EXAMPLES & EXPLANATIONS SERIES

Practical Preparation for Successful Students

Widely recognized by law students everywhere as the go-to prep tool for class, the best-selling *Examples & Explanations* series offers clearly written text, along with probing examples and detailed explanations, that will help you understand and test your knowledge of what you are learning in the classroom. Often recommended by professors, each *Examples & Explanations* text is an indispensable resource—offering a great way to prepare for class or review for exams.

Aspen Publishing offers an *Examples & Explanations* for over 35 law school courses, including:

Administrative Law
Agency, Partnerships, and LLCs
Antitrust
Bankruptcy and Debtor/Creditor
California Community Property
California Evidence
Civil Procedure
Conflict of Laws
Constitutional Law
- Individual Rights
- National Power and Federalism

Contracts
Copyright
Corporate Taxation
Corporations
Criminal Law
Criminal Procedure
Dispute Resolution
Employment Discrimination
Environmental Law
Evidence
Family Law
Federal Courts
Federal Income Taxation
Intellectual Property
International Law
Legal Research
Legal Writing
Legislation, Statutory Interpretation, and Election Law
Payment Systems
Professional Responsibility
Property
Real Estate Transactions
Remedies
Sales and Leases
Secured Transactions
Securities Regulation
The Law of Torts
Wills, Trusts, and Estates

For more information about the *Examples & Explanations* series, including new and forthcoming titles, please visit https://www.AspenPublishing.com/study-aids/examples-explanations

SUSTAINABLE FORESTRY INITIATIVE Certified Sourcing www.sfiprogram.org SFI-00198

ISBN 978-1-4548-9402-5
9 781454 894025 90000

Glannon

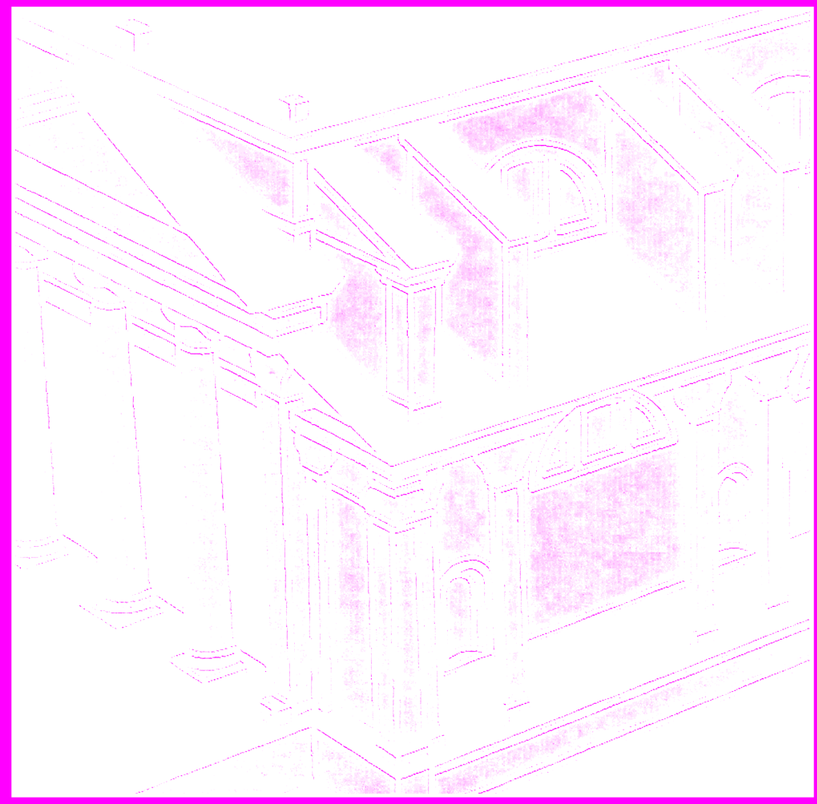
Civil Procedure Eighth Edition

EXAMPLES & EXPLANATIONS

Civil Procedure

Eighth Edition

Joseph W. Glannon



EXAMPLES & EXPLANATIONS

Civil Procedure

EXAMPLES & EXPLANATIONS

Civil Procedure

Eighth Edition

Joseph W. Glannon
Professor of Law
Suffolk University Law School

ASPEN PUBLISHING

To contact Customer Service, e-mail customer.service@aspenpublishing.com, call 1-800-950-5259, or mail correspondence to:

Aspen Publishing
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-4548-9402-5

Library of Congress Cataloging-in-Publication Data

Names: Glannon, Joseph W., author.
Title: Civil procedure : examples and explanations / Joseph W. Glannon, Professor of Law, Suffolk University Law School.
Description: Eighth edition. | Frederick, MD: Aspen Publishing, [2018] | Includes index.
Identifiers: LCCN 2017056959 | ISBN 9781454894025 (hardcover)
Subjects: LCSH: Civil procedure — United States. | LCGFT: Study guides.
Classification: LCC KF8841 .G58 2018 | DDC 347.73/5 — dc23
LC record available at https://lccn.loc.gov/2017056959

About Aspen Publishing

Aspen Publishing is a leading provider of educational content and digital learning solutions to law schools in the U.S. and around the world. Aspen provides best-in-class solutions for legal education through authoritative textbooks, written by renowned authors, and breakthrough products such as Connected eBooks, Connected Quizzing, and PracticePerfect.

The Aspen Casebook Series (famously known among law faculty and students as the "red and black" casebooks) encompasses hundreds of highly regarded textbooks in more than eighty disciplines, from large enrollment courses, such as Torts and Contracts to emerging electives such as Sustainability and the Law of Policing. Study aids such as the *Examples & Explanations* and the *Emanuel Law Outlines* series, both highly popular collections, help law students master complex subject matter.

Major products, programs, and initiatives include:

- **Connected eBooks** are enhanced digital textbooks and study aids that come with a suite of online content and learning tools designed to maximize student success. Designed in collaboration with hundreds of faculty and students, the Connected eBook is a significant leap forward in the legal education learning tools available to students.

- **Connected Quizzing** is an easy-to-use formative assessment tool that tests law students' understanding and provides timely feedback to improve learning outcomes. Delivered through CasebookConnect.com, the learning platform already used by students to access their Aspen casebooks, Connected Quizzing is simple to implement and integrates seamlessly with law school course curricula.

- **PracticePerfect** is a visually engaging, interactive study aid to explain commonly encountered legal doctrines through easy-to-understand animated videos, illustrative examples, and numerous practice questions. Developed by a team of experts, PracticePerfect is the ideal study companion for today's law students.

- The **Aspen Learning Library** enables law schools to provide their students with access to the most popular study aids on the market across all of their courses. Available through an annual subscription, the online library consists of study aids in e-book, audio, and video formats with full text search, note-taking, and highlighting capabilities.

- Aspen's **Digital Bookshelf** is an institutional-level online education bookshelf, consolidating everything students and professors need to ensure success. This program ensures that every student has access to affordable course materials from day one.

- **Leading Edge** is a community centered on thinking differently about legal education and putting those thoughts into actionable strategies. At the core of the program is the Leading Edge Conference, an annual gathering of legal education thought leaders looking to pool ideas and identify promising directions of exploration.

I dedicate this book to my parents,
Edward and Helen Glannon

Contents

PART III. THE SCOPE OF THE ACTION

PART IV. STEPS IN THE LITIGATION PROCESS

PART V. THE EFFECT OF THE JUDGMENT

PART VI. THINKING PROCEDURALLY: THE RULES IN ACTION

Preface to Students

Everyone comes to law school with some idea of what a contract is or the meaning of assault and battery, but who ever heard of supplemental jurisdiction, impleader, or res judicata? Abstract concepts such as these make civil procedure the most unfamiliar and intimidating of the basic law school courses.

However, civil procedure can also be fascinating if you can get by the initial strangeness. Many of the topics covered in the course appear baffling upon first acquaintance but begin to make sense when you see how they apply in particular cases and how they relate to other topics in the course. The goal of this book is to demystify civil procedure by providing concrete examples of procedural doctrines and rules in operation, together with full explanations of how these abstract concepts apply to each example.

Most casebooks contain major or representative cases but provide little discussion of what the cases mean or "what the law is" on a particular topic. I hope that you will find, as my students have, that the discussion in this book helps to tie the cases together into a coherent picture of the law. In addition, the opportunity to try your hand at the examples and then to compare your answers with mine will provide an incentive to analyze the examples and make that process more rewarding — perhaps even enjoyable.

