

## Civil Procedure

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# Personal Jurisdiction

## 1 Basic Principles

### 1.1 Personal Jurisdiction Defined

Court's authority to bind the parties to judgment

- Compare Subject Matter Jurisdiction: Court's authority to decide that type of case

### 1.2 Basis of Personal Jurisdiction

Sovereignty

- Territorial

Due Process

- Notice
- Fairness of requiring party to appear
- Personal right
- Waivable by party

## 2 Jurisdiction Based on Presence

### 2.1 History: Legal Formalism

**Pennoyer v. Neff (US 1878)**

Prior suit: Mitchell v. Neff (Oregon state court)

- Mitchell sued Neff to collect unpaid attorney's fees
- No personal service on Neff, who was not in Oregon
- Court entered default judgment against Neff, who failed to appear
- Mitchell satisfied judgment by attachment and execution on Neff's Oregon property

This suit: Neff v. Pennoyer (Oregon federal court)

- Neff sued to recover property from Pennoyer, who bought the property at sheriff's sale
  - Trial court ruled in favor of Neff, based on defects in affidavit of service by publication in the prior case

- Supreme Court affirmed
  - Majority says defects in affidavit may only be challenged on direct appeal, not collateral attack
  - But affirms the judgment based on lack of personal jurisdiction in prior case
  - Why does the Court do that, rather than remand?

### Holding

In personam judgment against non-resident defendant is void, where defendant was not personally served within state

- In an in personam action to establish and enforce private rights, service of process on a non-resident defendant by publication is ineffective to establish personal jurisdiction
- The only proper means for bringing a non-resident defendant within the court's jurisdiction are (1) personal service on the defendant while present in the state, or (2) the defendant's voluntary appearance

Where the court lacks personal jurisdiction over the defendant, an in personam judgment against that defendant is void (n.b. not voidable)

### Rationale/Theory

Formalist theory of state sovereignty

- State has jurisdiction over all persons and property within its territory
- No state has any jurisdiction over persons or property outside its territory
- This is a rule, rather than a standard
  - Simple binary choice: is the defendant physically present in the state or not?
- "Formalism": Rests on a formality of physical presence

Court recognizes exceptions to the physical presence requirement

- In rem and quasi in rem actions
  - Because the state has jurisdiction over the in-state property
  - But jurisdiction over the property must be established (by attachment) at the outset of the action, not after the fact
- Mandated appointment of in-state agent
  - Non-residents entering into partnerships or associations
  - Out-of-state corporations

### Questions

If Mitchell had personally served Neff in California (where Neff lived), would that have been effective? - Why not?

Was there any way Mitchell could have sued in Oregon?

- Attachment of property at outset of suit
  - Isn't this an empty formalism?
  - Isn't a judgment against the property really a judgment against Neff?

Was there any other way to sue Neff in Oregon?

- If not, what could Mitchell have done?
- Does that make sense?

## 2.2 Continued Viability of Presence

**Burnham v. Superior Ct. (US 1990)**

Rationale

Scalia: Tradition

Brennan: Minimum Contacts

### Problems

LeMond (resident of MN) & Stanko (resident of PA) enter into contract for Stanko to represent LeMond in arranging sponsorship deals. A dispute arises between Stanko & LeMond. Stanko files suit in PA, but does not serve LeMond. Stanko suggests that the parties meet at his office in PA to attempt to reach a settlement. LeMond does not attend, but sends his father, Robert. When Robert arrives, he is served with summons directed to Greg.

- Assuming that Robert is Greg's agent for purposes of service, is jurisdiction proper? See *Stanko v. LeMond* (ED Pa. 1991)

While on a non-stop flight from NY to Hawaii, Defendant's plane is grounded in California because of a storm. While Defendant is waiting in the airport, he is served with a summons for a suit in CA.

- Is this sufficient to confer jurisdiction?

Suppose the plane is not grounded. As the plane passes over California on the way to Hawaii, a process server aboard the plane hands Defendant a summons.

- Is this sufficient to confer jurisdiction? See *Grace v. MacArthur* (ED Ark. 1959)

## 3 Jurisdiction Based on Consent

### 3.1 Express Consent

**Kane v. New Jersey (US 1916)**

State law requires that out-of-state motorists expressly designate an in-state agent for service of process as a condition of using the state's roads

In a suit over an accident that occurred while the non-resident was driving in the state, service on the in-state agent is sufficient to confer jurisdiction over the out-of-state defendant.

