,[17] and which ultimately was embodied in section 23 of the Civil Procedure Code of a united Germany that was enacted in 1877.[18] Section 23, the wording of which has not changed since its adoption,[19] provides:

> [(1)] For complaints asserting pecuniary claims against a person who has no domicile (*Wohnsitz*) within the country, the court of the district within which this person has property (*Vermögen*), or within which is found the object claimed by the complaint, has jurisdiction. [(2)] In the case of claims (*Forderungen*) the debtor's domicile is considered the place where the property is located, and when the claim is secured, the place where the security is located is also so considered.[20]

Soon after its enactment, other countries adopted provisions similar to section 23. The first was Austria in 1895,[21] but the long list also includes the former German Democratic Republic, several Swiss Cantons, Liechtenstein, Greece, Sweden, Norway, Denmark, Japan, two Canadian provinces (Ontario and Quebec), Hungary, Yugoslavia, the Russian Federal Socialist Republic, Poland, Czechoslovakia, and Turkey.[22]

B. Operation of Section 23

A basic understanding of civil jurisdiction under German law is necessary to comprehend the operation of section 23. In Germany

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17. *See* GEORGIOS RAMMOS, DER GERICHTSSTAND DES VERMÖGENS UND DAS AUSLÄNDER–FORUM NACH VERGLEICHENDEM RECHT 9-12 (1930).

18. *See* Nadelmann II, *supra* note 5, at 231.

19. Ekkehard Schumann, *Der internationale Gerichtsstand des Vermögens und seine Einschränkungen, in* 2 STUDI IN ONORE DI ENRICO TULLIO LIEBMAN 839, 842-43 (1979).

20. ZIVILPROZEßORDNUNG [ZPO] § 23, *translated in* ARTHUR T. VON MEHREN & DONALD T. TRAUTMAN, THE LAW OF MULTISTATE PROBLEMS 673 (1965). The German text reads:

> (1) Für Klagen wegen vermögensrechtlicher Ansprüche gegen eine Person, die im Inland keinen Wohnsitz hat, ist das Gericht zuständig, in dessen Bezirk sich Vermögen derselben oder der mit der Klage in Anspruch genommene Gegenstand befindet. (2) Bei Forderungen gilt als der Ort, wo das Vermögen sich befindet, der Wohnsitz des Schuldners und, wenn für die Forderungen eine Sache zur Sicherheit haftet, auch der Ort, wo die Sache sich befindet.

ZPO § 23

21. Schumann, *supra* note 19, at 842.

22. This list appears in Schack, *supra* note 13, at 51-52.

international jurisdiction is based on statutory provisions which control both venue and the court's jurisdiction over a particular case,[23] and which allocate cases by means of venue between all courts of general jurisdiction.[24] Limitations on jurisdiction thus arise from statutory interpretation, not from constitutional considerations,[25] and the Anglo-American distinction between jurisdiction *in rem*, *quasi in rem*, and *in personam* is largely unknown.[26] The relevant statutory provisions, which are contained in the ZPO, may be divided into those dealing with general jurisdiction, under which any kind of action is allowed, and those dealing with special jurisdiction, under which only pecuniary or property-related claims (*vermögensrechtliche Ansprüche*) are allowed.[27] General jurisdiction over natural persons exists at their domicile,[28] and over legal entities at their seat.[29]

Section 23, which is one of the rules of special jurisdiction, is designed to provide a forum for a creditor domiciled in Germany against a debtor without domicile in that country, since no general jurisdiction based on domicile in Germany exists for such a defendant.[30] While section 23 has gained most of its fame in cases against foreigners, the provision may be used against Germans as well, since the nationality of either party plays no role in the technical

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23. *See* ULRICH DROBNIG, AMERICAN-GERMAN PRIVATE INTERNATIONAL LAW 321 (1972); von Dryander, *supra* note 8, at 672-75. This article will treat § 23's jurisdictional aspects only, and will not examine its role as a rule of venue.

24. von Dryander, *supra* note 8, at 673.

25. *Id.*

26. *Id.*

27. Henry P. de Vries & Andreas F. Lowenfeld, *Jurisdiction in Personal Actions--A Comparison of Civil Law Views*, 44 IOWA L. REV. 306, 331 (1959); von Dryander, *supra* note 8, at 675.

28. von Dryander, *supra* note 8, at 675.

29. *Id.*

30. 1 STEIN-JONAS, KOMMENTAR ZUR ZIVILPROZEßORDNUNG 742 (20th ed. 1980). Section 23 also provides jurisdiction in the district in which the object that is the subject of the complaint (*der mit der Klage in Anspruch genommene Gegenstand*) is located (a type of *in rem* jurisdiction). However, this clause presupposes a sufficient relationship between the claim and the object upon which jurisdiction is based and thus will not be examined here.

application of section 23.[31] Jurisdiction under section 23 can be excluded by agreement between the parties.[32]

The various elements of section 23 have all been defined by judicial decisions and academic commentators.[33] Section 23 expressly applies to "actions" (*Klagen*), which have been defined to include attachment proceedings and preliminary injunctions,[34] declaratory judgment actions,[35] as well as normal civil actions. The plaintiff (*Kläger*) may be anyone (including a legal entity), German or foreign,[36] whether or not domiciled in Germany.[37] The action must be brought at a time when all the elements for section 23 exist; after this point jurisdiction continues even if one of the necessary elements is no longer present before judgment is rendered.[38] The burden is on the plaintiff to establish the elements of section 23,[39] which includes giving a sufficient description of the defendant's property upon which jurisdiction is based. It is not enough, for example, to allege only that the defendant maintains "bank accounts" within the district.[40] "Pecuniary" (*vermögensrechtliche*) claims are

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31. Kropholler, *supra* note 4, at 316; JOCHEN SCHRÖDER, INTERNATIONALE ZUSTÄNDIGKEIT 379 (1971).

32. REINHOLD GEIMER, INTERNATIONALES ZIVILPROZEßRECHT 266 (1987); Haimo Schack, *Derogation des Vermögensgerichtsstandes zwischen deutscher lex fori und ausländischem Prorogationsstatut*, 10 PRAXIS DES INTERNATIONALEN PRIVAT- UND VERFAHRENSRECHTS [hereinafter IPRAX] 19 (1990). *See, e.g.*, Judgment of Apr. 18, 1985, BGH, 94 BGHZ 156 (1985).

33. *See* VON MEHREN & TRAUTMAN, *supra* note 20 and accompanying text (translating the text of § 23).

34. Schumann, *supra* note 19, at 845; Rolf A. Schütze, *Forderungssicherung im deutsch-iranischen Verhältnis*, 1979 BETRIEBS-BERATER 348, 349; RICHARD ZÖLLER, ZIVILPROZEßORDNUNG 215 (13th ed. 1981). Under German law a court ordering prejudgment attachment, whether based on § 23 or another jurisdictional provision, need not have jurisdiction of the underlying claim. Otto Sandrock, *Prejudgment Attachments: Securing International Loans or Other Claims for Money*, 21 INT'L LAW. 1, 23 (1987).

35. GEIMER, *supra* note 32, at 260.

36. ZÖLLER, *supra* note 34, at 215.

37. De Vries & Lowenfeld, *supra* note 27, at 339.

38. Kropholler, *supra* note 4, at 319; RAMMOS, *supra* note 17, at 61.

39. Judgment of July 13, 1987, BGH, 9 IPRAX 166 (1989); GEIMER, *supra* note 32, at 266; 1 STEIN-JONAS, *supra* note 30, at 756.

40. *See, e.g.*, Judgment of Dec. 8, 1986, Oberlandesgericht [OLG] Frankfurt, 8 IPRAX 24 (1988); *see infra* notes 93-99 and accompanying text (discussing case). Judgment of Dec. 14, 1987, LG Bonn, 1989 NJW 1225; *see infra* notes 89-91 and accompanying text (discussing case).

defined as those in which the personal or familial interest of a person does not predominate over his pecuniary interest.[41]

Section 23 jurisdiction may be asserted against defendants, including private persons and legal entities,[42] and apparently foreign States and their legal entities[43] (at least as long as they do not enjoy immunity under international law).[44] "Domicile" (*Wohnsitz*) in Germany is determined by other statutory provisions.[45] Under section 23, property of the defendant must also be located within the court's district for jurisdiction to arise. The location of physical objects is determined by the place in which they are situated.[46] Determining location is more complex when considering inanimate property. Claims or debts are located at the domicile of the third-party debtor (*Drittschuldner*),[47] as long he does not reside outside Germany.[48] Other rules are applicable with regard to more specialized forms of inanimate property.[49] Jurisdiction under section 23 is not limited to claims having some connection to the property upon which jurisdiction is based.[50]

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41. RAMMOS, *supra* note 17, at 23. Thus, for example, a divorce action is not considered "pecuniary."