Each chapter (except for the pleading chapters in Part VI) includes an introduction that gives a basic explanation of the relevant procedural concept followed by a series of examples. The "Explanations" section of each chapter presents my analysis of the examples in that chapter. The most effective way to use the book is to read each chapter when that topic is covered in your civil procedure course and to try to answer the questions yourself, based on my introductions and your reading for class. To keep yourself honest, write out your own analysis of each example, if only in a few sentences, before comparing it to mine. You may also want to review the chapter again after class coverage or discuss with your civil procedure professor any issues that you don't fully understand.

One of my principal frustrations as a first-year law student was that the questions posed in the casebooks were too hard. (Many are still beyond me, even after teaching procedure for many years.) I think you will find that the examples in this book are geared to cover the basics as well as more sophisticated variations; you really will be able to answer many of them, and the explanations will help to deepen your understanding of the issues.

You certainly will want to use *Civil Procedure: Examples and Explanations* for reviewing your civil procedure course at the end of the year. My students have found that these chapters are an excellent way to test their understanding of each topic and to fill in any gaps in class discussion or case reading. The examples provide an efficient means of learning the material because they help you to actively apply the concepts. You will learn a lot more by doing that than by passively rereading cases. In addition, the process will give you a sense of mastery of the material. As the course progresses, you will find that your ability to analyze the examples improves markedly, and that this positive feedback will help you feel more confident about your analytical skills. Surely every first-year law student will be thankful for that.

If you have any comments, suggestions, or corrections for future editions, please e-mail me at jglannon@suffolk.edu.

Joseph W. Glannon

January 2018

Acknowledgments

I am very grateful to the many faculty members and students who, over thirty years, have assisted me in preparing all eight editions of this book. Also, I am especially grateful to two publishing professionals who have played a defining role in the success of this book. First, to Rick Heuser, who chose to sign a novel and untried style of text by an unknown author for Little, Brown & Company in 1984. And second, to Carol McGeehan, who provided me essential advice and support over many years and editions.

Thanks, too, to the editorial staff at Aspen Publishing and The Froebe Group (especially Tom Daughhetee, Darren Kelly, and Paul Sobel) for their able assistance and advice in editing and producing the new edition.

Last, I offer thanks to all the students, both my own and those from many other law schools, who have offered their input, support and (of course) corrections.

Special Notice

For several frequently cited treatises I have used shortened versions after the initial citation to the work. These are as follows: Friedenthal, Kane, and Miller, Civil Procedure (5th ed. 2015), cited as Friedenthal, Kane, and Miller; James, Hazard, and Leubsdorf, Civil Procedure, cited as Hazard, Leubsdorf & Bassett (6th ed. 2011); Moore's Federal Practice, cited as Moore's; Wright and Kane, Federal Courts (8th ed. 2017), cited as Wright & Kane; and Wright and Miller, Federal Practice and Procedure, cited as Wright and Miller. (My apologies to supplementary co-authors of the Moore's and Wright and Miller treatises.)

EXAMPLES & EXPLANATIONS

Civil Procedure

PART I

Choosing a Proper Court

CHAPTER 1

Personal Jurisdiction

The Enigma of Minimum Contacts

INTRODUCTION

There is no place to start like the beginning, and the usual beginning for the defendant is the receipt of a summons from the court with an order to appear and defend a lawsuit. It is never a prospect that evokes much enthusiasm, but the reception is likely to be even chillier if the suit has been filed in a distant state. The defendant will want to know why on earth the plaintiff has chosen to sue in a court a thousand miles away and, perhaps more to the point, whether she *can* sue there. The answer to the second question lies shrouded in one of the foggiest realms of civil procedure, the doctrine of personal jurisdiction.

Ever since the landmark case of *Pennoyer v. Neff*, 95 U.S. 714 (1877), the Supreme Court has consistently held that plaintiffs are not free to bring suit wherever they choose. The Fourteenth Amendment to the United States Constitution forbids the states from "depriv[ing] any person of life, liberty or property, without due process of law." A state would violate this guarantee if its courts entered judgments against defendants without following a fair judicial procedure, and fair procedure includes not only such traditional elements as the right to counsel or to cross-examine witnesses, but also appropriate limits on the places where a defendant can be required to defend a lawsuit.

The Supreme Court has repeatedly attempted to define the appropriate limits on the power of state courts to "exercise personal jurisdiction over" defendants, that is, to require them to come into the state to defend lawsuits

there. A number of bases for personal jurisdiction have evolved, including domicile, consent, physical presence, and the enigmatic "minimum contacts" standard. In many cases in which the defendant is not from the forum state (the state where suit is brought), the only basis for exercising personal jurisdiction over her will be the minimum contacts test developed in *International Shoe v. Washington*, 326 U.S. 310 (1945). This chapter focuses on the meaning of that test.

THE MINIMUM CONTACTS TEST

In *International Shoe*, the Supreme Court held that the courts of a state may exercise personal jurisdiction over a defendant if she has such minimum contacts with the state that it would be fair to require her to return and defend a lawsuit in that state. The Court did not elucidate this somewhat circular proposition by providing a list of what minimum contacts are sufficient, nor did it base the test on the number of contacts with the state. Instead, the Court suggested that whether jurisdiction is permissible depends on the "quality and nature" of the contacts with the state. 326 U.S. at 319. In some cases, the Court indicated, even a single contact will do, but not contacts that are "casual" or "isolated."

This language is too vague to provide much guidance in applying the minimum contacts test, but the rationale of *International Shoe* is more helpful. The *Shoe* Court suggested that a corporation that chooses to conduct activities within a state accepts (implicitly, of course) a reciprocal duty to answer for its in-state activities in the local courts. A defendant should understand that her activities within the state will have an impact there, that those activities may lead to controversies and lawsuits there, and that the state has a right to enforce the orderly conduct of affairs within its borders by adjudicating disputes that arise from such in-state activities. The defendant who deliberately chooses to take advantage of the "benefits and protections of the laws" (326 U.S. at 319) of a state will not be heard to cry "foul" when that state holds her to account in its courts for her in-state acts.

This rationale suggests an important limitation on minimum contacts jurisdiction. Because the court's power to exercise jurisdiction derives from the defendant's voluntary relation to the state, the power should be limited to cases arising out of that relation. *International Shoe* implies such a limitation, and subsequent cases have confirmed that minimum contacts jurisdiction is limited to claims arising from (or, perhaps, related to) the defendant's contacts with the forum state. In *Shoe*, for example, the corporation was held subject to personal jurisdiction in Washington for claims arising out of its shoe sales in that state, but the corporation could not have been required

to defend a claim in Washington arising from shoe sales in Texas under a minimum contacts analysis. Sales in Texas are unrelated to Washington; the corporation would certainly not expect to be sued in Washington by a Texas shoe buyer, nor does the corporation take advantage of the benefits and protections of the laws of Washington by its activities in Texas. The analysis must always consider the relationship between the contacts that gave rise to the suit and the state where the suit is brought. Miscellaneous contacts are not minimum contacts. It is the contacts that spawned the lawsuit that are crucial to the minimum contacts analysis.

SPECIFIC AND GENERAL JURISDICTION: THE "*SHOE* SPECTRUM"

Although *International Shoe* is primarily viewed as a minimum contacts case, the opinion analyzes a broad spectrum of possible contacts with a state and their jurisdictional consequences. Figure 1-1 illustrates this spectrum of increasing contacts.

At one end of the "*Shoe* spectrum" are cases in which a defendant has no contact with the forum state. In such cases, *Shoe* indicates that the state has no authority to exercise personal jurisdiction over the defendant, unless she consents to it. "Casual" or "isolated" contacts (whatever they may be) are also insufficient to support jurisdiction. But other single acts, because of their "quality and nature," will support "specific in personam jurisdiction," that is, jurisdiction over claims arising out of that single act. See, e.g., *McGee v. International Ins. Co.*, 355 U.S. 220 (1957) (upholding jurisdiction over claim arising out of a single contract solicited in the state). Continuous but limited activity in the forum state, such as the ongoing business relationship in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), will also support "specific" in personam jurisdiction, that is, jurisdiction over claims arising out of that continuous activity. In each of these categories of cases, the in-state activity is limited. In each, the defendant is only subject to jurisdiction for claims arising out of those "minimum contacts."

