Which country's court is responsible?

Nemčija

The international jurisdiction of German courts is determined either according to relevant legal acts of the European Union or through autonomous international law of civil procedure, which also includes international conventions. The questionnaire covers only matters of national jurisdiction.

1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

There are two different systems of courts for civil disputes in Germany, the civil courts (*Zivilgerichte*) and the labour courts (*Arbeitsgerichte*).
Labour courts have jurisdiction in respect of all civil disputes between employees and employers and disputes between the social partners. The other responsibilities of the labour courts arise from Sections 2 and 2a of the Labour Courts Act (*Arbeitsgerichtsgesetz*, ArbGG). Under Section 5(1), second sentence, of the Labour Courts Act, they also have jurisdiction for disputes between persons in a comparable situation to employees and their customers. All other civil disputes come within the jurisdiction of the civil courts, which are part of ordinary jurisdiction.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

The civil courts of first instance are the local courts (*Amtsgerichte*) and the regional courts (*Landgerichte*).
1. The local courts generally have jurisdiction in civil disputes if the value in dispute does not exceed €5 000 and the regional court does not have exclusive jurisdiction (Section 23 No 1 of the Judicature Act (*Gerichtsverfassungsgesetz*, GVG).
The local courts also have exclusive jurisdiction in the following cases, regardless of the value in dispute (Sections 23 and 23a of the Judicature Act).
The local courts have jurisdiction to hear disputes regarding claims arising from a residential lease or regarding the existence of such a lease (Section 23 No 2(a) of the Act).
Additionally, the local courts have exclusive jurisdiction in family cases, and generally in matters relating to the noncontentious jurisdiction (Section 23a(1), first sentence, Nos 1 and 2).
The local courts also have exclusive jurisdiction in other matters arising out of Section 23 No 2, b–d and g of the Judicature Act.
2. The regional courts have jurisdiction at first instance in respect of all civil disputes that are not allocated to the local courts. These are primarily cases where the value in dispute is more than €5 000.
In particular, the regional courts have exclusive jurisdiction under Section 71(2) of the Act, irrespective of the value in dispute:

- for claims against the tax authorities based on civil service legislation,
- for claims based on false, misleading public capital market disclosures or on the failure to make such disclosure, on the use of false or misleading public capital market disclosures or on failure to inform the public that such public capital market disclosures are false or misleading,
- for disputes concerning the buyer's right to order and the contractor's resulting claim to adaptation of remuneration for construction contracts within the meaning of Section 650a of the Civil Code (*Bürgerliches Gesetzbuch*, BGB),
- and for claims relating to the liability of public officials.

The regional courts may establish commercial divisions (Section 93 of the Judicature Act). These have jurisdiction among other things for civil law claims against businesses and disputes under the law governing cheques and bills of exchange. Section 95 of the Judicature Act contains an exhaustive list of the jurisdictions of the commercial divisions. The claimant must apply in the originating application for the matter to be heard before the commercial division (Section 96(1) of the Act).

2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)

2.2.1 The basic rule of territorial jurisdiction

In Germany, the general rule of jurisdiction in the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) (Sections 12-18) is that territorial jurisdiction is determined by the place where the defendant lives. If a person has no permanent place of residence, the basis is the place where they are staying in Germany, and, if no such place is known, their last permanent place of residence (Section 16 ZPO). In the case of a legal entity, territorial jurisdiction is determined by its registered office (Section 17 ZPO).

2.2.2 Exceptions to the basic rule

2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?

For certain types of claim, the claimant may alternatively choose a special, but not an exclusive jurisdiction, different from that where the defendant lives. Examples of this are as follows:
* Disputes arising from a contractual relationship and disputes about the existence of a contract may also be commenced in the court of the place where the disputed obligation is to be performed (specific jurisdiction of the place of performance, Section 29(1) of the Code of Civil Procedure). An agreement regarding the place of performance is relevant for procedural purposes only if the contracting parties belong to the category of people who are authorised to conclude choice-of-jurisdiction agreements under Section 38(1) of the Code of Civil Procedure, see 2.2.2.3.
The term 'contractual relationship' includes all contracts governed by the law of obligations, regardless of the type of obligation. Where the labour courts have jurisdiction, the provision applies *mutatis mutandis*.
* For claims arising in civil liability for wrongful acts, the court in whose area the act took place also has jurisdiction (Section 32 of the Code of Civil Procedure).
* According to Section 20 of the Road Traffic Act (*Straßenverkehrsgesetz*, StVG), the court in the district of which the harmful event, i.e. the traffic accident, occurred also has jurisdiction for claims based on that Act.
* The victim of a criminal act may in the course of criminal proceedings submit applications intended to assert financial claims accruing to him from the criminal act in the court where the charge has been brought (joining the criminal proceedings under Sections 403 and 404 of the Code of Criminal Procedure (*Strafprozessordnung*, StPO)).