42. ZÖLLER, *supra* note 34, at 215.

43. GEIMER, *supra* note 32, at 266; 1 STEIN-JONAS, *supra* note 30, at 742. The most prominent such cases were those concerning the Central Bank of Nigeria and Iran, see materials cited *supra* note 8 and accompanying text and *supra* note 10 and accompanying text.

44. Judgment of May 4, 1982, OLG Frankfurt, 1982 RIW 439. *Cf.* Judgment of Apr. 12, 1983, Bundesverfassungsgericht [BVerfG] [highest administrative court], 64 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 1 (1984) (deciding that attaching bank accounts established in the name of Iranian state enterprises under § 23 did not in itself violate international law or German constitutional law). The *Bundesverfassungsgericht* is Germany's highest court, with the power "to decide only constitutional questions and a limited set of public-law controversies." DONALD P. KOMMERS, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY 3 (1989); Judgment of Dec. 2, 1975, LG Frankfurt, 1976 NJW 1044 (determining that the Central Bank of Nigeria was not entitled to immunity, and therefore allowing attachment based on § 23, while noting that the provision could be used against foreign States).

45. *See* Kropholler, *supra* note 4, at 323.

46. ZÖLLER, *supra* note 34, at 216.

47. Kropholler, *supra* note 4, at 323.

48. ZÖLLER, *supra* note 34, at 216.

49. *See* Kropholler, *supra* note 4, at 323-24.

50. GEIMER, *supra* note 32, at 259. In American terms, Vermögensgerichtsstand is thus a rule of general jurisdiction ("power to adjudicate any kind of controversy") rather than of specific jurisdiction ("power to adjudicate with respect to issues deriving from, or connected with, the very controversy that established jurisdiction to adjudicate"). Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966).

The most important element of section 23 has traditionally been the inquiry into what constitutes "property" of the defendant.[51] As section 23 does not define the term, the courts have done so. These judicial interpretations have been the focus of most of the controversy surrounding Vermögensgerichtsstand. It has been consistently held that the value of the property need not stand in a specific relation to that of the claim.[52] For example, jurisdiction has been granted based on "property" such as four fruit baskets (for a claim of DM 10,000) and several newspapers worth one dollar (for a claim of US $4,194).[53] Such court decisions prompted one commentator to note that the statutory definition of Vermögensgerichtsstand is not nearly as bad as what the courts have done with it.[54]

The following general rules have emerged for defining property under section 23: (1) it is defined neither economically nor in relation to the claim; (2) it may be a physical object, a debt, or some other claim to property or performance; and (3) it must have independent value, meaning some sort of monetary value on the open market. Therefore, objects which are not considered property include personal letters, notes, receipts, assurances one will acquire a particular piece of property in the future, and rights to an inheritance.[55] Monetary claims seem to have the greatest practical significance for use of section 23,[56] and here the law has been particularly liberal. Jurisdiction may be supported by a debt owed to the defendant even though it would not lead to actual payment and even if the claim is owed by the plaintiff to the defendant.[57] It

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51. Kropholler, *supra* note 4, at 318.

52. Judgment of Aug. 1, 1991, OLG Düsseldorf, 1991 NJW 3103; 1 STEIN-JONAS, *supra* note 30, at 745; ZÖLLER, *supra* note 34, at 216; von Dryander, *supra* note 8, at 680.

53. 1 STEIN-JONAS, *supra* note 30, at 745 n.17; *See* SCHRÖDER, *supra* note 31, at 381 (giving further examples).

54. SCHRÖDER, *supra* note 31, at 376.

55. 1 STEIN-JONAS, *supra* note 30, at 745.

56. *See* Kropholler, *supra* note 4, at 320.

57. *Id.* at 320-21. Judgment of Oct. 22, 1987, BGH, 1988 NJW 966 (holding that certain claims can establish § 23 jurisdiction, even though they are practically worthless on the open market since the company owing them is deeply in debt and unable to pay).

should also be noted that the property need not be attached[58] or even subject to attachment (*pfändbar*)[59] to serve as the basis for Vermögensgerichtsstand. However, property must be obtained in good faith to found jurisdiction.[60] For example, if the plaintiff brings a frivolous suit against the defendant which is dismissed, he may not base jurisdiction on the defendant's claim for costs against him.[61]

If all the elements of Vermögensgerichtsstand are present, then the court has full personal jurisdiction over the defendant; that is, his liability is not limited to the value of his property within the district.[62]

C. *Critical Reception of Section 23*

1. *Arguments in Favor of Section 23*

Section 23 has long been the object of both praise and scorn. The provision has been defended as necessary to protect the German creditor from having to bring suit against a debtor in a foreign country.[63] It has also been contended that the defendant's assets in the district of suit are usually sufficient to satisfy the plaintiff's claim,[64] and that even if they are not, section 23 allows the plaintiff to obtain a judgment which can be satisfied elsewhere or at a later time.[65] Defenders have also argued that section 23 is useful as a "bargaining chip" in negotiations with other nations that have their

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58. Kropholler, *supra* note 4, at 319; von Dryander, *supra* note 8, at 678. The authorities are not in accord as to whether the value of the property must at least cover the costs of execution. *See e.g.*, SCHRÖDER, *supra* note 31, at 380 (stating it is not necessary for the value of the property to cover the cost of execution); *cf.* 1 STEIN-JONAS, *supra* note 30, at 747 (stating value of property should cover costs of execution).

59. SCHRÖDER, *supra* note 31, at 382-83.

60. 1 STEIN-JONAS, *supra* note 30, at 750; Schumann, *supra* note 19, at 859.

61. Schumann, *supra* note 19, at 860-61; DROBNIG, *supra* note 23, at 323. *Cf.* GEIMER, *supra* note 32, at 265 (noting that a good faith claim for reimbursement of costs is sufficient to found jurisdiction).

62. von Dryander, *supra* note 8, at 678.

63. *See* Kropholler, *supra* note 13, at 1; Schack, *supra* note 13, at 48.

64. L.I. De Winter, *Excessive Jurisdiction in Private International Law*, 17 INT'L & COMP. L.Q. 706, 716-717 (1968).

65. *See* von Mehren & Trautman, *supra* note 20, at 674.

own exorbitant forms of jurisdiction.[66] Because section 23 is usually used by German plaintiffs or foreigners living in Germany, its existence benefits the German economy.[67] By allowing jurisdiction without attachment of the defendant's assets in the district, section 23 simplifies the process of acquiring jurisdiction.[68] Further, the ease of determining whether jurisdiction exists under the provision promotes certainty and clarity in the law.[69]

2. *Arguments Against Section 23*

Opponents of Vermögensgerichtsstand contend that it is improper to allow jurisdiction by a court with no connection to a case other than the accidental presence of assets within its district.[70] On a more practical level, a judgment based on section 23 will rarely be recognized abroad, as the provision is considered exorbitant in most countries.[71] Therefore, the plaintiff normally has no chance of recovery beyond the value of the defendant's assets in Germany. Use of section 23 against foreigners can also backfire against Germans. Under section 328 of the *Zivilprozeβordnung*, a foreign judgment may not be recognized in Germany unless the foreign court had jurisdiction under German law.[72] A foreign judgment against a German defendant based on a foreign equivalent of

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66. *See* Lee S. Bartlett, *Full Faith and Credit Comes to the Common Market: An Analysis of the Provisions of the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters*, 24 INT'L & COMP. L.Q. 44, 56 (1975); *see also* Nadelmann I, *supra* note 6, at 1014 (for an example of the retaliatory use of a jurisdictional provision by Belgium).

67. Kropholler, *supra* note 13, at 1.

68. SCHRÖDER, *supra* note 31, at 386-87.

69. GEIMER, *supra* note 32, at 262. *But see infra* notes 214-216 and accompanying text.

70. ULRICH WAHL, DIE VERFEHLTE INTERNATIONALE ZUSTÄNDIGKEIT 23-24 (1974); Nadelmann I, *supra* note 5, at 1005-06; *see infra* note 93 and accompanying text (discussing a case in which the *Oberlandesgericht* Frankfurt expressed this reservation).