The *Shoe* opinion also suggests that if the defendant's forum contacts fall at the far right end of the spectrum, where the in-state contacts are very substantial, the defendant is subject to "general in personam jurisdiction." This means that the defendant may be sued in the state for any claim, even one completely unrelated to its in-state activities. Several cases that came after *International Shoe* confirmed that general in personam jurisdiction is sometimes appropriate (see *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984); *Perkins v. Benguet Consolidated Manufacturing Co.*, 342 U.S. 437 (1952)), but did little to clarify how extensive a defendant's in-state

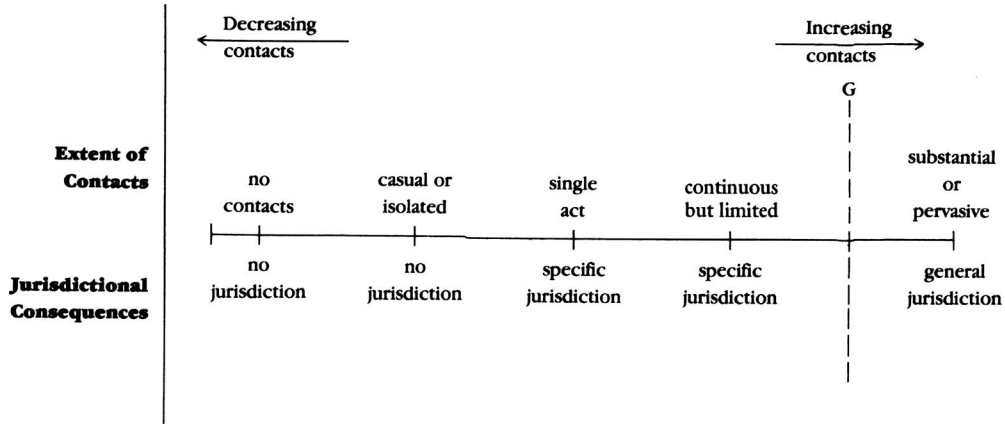


Figure 1-1. The *Shoe* spectrum.

activity would have to be to support it. Lower federal courts adopted various approaches, but often approved the exercise of general in personam jurisdiction based on extensive in-state contacts such as physical facilities, employees, and sales.

Since 2011, however, the Supreme Court has taken a much more restrictive approach to general in personam jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011), held that several foreign subsidiaries of Goodyear Tire and Rubber Company were not subject to general in personam jurisdiction in North Carolina, even though several thousands of their tires were redistributed in North Carolina. The *Goodyear* Court rejected the argument that continuous sales into the state suffice to support general jurisdiction (as it had for substantial purchases in *Helicopteros*). In dicta, the Court affirmed that a corporation is subject to general in personam jurisdiction in the state where it is incorporated and the state of its principal place of business. The opinion states that the corporation is "fairly regarded as home" (131 S. Ct. at 2853-2854) in these states, analogizing to the state of domicile of a natural person, which may exercise general in personam jurisdiction over its domiciliaries. *Milliken v. Meyer*, 311 U.S. 457 (1940).

Goodyear left unclear whether a corporation could be subject to general in personam jurisdiction in other states *in addition to* the states of incorporation and principal place of business. Suppose, for example, that MegaSales Inc. is incorporated in Delaware and has its principal place of business in Colorado, but also has fifty stores employing ten thousand people in Illinois. *Goodyear* clearly indicates that MegaSales is subject to general in personam jurisdiction in Delaware and Colorado, but did not clarify whether its substantial and continuous contacts in Illinois will subject it to general jurisdiction there as well.

Three years later, in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the Court revisited the issue and suggested that general in personam jurisdiction will

almost always be limited to the corporation's state of incorporation and principal place of business. The Court did not absolutely foreclose the possibility that a corporation might be subject to general in personam jurisdiction in some other state "in an exceptional case." However, the Court held that the defendant in *Daimler*, though it had extensive contacts in California, was not subject to general in personam jurisdiction there. Very likely then, after *Daimler*, general jurisdiction will be proper over almost all corporations only in their state of incorporation and the state of their principal place of business.

Be careful not to confuse *Goodyear's* analysis of general in personam jurisdiction with the analysis of a corporation's state citizenship under 28 U.S.C. §1332(c)(1). Section 1332(c)(1) defines the corporation's state citizenship for diversity purposes—to determine subject matter jurisdiction. *Goodyear* and *Daimler* consider whether a corporation is subject to *personal* jurisdiction in a state for a claim that does not arise out of its contacts in that state.

Admittedly, after those two decisions, the two tests (for state citizenship under §1332(c)(1) and for general in personam jurisdiction) are similar, but they may not be exactly the same. In *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) the Supreme Court adopted the "home office" or "nerve center" test for principal place of business for *diversity purposes* under §1332(c)(1). But it is not clear whether that same test will be adopted to define the term "principal place of business" for general in personam jurisdiction. There may be good reasons to use a different test for personal jurisdiction purposes. Arguably, general in personam jurisdiction analysis should focus on the extent of the defendant's in-state activity, and that activity may be much greater in states where a corporation has production or sales facilities than the state of the home office.[1]

SOME GUIDELINES IN APPLYING MINIMUM CONTACTS

Several important aspects of the minimum contacts test have been settled by cases since *International Shoe*. First, the minimum contacts test applies to individual as well as corporate defendants. See, e.g., *Kulko v. Superior Court*, 436 U.S. 84 (1978). This makes good sense, since individuals benefit from their voluntary in-state contacts just as corporations do and should likewise

1. One Supreme Court opinion suggests in dicta that general in personam jurisdiction based on extensive in-state activity may apply only to corporate defendants, not to individual defendants. *Burnham v. Superior Court*, 495 U.S. 604, 610, n. 1 (1990). Surely, the overwhelming majority of general in personam cases involve corporate defendants. Individuals' contacts with a state other than their domicile are seldom so extensive as to support an argument for general in personam jurisdiction.

understand that those benefits may carry with them the burden of related litigation. *Second,* the limitations on personal jurisdiction found in long-arm statutes are distinct from the constitutional limit imposed by the minimum contacts test. See Chapter 2, which compares these two related concepts.

Third, it is clear that a defendant may have sufficient contacts *with* a state to support minimum contacts jurisdiction there even though she did not act *within* the state. If a defendant commits an act outside the state that she knows will cause harmful effects within the state, she may be subject to minimum contacts jurisdiction there for claims arising out of that act. In *Calder v. Jones,* 465 U.S. 783 (1984), for example, the defendant was held subject to personal jurisdiction in California for an allegedly defamatory article written in Florida, since the article was to be circulated in California, the plaintiff lived there, and the plaintiff's career was centered there. Similarly, if Healy, a Minnesota lawyer, calls a Missouri client on a regular basis to give her legal advice and bills the client for that advice, Healy derives benefits from conducting activities in Missouri. Even if she has never visited Missouri, she will have to answer there for a legal malpractice claim that arises from her deliberate business activity there.

Fourth, minimum contacts analysis focuses on the time when the defendant acted, not the time of the lawsuit. Even if Healy stopped representing her Missouri client a year before being sued and now has no contacts with Missouri, Healy is subject to jurisdiction in Missouri for claims arising from these prior contacts. Minimum contacts jurisdiction is based on the premise that parties who conduct activities in a state accept the risk that those activities will give rise to suits and understand that they may have to return to the state where the activity was conducted to defend such suits. This rationale applies whether or not the defendant is still acting in the state at the time the suit is actually filed. Compare jurisdiction based on service of process on the defendant within the state, which was reaffirmed in *Burnham v. Superior Court of California,* 495 U.S. 604 (1990). Jurisdiction based on in-state service only requires that the defendant be present in the forum state at the time that the summons and complaint are served upon her. In such cases, the defendant need not have had *any* contact with that state at the time of the events giving rise to the suit.

PURPOSEFUL AVAILMENT

The toughest problem in applying the minimum contacts test has been defining the "quality and nature" that makes a contact sufficient to support jurisdiction. Many cases have relied on the statement in *Hanson v. Denckla* that the defendant must have "purposely avail[ed] itself of the privilege of

conducting activities within the forum State, thus invoking the benefits and protections of its laws." 357 U.S. 235, 253 (1958). This language emphasizes that the defendant must have made a deliberate choice to relate to the state in some meaningful way before she can be made to bear the burden of defending there. Unilateral contacts of the plaintiff or others will not do.