- Why may the state impose this requirement?
- Does it satisfy Due Process?
- How is this consistent with the formalist approach of Pennoyer?
  - "Virtual presence" through the in-state agent

- Would service on the agent be effective for actions not arising out of the non-resident's use of the state's roads?

### 3.2 Implied Consent

#### Hess v. Pawloski (US 1927)

Out-of-state motorist's use of state's roads implies appointment of a state official as the non-resident's in-state agent for service

- How does this satisfy Due Process?
- How is it consistent with the formalist approach of Pennoyer?
- Still relies on legal fiction of "virtual presence" through the in-state agent

### 3.3 Consent by Appearance

#### Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee (US 1982)

CBG (a DE corporation based in Guinea) sued multiple insurance carriers including ICI (incorporated & based in Ireland) in PA federal court. Suit involved dispute over insurance coverage.

ICI & other foreign defendants asserted lack of personal jurisdiction as a defense. CBG served discovery requests seeking documents pertaining to foreign defendants' activities in PA, for purpose of establishing jurisdiction. After defendants repeated failure to produce the documents, the trial court imposed discovery sanctions under FRCP Rule 37(b). Sanctions included an order, pursuant to Rule 37(b)(2)(A), that "for the purposes of this litigation the [foreign defendants] are subject to the in personam jurisdiction of this Court due to their business contacts with Pennsylvania".

Foreign defendants appealed, arguing that the discovery sanction was improper because the court lacked personal jurisdiction over the defendants in the first place.

#### Holding

By making a special appearance to contest jurisdiction (instead of refusing to appear and risking a default judgment), the defendants submitted to the court's jurisdiction for that purpose and is bound by the court's determination of that issue.

The court's imposition of sanctions, including a determination that the facts supporting jurisdiction were established, was not an abuse of discretion.

#### Rationale

The requirement of personal jurisdiction is not a limit on the court's sovereignty (which the parties cannot waive) but an individual right that can be waived

A defendant's conduct may constitute implied consent to jurisdiction, or may result in the defendant's being estopped from contesting jurisdiction - This may include the defendant's failure to comply with procedural rules

## Problems

Neff sues Mitchell in Oregon for legal malpractice

- If Mitchell asserts a counterclaim against Neff for nonpayment of attorney fees, does the Oregon court have personal jurisdiction over Neff?

Suppose that Dowell, a resident of Oregon, has an unrelated claim against Neff for breach of contract.

- Does Neff's (implied) consent to personal jurisdiction in his suit against Mitchell also give an Oregon court personal jurisdiction over Neff in Dowell's suit?

## 3.4 Consent by Contract

*Carnival Cruise Lines v. Shute* (US 1991)

A non-negotiable forum selection clause was enforceable against Plaintiffs, even though plaintiffs didn't receive tickets until after they'd already paid and the clause was printed on reverse of ticket.

# 4 Jurisdiction Based on Contacts

## 4.1 Origins of the Minimum Contacts Standard

*International Shoe v. Washington* (US 1945)

Missouri corporation sold shoes through sales representatives in Washington.

Sales representatives received orders from customers and transmitted them to company for acceptance in Missouri. The company fulfilled orders & shipping them FOB from Missouri.

Washington sought to collect unemployment insurance tax from company for Washington-based sales representatives.

- Company argued sales reps were independent contractors, not employees, and thus not covered by unemployment compensation.
- Agency concluded sales representatives were employees and assessed tax.

Company appealed, arguing it was not subject to personal jurisdiction in Washington because it lacked any physical presence there

- Company also argued service on sales representatives was ineffective, because they were not company's agents for that purpose.

## Holding & Analysis

Due process is satisfied where non-resident defendant has "minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

## Contacts

Activity by the defendant, conducted within or directed at the forum state.

Nature & quality of contacts:

- Systematic & Continuous v. Irregular or Casual
- Give rise to claim v. unrelated to claim

“[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state”

Company’s in-state activity, through its sales employees, was sufficient to satisfy minimum contacts requirement - Case arose out of that activity

Service of process on company’s in-state employees (agents), whose in-state activities constitute company’s “presence”, is sufficient to provide notice.