71. *See* DROBNIG, *supra* note 23, at 323; F. A. Mann, *The Doctrine of Jurisdiction in International Law*, 111 RECUEIL DES COURS 1, 81 (1964) (reprinted in F. A. MANN, STUDIES IN INTERNATIONAL LAW 1 (1973)); Nadelmann II, *supra* note 5, at 229-30. *But see* Schack, *supra* note 13, at 53-54; GEIMER, *supra* note 32, at 260 (arguing that recognition abroad may not always be necessary, since § 23 can be used to obtain a declaratory judgment and thus allow the plaintiff to execute in Germany if the defendant later acquires property there).

72. *See* Dieter Martiny, *Recognition and Enforcement of Foreign Money Judgments in the Federal Republic of Germany*, 35 AM. J. COMP. L. 721, 734 (1987).

Vermögensgerichtsstand can thus be recognized in Germany, since under German law the foreign court had jurisdiction. The presence of section 23 therefore subjects Germans to the possibility of foreign suits,[73] though this danger has been reduced by treaty.[74] Use of an exorbitant form of jurisdiction such as section 23 can also lead to retaliation by other countries.[75]

The lack of a requirement that there be a reasonable relationship between the value of the claim and the value of the defendant's assets in Germany, and the resultant possibility of allowing *in personam* jurisdiction for a huge claim based on assets of minuscule value, has also been criticized.[76] Besides being potentially unfair to the defendant, this permits jurisdiction when there may be no realistic prospect of satisfying a judgment for the plaintiff.[77] Another traditional objection to section 23 is that it allows suit when neither the parties nor the subject of the action have any connection with Germany,[78] though this is no longer permitted.[79] It is no coincidence that in cases involving section 23, dismissal was often sought on the grounds that proceedings were pending in a foreign court.[80] It has also been contended that an action against a foreign State based on Vermögensgerichtsstand risks interference with Germany's foreign policy,[81] and that

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73. *See id.* at 739; GEIMER, *supra* note 32, at 269; Friedrich Juenger, *The Recognition of Money Judgments in Civil and Commercial Matters*, 36 AM. J. COMP. L. 1, 15 (1988); Nadelmann I, *supra* note 6, at 1012. *Cf.* Schack, *supra* note 13, at 54 (accepting this danger as a matter of fairness to those not domiciled in Germany).

74. *See* Martiny, *supra* note 72, at 727 (stating that "more than 96 percent of all applications for the grant of execution in pecuniary matters . . . are under a convention today").

75. *See* Nadelmann I, *supra* note 5, at 1014-15; Nadelmann II, *supra* note 5, at 232-33.

76. Kropholler, *supra* note 4, at 328. *See infra* note 121 and accompanying text.

77. *Id.*

78. *See id.*; Schumann, *supra* note 19, at 865; von Dryander, *supra* note 8, at 679. *See, e.g.*, Judgment of Sept. 18, 1959, OLG München, 1960 Monatsschrift für deutsches Recht [MDR] 146 (affirming jurisdiction under § 23 in an action brought by an Israeli citizen and resident against another Israeli citizen who was in Germany only for a short visit).

79. *See infra* note 113 and accompanying text.

80. *See, e.g.*, Judgment of Dec. 8, 1986, OLG Frankfurt, 8 IPRax 24 (1988); *see infra* notes 93-99 and accompanying text; Judgment of Oct. 21, 1980, OLG Frankfurt, 1980 RIW 874. *See also* Ekkehard Schumann, *Der Vermögensgerichtsstand (§ 23 ZPO) und der Einwand internationaler Rechtshängigkeit*, 8 IPRAX 13 (1988).

81. *See* Schumann *supra* note 8.

Vermögensgerichtsstand promotes forum-shopping,[82] violates the principle of *actor sequitur forum rei*,[83] and is unconstitutional.[84]

D. Vermögensgerichtsstand in Action: Recent Case Law

An understanding of how section 23 functions in practice can best be gained through examination of actual cases. The following four cases are among the most significant involving the provision to have been decided in recent years, and illustrate an increasing judicial uneasiness with the unrestricted scope of Vermögensgerichtsstand.

In the first, case a German farmer brought suit in the Bonn *Amtsgericht* against the Soviet Union, claiming that he had to destroy part of his crop following the Chernobyl disaster.[85] The petitioner attempted to ground jurisdiction on section 23, but the court rejected this argument and dismissed the petition. The *Amtsgericht* first found that the petitioner had not alleged that the USSR possessed specific assets within the district, but had simply stated that it was liable to the extent of all its assets outside Germany.[86] While jurisdiction could have been based on an assertion that certain embassy property served functions that did not concern the USSR in its status as a foreign State, no such assertion had been made.[87] Nor did the petitioner's vague reference to a Soviet postal bank account in Cologne change the result, since that would lie outside the court's district.[88] On appeal to the Bonn *Landgericht*[89] the decision was affirmed, though in

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82. Friedrich Juenger, *Judicial Jurisdiction in the United States and in the European Communities: A Comparison*, 82 MICH. L. REV. 1195, 1204 (1984).

83. SCHRÖDER, *supra* note 31, at 377. *Actor sequitur forum rei* is a general principle of private international law according to which the defendant must be summoned to the court of his domicile. De Winter, *supra* note 64, at 716.

84. *See, e.g.*, SCHRÖDER, *supra* note 31, at 402-03. However, the *Bundesgerichtshof* has held that Vermögensgerichtsstand is not unconstitutional. Judgment of Nov. 24, 1988, BGH, 1989 NJW 1431; *see also* infra notes 100-103 and accompanying text.

85. Judgment of Sept. 9, 1987, AG Bonn, 1988 NJW 1393.

86. *Id.*

87. *Id.*

88. *Id.*

89. Judgment of Dec. 14, 1987, LG Bonn, 1989 NJW 1225.

the meantime the petitioner had amended the petition to allege that the USSR maintained several accounts in the main branch of the Deutsche Bank in Bonn.[90] The *Landgericht* found that some information regarding the nature and value of the property is necessary to found jurisdiction under section 23, and that a mere reference to "bank accounts" is insufficient.[91]

In the second case, the Frankfurt *Oberlandesgericht*[92] refused to grant an order of attachment sought by an American construction firm against an Egyptian bank, in a case arising from a transaction in Egypt governed by Egyptian law.[93] The court found that allegations that the defendant maintained accounts with two Frankfurt correspondent banks without any further supporting information were insufficient to establish jurisdiction.[94] Nor did the plaintiff's allegations that the defendant gave collateral to the Frankfurt banks to secure loans suffice, since there was no evidence that this collateral was actually present in Germany.[95] The court went on to express grave doubts about whether it was the proper forum for the case, since the only connections with Germany were the correspondent accounts in Frankfurt.[96] However, the court determined that there was no need to decide this point because litigation on the case was already underway in Egypt.[97] It could not be assumed that the plaintiff's rights would not be respected in those proceedings, or in case of a judgment for the plaintiff, that the defendant would automatically remove all its property from Germany.[98] Therefore, dismissal of the case was warranted.[99]

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90. *Id.*
91. *Id.*
92. The *Oberlandesgericht* hears appeals from the *Landgericht* and, in certain instances, the *Amtsgericht* levels. HORN ET AL., *supra* note 6, at 31.
93. Judgment of Dec. 8, 1986, OLG Frankfurt, 8 IPRAX 24 (1988). *See* Schumann, *supra* note 80 (discussing this case).
94. Judgment of Dec. 8, 1986, OLG Frankfurt, 8 IPRAX 24 (1988).
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*

In the third case, the *Bundesgerichtshof* reversed the dismissal of an action against an Austrian corporation owning property in Frankfurt.[100] The court found that the defendant had failed to produce sufficient evidence to show that it and the plaintiff had agreed to a forum selection clause such as to foreclose section 23 jurisdiction.[101] However, the most important part of the decision was the court's discussion of the basic requirements for application of section 23.[102] The *Bundesgerichtshof* took notice of the scholarly criticism that had been directed at section 23, but found that such criticism "can in no way lead to the conclusion that the courts will no longer apply section 23," and held that Vermögensgerichtsstand violates neither international law nor the *Grundgesetz* (German Constitution).[103] Most significantly, the *Bundesgerichtshof* noted the suggestions that section 23 be interpreted restrictively, but expressly refused to do so, finding that the present case, at least, did not in any way lead to a questioning of the basis of Vermögensgerichtsstand.