Although scholars have criticized this emphasis on the defendant's purposeful in-state contacts,[2] the Court has consistently required it. In *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980), for example, the Court concluded that a New York Audi dealer, Seaway, had not purposely availed itself of the opportunity to conduct activities in Oklahoma, although it could foresee that its buyers might take its cars there. The dealer had not sold cars there, advertised there, cultivated Oklahoma customers, or deliberately focused on Oklahoma as a market. Thus, it had not sought any direct benefit from Oklahoma activities sufficient to require it to submit to jurisdiction there. In *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984), by contrast, the defendant had purposely availed itself of the opportunity to engage in in-state activities, by distributing its magazines within the state. Because the plaintiff's claim arose out of those contacts, they supported jurisdiction even though the defendant's acts had greater impact in other states, and the plaintiff had few contacts with the forum state.

Much debate has swirled around application of this purposeful availment requirement in cases where the defendant's goods reach the forum state through the so-called "stream of commerce." This often happens in one of two ways. *First*, an out-of-state component manufacturer sells components to a manufacturer of a finished product outside the state (or outside the country). That manufacturer then incorporates the component into a finished product and distributes the finished product into the forum state. *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), is an example of this situation. *Second*, a manufacturer sells finished products to a wholesaler outside the state, the wholesaler then resells to a retailer in the forum state, and the retailer resells to the consumer. In these situations, the party at the beginning of the stream of commerce (the component maker in the first situation, and the manufacturer in the second) did not import the product into the forum state itself; it sold to others who did. The manufacturer or component maker may know that such resales take place in the state, may think it highly likely, or may not know or care about the ultimate destination of its product.

In *Asahi*, the Court split on the question of whether the mere act of selling goods outside the forum state that will likely be imported into the forum state for resale suffices to support jurisdiction. Justice O'Connor's opinion, joined by three other Justices, rejected the premise that "mere awareness" that the stream of commerce may sweep goods into the state

2. See, e.g., M. Weber, Purposeful Availment, 39 S.C.L. Rev. 815, 865-871 (1988).

after they leave the defendant's hands suffices to satisfy "purposeful availment." O'Connor would require clearer evidence that the defendant seeks to serve the market in the particular state, such as designing the product for the market in that state or advertising there. 480 U.S. at 112-113. However, the concurring Justices in *Asahi* would find that sending goods into the stream of commerce, at least in substantial quantities, constitutes "purposeful availment," whether or not the original maker knows that the goods will be sold in a particular state or cultivates customers there. The rationale for this view is that the maker both foresees and benefits from such sales in other states, whether it distributes them there directly or indirectly profits from the fact that another entity conveniently does so in its place.

More than two decades after *Asahi*, the Supreme Court reconsidered stream-of-commerce jurisdiction in *J. McIntyre Machinery Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011). The defendant in *McIntyre* made a metal-shearing machine in England and sold it to a distributor in the United States, which resold it into New Jersey. The plaintiff was injured using it in New Jersey and sued there for his injuries. There was no question that McIntyre had sought to serve the U.S. market — it used an Ohio-based company as its exclusive U.S. distributor, sold its machines into the United States, attended conventions here to promote its machinery, and at least one of its machines was resold into New Jersey. Yet the majority of the Court held (over a fervent dissent by three Justices) that McIntyre's contacts in New Jersey would not support specific in personam jurisdiction in New Jersey for Nicastro's claim.

McIntyre seems a stronger case for jurisdiction than *Asahi*, because the defendant had reached out to sell its products in the United States. And it had sold the product that caused the injury into New Jersey, though indirectly. It not only knew that its products were entering the U.S. market, but promoted that market. The argument that it purposely availed itself to the United States, but not to the states where its products were actually resold, seems mildly disingenuous. In *McIntyre* five Justices — the two concurring Justices and the three dissenters — at least leave open the question whether a foreign manufacturer is subject to jurisdiction in states where substantial amounts of its goods are regularly redistributed.

Some things are reasonably clear based on these two cases. A foreign manufacturer or component maker that sells its products to wholesalers outside the United States, without cultivating the U.S. market in any way, will likely not be subject to jurisdiction, even if its product is imported into the United States and injures a consumer here. If that manufacturer develops a relationship with a U.S. distributor, sells goods to that distributor, and encourages U.S. sales, it will likely be subject to jurisdiction for claims arising from those sales *in the state where it directs its goods*, that is, where the U.S. distributor is located. However, it is not clear whether the manufacturer will be subject to jurisdiction in other states where the distributor resells the

goods. The plurality opinion in *J. McIntyre* suggests that it will not be, yet the concurring and dissenting opinions suggest that jurisdiction may be proper if the defendant regularly serves the market in the state where its product causes injury.

It also seems quite likely that a foreign manufacturer that engages in the type of conduct described in Justice O'Connor's opinion in *Asahi*, which is intended to promote its goods in that state, will be subject to specific in personam jurisdiction for claims that arise out of sales (including indirect sales) in that state. If J. McIntyre had maintained a service network for its products in New Jersey, it would probably have been found subject to the court's jurisdiction in Nicastro's case. Establishing the service network would represent "purposeful availment" sufficient to support jurisdiction if its product causes the injury in New Jersey.

OTHER FACTORS IN THE JURISDICTIONAL CALCULUS

There is also a great deal of talk in the cases about factors other than the defendant's in-state contacts, such as the interest of the forum state in providing redress to its citizens, the interest of the plaintiff in obtaining relief in a convenient forum, the interest of the states in enforcing their substantive law or policy, and the extent of the inconvenience to the defendant if she is forced to defend away from home. The cases have repeatedly cited such factors in determining whether it would be fair to assert personal jurisdiction over the defendant. See *Keeton*, 465 U.S. at 775-780; *Burger King*, 471 U.S. at 476-477. However, *Burger King* suggests that, where the defendant has purposely directed activities to the forum state, jurisdiction is presumptively reasonable, and she will have to make a "compelling case" that other considerations make the exercise of jurisdiction unreasonable. *Burger King* at 477. In *Asahi*, on the other hand, the Court found such a case to be made: There, a clear majority of the justices concluded that, even if minimum contacts were established, it would be unreasonable to exercise jurisdiction on the unusual facts of that case.

While the plaintiff's interest, the forum state's interest, and other fairness issues enter the balance once minimum contacts are found, they are not sufficient to support jurisdiction if those contacts are lacking.[3] The defen-

3. In *Daimler*, the majority opinion suggested in dicta that no "reasonableness" analysis is required if the defendant is subject to general in personam jurisdiction, presumably on the rationale that it is never unreasonable or inconvenient to sue a defendant "at home." 134 S. Ct. at 762 n. 20.

dant must first have purposely availed herself of the opportunity to conduct activities in the state. It is only when such deliberate contacts exist between the defendant and the forum state and those contacts give rise to the claim, that other factors will be weighed in determining whether the exercise of jurisdiction would comport with "fair play and substantial justice."

Thus, although some principles are established in the minimum contacts area, the test still remains difficult to apply in close cases. Over the course of your lawyering life it will take on clearer meaning as you handle personal jurisdiction issues and begin to see how courts give flesh to the bare-bones test. The following examples will provide a start in that direction. In answering them, focus on the constitutional issue of minimum contacts only; do not worry about statutory problems under long-arm statutes. Also, assume that the contacts mentioned are the only contacts the defendant has with the forum state.

EXAMPLES

Examples

Opening Rounds

1. Austin is a traveling salesman who lives in North Dakota and sells Fuller brushes in parts of North Dakota, South Dakota, and Minnesota. While en route to deliver brushes to a Minnesota customer, he is involved in an auto accident in Minnesota with Healy, a Minnesota citizen. He brings suit against Healy in North Dakota for his injuries in the accident. Does the court have personal jurisdiction over Healy?

2. As a result of the same accident, Healy brings suit against Austin for her injuries. She sues in South Dakota. Does the court have jurisdiction over Austin based on minimum contacts?

3. To be on the safe side, Healy also files suit against Austin in Minnesota. Does that court have personal jurisdiction over Austin based on minimum contacts?

A Parade of Perplexities

4. *The Volkswagen.* Many of the most difficult personal jurisdiction cases involve commercial contacts, that is, contacts that arise out of business done in the state, either directly or indirectly, by a corporation acting outside the state. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980), sets out the basic framework for analyzing these cases. The motorcade of hypotheticals that follows may help you to assess the importance of various contacts with the forum state.