- Mailing of complaint & summons to corporation’s out-of-state office is reasonably calculated to provide actual notice

### **Hanson v. Denckla (US 1958)**

Donner, a Pennsylvania resident, established a trust, naming a Delaware bank as trustee.

After Donner moved to Florida, she executed a power of appointment transferring \$400k from the trust to two other trusts that her daughter, Hanson, had established for the benefit of her sons (Donner’s grandsons). Another Delaware bank was the trustee for these trusts.

Donner also executed a will, naming Hanson as executor, and directed that the balance of the original trust (\$1 million) would pass under the will.

Donner’s two other daughters, Denckla & Stewart, were the residual beneficiaries under the will. They contested the validity of the appointment granting \$400k from the Donner trust to the two Hanson trusts, contending that this money should also pass to them under the will.

Denckla & Stewart filed a declaratory judgment action in Florida court against Hanson and the two Delaware banks, to determine the status of the disputed trust funds

- The banks were served by mail to their Delaware offices.
- Plaintiffs were required to include the banks as defendants, because they had actual control over trust assets. See FRCP Rule 19.

Hanson and her sons moved to dismiss on the grounds that the Banks were not validly served and could not properly be joined because the Florida court lacked personal jurisdiction.

- If court lacks jurisdiction over an “indispensable” party, the court must usually dismiss the entire action. FRCP Rule 19

The Florida court agreed that it lacked jurisdiction over the Delaware banks, but held that the appointment was invalid under Florida law and that the disputed funds should pass under the will.

While the Florida action was pending, Hanson filed a declaratory judgment action in Delaware state court.

After the Florida court issued its ruling, Denckla & Stewart argued that the Florida judgment was binding on the Delaware court as res judicata. The Delaware court ruled that the appointment was valid under Delaware law and that the disputed funds belonged to the two Hanson trusts.

The Florida case was appealed to the Florida supreme court, which affirmed the lower court's judgment on the merits, and further held that the Florida court had jurisdiction over the Delaware banks.

### Holding & Analysis

Florida court lacked jurisdiction over Delaware banks, and its judgment was therefore not entitled to full faith and credit, where Delaware banks did not have minimum contacts with Florida.

Minimum contacts must be based on "acts by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State". Unilateral acts of other persons alone do not suffice

- But do acts of other parties count at all?

Trustee's mere continuation of business with settler, after she moved from PA to FL, was not sufficient to constitute minimum contacts with FL

### Question

Following *International Shoe & Hanson*, would Neff have been subject to jurisdiction in Oregon on Mitchell's breach of contract suit?

## 4.2 Minimum Contacts based on Contractual Relationships

### McGee v. International Life Ins. Co. (US 1957)

McGee sued International Life, a Texas corporation, in California state court over its refusal to pay benefits under a life insurance policy. The policy was issued by Empire Mutual, an Arizona corporation, which sold the policy to Franklin, a California resident.

International acquired Empire Mutual and assumed its obligations under the policy. Neither Empire nor International solicited any other business or sold any other policies in California.

California statute gave jurisdiction over foreign insurance corporations in suits over insurance contracts with in-state residents

McGee served International by mail at its Texas office. International did not respond nor appear in California court and California court entered a default judgment in favor of McGee.

McGee sought to enforce her California judgment in Texas, but the Texas court refused to honor the California judgment.

- Under the Full and credit clause, the courts of one state must normally honor judgments rendered by the courts of other states.
- Exception: Where other state's judgment was invalid because the court lacked jurisdiction or otherwise deprived the defendant of due process.

### Holding & Analysis

Jurisdiction in California was proper where Empire solicited the policy in California and International continued to accept payment from the California policy holder.

- Compare *Hanson*, where Delaware bank itself did nothing to initiate contact with Florida

Balance the burden on defendant v. interest of state

- Court considers state's interest in providing remedy for its residents as a factor in deciding whether exercise of jurisdiction comports with due process

### **Burger King v. Rudzewicz (US 1985)**

MI franchisee subject to jurisdiction in FL based on contractual relationship with FL-based franchisor, even though all of franchisee's activity occurred in MI

Court treats contract as purposeful activity directed at FL. Important aspects of performance under the contract took place in Florida. Contractual choice of FL law indicates purposeful availment

### **Problem**

A, a SC resident, driving through NC on the way from VA back home to SC, gets into a car accident with B, a NC resident.