The fourth and final case represents a landmark in the judicial interpretation of section 23.[104] The plaintiff in that case, who was British and did not reside in Germany, sued a Turkish bank with offices in Germany based on a claim assigned by a Cypriot construction firm relating to a construction project in Libya.[105] The plaintiff founded jurisdiction on section 23, arguing that the defendant's property in Stuttgart was worth at least DM 150,000.[106] The defendant objected that its property was worth at most one-tenth this amount and that jurisdiction should be denied since the case lacked any connection to Germany.[107] The *Landgericht* allowed jurisdiction, but was reversed on appeal by the Stuttgart *Oberlandesgericht*, which interpreted section 23

100. Judgment of Nov. 24, 1988, BGH, 1989 NJW 1431.
101. *Id.*; GEIMER, *supra* note 32 and accompanying text.
102. Judgment of Nov. 24, 1988, BGH, 1989 NJW 1431.
103. *Id.*
104. Judgment of Aug. 6, 1990, OLG Stuttgart, 1990 RIW 829.
105. *Id.*
106. *Id.*
107. *Id.*

restrictively and found that the plaintiff, the applicable law, and the evidence to be presented were all unconnected to Germany.[108] Further, the court found that the mere presence of the defendant's property is sufficient to found jurisdiction in cases without connection to Germany only when a particular domestic interest of the plaintiff must be protected.[109] The plaintiff's unwillingness to bring suit in Turkey did not constitute such an interest.[110] The court suggested four possible factors which would justify jurisdiction in cases involving section 23: (1) that the plaintiff resides in Germany; or (2) that the facts on which the claim is based are most closely connected to Germany; or (3) that German law is to be applied; or (4) that the plaintiff has some other worthy interest in a German judgment.[111] Finding that none of these conditions existed, the court denied jurisdiction.[112]

The decision was affirmed on appeal by the *Bundesgerichtshof*,[113] which expressly determined that jurisdiction can only be founded under section 23 if the case has a sufficient connection to Germany beyond the presence of the defendant's property.[114] This requirement was necessary to give effect to the purpose of the provision, which was to allow plaintiffs domiciled in Germany to sue defendants who were either domiciled abroad or who moved around so often in Germany as not to established German domicile.[115] Section 23 was not enacted to make it easier for foreigners to bring disputes with no connection to Germany before the German courts.[116] The Court found that the failure to require a connection to Germany would lead to forum shopping and the trial of foreign matters in German courts, which could cause friction with other countries.[117] The *Bundesgerichtshof* also

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108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. Judgment of July 2, 1991, BGH, 1991 NJW 3092.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*

mentioned the difficulties faced by foreign defendants sued in Germany, and rejected arguments brought by defenders of Vermögensgerichtsstand that the acquisition of property demonstrates an "affinity" to Germany.[118] The Court defended its decision as consistent with precedent, since in none of the previous cases involving section 23 had the defendant's connection to Germany been in doubt (a point that could certainly be disputed).[119] Finally, the *Bundesgerichtshof* stated that the plaintiff still had the option of suing in Cyprus or Turkey, and that it was not prepared to allow jurisdiction only because the plaintiff had no faith in the courts of those countries.[120]

It should be noted that the *Bundesgerichtshof*'s decision failed to answer all the questions surrounding Vermögensgerichtsstand. For instance, it refused to reexamine the traditional view that the value of the defendant's property need not stand in any specific relation to the value of the claim, since in this case the defendant owned substantial property in Germany.[121] Moreover, the Court stated that section 23 is neither unconstitutional nor violative of international law, while at the same time finding that a restrictive application of Vermögensgerichtsstand would better conform to the growing tendency under international law to restrict the doctrine by treaty.[122] The *Bundesgerichtshof* also failed to mention the four-part test for a connection to Germany that had been applied by the *Oberlandesgericht*,[123] though it did note that while the plaintiff's domicile or residence in Germany would normally be sufficient, in this case the plaintiff's ties to Germany were very loose.[124]

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118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. Judgment of Aug. 6, 1990, OLG Stuttgart, 1990 RIW 829.
124. Judgment of July 2, 1991, BGH, 1991 NJW 3092.

III. VERMÖGENSGERICHTSSTAND *DE LEGE FERENDA*

A. Possible Reform of Section 23

1. Reform through the Courts

The controversy surrounding Vermögensgerichtsstand has led to numerous suggestions for its reform, the first of which involves reform through the courts. It has been suggested that German courts adopt the American doctrine of *forum non conveniens*, allowing them to decline jurisdiction when a foreign court stands in closer connection to a case.[125] While the courts have traditionally been unreceptive to this idea in cases involving section 23,[126] the *Bundesgerichtshof's* decision discussed above suggests that this view may be changing.[127] Another suggestion is that the courts should view section 23 as a *Notgerichtsstand*, to be used only when suit can not be brought against the defendant under any other provision.[128]

2. Reform through the Legislature

The second set of proposals involves reform through the legislature. While repeal of section 23 would satisfy many

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125. *See* ERIK JAYME, KOLLISIONSRECHT UND BANKGESCHÄFTE MIT AUSLANDSBERÜHRUNG 30 (1977); von Dryander, *supra* note 8, at 680.

126. *See, e.g.*, Judgment of Nov. 12, 1985, OLG Frankfurt, 6 IPRax 297 (1986) (affirming jurisdiction under § 23, even though the plaintiff was an American bank suing a Spanish bank, and the only contact of the case with Germany was the defendant's ownership of property being stored in a warehouse at the Frankfurt airport); *see also* Burkhardt Löber, *Forum Shopping, Forum non Conveniens oder schlicht: Justizgewährungsanspruch*, 6 IPRAX 283 (1986); von Dryander, *supra* note 8, at 680 (stating that "German jurisprudence adheres strictly to the principle that once jurisdiction is conferred upon a court pursuant to the ZPO that court must adjudicate the matter."). *Cf.* Judgment of Dec. 8, 1986, OLG Frankfurt, 8 IPRAX 24 (1988); *see supra* note 93 and accompanying text (discussing this case). The court expressed grave doubts about whether the lack of contacts between the case and Germany made it the proper forum, but declined § 23 jurisdiction on other grounds. *Id.*

127. *See* Judgment of Aug. 6, 1990, OLG Stuttgart, 1990 RIW 829.

128. Kropholler, *supra* note 4, at 332; Kropholler, *supra* note 13, at 9. The *Bundesgerichtshof* has held that § 23 can only be used as a *Notgerichtsstand* if refusing to allow jurisdiction in Germany would lead to a denial of justice. Judgment of July 2, 1991, BGH, 1991 NJW 3092; Judgment of Aug. 6, 1990, OLG Stuttgart, 1990 RIW 829.

commentators,[129] the legislature would likely be hesitant to remove a provision which is viewed as helpful to German plaintiffs.[130] More realistically, it has been suggested that jurisdiction under section 23 should be allowed only insofar as the defendant's assets in Germany satisfy the claim.[131] Further, that execution of a judgment under section 23 should be restricted to the value of the property upon which jurisdiction is based.[132] Another possibility would be to restrict use of section 23 to plaintiffs who are either Germans or who have their domicile in Germany,[133] even though this would conflict with the German jurisdictional principle that the nationality of the parties is irrelevant.[134]

Two further legislative reforms have been proposed. The first involves copying a reform already instituted in Austria, whereby the value of the assets cannot stand in great discrepancy to the value of the claim and the assets must at least be valuable enough to cover court costs.[135] However, this might make it necessary to bring several suits to satisfy a claim.[136]

The second legislative reform is to adopt the recommendations made in 1977 by the government-sponsored Commission for Civil Procedure.[137] The Commission first recommended that Vermögensgerichtsstand be available only in the district where the defendant's property has been attached (the so-called principle of *Arrestschlag*).[138] This would at least restrict use of Vermögensgerichtsstand to cases in which the defendant has a strong connection to Germany.[139] However, this proposal has

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129. *See, e.g.*, SCHRÖDER, *supra* note 31, at 403.

130. *See* von Dryander, *supra* note 8, at 680.

131. Schumann, *supra* note 19, at 857; *see* Schack, *supra* note 13, at 64-65 (arguing that a plaintiff should be able to bring a declaratory judgment action for the full value of the claim).

132. Schack, *supra* note 13, at 64-65.

133. Kropholler, *supra* note 13, at 8; Schumann, *supra* note 19, at 863-69.

134. *See* Martiny, *supra* note 72, at 729-30. *See also* material at *supra* note 31.