   Hudson, an Ohio citizen, buys a Volkswagen from Smoky Mountain VW, located on the east side of the Smoky Mountains in North Carolina,

while she is on vacation in North Carolina. Shortly after she returns home, all four wheels fall off while she is driving, and Hudson is injured. Understandably upset, Hudson sues Smoky Mountain in an Ohio court for negligence. Does the Court have personal jurisdiction over the dealer?

5. *The Chevy.* After Hudson leaves, Ford pulls into Smoky Mountain's lot with his engine belching smoke. His car is clearly a total loss, and he tells De Soto, the salesman, that he must have a car to get back home to Florida. De Soto sells him a (very) used Chevy. After crossing into Florida, Ford pushes the windshield wiper button, and the engine automatically ejects into the Everglades. Ford sues De Soto and Smoky Mountain in Florida. Is personal jurisdiction proper there?

6. *The Maserati.* De Soto has an eye for fast cars. At the moment, he has a nice Maserati on the lot, with all the extras (engine, wheels, brakes). A customer tells him that a trucker buddy of his, Packard, from Pennsylvania, might be interested in buying the Maserati. De Soto calls Packard in Pennsylvania, extols the Maserati's virtues, and encourages her to come in and test drive the car on her next delivery in North Carolina. Packard does stop to see the car, likes it, and buys it. She makes the mistake of towing it home, only to discover upon arrival that the engine, lights, carburetor, and exhaust system are missing. She sues De Soto in Pennsylvania. De Soto has no other contacts with Pennsylvania. Will the Pennsylvania court have personal jurisdiction over De Soto?

7. *The Audi.* After lunch, Rambler comes in. Rambler lives across the border in Tennessee, where he read in a Tennessee paper Smoky Mountain's ad for a one-year-old Audi for $1,100. Because the Smoky Mountain dealership is located ten miles from the Tennessee border, it advertises frequently in Tennessee, as well as in North Carolina. Rambler visits the dealership, talks De Soto down to $1,025, and buys the car. He barely gets across the Tennessee line when the steering wheel comes off in his hand, and the body comes entirely loose from the frame of the car. Rambler sues Smoky Mountain in Tennessee. Does the court have personal jurisdiction over Smoky Mountain?

8. Assume, on the facts of example 7, that Smoky Mountain only advertises occasionally in Tennessee and derives only 5 percent of its business ($40,000 of its annual gross sales of $800,000) from sales to Tennessee customers. The rest of its sales are in North Carolina. Rambler sees the ad and buys the Audi at Smoky Mountain's dealership; it breaks down in Tennessee on the way home. Can Rambler sue Smoky Mountain in Tennessee?

Sports Cars

9. *The Ferrari*. You can't work all the time. When De Soto relaxes, he likes to go to the Georgia coast for some deep sea fishing. While drinking at a bar in the fishing lodge there, he gets to talking with Lenoir, another guest at the lodge. Lenoir asks De Soto about his work. The two get into a car lovers' debate over the relative merits of various sports cars. Before leaving the bar, Lenoir asks De Soto for his card.

    Two months later, Lenoir visits Smoky Mountain and buys a jazzy looking Ferrari from De Soto. Imagine for yourself what happens to the Ferrari when Lenoir gets it back to Georgia. Lenoir sues De Soto in Georgia. Will the court have personal jurisdiction over De Soto?

Streams of Commerce

Consider the following questions, which may help to sort out the reach of stream-of-commerce jurisdiction after the Supreme Court's fractured decisions in *Asahi* and *J. McIntyre*.

10. Accu-Cut makes riding lawnmowers in France. It sells them to Transmondial, a French wholesaler of outdoor products. Transmondial sells an Accu-Cut mower to a hardware store in Colorado, and ships it to the store. Stanley buys it, is injured using it in Colorado, and sues Accu-Cut (which has no other U.S. contacts) in a Colorado court. Does the court have personal jurisdiction over Accu-Cut for this claim?

11. Same facts, but Accu-Cut exports mowers to Moline Distributors in Moline, Illinois. Moline resells five Accu-Cut Mowers to the hardware store in Colorado. Stanley buys one and is injured using it in Colorado. Would the Colorado court have personal jurisdiction over Accu-Cut for this claim?

12. Accu-Cut makes mowers in Florida that it sells to Moline Distributors in Illinois, and ships to Moline. Moline resells an Accu-Cut mower to a Colorado hardware store in an isolated transaction. Stanley buys it and is injured using it in Colorado. Would the Colorado court have personal jurisdiction over Accu-Cut for this claim?

13. Accu-Cut makes mowers in France and sells to Moline Distributors in Illinois, which resells a few mowers to a Colorado hardware store. Stanley buys one of them, is injured in Colorado, and sues Accu-Cut for his injury in Illinois. Does the Illinois court have jurisdiction over Accu-Cut?

14. Same facts as the previous example, except that Moline resells substantial numbers of Accu-Cut mowers into Colorado every year. Stanley buys one in Colorado and is injured using it in Colorado. Will Accu-Cut be subject to personal jurisdiction in Colorado?

15. Accu-Cut makes its mowers in Florida and sells them to Moline Distributors in Moline, Illinois. Moline resells five Accu-Cut Mowers to the hardware store in Colorado. Stanley buys one and is injured using it in Colorado. Stanley sues Moline Distributors in Colorado for his injury. Will Moline Distributors be subject to personal jurisdiction for the claim?

16. Accu-Cut makes mowers in Florida and sells them to Moline in Illinois, which resells them into Colorado. Here, though, Accu-Cut also advertises its mowers in Colorado on several weekly television programs. Would Accu-Cut be subject to personal jurisdiction in Colorado for Stanley's claim?

Changing Cars in Midstream

17. *The Edsel*. Andretti is an Indiana race car driver whose hobby is collecting antique cars. He notices an ad in *Antique Auto*, a national magazine, for a mint condition Edsel for sale by a Michigan collector, Studebaker. He calls Studebaker, gets further information on the car, and decides to go up to look at it. While he is in Michigan, he and Studebaker discuss price but do not settle the deal. After Andretti returns to Indiana, he calls Studebaker back, agrees to his price, and arranges to pick up the car the following month. After buying the car and returning with it to Indiana, he discovers that it is a cleverly disguised Dodge Dart. He sues Studebaker in Indiana. Will the court dismiss for lack of personal jurisdiction?

18. Reconsider the case just described involving Andretti's purchase of a car from Studebaker. However, assume that, instead of reading about the car in *Antique Auto*, Andretti dialed up Studebaker's "Hot Cars" website and learned of the Edsel through the Internet. He then called Studebaker, and the transaction unfolded as above in example 17. Could Andretti sue Studebaker in Indiana on his fraud claim arising out of the sale?

The Rental Car

19. Patrikas, an elderly widow with minimal income, lives in Georgia. Her daughter is getting married in California. Patrikas scrimps and saves for two years (it was one of those long engagements) to set aside funds to fly out for the wedding. She rents a car to drive to the wedding, but on the way back to the airport she runs into an Acme International Conglomerated Enterprises truck. She flies back to Georgia, broke.

    Acme International Conglomerated Enterprises is an international company worth billions. It sues Patrikas for damage to the truck in California. Does the court have personal jurisdiction over Patrikas?

Fundamental (Un)truths

20. Every year, the following statements sprout like dandelions in civil procedure bluebooks. What is wrong with them?
    a. "Even if the defendant lacks minimum contacts with the state, the plaintiff may be able to get jurisdiction over him if he has taken advantage of the benefits and protections of the laws of the state."
    b. "The defendant may be sued in the state because she has engaged in deliberate acts there and thus has minimum contacts sufficient to support personal jurisdiction."

Explanations

Opening Rounds

1. In this case Austin has sued Healy in a state in which Austin has contacts, but Healy has none. As far as the example tells us, Healy has never been there, has not formed any deliberate relationship to or performed acts within the state, and has done nothing to derive benefits from North Dakota. Consequently, she has no reason to expect to be sued there and has not impliedly swallowed that bitter pill in exchange for the benefits of in-state activity. She lacks minimum contacts with North Dakota and may not be sued there on this claim.

   As this conclusion suggests, the personal jurisdiction rules are defendant-oriented: The plaintiff's contacts with the forum state will not do; the court must find some basis for forcing the defendant, the unwilling litigant, to appear before it. Conversely, if the defendant has minimum contacts with the forum state, it is irrelevant (at least, for personal jurisdiction purposes) that the plaintiff has none.