- Is A subject to jurisdiction in NC?
- If A sues B, claiming B was at fault, is B subject to jurisdiction in SC?

As a result of the accident, A needs a new tire, which she purchases from C's service station in NC. A pays by check, which bounces.

- Is A subject to jurisdiction in NC in a suit by C for breach of contract?

After A reaches SC, the tire has a blow out.

- In a suit by A against C for breach of warranty, is C subject to jurisdiction in SC?

## **4.3 Minimum Contacts Based on Publication**

### **Keeton v Hustler Magazine (US 1984)**

Keeton (NY) sued Hustler (OH/CA) in NH for defamation.

- Keeton sued in NH because the statute of limitations had run in other states.

Defendants' sale of magazines (>10k copies) in NH was sufficient to confer jurisdiction.

Plaintiff's lack of contacts with forum state is irrelevant.

### **Calder v. Jones (US 1984)**

Jones (CA) sued the National Enquirer (FL), along with its editor & reporter (both FL) in CA

Jurisdiction in California proper where effects of defendants' conduct were felt in CA

- Enquirer sold many copies in CA
- Defendants knew Jones lived and worked in CA, and reached out to her there in preparing the story
- Conduct was thus "expressly aimed" at CA

Effects test may be limited to intentional torts.



**Young v. New Haven Advocate (4th Cir. 2002)**

VA prison warden sued CT newspaper in VA, asserting defamation claim based on story about conditions in VA prison where inmates from CT were held.

Virginia court lacked personal jurisdiction over CT paper

- Paper sold few copies in VA
- Availability of paper's online edition was not sufficient to constitute direct aiming at/purposeful availment of VA
- *Calder* effects test not applicable
  - Focus of the story was CT
  - Internet posting not expressly aimed at VA, where paper has negligible readership

**Dutcher v. Eastburn (E.D.N.C. 2011)**

Dutcher (NC resident) sued the author (Colorado resident living in Texas when suit was filed) and publisher (incorporated in NY, based in MA) of a nonfiction book about the murder of his parents & nephew in Colorado, contending that the book contained defamatory statements about him.

Defendants did not have sufficient NC contacts to support jurisdiction

*Calder v. Jones* distinguished:

- Dutcher was not the focus of the book, merely mentioned incidentally in story about events outside NC
- Defendants did not contact Dutcher before publication
- Only 14 books, out of 10,000+ total, were sold in NC
- No marketing efforts aimed at NC

## **4.4 Minimum Contacts and the Stream of Commerce**

**World Wide Volkswagen v. Woodson (US 1980)**

The Robinsons purchased an Audi from Seaway VW, a NY dealer. The car was manufactured by Audi (Germany), imported by VW of America (NJ), and distributed by World-Wide VW (NY).

While driving from NY to AZ, the Robinsons were in an accident in Oklahoma.

The Robinsons sued in Oklahoma state court, naming Seaway, World-Wide VW, VW of America, and Audi as defendants

- Why didn't the Robinsons sue the other driver who caused the accident?

Oklahoma courts interpreted the state's enumerated long-arm statute to reach constitutional limit.

**Holding & Analysis**

The Oklahoma court lacked jurisdiction over Seaway and World-Wide, because those defendants had no contacts with the state.

- No activity in OK, nor with OK residents
- Not responsible for the car's passing through Oklahoma
- Mere foreseeability of the event is not enough

- Foreseeability is relevant where, “the defendant’s conduct and connection with the forum State are such that he should reasonably anticipated being haled into court there.”
- Jurisdiction is “foreseeable” where the defendant “purposefully avails itself of the privilege of conducting activities within the forum State.”
- Defendant can “structure their primary conduct” to give predictability as to where they might be sued.
- “Stream of commerce”
  - “[A] corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State” (citing *Gray v. American Radiator* and foreshadowing *Asahi Metal*)
  - Majority says placing the car into the stream of commerce was not sufficient to establish a contact with Oklahoma.