135. Kropholler, *supra* note 13, at 5-6.

136. Kropholler, *supra* note 4, at 332.

137. Bundesministerium der Justiz, BERICHT DER KOMMISSION FÜR DAS ZIVILPROZEßRECHT (Mar. 1977). *See* Schumann, *supra* note 19, at 843; von Dryander, *supra* note 8, at 684.

138. *See* Kropholler, *supra* note 13, at 7.

139. *Id.*

been criticized on the grounds that it does not attack a central problem of Vermögensgerichtsstand, namely the lack of a reasonable relation between the value of the assets and the value of the claim.[140] The Commission also recommended that Vermögensgerichtsstand be available in districts where the defendant owns real property.[141] However, none of the Commission's proposals regarding section 23 have yet to be adopted.

3. Reform by Treaties

Treaties are the final avenue of reform. Germany is a party to two multilateral treaties that restrict section 23 by affecting the direct jurisdiction of German courts. The most important of these is the European Communities Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (the Brussels Convention).[142] Article 3 of the Brussels Convention prohibits the use of section 23 jurisdiction against a defendant who is domiciled in one of the contracting States.[143] However, section 23 may still be invoked as a rule of venue by a German court when international jurisdiction is founded on another basis[144] and as a jurisdictional rule for provisional remedies.[145] The Brussels Convention has increased the chance of recognition and enforcement of a judgment based on section 23 within the Community since it mandates that judgments rendered in a State

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140. Kropholler, *supra* note 4, at 330; Kropholler, *supra* note 13, at 7.

141. Kropholler, *supra* note 13, at 6-7.

142. Sept. 27, 1968, 29 I.L.M. 1413 (1990) (consolidated and updated version) [hereinafter The Brussels Convention]. As of 1990, the Brussels Convention was in force between Germany, the United Kingdom, Denmark, France, Greece, the Republic of Ireland, Italy, the Netherlands, Spain, and Portugal. *Id.* at 1416.

143. *See* Bartlett, *supra* note 66, at 49. According to Art. 4 of the Convention, § 23 can be used against defendants domiciled outside the contracting States. Arthur T. von Mehren, *Recognition and Enforcement of Sister-State Judgments: Reflections on General Theory and Current Practice in the European Economic Community and the United States*, 81 COLUM. L. REV. 1044, 1059-60 (1981).

144. Schumann, *supra* note 19, at 849; 1 STEIN-JONAS, *supra* note 30, at 754.

145. The Brussels Convention, *supra* note 142, art. 24. *See* F.A. Mann, *The Doctrine of International Jurisdiction Revisited after Twenty Years*, 186 RECUEIL DES COURS 1, 72 (1984) (*reprinted in* F.A. MANN, FURTHER STUDIES IN INTERNATIONAL LAW 1 (1990)); Schütze, *supra* note 34, at 349.

Party must be recognized in another State Party even if based on a form of exorbitant jurisdiction.[146] Another treaty, the Lugano Convention,[147] prohibits use of exorbitant jurisdictional provisions, such as section 23, between domiciliaries of the European Communities and the European Free Trade Association (EFTA).[148]

Germany has concluded a number of bilateral treaties which restrict the use of Vermögensgerichtsstand by regulating the recognition and execution of judgments.[149] Treaties with Great Britain, Italy, Spain, Switzerland, and Tunisia forbid recognition of judgments based on section 23 in the signatory nations.[150] While these treaties do not technically invalidate the jurisdiction of German courts under section 23, the effect is to discourage section 23 jurisdiction when the defendant's property in Germany is of minuscule value.[151] Two other bilateral treaties, with Austria and Greece, restrict execution of a judgment based on Vermögensgerichtsstand to the country where it was rendered when the defendant so demands.[152] This represents a return to classical *forum arresti* jurisdiction by limiting execution of the judgment to the property on which jurisdiction is based.[153] Another possible restriction is contained in bilateral treaties with Belgium, Israel, and the Netherlands. These treaties allow suit based on Vermögensgerichtsstand as long as the defendant has neither his

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146. *See* The Brussels Convention, *supra* note 142, arts. 26, 27(1), 28, 34; von Dryander, *supra* note 8, at 682-83; von Mehren, *supra* note 143, at 1059.

147. Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Sept. 16, 1988, 28 I.L.M. 620 (1989). Most members of EFTA had forms of jurisdiction similar to § 23 which are excluded by the Lugano Convention. *See* P. Jenard & G. Möller, *Report on the Lugano Convention*, 29 I.L.M. 1481, 1484, 1487-88 (1990) [hereinafter Lugano Report].

148. *See* Lugano Report, *supra* note 147, at 1485-86. As of 1990 the members of EFTA were Austria, Finland, Iceland, Norway, Sweden, and Switzerland. *Id.* at 1483.

149. The texts of all these treaties, except the one with Spain, can be found in 1 ARTHUR BÜLOW & KARL-HEINZ BÖCKSTIEGEL, DER INTERNATIONALE RECHTSVERKEHR IN ZIVIL- UND HANDELSSACHEN Nos. 610-704 (1990). The text of the treaty with Spain can be found in 1987 Bundesgesetzblatt, Teil II, p. 34. It should be remembered that application of many of these bilateral treaties is limited because of the Brussels and Lugano Conventions.

150. *See* Kropholler, *supra* note 4, at 326-27; Schumann, *supra* note 19, at 849-50.

151. *See* GEIMER, *supra* note 32, at 268-69.

152. *See* Schumann, *supra* note 19, at 850-51.

153. *Id.* at 851.

domicile nor his usual residence in any of the signatory nations.[154]

The bilateral treaty with the most far-reaching restriction on the use of section 23 is that concluded with Norway.[155] This treaty provides that a defendant with domicile or usual residence in one of the State Parties may not be sued in the other State on the basis of Vermögensgerichtsstand solely because he holds assets in that other State.[156] Vermögensgerichtsstand may only be used when either the claim is secured at the start of the proceedings or the value of the claim does not exceed the value of the defendant's assets in the State where suit is brought.[157] This type of treaty has been praised as the best mechanism for controlling Vermögensgerichtsstand internationally.[158]

B. Vermögensgerichtsstand under International Law

The status of Vermögensgerichtsstand under international law has not been thoroughly examined in the past, probably because "[i]nternational law has not yet developed a comprehensive set of rules defining with reasonable precision, all forms of jurisdiction that may be exercised by states . . ."[159] However, the propositions that certain bases of civil jurisdiction are considered exorbitant,[160] and that international law places some limits on the adjudicative jurisdiction of national courts,[161] are now accepted by a significant

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154. *Id.* at 851-52; Kropholler, *supra* note 4, at 327.

155. *See* Kropholler, *supra* note 4, at 326.

156. Kropholler, *supra* note 13, at 5.

157. *Id.*

158. *Id.* at 9.

159. LOUIS HENKIN, ET AL., INTERNATIONAL LAW, CASES AND MATERIALS 821 (2d ed. 1987).

160. RESTATEMENT (THIRD), *supra* note 2, at ch. 2 introductory note. *See* Detlev F. Vagts, *Dispute-Resolution Mechanisms in International Business*, 203 RECUEIL DES COURS 9, 40 (1987); von Mehren, *supra* note 143, at 1058.

161. *E.g.*, IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 299 (3d ed. 1983); Mann, *supra* note 71, at 10-11; RESTATEMENT (THIRD), *supra* note 2, ch. 2, intro note; Gary Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 GA. J. INT'L & COMP. L. 1, 11, 19 (1987). *But see* the following German authorities, all of whom reject such limits: GEIMER, *supra* note 32, at 261; Kropholler, *supra* note 4, at 214-15, 328-29; HAIMO SCHACK, JURISDICTIONAL MINIMUM CONTACTS SCRUTINIZED 8 n.54 (1983); Matthias Herdegan, Book Review, 39 AM. J. COMP. L. 207, 209 (1991) (reviewing RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED

portion of the international legal community. These limits have generally been defined in terms of reasonableness[162] or closeness of contacts.[163] It is important to determine the propriety of Vermögensgerichtsstand under international law, since German law requires its rules of international jurisdiction to be interpreted in a manner consistent with international law.[164]

International law does not appear to be violated when jurisdiction is limited to the value of the property upon which it is based, that is, *forum arresti* or *quasi in rem* jurisdiction.[165] The presence of property establishes a "sufficiently close link" to the forum to establish jurisdiction over the defendant up to the property's value.[166] With regard to unlimited personal jurisdiction based on the ownership of property, some authorities have stated that it does violate international law,[167] while others have rejected the proposition.[168] At the present time, Vermögensgerichtsstand does not appear to violate customary international law. The continued use of Vermögensgerichtsstand in Germany and numerous other countries,[169] together with the seeming lack of

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STATES); Bernd von Hoffmann, *Gegenwartsprobleme internationaler Zuständigkeit*, 2 IPRAX 217, 217 (1982).