   One might well ask why Austin should have to go to Healy instead of Healy coming to Austin. If someone will have to be inconvenienced by the suit, shouldn't it be the defendant rather than the injured plaintiff? On the other hand, the defendant may be completely blameless; plaintiffs lose law suits as well as win them. If so, it seems unfair to add the insult of distant litigation to the injury of being sued in the first place. Perhaps more importantly, the defendant (unlike the plaintiff, who started the suit) has not chosen the forum and ought to have some veto power over unreasonable choices by the plaintiff.

2. The South Dakota court will not have personal jurisdiction over Austin under the minimum contacts test. It is true that Austin has some contacts with South Dakota because he travels there to sell brushes. However, *International Shoe* does not hold that a defendant may be sued in a state simply because she has some contacts with that state. *Shoe* holds that a

defendant may, by committing limited acts within a state, submit herself to jurisdiction for claims arising out of the in-state acts themselves. Here, Healy's claim is unrelated to Austin's brush sales in South Dakota. Austin had no reason to believe that he was submitting himself to the jurisdiction of the South Dakota courts for auto accidents in Minnesota by selling brushes in South Dakota. The situation would be different if the claim were for faulty brushes sold to a South Dakota customer. In that case, the claim would arise directly from Austin's voluntary contacts with the state, and jurisdiction would be proper.

However, Healy may still be able to sue Austin in South Dakota for the auto claim. Ever since *Pennoyer v. Neff*, 95 U.S. 714 (1877), it has been permissible to obtain personal jurisdiction over an individual defendant (that is, a person) by serving her with the summons in the state where suit is brought. In *Burnham v. Superior Court*, 495 U.S. 604 (1990), the Supreme Court concluded that such "transient jurisdiction" is still a valid means of obtaining jurisdiction over an individual defendant, even if the defendant is in the state briefly or for reasons unrelated to the litigation. Thus, if Healy is determined to sue in South Dakota, she may bring suit there and have the process server await Austin's next sales trip into the state.

3. Healy has gotten it right by suing Austin in Minnesota. Austin's act of driving in Minnesota provides a minimum contacts basis for a suit against him there for injuries suffered in the accident. Motorists who use the roads of a state should realize that this purposeful activity in the forum subjects other drivers to serious risks, that people may be injured and may sue. It would be unfair to allow drivers to take advantage of Minnesota's highways but not to call them to account there for accidents they are involved in on those highways.

   Even if causing the accident in Minnesota were Austin's only contact with the state, it would support specific in personam jurisdiction in this case. The "quality and nature" of this single, purposeful act, and the consequences that may predictably ensue from it, are so serious as to make it reasonable to force the driver to return to defend a suit that arises from the accident. This is true whether Austin causes an accident while in Minnesota on business or in Florida on vacation.

A Parade of Perplexities

4. As the heading suggests, this case bears some resemblance to *World-Wide Volkswagen v. Woodson*. Here, as in *World-Wide*, the plaintiff purchased the car in one state and took it to another where she suffered injury from alleged defects in the car. As in *World-Wide*, the plaintiff sues where the injury is suffered, although the defendant acted in another state and is

still in that state. And, as in *World-Wide*, the court will dismiss this case for lack of personal jurisdiction. Smoky Mountain (like Seaway in the *World-Wide* case) has committed no deliberate act that affiliates it with Ohio. It does not sell cars there, has not availed itself of the protection of Ohio's laws, and has no reason to expect that it will be sued there. Although it is foreseeable that the car will be driven through or end up in Ohio, it is equally foreseeable that it will go to many other states. A rule that such foreseeability establishes jurisdiction would essentially subject the seller of any portable product to nationwide jurisdiction, making "the chattel [product] his agent for service of process" (*World-Wide Volkswagen* at 296) wherever the buyer takes it.

5. This case is somewhat stronger than Hudson's, since De Soto at least knew he was dealing with a Florida citizen who would use the Chevy in Florida. However, it is very doubtful that this knowledge is enough to support jurisdiction over De Soto or Smoky Mountain in Florida. Personal jurisdiction is the price defendants pay for deliberate efforts to derive benefits from or conduct activities in a state. These defendants did not solicit any business in Florida; they did not even solicit business from a Floridian. Ford rolled into the dealership under his own steam and initiated the transaction in North Carolina. It was only by chance that Ford told De Soto why he needed the car; it is reasonable to infer that it was irrelevant to De Soto that Ford planned to drive it to Florida. (A sale is a sale, right?) De Soto and his employer derived benefits from dealing with a Floridian in North Carolina, not from conducting business activities in Florida. Ford's Florida domicile is a unilateral contact of the plaintiff, not the defendant, with the forum state. See *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); compare *Burger King*, 471 U.S. at 478-482, in which jurisdiction was upheld because the defendants had an on-going contractual relationship with a large Florida franchise, agreed that Florida law would govern the relationship, and regularly related to the Florida headquarters of the franchise regarding important aspects of their business.

   It is true that the Supreme Court cases emphasize that the plaintiff's interest in a remedy and the forum state's interest in providing one are part of the personal jurisdiction calculus. See, e.g., *Asahi*, 480 U.S. at 113-115; *Keeton v. Hustler Magazine*, 465 U.S. at 775. However, before those factors can be weighed in favor of jurisdiction, the defendant must be shown to have appropriate purposeful contacts with the state asserting jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. at 474-478. De Soto's relation to Florida on these facts appears too attenuated to support such a finding.

   Nor is it sufficient that the defendants could anticipate that the car would be used in Florida. If that were sufficient to support jurisdiction, then the local store that sells a defective mountain climbing rope could be sued in any mountainous state, or a farmer who sells rancid tomatoes to

railroad dining cars could be sued in any state the railroad serves. *World-Wide Volkswagen* makes it clear that the Court has chosen a narrower view of personal jurisdiction, focusing on the scope of the activity of the seller, rather than the predictable area of use of the product by the buyer.

6. Here, as in example 5, De Soto has consciously dealt with an out-of-stater, but here, unlike the earlier situation, he has voluntarily affiliated himself with the plaintiff's state. He not only anticipates that his acts will have consequences in the other state, but he has also deliberately set those events in motion by his own in-state act. De Soto voluntarily reached into Pennsylvania to conduct business with a Pennsylvanian. He made representations to Packard in Pennsylvania that encouraged her to come to North Carolina to buy the car. He can reasonably anticipate that Packard will use the car extensively in Pennsylvania and likely suffer harm there from any defects in the car. De Soto should realize that his deliberate relationship with a Pennsylvanian, which he initiated by calling into that state, may lead to a lawsuit, and that if a claim arises out of the sale, Packard will likely bring the suit in Pennsylvania. Thus, De Soto will be subject to personal jurisdiction in this action. His single contact with Pennsylvania is sufficient to support specific in personam jurisdiction (that is, jurisdiction for claims arising out of the contact itself), although it would not support jurisdiction for claims that did not arise out of the sale.

7. In this case the dealership has reached into Tennessee to solicit business. It has attempted to draw customers from there into North Carolina, and in Rambler's case it succeeded. Although the actual sale took place in North Carolina, the claim arises directly out of deliberate efforts to serve the Tennessee market. Smoky Mountain can hardly plead unfairness or surprise when suits that arise from those efforts are brought in Tennessee. Even Justice O'Connor should have no problem upholding jurisdiction in this case, since the defendant has intentionally attempted to derive profits from dealing with Tennessee customers by advertising in Tennessee.

   It is important that the dealership is the defendant here, instead of De Soto, because it is the dealership that solicited the business in Tennessee, not the salesman. It is unlikely that the dealership's contacts with Tennessee will be imputed to its employees. (Compare example 6, in which De Soto personally initiated contacts with the forum state.) Thus, if Rambler wanted to sue De Soto and Smoky Mountain together, he would probably have to bring suit in North Carolina.

8. This hypo makes an important point. Personal jurisdiction is not based on the most contacts or the best contacts but on minimum contacts. Here, Smoky Mountain has a great deal more contact with North Carolina

than it has with Tennessee, but the dealership has solicited business in Tennessee, and the claim arises out of its efforts to obtain that business. That is enough to support jurisdiction in Tennessee. Smoky Mountain will not be able to defeat jurisdiction there by arguing that it has more contacts with North Carolina.