Focus of the Minimum Contacts Standard: Reasonableness

- Relevant interests
  - Protect defendant from unfair burden
  - Protect limits of state sovereignty
- Factors
  - Defendant’s interest in avoiding unfair burden
  - Plaintiff’s interest in obtaining convenient & effective relief
  - State’s interest in adjudicating dispute
  - Interstate judicial system’s interest in obtaining most efficient resolution of controversies
  - Shared interests of the several states in furthering fundamental substantive social policies

Unlike the formalist standard in *Pennoyer*, the Minimum Contacts standard evolves with changing economic and other social circumstances.

- Legal Realism: Emphasize practical realities, rather than formalities.

### Dissent

Purpose of a car is mobility. Defendants benefit economically from sale of cars, and should expect they might be driven elsewhere

Both dissents (Brennan; Marshall/Blackmun) see this as a straightforward “stream of commerce” case, indistinguishable from *Gray v. American Radiator*

- The majority’s rejection of the “stream of commerce” argument rests on a distinction between the chain of distribution and post-retail use by the consumer.
  - Should that matter?

State has substantial interest

- Accident occurred there
- Robinsons were hospitalized there
- State’s interest in safety of its highways

Brennan would abandon the “defendant focus” of *International Shoe* and also look at plaintiffs’ contacts.

- He says defendant focus is vestige of *Pennoyer*

### **Asahi Metal Industry Co. v. Superior Ct. (US 1987)**

Zurcher was injured, and his wife killed, in a motorcycle accident in California.

Zurcher sued Cheng Shin, Taiwanese manufacturer of motorcycle’s tires, in California. Cheng Shin impleaded Asahi, Japanese manufacturer of tire valves.

- *Impleader*: Defendant adds another party (third-party defendant) seeking to hold them responsible for covering all or part of the defendant’s liability to the plaintiff.
  - The third-party defendant’s responsibility is based on a contractual, statutory, or common law duty of indemnification or contribution.
  - Indemnification clauses are common in contracts between businesses in a retail supply chain (component parts manufacturer, finished product manufacturer, distributor, retailer).
  - Tort law usually allows a consumer to sue any business in the supply chain for injuries resulting from a defective product. It’s then up to the supply chain participants to sort out where the buck ultimately stops.

After Zurcher settled, Asahi moved to dismiss Cheng Shin’s third-party claim for lack of personal jurisdiction.

### **Holding & Analysis**

*O’Connor opinion (4 Justices)*

No minimum contacts where foreign manufacturer of component part did not market or sell goods directly to California

Minimum contacts

- Acts of defendant
- Purposefully directed at the forum state

“Stream of Commerce” does not create presumption of purposeful availment

- Mere awareness or foreseeability is insufficient

Indicators of purposeful availment

- Designing specifically for the market in state
- Advertising in state
- Distributing through agent in state
- Establishing service channels in state

Plaintiff has burden of establishing that defendant has minimum contacts.

*Brennan opinion (4 Justices)*

Placing goods in stream of commerce satisfies minimum contact requirement

- Stream of commerce: “regular and anticipated flow of products from manufacture to distribution to retail sale”
- Awareness that goods will be marketed in state satisfies requirement of “fair play and substantial justice”
  - No further conduct needed
- Can defendant rebut presumption of purposeful availment?
  - Affirmative steps to keep goods out of market?

But exercise of jurisdiction is unreasonable, based on the “interest” factors

- Defendant’s interest in avoiding undue burden
- Plaintiff’s interest in obtaining relief
- Forum state’s interest in vindicating its policies
- Shared interest of the interstate judicial system in respecting sovereignty

### J. McIntyre Machinery Ltd. V. Nicastro (US 2011)

Suit against British manufacturer of machine that injured plaintiff in NJ. Machine was sold in US by independent distributor, not under McIntyre’s control. Distributor followed McIntyre’s “direction and guidance whenever possible” in advertising and sales. No more than four machines ended up in NJ. McIntyre held US patents and McIntyre personnel attended industry events in US (but not in NJ) to promote sales.

#### Holding & Analysis

*Kennedy Opinion (4 Justices)*

- Follows O’Connor “purposeful direction” theory
- Focus is on “defendant’s actions, not his expectations”
- Evidence does not establish requisite purpose

*Breyer opinion (2 Justices)*

Facts don’t support finding of minimum contacts based on single in-state sale

- Analogizes to Volkswagen
  - Isn’t this different, because in VW, plaintiff consumer, not defendant retailer, was responsible for car’s ending up in OK?