* Territorial jurisdiction in respect of divorce proceedings is regulated in Section 122 of the Act on proceedings in family matters and in matters of non-contentious jurisdiction (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG). Accordingly, territorial jurisdiction lies solely with the family court (*Familiengericht*, a division of the local court) in the district of which one of the spouses with all the couple' s under-age children have their usual residence (meaning the actual focus of their lives). If no such usual residence with all the couple's under-age children exists at the time when the proceedings become pending, i.e. at the time of service of the application document, sole jurisdiction lies with the family court in the district of which one of the spouses is usually resident together with some of the couple's under-age children, provided that none of the couple's children are usually resident with the other spouse.
If this does not establish jurisdiction, sole jurisdiction lies with the family court in the district of which the spouses last had their joint habitual residence, if one of the spouses is still usually resident there at the time when the proceedings become pending (see above). If this does not apply either, the point of reference is the opposing party's habitual place of residence, unless there is no such place of residence in Germany. In this event, the point of reference is the applicant's habitual place of residence.
If this does not establish jurisdiction either, the Family Court at the Berlin-Schöneberg Local Court has sole jurisdiction.
* Territorial jurisdiction for maintenance matters is regulated in Section 232 of the Act on proceedings in family matters and in matters of non-contentious jurisdiction. The court where actions relating to matrimonial matters are or have been pending at first instance has exclusive jurisdiction with regard to maintenance for spouses and children, while these actions are still pending.
If an action relating to matrimonial matters is no longer pending, the court in the district of which the child or the parent who has authority to act on behalf of the under-age child has their usual residence has sole jurisdiction with regard to maintenance matters for an under-age or equivalent child. This does not apply in the case of the child or parent having their usual residence abroad.
For all other maintenance matters (maintenance of spouses or children not covered by the provisions above, but also maintenance of grandchildren, parents or single mothers), the general provisions remain applicable, i.e. the usual residence of the opposing party takes precedence. For some special cases, there is also the choice of jurisdiction pursuant to Section 232(3), second sentence, of the Act on proceedings in family matters and in matters of non-contentious jurisdiction.
* In proceedings relating to parental responsibility or the right of access, the same applies under Section 152 of the Act, i.e. if proceedings are pending for the dissolution of the marriage, this court retains jurisdiction. If no proceedings in marital matters are pending, the reference point is the usual residence of the child. The date of reference for determining jurisdiction is the date on which the matter is referred to the court.

2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?

Where a statute expressly states that a place of jurisdiction is exclusive, it takes precedence over all other jurisdictions, i.e. the proceedings can be brought (admissibly) only before the court with exclusive jurisdiction. Exclusive places of jurisdiction arise mainly from the Code of Civil Procedure, but also as a result of special statutes (e.g. Section 122 of the Act on proceedings in family matters and in matters of non-contentious jurisdiction).
If the proceedings relate to land or to a right equivalent to land (e.g. a hereditary building right), exclusive jurisdiction lies in some cases with the court in whose district the immovable property is located; this applies to proceedings relating to ownership or encumbrances on immovable property, disputes about freedom from such encumbrances, possessory actions, boundary disputes and actions for partition (Section 24 of the Code of Civil Procedure).
In the case of disputes arising from leases or tenancies of premises or the existence of such arrangements, sole jurisdiction lies with the court in the district of which the leased or tenanted premises are located (Section 29a(1) of the Code of Civil Procedure). This provision does not, however, apply to rental of residential premises for temporary use (holiday homes, hotel rooms etc.), furnished premises for individual tenants or to houses and premises for official duties (Section 29a(2)).
In the case of proceedings against the owner of a plant located in Germany, in which a claim to compensation is asserted for damages caused by effects on the environment, exclusive jurisdiction lies with the court in the district of which the plant's effects on the environment originated (Section 32a).
In the case of proceedings for compensation due to false or misleading public capital market disclosures or failure to make such disclosures to the public, or for performance of a contract based on an offer pursuant to the Securities Purchase and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*), the court has exclusive jurisdiction that is located at the registered seat of the issuer concerned, of the offeror concerned of other capital investments, or of the target company, where this registered seat is situated within Germany and the complaint is directed, at least also among others, against the issuer, the offeror, or the target company (Section 32b).
In debt collection proceedings (using the payment order procedure (*Mahnverfahren*)), sole jurisdiction lies with the local court with ordinary jurisdiction for the applicant, in other words the court of the place where the applicant has his or her residence or, in the case of legal persons, its registered office (Section 689 (2), first sentence, of the Code of Civil Procedure). If the applicant does not have a general place of jurisdiction in Germany, the Wedding Local Court in Berlin has sole jurisdiction. This applies even if a different exclusive jurisdiction is specified in other legislation.
In enforcement proceedings, exclusive jurisdiction lies with the local court in whose district the enforcement is to take place or has taken place (Sections 764 (2) and 802 of the Code of Civil Procedure). In the case of enforcement of claims and other property rights, the local court in the place of residence of the debtor has jurisdiction (Section 828(2)). In the case of forced sale by auction or forced administration of land, exclusive territorial jurisdiction as court of execution lies with the local court in the district of which the land is located (Sections 1(1) and 146 of the Act on Compulsory Auction and Administration (*Gesetz über die Zwangsversteigerung und die Zwangsverwaltung* (ZVG)) and Sections 802 and 869 of the Code of Civil Procedure).
If a third party claims to have title preventing the disposal of an object subject to compulsory enforcement, the court in the district of which compulsory enforcement is being pursued has sole jurisdiction (Section 771 of the Code of Civil Procedure).
Where an obligation cannot be performed by anyone except the obliged party (it is an *unvertretbare Handlung*), the trial court of first instance has jurisdiction to enforce it, whether it is an obligation to do something, or to permit something, or to refrain from doing something (Sections 894, 895, 888, 890 of the Code of Civil Procedure). The trial court of first instance also has jurisdiction for actions raising an objection to the claim established by judgment (§ 767 of the Code of Civil Procedure).