162. *See* RESTATEMENT (THIRD), *supra* note 2, at introductory note to Part IV, stating that rules in the Restatement concerning jurisdiction "notably the principle of reasonableness . . . have emerged as principles of customary law"; *id.* §421(1). *See also* Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County, 107 S. Ct. 1026, 1035 (1987), in which the Court recognized the necessity of inquiring into the "reasonableness" of an assertion of jurisdiction over a foreign defendant.

163. Mann, *supra* note 71, at 49, 97; Mann, *supra* note 145, at 25, 31.

164. Judgment of July 2, 1991, BGH, 1991 NJW 3092; 1 STEIN-JONAS, *supra* note 30, at 58, 752 n. 110.

165. Mann, *supra* note 71, at 81; Restatement (Third), *supra* note 2, § 421(2)(k).

166. *See* Mann, *supra* note 71, at 81.

167. *See* Mann, *supra* note 145, at 69. *See also* Schumann, *supra* note 8, at 439 (stating that use of Vermögensgerichtsstand against a foreign State violates customary international law).

168. *See, e.g.*, Judgment of Nov. 24, 1988, BGH, 1989 NJW 1431; GEIMER, *supra* note 32, at 260; HENKIN ET. AL., *supra* note 159, at 882; Schack, *supra* note 13, at 60-61; SCHRÖDER, *supra* note 31, at 403 n. 1763.

169. *See* Shack, *supra* note 13, at 51-52 (listing States, besides Germany, that recognize the doctrine).

diplomatic protests against its use,[170] suggest that Vermögensgerichtsstand is not contrary to customary international law.[171]

However, this conclusion does not end the inquiry into the status of Vermögensgerichtsstand under international law. It should not be forgotten that Vermögensgerichtsstand, together with similar types of asset-based jurisdiction,[172] is now excluded among the parties to the Brussels[173] and Lugano Conventions.[174] Further, Germany has concluded bilateral treaties with a number of States excluding or severely limiting its use. Vermögensgerichtsstand is also restricted by two other multilateral treaties, the Protocol to the Hague Convention concerning the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters,[175] and the

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170. *See* Michael Akehurst, *Jurisdiction in International Law*, 46 BRIT. Y.B. INT'L L. 145, 172 (1972-73) (admitting that Vermögensgerichtsstand "enables a State to exercise jurisdiction over cases and parties having no real connection with that State," while noting that "no State seems to have protested that such jurisdiction is contrary to international law"); HENKIN ET. AL., *supra* note 159, at 821-22. *But see* RESTATEMENT (THIRD), *supra* note 2, ch. 2, intro note (declaring that States "increasingly . . . object to the improper exercise of jurisdiction as itself a violation of international principles").

171. *See* Hans Baade, Book Review, 22 AM. J. COMP. L. 793, 805 (1974) (reviewing F.A. MANN, STUDIES IN INTERNATIONAL LAW (1973)) (stating that any rule limiting jurisdiction under international law must be "founded on a clear and convincing demonstration that it was supported not only by custom as evidenced by state practice, but also by the *opinio necessitatis iuris*, *i.e.*, the belief on the part of states that their practice was required by international law").

172. *See* Lugano Report, *supra* note 147, at 1487. The report lists Austria, Denmark, Finland, Germany, Iceland, Norway, Sweden, and the United Kingdom as having some sort of asset-based jurisdiction which has been superseded by the Lugano Convention. *See also* Juenger, *supra* note 82, at 1211.

173. *See* The Brussels Convention *supra* note 142. Kropholler finds that the Convention strengthens the validity of Vermögensgerichtsstand under international law, since art. 4 permits use of § 23 against non-Community domiciliaries. Kropholler, *supra* note 4, at 329. However, this interpretation seems perverse; the importance of the Convention surely lies in the limits it puts on § 23, not in the fact that it retains the provision for one class of defendants.

174. *See* The Lugano Convention *supra* note 147.

175. Articles 2 and 4(a) of the Protocol allow recognition and enforcement of a judgment to be refused if jurisdiction was based solely on the presence of property. As of July 27, 1990 the Convention was in force between only three countries, namely Cyprus, the Netherlands, and Portugal. 29 I.L.M. 1072-75 (1990). Admittedly, the failure of more States to become parties argues against the significance of these two articles of the Protocol as rules of customary international law. *See* Richard Baxter, *Treaties and Custom*, 129 RECUEIL DES COURS 25, 100-101 (1970). The text of the Protocol can be found in Kurt Nadelmann & Arthur T. von Mehren, *The Extraordinary Session of the Hague Conference on Private International Law*, 15 AM. J. COMP. L. 361, 369-70 (1967). *See also* GERHARD KEGEL, INTERNATIONALES PRIVATRECHT 698 (6th ed. 1987) (discussing the

European Convention on State Immunity.[176] The restrictions placed on Vermögensgerichtsstand by these treaties may indicate that it is gradually becoming regarded as violative of customary international law.[177] Alternatively, it is possible that Vermögensgerichtsstand violates the general principle of international law that national courts must be reasonable in exercising jurisdiction in international cases.[178]

The case for considering Vermögensgerichtsstand to be violative of international law may admittedly be rather tenuous. However, the trend in the international legal community toward viewing the doctrine as unreasonable is unmistakable. Even the *Bundesverfassungsgericht* (German Federal Constitutional

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Convention).

176. May 16, 1972, Europ. T.S. No. 74. The Annex to the Convention lists several bases of jurisdiction upon which a judgment against a State Party may not be based under arts. 20(3)(a), 24(2), and 25(3)(b), one of which is the presence of property, unless the action is related to such property. As of 1990 the Convention was in force between Austria, Belgium, Cyprus, the United Kingdom, the Netherlands, Switzerland, and Luxembourg. CHARLES LEWIS, STATE AND DIPLOMATIC IMMUNITY 9-10 (3d ed. 1990). *See* Kropholler, *supra* note 4, at 325; Schumann, *supra* note 8, at 427-29 (discussing the Convention).

177. *See* Judgment of July 2, 1991, Bundesgerichtshof, 1991 N.J.W. 3092, *supra* note 113 (implicitly recognizing this possibility by noting that a restrictive application of Vermögensgerichtsstand would better conform to the growing tendency under international law to limit the doctrine by treaty); RESTATEMENT (THIRD), *supra* note 2, at § 102(3) comment i: "A wide network of similar bilateral arrangements on a subject may constitute practice and also result in customary law." *See also* Juenger, *supra* note 73, at 16 (noting that "guidance to distinguish between acceptable and exorbitant jurisdictional bases" may be derived from treaties). Akehurst, *supra* note 170, at 172, and Kropholler, *supra* note 4, at 329, cite the International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision of 1952, which allows actions arising from the collision of ships to be brought where the defendant ship has been seized and does not limit jurisdiction to the value of the ship, as support for the validity of Vermögensgerichtsstand under international law. However, this single treaty is hardly entitled to a great deal of weight, given its specialized subject matter and the number of later treaties which restrict Vermögensgerichtsstand-type jurisdiction.

178. *See* Born, *supra* note 161, at 20 (referring to "an emerging principle of international law requiring assertions of judicial jurisdiction to be reasonable"); Juenger, *supra* note 73, at 16 ("there may indeed be a trend toward international criteria of reasonableness"); Schumann, *supra* note 8, at 429.

Court)[179] recognized that section 23 poses "significant questions" under international law.[180]

IV. CONCLUSION

A. In General

Vermögensgerichtsstand has not received a thorough evaluation under the norms and policies of international law relating to adjudicative jurisdiction. Defenders of the doctrine tend to make emotional appeals about the unfairness of forcing plaintiffs to litigate in forums outside of Germany, such as "Tahiti, Nicaragua or Laos."[181] They justify the doctrine chauvinistically by insisting that anyone acquiring property in Germany must thereby consent to jurisdiction in Germany.[182] Further, defenders of the doctrine contend that section 23 is no worse than jurisdictional bases used in other countries.[183] Opponents, on the other hand, often describe the provision as exorbitant or unreasonable without any detailed explanation.[184] Vermögensgerichtsstand must be evaluated from the perspectives of the three participants in a lawsuit (the defendant, the plaintiff, and the forum) based on closeness of contacts[185] and reasonableness,[186] which have become the predominant factors under international law for determining the propriety of a jurisdictional base.