Declines to make broader pronouncement

*Dissent (3 Justices)*

Would apply Brennan’s “stream of commerce” theory

- Defendant targeted the US market as a whole
- Machine ended up in NJ as a result of those efforts

## 5 Long-Arm Statutes

### 5.1 Varieties of Long-Arm Statute

#### Constitutional-limits statute

Co-extensive with constitutional limits on jurisdiction

- Example: California

#### Enumerated statute

Applies to specifically-enumerated acts

- May be less inclusive, than constitutional limits.
- But may not be broader than constitutional limits.

Often interpreted to extend to constitutional limits

- Example: NC

### 5.2 Applying Long-Arm Statutes

#### Gray v. American Radiator & Standard Sanitary Corp. (Ill. 1961)

Gray was injured when a water heater, manufactured by American Radiator (IL), exploded. Explosion was caused by valve manufactured by Titan (Ohio).

Gray sued American Radiator & Titan in Illinois, and served Titan by mail in Ohio.

Titan moved to dismiss on two grounds:

- Illinois long-arm statute, providing for jurisdiction over out-of-state defendant who commits a tortuous act within the state, did not apply where Titan's conduct was entirely outside the state.
- Even if Illinois long-arm statute applied, exercise of jurisdiction violated 14th Amendment due process

#### Holding & Analysis

##### *Statutory interpretation*

Illinois long-arm statute conferred jurisdiction against a defendant who "commits a tortuous act within this State". The place of injury (IL), not the place of defendant's last act (manufacture & sale of valve outside IL), is the place where the tortuous act occurred.

##### *Due Process/Minimum Contacts*

"Where the business done by a foreign corporation in the State of the forum is of a sufficiently substantial nature, it has been held permissible for the State to entertain a suit against it even though the cause of action arose from activities entirely distinct from its conduct within the State. But where such business or other activity is not substantial, the particular act or transaction having no connection with the State of the forum, the requirement of 'contact' is not satisfied." 176 NE2d at 438 (Citations omitted)

Single act/transaction within forum state may suffice, if it is basis of suit

Court assumes other appliances with Titan valves were sold in IL.

- Titan benefits, at least indirectly, from protection of Illinois, which facilitates sales of Titan's goods in that state.
- Legal realism: Court bases analysis on the realities of the interstate supply chain/stream of commerce

Does this analysis & holding survive *Asahi Metal*?

- May depend on which view of "stream of commerce" is correct

## 6 General Jurisdiction

### 6.1 General jurisdiction over individuals

An individual is always subject to personal jurisdiction in their home state, regardless of whether cause of action has any connection to that state.

Based on state sovereignty theory (*Pennoyer*).

### 6.2 General jurisdiction over corporations

**Perkins v. Benguet Consolidated Mining Co. (US 1952)**

Mining company from Philippines, shifted corporate activity to US during Japanese occupation. Company regularly conducted its business from Ohio location.

Shareholder brought derivative action against corporation in Ohio

For purposes of personal jurisdiction, the company was effectively "at home" in Ohio, and could be sued there even where the cause of action did not arise in Ohio.

**Helicopteros Nacionales de Colombia v. Hall (US 1984)**

Wrongful death action arising from helicopter accident in Peru

Defendant, Columbian corporation, operated helicopter per contract with decedants' employer, Peruvian corporation that was alter ego of Texas corporation

- Contract negotiations took place in Texas
- Helicopter made by & purchased from Bell in Texas
- Pilots trained by Bell in Texas
- Payments, drawn on Texas bank, deposited in NY bank
- Helicopter passengers were hired in Texas by Texas parent corporation of Peruvian shell

Plaintiffs conceded the case did not arise from Defendant's activity in Texas

- Why would plaintiffs concede this?

Contract included forum selection clause providing that any suits arising out of the contract must be brought in Peru.

### **Holding & Analysis**

#### *Majority*

- No general jurisdiction, where defendant's contact with Texas are insufficient to treat it as effectively "at home" in that state

#### *Dissent (Brennan)*

- Would find defendant subject to specific jurisdiction
- Says it's enough that cause of action is "related to" in-state contacts, even if case "did not formally 'arise out of' specific activities" in state

### **Goodyear Dunlop Tires Operations, S.A. v. Brown (US 2011)**

Parents of children killed in bus accident in France sued tire manufacturer in NC. Tires were manufactured by Turkish subsidiary of US corporation.