A corollary of this point is that a defendant may be subject to minimum contacts jurisdiction in more than one state for a claim that arises from a transaction involving contacts with a number of states.

Sports Cars

9. In my estimation, this is the kind of "casual" or "isolated" contact (*International Shoe*, 326 U.S. at 317) that is insufficient to subject the defendant to personal jurisdiction. Although De Soto did act in the state, he was not soliciting business and did not initiate the conversation for business purposes. He gave Lenoir his card at Lenoir's request. He did not encourage Lenoir to go to North Carolina to buy a car. In the "but-for" sense, this contact did give rise to the claim Lenoir asserts, but it was not a purposeful act intended to take advantage of the benefits and protections of conducting activity in Georgia. De Soto would be justifiably upset if this offhand interaction led to a suit in Georgia. He would hardly expect that to be the consequence of responding to a request for a business card, and jurisdictional doctrine is largely based on a common sense appraisal of what people should expect.

There is room for debate on this case, but it is doubtful that this constitutes deliberate in-state activity intended to exploit the local market or affect local citizens. In this regard, it is clearly distinguishable from the Maserati case, in which De Soto deliberately initiated a business contact with the in-state plaintiff, or *McGee v. International Ins. Co.*, 355 U.S. 220 (1957), in which the insurer reached into California by sending an offer there to reinsure a Californian.

Streams of Commerce

10. No. Here a foreign manufacturer makes a product outside the United States and sells it there, much as Asahi did for the component tire valves in the *Asahi* case. This would certainly not satisfy the *Asahi* plurality's test for purposeful availment in Colorado, because it was Accu-Cut's buyer that chose to sell the mower into Colorado, not Accu-Cut. Nor would it satisfy Justice Kennedy's opinion in *J. McIntyre*. Accu-Cut in the example has done a good deal less to cultivate the U.S. market (or the Colorado market) than J. McIntyre did in the *J. McIntyre* case.

It isn't clear whether the *J. McIntyre* dissenters would find jurisdiction on these facts, but it seems fairly clear that the concurring Justices

would not. They viewed J. McIntyre's contacts, in selling the product to a United States distributor, as insufficient to support jurisdiction in a different state where it was resold and caused injury, so they presumably would find Accu-Cut's lesser contacts also insufficient.

11. Accu-Cut's contacts here resemble those of the manufacturer in *J. McIntyre*, which the plurality found insufficient to support personal jurisdiction in the state courts of New Jersey. Accu-Cut has chosen to serve the market for its products in the United States by selling to an Illinois distributor, but it has not independently reached into Colorado. Here again, it seems that the plurality opinions in *Asahi* and in *J. McIntyre* would reject personal jurisdiction over Accu-Cut.

    The *J. McIntyre* dissenters argue strenuously that there should be jurisdiction over the foreign manufacturer in cases like this one, where it has served the U.S. market — albeit through an intermediary — and derived profits from it. The concurring Justices in *J. McIntyre* might accept that argument under some circumstances, as where the manufacturer's products are regularly sold into the state or it directly cultivates the market in the state. But they probably would not find jurisdiction justified on these facts — a sale of five mowers on a single occasion. So, after *J. McIntyre*, as after *Asahi*, the answer is probably "no."

12. The main difference here is that Accu-Cut makes its mowers in the United States. It seems unlikely that this difference would lead the Justices who signed on to the plurality opinion in either *Asahi* or *J. McIntyre* to reach a different result. Accu-Cut has still not done anything to focus on Colorado. It has simply made a product in one state and sold it to a wholesaler in another, which redistributes the product in other states. *See J. McIntyre* at 2790 ("the undesirable consequences of Justice Brennan's approach are no less significant for domestic producers").

13. It almost certainly would. Accu-Cut has imported goods into Illinois, a purposeful contact that supports jurisdiction for claims that arise out of that purposeful decision to do business in Illinois. Although the injury occurred in Colorado, the claim against Accu-Cut does arise out of its sale of the mower into Illinois.

    Ironically, there seems little reason to litigate this case in Illinois. Neither party is from there and the events giving rise to the claim took place in France (where the mower was made) and Colorado (where Stanley was injured). Accu-Cut might even move to dismiss for *forum non conveniens*, claiming that there is no reason to litigate this case in Illinois. Yet it is hard to see an Illinois judge granting that motion, which would leave Stanley with only the option of a French court to litigate his Colorado claim.

14. In this case it seems likely that Justices Breyer and Alito, the concurring Justices in *J. McIntyre*, would conclude that Accu-Cut's substantial, on-going sales into Colorado would support personal jurisdiction over it in Colorado for this claim. See 131 S. Ct. at 2792 (concurring opinion notes the lack of a "'regular flow' or 'regular course' of sales in New Jersey," suggesting that such in-state contacts might change the result). Clearly, the three dissenters would uphold jurisdiction as well, so this scenario may support specific in personam jurisdiction. But we don't really know. Civil Procedure teachers waited 24 years after *Asahi* for clarification of the scope of jurisdiction based on the stream of commerce. Despite Justice Kennedy's avuncular assurance that "judicial exposition will, in common law fashion, clarify the contours of that principle" (131 S. Ct. at 2790), we didn't get very much clarity from *J. McIntyre*.

15. Absolutely. Moline sold goods into the state, a deliberate contact with the state that supports specific in personam jurisdiction for claims that arise from that contact. This is like Accu-Cut's contacts with Illinois.

16. In this example Accu-Cut has reached into Colorado to solicit buyers for its mowers (in the words of Justice Kennedy in *J. McIntyre*, it has "targeted the forum"). 131 S. Ct. at 2788. Through this deliberate conduct Accu-Cut has established a purposeful contact in Colorado. This contact may not have given rise *directly* to the sale to Stanley (he may have never seen the ads) but even if it didn't, it appears to satisfy Justice O'Connor's approach in *Asahi*: The combination of deliberate cultivation of the market and the in-state injury supports some kind of "hybrid" jurisdiction. See also *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297 (1980):

> If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.[4]

Of course, membership on the Court has changed since *Asahi*, but nothing in the Court's recent opinions suggests movement away from this emphasis on deliberate reaching in. See, e.g., *J. McIntyre*, 131 S. Ct. at

4. Note that the *World-Wide* Court does *not* say, "if its allegedly defective merchandise *that was sold into the state* has there been the source of injury." Because the Audi involved in the accident in *World-Wide* had not been sold in Oklahoma, the Court's language suggests that, as long as the defendant is serving the in-state market, it will be subject to jurisdiction for injuries caused in the state by products sold elsewhere.

2792 (Breyer, J., concurring) (noting absence of state-focused design, advice, or marketing by the defendant).

Changing Cars in Midstream

17. This is a close case indeed, perhaps too close to call. Studebaker does have a contact with Indiana: He advertised in a magazine circulated there with the express purpose of selling his Edsel. On the other hand, the magazine is a specialty publication circulated nationally. Studebaker was not specifically soliciting an Indiana buyer but was willing to sell to anyone, in or out of the state. Once Andretti learned of the car's availability, he took the initiative: He went to Michigan to see the car; he called back to make an offer; and he picked up the car in Michigan. Studebaker remained in Michigan and passively responded. It was irrelevant to him that Andretti was from Indiana. He may not even have known where Andretti was from.

    I think this is a case in which the defendant does have a deliberate contact with the forum state, but the totality of the circumstances weighs against jurisdiction in Indiana. At least eight of the *Asahi* Justices agreed that, once a jurisdictionally significant contact with the forum state is found, the Court must consider whether it would be fair and reasonable under all the circumstances to take jurisdiction. 480 U.S. at 113-116. Given the lack of deliberate acts by Studebaker in Indiana, that all the negotiations took place at Andretti's initiative, and that Studebaker never left Michigan, it appears unreasonable to expect Studebaker to defend this claim in Indiana. Once again, compare example 6, in which the seller solicited the sale in the forum state.

    For a quite similar case in the Internet era, see *Boschetto v. Hansing*, 539 F.3d 1011 (9th Cir. 2008). In *Boschetto*, the California plaintiff bought an antique car through eBay from Wisconsin sellers. He then hired a transport company to deliver the vehicle to him in California, but sued the sellers in California after it arrived and did not conform to expectations. The Ninth Circuit upheld the dismissal for lack of personal jurisdiction, finding that the Wisconsin sellers had not purposely availed themselves of the opportunity to conduct activities in California by advertising the car through eBay.