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179. *See supra* note 44 (regarding the *Bundesverfassungsgericht*).

180. Judgment of Apr. 12, 1983, BVerG, 64 BVerfGE 1, 18 (1984) (holding that attachment under § 23 of bank accounts established in the name of Iranian state enterprises did not in itself violate international law, the court determined that it did not have to decide the international legal propriety of § 23, but did find that the provision raises significant questions under international law). *But see* Judgment of Nov. 24, 1988, BGH, 1989 NJW 1431 (The *Bundesgerichtshof* stated that Vermögensgerichtsstand does not violate international law).

181. *E.g.*, Schack, *supra* note 13, at 49.

182. *E.g.*, GEIMER, *supra* note 32, at 261.

183. *E.g.*, Bartlett, *supra* note 66, at 55-56.

184. *E.g.*, Mann, *supra* note 145, at 69.

185. Mann, *supra* note 71, at 49, 97; Mann, *supra* note 145, at 25, 31.

186. *See* materials cited at *supra* note 162.

B. Vermögensgerichtsstand from the Defendant's Point of View

Judging Vermögensgerichtsstand first from the defendant's point of view, the degree of connection provided by the defendant's ownership of property within the jurisdiction is infinitely variable. Certain types of property, such as land, indicate a substantial connection to the jurisdiction, while others, such as personal articles, demonstrate an insignificant degree of connection[187] (at least for claims not strictly related to the status of such property, *i.e.*, *quasi in rem* rather than *in rem* actions). A century ago, the presence of a person's property may have indicated a significant connection with the forum. However, in this age of convenient travel and frequently shifting assets, this assumption is no longer justified.[188] Thus, one defect of jurisdiction based on the presence of property is that it casts its net too wide, snaring defendants with little or no connection to the State.

Vermögensgerichtsstand is even less satisfactory when used as a basis for unlimited personal jurisdiction. It is logical that the presence of the defendant's property should justify asserting jurisdiction over that defendant for judgments not exceeding the value of that property.[189] However, this logic is wholly absent when unlimited personal liability is asserted against a defendant based on the presence of property within the jurisdiction. Property does not have some talismanic significance such that control over it should give a court full control over the owner. Attempts to counter this argument by German scholars rest on absurd legal fictions. These scholars contend that a person must be deemed ready to defend his property wherever it is in the world,[190] or that the ownership of property in Germany indicates use of the German economic system.[191] Even if these arguments are accepted, they do not justify jurisdiction beyond the value of the property within the court's district.

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187. *See* Schack, *supra* note 161, at 60-61; von Mehren & Trautman, *supra* note 20, at 671-73.
188. *See* von Mehren & Trautman, *supra* note 50, at 1178.
189. *See* Mann, *supra* note 71, at 81.
190. von Hoffmann, *supra* note 161, at 220; Schack, *supra* note 13, at 49.
191. GEIMER, *supra* note 32, at 261.

Moreover, Vermögensgerichtsstand fails to require a reasonable relationship between the value of the claim and the value of the property. International standards of reasonableness, however nebulous they may be, are surely violated when jurisdiction for a claim of several million dollars is based on the defendant's leaving his shoes in a hotel room.[192] It is no use arguing that cases involving property of minuscule value are almost never brought.[193] This assertion, even if accepted, provides no reason not to eliminate the possibility of such a suit by requiring a reasonable relation between the value of the claim and the property. Thus, Vermögensgerichtsstand appears unfair and arbitrary from a defendant's point of view.

C. Vermögensgerichtsstand from the Plaintiff's Point of View

The picture is quite different from the plaintiff's perspective, since the expansiveness of Vermögensgerichtsstand makes it easier for the plaintiff to bring suit. In this respect, Vermögensgerichtsstand can best be understood as a response to the maxim *actor sequitur forum rei* which is designed to restore some advantage in litigation to plaintiffs,[194] particularly German plaintiffs.[195]

However, Vermögensgerichtsstand promotes the plaintiff's interests to an excessive and unnecessary extent. There are motivations for a foreign defendant not to abscond, even when a domestic judgment can not be enforced against him abroad. These

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192. *See* Mann, *supra* note 71, at 81 ("From the point of view of the doctrine of international jurisdiction the objection. . .lies in the fact that assets of trifling value are said to justify civil jurisdiction in respect of claims of unlimited size.").

193. *See, e.g.*, Reinhold Geimer, *Zur Rechtfertigung des Vermögensgerichtsstandes*, 39 JURISTENZEITUNG 979, 980 (1984). This argument also conflicts with the point made by another defender of § 23, Schack, *supra* note 13, at 54, that the provision is useful even if the defendant's property in Germany is minuscule in case he brings in more assets at a later date.

194. *See* Kropholler, *supra* note 13, at 9.

195. Von Dryander, *supra* note 8, at 681. German scholars generally place considerable weight on the interests of the plaintiff in determining jurisdictional limits in international cases, based on the difficulties of suing in a foreign country. *E.g.* Erik Jayme, Book Review, 1991 N.J.W. 3077 (reviewing HAIMO SCHACK, INTERNATIONALES ZIVILVERFAHRENSRECHT (1991)); Kegel, *supra* note 175, at 684-85.

include the wish to continue doing business in the jurisdiction or to bring assets there in the future.[196] Moreover, it is unfair to assume that plaintiffs are always at a greater disadvantage than defendants when litigating abroad.[197] Further, the defendant's ownership of property does not constitute one of those special situations in which it may be just to favor the plaintiff's forum, such as when "the controversy arises out of conduct that is essentially multistate on the part of the defendant, and essentially local on the part of the plaintiff."[198] Since the plaintiff initiated the suit, a policy of discouraging frivolous litigation is better served if he has to bear more of the attendant burdens.[199] The plaintiff's rightful concern that the defendant will abscond or conceal assets can be assuaged by relying on provisional remedies when appropriate.[200] This avoids section 23's mistake of treating all non-resident defendants as "presumptive absconders."[201]

While Vermögensgerichtsstand may give an unjustified advantage to the plaintiff bringing suit, it can prove disadvantageous to him once a judgment is obtained, since a

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196. Born, *supra* note 161, at 23. *See* Z Ltd. v. A, (1982) 1 All E.R. 556, 572 (C.A. 1981) (where Lord Justice Kerr noted that in many international cases the defendants "are generally persons or concerns who are established within the jurisdiction in the sense of having assets here which they could not, or would not wish to, dissipate merely in order to avoid some judgment which seems likely to be given against them. . . .").

197. *See* Born, *supra* note 161, at 25.

198. Von Mehren & Trautman, *supra* note 50, at 1167-68. *See* De Winter, *supra* note 64, at 717; Hans Smit, *Common and Civil Law Rules of In Personam Adjudicatory Authority: An Analysis of Underlying Policies*, 21 INT'L & COMP. L.Q. 335, 351 (1972).

199. *See* Born, *supra* note 161, at 5 n.17, 25; von Mehren & Trautman, *supra* note 50, at 1127-1128.

200. *See* von Mehren & Trautman, *supra* note 50, at 1178. *See also* Michael B. Mushlin, *The New Quasi-in-Rem Jurisdiction: New York's Revival of a Doctrine Whose Time Has Passed*, 55 BROOK. L. REV. 1059, 1110 (1990):

> It is also no answer to say that quasi in rem jurisdiction is necessary to prevent the out-of-state defendant from fleeing, from removing property from the jurisdiction, or from secreting assets. If any of these factors can be established in a particular case they justify attachment, not for the purpose of jurisdiction, but rather for security.

Id. German procedural law provides for interim protective measures. *See* Löber, *supra* note 126, at 283; Sandrock, *supra* note 34, at 22-25.

201. Mushlin, *supra* note 200, at 1111. *See supra* notes 93-99 and accompanying text (discussing a case in which the *Oberlandesgericht* Frankfurt noted that it cannot be assumed that a defendant will automatically remove all his assets from Germany to prevent execution there after losing a case in another country).

judgment based on section 23 is unlikely to be recognized abroad. The argument has been made that the interest protected by Vermögensgerichtsstand is that of allowing the plaintiff to litigate at his forum, and even if execution is not possible, the plaintiff can use section 23 to obtain a declaratory judgment or toll the statute of limitations so as to protect his rights should the defendant bring assets back into Germany.[202] However, it strains credulity to argue that the plaintiff has so little interest in having a judgment executed; presumably his object in suing is to obtain compensation for his damages as soon as possible. Most plaintiffs can obtain execution since most non-resident defendants need continued access to Germany and are not willing to sever all ties to the country because of a lawsuit. Those defendants that are willing to abscond are unlikely to bring assets back into Germany knowing that a sizeable judgment has been entered against them. Thus, the plaintiff is provided little protection by section 23 if the defendant is determined to abscond.