The parent corporation conceded jurisdiction, based on its own activity in NC.

The Turkish subsidiary made tires aimed at European & Asian markets. A few of their tires sold in NC, on custom orders for specialty use. No tires of the type involved in the accident were ever distributed in NC.

NC trial court denied motion to dismiss. NC Court of Appeals affirmed, applying the "stream of commerce" theory to "general jurisdiction".

### **Holding & Analysis**

Foreign defendants' contacts with NC were not sufficient to support general jurisdiction.

General jurisdiction applies only where foreign corporation's contacts "are so 'continuous and systematic' as to render them essentially at home in the forum State"

"Stream of commerce" theory has no application in general jurisdiction context, where the claim does not arise from any forum-state contacts

### **Daimler AG v. Bauman (US 2014)**

Residents of Argentina sued Daimler in California federal court, alleging that Daimler's Argentinian subsidiary collaborated with government security forces during Argentina's "dirty war". Plaintiffs were victims, or family members of victims, of government human rights abuses.

Daimler, incorporated and based in Germany, moved to dismiss for lack of personal jurisdiction.

Plaintiffs argued that Daimler was subject to jurisdiction in California based on the California contacts of its US subsidiary, Mercedes-Benz USA, incorporated in Delaware and based in New Jersey. District Court granted Daimler's motion to dismiss for lack of personal jurisdiction.

Court of Appeals reversed.

- Court assumed that MBUSA was subject to "general jurisdiction" in California, based on its regular distribution of vehicles to authorized dealers in California.

- Daimler is subject to jurisdiction in California based on the activity of its agent, MBUSA.

### Holding & Analysis

No personal jurisdiction over Daimler in California in suit for injuries that occurred, and were caused by conduct occurring, outside the US.

General jurisdiction (i.e. in a case not arising from in-state contacts) requires more than “continuous and systematic” contacts with the forum state. The defendant must be “essentially at home in the forum state” (quoting *Goodyear*).

Neither Daimler nor MBUSA was incorporated or based in California, and their California activity was insufficient to make them “virtually at home” there.

Activity giving rise to claims occurred entirely outside California and had no direct impact there.

Under these facts, California could not assert general jurisdiction

## 7 Jurisdiction Over Property

### 7.1 In Rem jurisdiction

Suit to establish rights in property against all other claimants (i.e. *Quiet Title*)

### 7.2 Quasi In Rem Jurisdiction

Property is related to, or at issue in, suit

#### *Quasi in Rem I*

Suit to enforce pre-existing interest in property (e.g. lien)

#### *Quasi in Rem II(a)*

Property is factually related to cause of action

#### *Quasi in Rem II(b)*

Property belonging to the defendant/judgment-debtor is used to secure or satisfy a (pre-existing) judgment.

- Property may or may not also be related to the underlying cause of action
- Remedy is limited to (value of) attached property
- Plaintiff may bring further action(s), quasi in rem or in personam, for remainder

### Harris v. Balk (US 1905)

Harris (NC) owed money to Balk (NC); Balk (NC) owed money to Epstein (MD)

While Harris was traveling in MD, Epstein brought *quasi in rem* action, attaching Harris's debt to Balk, to satisfy Balk's debt to Epstein. MD court ordered Harris to pay Epstein instead of Balk.



Balk later sued Harris in NC to collect on Harris's debt to Balk. Harris argued NC court must give full faith and credit to MD judgment, and his payment to Epstein pursuant to that order discharged his debt to Balk. Balk argued MD judgment was void for lack of personal jurisdiction.

- Why would Balk, who was not a party to the MD suit, be bound by that judgment in any event?

#### Issue

Whether attachment of Balk's property (i.e. debt owed by Harris) located in MD was sufficient to establish quasi in rem jurisdiction over Balk

- Under *Pennoyer*, Maryland court could not exercise in personam jurisdiction over Balk, because he was out of state.

#### Holding & Analysis

Maryland court's exercise of *quasi in rem* jurisdiction, as authorized by Maryland law, satisfied due process, and judgment was valid.

A debt represents property of creditor. The debt is located wherever debtor is present.