2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?

a) Agreements

The Code of Civil Procedure provides for the possibility of choiceofjurisdiction agreements. Under Section 38(1) of the Code, a court of first instance that has no jurisdiction *per se* can acquire jurisdiction as a result of an express or implied agreement between the parties, if the parties are businesses, legal entities under public law or public-law special funds. A particular court of first instance may also be given jurisdiction if at least one of the contracting parties is not within the ordinary jurisdiction of any court in Germany (Section 38(2) of the Code of Civil Procedure). In the latter case, the agreement must be made in writing or, if it is made orally, confirmed in writing. If one of the parties is within the ordinary jurisdiction of a court in Germany, any choiceofjurisdiction clause must as far as Germany is concerned name either that court or a special court with established jurisdiction in the case.

Under Section 38(3) of the Code of Civil Procedure, a choiceofjurisdiction agreement is admissible only if it has been entered into expressly and in writing after the dispute arose or to cover the possibility of the future defendant moving their address or habitual residence abroad after the contract is concluded, or of their address or habitual residence not being known at the time proceedings commence.

A choiceofjurisdiction agreement must always relate to a particular legal relationship and legal disputes arising from it; otherwise it is invalid (Section 40(1) of the Code of Civil Procedure). A choiceofjurisdiction agreement is also inadmissible if it deals with nonfinancial claims which are allocated to the local court, regardless of the value of the object of the dispute. A choiceofjurisdiction agreement is not possible if an exclusive jurisdiction is established by law (Section 40(2)).

A valid choiceofjurisdiction agreement is binding on the courts; the question of whether exclusive jurisdiction has been agreed depends on the wording of the agreement.

b) Failure to dispute jurisdiction

Jurisdiction may also be conferred on a court of first instance if the defendant makes oral submissions in the main action without arguing lack of jurisdiction (Section 39 of the Code of Civil Procedure). In proceedings before the local courts, this legal consequence follows only if the court has drawn attention to the issue (Section 504).

However, jurisdiction cannot be conferred by a failure to dispute jurisdiction in the main action if a choiceofjurisdiction agreement would be inadmissible (see above, non-financial disputes and exclusive jurisdiction).

3 Where specialised courts have jurisdiction how can I find out which one I have to address?

Particularities arise from the labour court’s special jurisdiction not only with regard to operational jurisdiction pursuant to Sections 2-3 of the Labour Court Act (*Arbeitsgerichtsgesetz*, ArbGG).

Particularities are also to be observed with regard to territorial jurisdiction. For proceedings leading to a judgment within the meaning of Section 2 of the Labour Court Act, reference is first made to the general rules of the Code of Civil Procedure under Sections 12-40 (Section 46(1) of the Code). However, Section 48(1a) of the Labour Court Act establishes the special area of jurisdiction (see 2.2.2.1) of the place of work, before which actions can also be brought. The general rules as presented under question 2 apply to jurisdiction agreements. However, it should be noted that, for certain disputes, the social partners are entitled under Section 48(2) of the Act to specify the jurisdiction of a court without territorial jurisdiction *per se*, without observing Section 38(2) and (3) of the Code.

For proceedings leading to an order within the meaning of Section 2a of the Labour Court Act, Section 82(1) of the Act stipulates the exclusive jurisdiction of the place of operation or the registered office of the undertaking.

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