D. Vermögensgerichtsstand from the Point of View of the Forum

Vermögensgerichtsstand is particularly unattractive from the forum's point of view. Until the *Bundesgerichtshof*'s recent decision discussed above,[203] the wide scope of section 23 encouraged the adjudication of suits in Germany with no connection to that country. This broad application risked causing friction with other States,[204] particularly in cases involving a

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202. *See* Schack, *supra* note 13, at 64. *But see* 1 STEIN-JONAS, *supra* note 30, at 742-43 (stating that one of the purposes of § 23 is to allow a plaintiff to execute a judgment on at least some of the property of a non-resident defendant).

203. *See* Judgment of July 2, 1991, BGH, 1991 NJW 3092.

204. *See* von Mehren & Trautman, *supra* note 50, at 1127:

> [I]n establishing bases for jurisdiction in the international sense, a legal system cannot confine its analysis solely to its own ideas of what is just, appropriate, and convenient. To a degree it must take into account the views of other communities concerned.... Conduct that is overly self-regarding with respect to the taking and exercise of jurisdiction can disturb the international order and produce political, legal, and economic reprisals.

Id.

foreign State entity.[205] While this possibility may now be less likely, the *Bundesgerichtshof's* failure to articulate clear standards for deciding when section 23 jurisdiction is appropriate places a considerable burden on the German courts. Moreover, the other objectionable elements of Vermögensgerichtsstand, such as the non-enforceability of judgments based on section 23 outside of Germany, make it an inefficient basis for international litigation and a waste of the forum's resources. Protection of Germany's domiciliaries, the only real interest of the forum which Vermögensgerichtsstand promotes, can be adequately assured by reliance on more legitimate jurisdictional bases.

Defenders of Vermögensgerichtsstand often argue that Germany must retain section 23 until procedures for the recognition and enforcement of judgments are strengthened at the international level.[206] There is no doubt that the doctrine exists to a great extent because of difficulties in obtaining recognition and enforcement of foreign judgments.[207] While it cannot be disputed that great improvements in this sphere would reduce much of the need for Vermögensgerichtsstand, awaiting such a utopian development sounds suspiciously like an excuse for doing nothing.[208] As the country with the dubious distinction of having given Vermögensgerichtsstand to the world, Germany has a special responsibility for its reform,[209] which would best be done internally. As Professor Nadelmann argues with regard to exorbitant jurisdictional rules, "Why should negotiation of treaties be required when correction of defects in municipal law can remove a large part of the trouble which has arisen? What glory can come from maintenance of defective municipal law?"[210]

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205. *See e.g.*, materials cited at *supra* notes 8 & 10.

206. *See, e.g.*, Kropholler, *supra* note 4, at 330.

207. DROBNIG, *supra* note 23, at 323; Juenger, *supra* note 73, at 28; Nadelmann I, *supra* note 5, at 1008-09. *But see* Schack, *supra* note 13, at 48, 60 (arguing that even if foreign judgments were easily enforceable, Vermögensgerichtsstand would still be necessary when it would be unfair for the plaintiff to litigate abroad).

208. *See* Kropholler, *supra* note 4, at 331.

209. *Id.*

210. Nadelmann II, *supra* note 5, at 237.

E. Final Thoughts

A reasoned examination of Vermögensgerichtsstand leads to the conclusion that it is not satisfactory from the points of view of the defendant, the plaintiff, or the forum. Under section 23 the defendant may be subjected to full personal liability if he owns a minuscule amount of property in Germany. The plaintiff is, on the one hand, given an unfair advantage in bringing suit, but on the other hand, receives a judgment which he cannot enforce abroad. Moreover, pursuant to section 23, the forum must open its courts to inefficient and burdensome litigation.

While this state of affairs has been improved somewhat by the *Bundesgerichtshof's* decision of July 1991,[211] that case did not resolve a number of important questions concerning section 23. For instance, most criticism of the provision has centered on its unfairness to defendants, but the *Bundesgerichtshof's* opinion limited section 23's scope only when the plaintiff has insufficient contacts to Germany. The court also refused to determine whether the value of the property upon which jurisdiction is based need stand in any specific relation to the value of the claim. However, the court's emphasis on the facts of the case suggests that it might be willing to do so given the proper case.[212] Perhaps most importantly, the *Bundesgerichtshof* gave the German courts a great deal of discretion to determine when the plaintiff's connection to Germany is sufficient to support jurisdiction.

It would be ironic if this case were to herald the development of a doctrine of *forum non conveniens* in Germany.[213] German defenders of Vermögensgerichtsstand have traditionally viewed it as their country's counterpart to American long-arm jurisdiction, that is, a necessary mechanism for asserting jurisdiction over foreign defendants.[214] However, while prerequisites to long-arm

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211. *See* Judgment of July 2, 1991, BGH, 1991 NJW 3092.

212. *Id.*

213. *See* Löber, *supra* note 126 (discussing the German attitude to *forum non conveniens*).

214. *See, e.g.*, von Hoffmann, *supra* note 161, at 220; Schack, *supra* note 13, at 47-48. Arguments by German scholars equating American *quasi in rem* jurisdiction with Vermögensgerichtsstand (*e.g.* Schack, *supra* note 13, at 48, 53) are not convincing. *Quasi in rem*

jurisdiction such as the existence of minimum contacts seem impossibly complex and arbitrary to the Germans,[215] they have always regarded Vermögensgerichtsstand as, if not perfect, easy to apply.[216] This ease of application, even if it can be criticized as "the kind of clarity commonly produced by an arbitrary rule,"[217] has been considerably reduced by the *Bundesgerichtshof's* ruling.

Whatever criticism can be made of it, the *Bundesgerichtshof's* bold decision to limit the scope of section 23 must be welcomed as the enlightened realization that a form of jurisdiction which may have had some justification a century ago had to be brought into conformity with modern standards of international jurisdiction. Given the *Bundesgerichtshof's* new willingness to rethink the application of Vermögensgerichtsstand, further challenges to the doctrine are likely, particularly in cases in which allowing jurisdiction would be blatantly unfair to the defendant (such as when property of small value is used to support jurisdiction for a huge claim). Far from saying the last word concerning Vermögensgerichtsstand, the *Bundesgerichtshof's* recent decision wrote a new chapter in the history of a jurisdictional provision that is likely to be the subject of continuing interest for years to come.

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jurisdiction has always been limited to the value of the assets upon which jurisdiction is based, unlike Vermögensgerichtsstand, and has been further restricted by the Supreme Court's decision in Shaffer v. Heitner, 433 U.S. 186 (1977). As noted by De Vries & Lowenfeld, *supra* note 27, at 332, "Article 23 is quite different from the American invention of jurisdiction quasi in rem." Likewise, attempts to justify § 23 by criticism of American jurisdictional rules (*e.g.* Schack, *supra* note 13, at 47-48) must be rejected; if American rules are exorbitant then that is a reason to change them, not a reason to retain Vermögensgerichtsstand in its present form. *See* Patrick J. Borchers, *Comparing Personal Jurisdiction in the United States and the European Community: Lessons for American Reform*, 40 AM. J. COMP. L. 121 (1992) (regarding possible reform of American rules of personal jurisdiction).

215. *See, e.g.*, Schack, *supra* note 161, at 16, 72.

216. *See, e.g.*, GEIMER, *supra* note 32, at 262. It is not surprising that the *Bundesgerichtshof's* decision and that of the *Oberlandesgericht* which it affirmed have been criticized by German defenders of Vermögensgerichtsstand. Klaus Fischer, *Zur internationalen Zuständigkeit deutscher Gerichte nach §23 ZPO*, 1990 RIW 794; Reinhold Geimer, *Rechtsschutz in Deutschland künftig nur bei Inlandsbezug?*, 1991 NJW 3072.

217. Harold G. Maier & Thomas R. McCoy, *A Unifying Theory for Judicial Jurisdiction and Choice of Law*, 39 AM. J. COMP. L. 249, 279 (1991).