Harris is bound by MD judgment, because he was personally served while in MD.

Attachment of Balk's property in MD is sufficient to satisfy due process.

- Balk could have sued Harris in MD to collect on his debt, or (pursuant to MD law in attachment cases) brought an action in MD within a year after the judgment, seeking restitution from Epstein.
- Court notes that the outcome would have been different if Harris had been negligent in failing to give Balk notice of the MD court's attachment of the debt.
  - In that situation, Harris's negligence would bar him from arguing it was unfair to make him pay the same debt twice.

### 7.3 Minimum Contacts & In Rem Jurisdiction

#### Shaffer v. Heitner (US 1977)

Shaffer brought shareholder derivative suit in DE against Greyhound Corp. (DE corp, based in AZ) & corporate directors (not DE residents)

Suit alleged directors breached their fiduciary duty by approving activity that resulted in civil and criminal antitrust liability that resulted in civil and criminal antitrust liability. Activity at issue occurred in Oregon.

DE law provided for "sequestration" of non-resident defendant's in-state property as means to obtain jurisdiction. If defendant appears & consents to jurisdiction, sequestration is released.

Defendant directors owned shares of Greyhound stock. Under DE law, shares of DE corporation were "located" in Delaware.

Heitner served directors by mail to their out-of-state addresses and publication in Delaware newspaper (per DE law).

Defendants argued the DE court lacked personal jurisdiction because they had no minimum contacts with DE. The DE court held sequestration was sufficient to establish quasi in rem jurisdiction.

### Holding & Analysis

“Minimum Contacts” standard applies to *quasi in rem* jurisdiction

Where property is unrelated to cause of action, defendants must have other contacts with forum state to support jurisdiction.

- Where property is related to cause of action, will minimum contacts ever not be satisfied?

Court noted that Delaware law was unusual in treating shares as located in state of incorporation, rather than shareholder’s state of residence. Mere ownership of shares is not enough to satisfy minimum contacts, where the “location” of that property in the state is a matter of legal formality, not any act or decision by defendants.

“Necessity” exception (dicta)

- Where no other forum is available, *quasi in rem* jurisdiction (Type IIb) may be permissible even absent other contacts.

### Postscript

Delaware amended state law to allow long-arm jurisdiction over an out-of-state director of DE corporation in any suit arising from acts or omissions as director.

- Does this satisfy minimum contacts standard?

### Implications

*In Rem*, *Quasi in Rem I*, and *Quasi in Rem II(a)*

Minimum contacts standard is always satisfied

- Interest in property located in forum state is a sufficient contact
- Cause of action arises out of that property

*Quasi in rem II(b)*

Assuming property is defendant’s only contact with the forum state, satisfaction of minimum contacts standard depends on relationship between property and cause of action

- Where cause of action arises out of property, standard will generally be satisfied. This is essentially a hybrid of *Quasi in rem II(a)* and *II(b)*.
- Where property unrelated the cause of action, it will not be sufficient on its own to satisfy the minimum contacts standard.
  - But location of property in the state, along with other contacts, may satisfy the standard.

### Problems

Bob, a resident of PA, buys a fishing boat, which he pays for with money he borrows from the Delaware National Bank. As part of the loan agreement, the bank takes a security interest in the boat. Bob keeps the boat at a dock on the Chesapeake Bay in MD. When Bob defaults on the loan payment, the Bank brings an action in MD, and has the court attach the boat.

- If Bob moves to dismiss for lack of jurisdiction, how should the court rule?

Lefty, who lives in MD, goes fishing with Bob on Bob's boat in Virginia. As a result of a carelessly executed backcast, Bob hooks Lefty in the eye with his fly. After Bob returns home to PA, Lefty brings suit in MD, and has the court attach Bob's boat (which is docked in MD).

- If Bob moves to dismiss for lack of jurisdiction, how should the court rule?

Joan, who lives in NY, lends Bob \$10,000 to start up a fly tackle shop out of Bob's home in Pennsylvania. Bob lends his boat to Lee, who (without telling Bob) sails it to Montauk, NY, for some fishing. Meanwhile, Bob has failed to repay Joan, and she decides to bring suit. While the boat is docked in Montauk, Joan files her suit in NY, and has the court attach the boat.

- If Bob moves to dismiss for lack of jurisdiction, how should the court rule?