> Neither Boschetto's complaint nor his affidavit in opposition to dismissal point to any continuing commitments assumed by the Defendants under the contract. . . . Nor did performance of the contract require the Defendants to engage in any substantial business in California. On Boschetto's version of the facts, funds were sent to Wisconsin and arrangements were made to pick up the car there and have it delivered to California. This was, as the district court observed, a "one-shot affair."

539 F.3d at 1017.

18. Doubtless the Internet has changed a great many things, but it hasn't really changed the basic principles of personal jurisdiction. In this case, as in example 17, Studebaker has advertised the car but has not really reached into Indiana specifically. The initiative came from Andretti and the transaction unfolded in Michigan. The court would likely conclude that the act of posting the car on a website accessible in Indiana (or anywhere else, for that matter) is like the advertisement in example 17, and insufficient to constitute purposeful availment by Studebaker. See, e.g., *Mink v. AAAA Development, LLC.*, 190 F.3d 333 (5th Cir. 1999) (website that constituted "passive advertisement" not sufficient to support jurisdiction).

    However, where the defendant engages more actively in in-state commerce over the Internet, jurisdiction will be found. If, for example, substantial negotiations take place between the defendant and the plaintiff in the forum state over the Internet, or products are sold into the forum state over the Internet, purposeful availment is likely to be found, just as it would be if the same contacts arose in person or by phone or fax. See, e.g., *Euromarket Designs Inc. v. Crate & Barrel Ltd.*, 96 F. Supp. 2d 824 (N.D. Ill. 2000) (jurisdiction upheld over defendant who conducted catalogue sales in Illinois over the Internet); see also *Hy Cite Corp. v. Badbusinessbureau.com LLC.*, 297 F. Supp. 2d 1155, 1160 (W.D. Wis. 2004) (jurisdiction based on Internet contacts requires inquiry as to whether defendant "is expressly targeting residents of the forum state and not just making itself accessible to everyone regardless of location"). Basically, analysis in Internet jurisdiction cases requires the same examination of the defendant's contacts with the forum and the relation of those contacts to the plaintiff's claim that is necessary in any other type of personal jurisdiction case.

The Rental Car

19. The first part of the minimum contacts test is satisfied here: The claim arises out of a deliberate contact of Patrikas in California, driving a car there, which imposes the predictable risk of causing an accident. But might the court hold that it isn't "fair and reasonable," under the second part of the test, to drag the widow back to California on these facts? Shouldn't that deep pocket corporation go to her instead?

    Probably not. The Supreme Court suggested in *Burger King Corp. v. Rudzewicz* that a defendant who has directed activities to the forum must present "a compelling case" (471 U.S. at 477) before jurisdiction will be found unreasonable. Patrikas probably cannot make that case. Acme's claim arises out of her deliberate choice to engage in conduct in California. California has an interest in regulating that conduct and compensating injuries that result from it. And Acme has an interest in

bringing suit where the accident happened, since witnesses and evidence may be located there. Despite some language in *Burger King* that might support the argument,[5] it is hard to find cases that reject jurisdiction under circumstances like this, involving an imbalance in the economic resources of the parties. Patrikas will probably have to defend this action in California, even though it would be a huge inconvenience to her to do so, and it would be much easier for Acme to litigate in Georgia than for her to do so in California.

Fundamental (Un)truths

20. a. This statement implies that taking advantage of the benefits and protections of the laws of the state is an alternative basis for personal jurisdiction, independent of the minimum contacts test. On the contrary, the purpose for asking whether the defendant has taken advantage of the benefits and protections of the state's laws is to *evaluate* the defendant's contacts with the state, to ascertain whether they are of the "quality and nature" to support jurisdiction. If the defendant's in-state acts demonstrate a deliberate effort to take advantage of the benefits and protections of the forum state's laws, it is a fair inference that these acts satisfy the minimum contacts test, since minimum contacts jurisdiction is based on the defendant's deliberate decision to act in the forum state for her own purposes.

b. The problem with this statement is that it suggests that a defendant is subject to jurisdiction in a state for any claim if she has *some* contacts with the state. Not so. Conducting some activity in a state does not support such wide jurisdiction. Unless the contacts are so substantial as to pass that ambiguous "G" line in Figure 1-1, the defendant is only subject to jurisdiction for claims *related to the in-state contacts.*

Precision and clarity are the stock-in-trade of the law student as well as the lawyer. A few students who make statements like this on the exam have not really grasped the distinction between specific and general in personam jurisdiction. But most really mean to say, "The defendant may be sued in the state on this claim under the minimum contacts test because it has purposely conducted activities there, and the claim arises out of this purposeful contact." This second statement is not only a great deal more precise than the first, but it is accurate, while the other, as it stands, is not. It is differences like this that separate the daffodils from the dandelions in the Merry Month of May.

---

5. "Jurisdictional rules may not be employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party unfairly is at a 'severe disadvantage' in comparison to his opponent." 471 U.S. at 478.

CHAPTER 2

Statutory Limits on Personal Jurisdiction

The Reach and Grasp of the Long-Arm

INTRODUCTION

As Chapter 1 explains, the due process clause of the Fourteenth Amendment to the Constitution imposes fundamental limitations on the power of state courts to exercise personal jurisdiction over defendants in civil suits. Under that clause states may only assert jurisdiction over defendants who have established a significant relationship to the forum state, such as domicile, in-state presence, incorporation or principal place of business within the state, consent to suit in that state, or minimum contacts with the state that gave rise to the claim in suit. If the defendant is not subject to personal jurisdiction within the forum state on one of these limited bases, the court will be unable to adjudicate the plaintiff's claim.

However, even if it is constitutionally permissible for a court to exercise personal jurisdiction in a case, that court may still lack the power to call the defendant before it. The due process clause does not actually confer any jurisdiction on state courts; it only defines the outer bounds of permissible jurisdictional power. That is, it says to the state legislatures: "When you authorize your courts to exercise jurisdiction, you may not go any further than this." It is up to the legislature of each state to actually grant the power to its courts to exercise personal jurisdiction, through jurisdictional statutes. Thus, every personal jurisdiction issue involves a two-step analysis. *First*, the court must ask whether there is a state statute that authorizes it to exercise personal jurisdiction under the circumstances

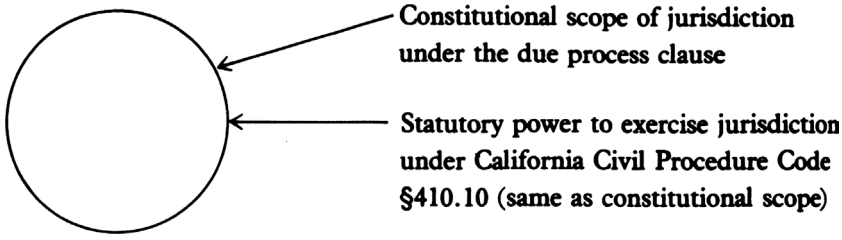


Figure 2-1.

of the case. *Second*, if there is, the court must ask whether it would be constitutional under the due process clause to do so.

State legislatures are free to grant their courts the power to exercise personal jurisdiction to the limits of the due process clause or to confer only part of the constitutionally permissible jurisdiction. In some states the legislature has granted the courts the full scope of personal jurisdiction permissible under the due process clause. California's statute, for example, authorizes its courts to exercise jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Civ. Proc. Code §410.10. In states with statutes like California's, the two inquiries are collapsed into one: If the court has the constitutional power to assert jurisdiction, it automatically has the statutory power to do so as well. Visually the relationship may be (somewhat simplistically) portrayed in Figure 2-1. One advantage of such expansive provisions is that they are "self-adjusting"; that is, if the courts reinterpret the due process clause to allow the exercise of personal jurisdiction in additional circumstances, these statutes automatically authorize the courts of the state to exercise jurisdiction in such cases. See K. Beyler, The Illinois Long-Arm Statute: Background, Meaning and Needed Repairs, 12 S. Ill. L.J. 293, 319, 320 (1988).

"ENUMERATED ACT" LONG-ARM STATUTES

Other states, however, have not given their courts blanket authority to exercise personal jurisdiction to the limits of due process. Instead, these states have passed "long-arm" statutes, which authorize their courts to exercise jurisdiction over defendants based on specific types of contact with the forum state. Historically, these "enumerated act" long-arm statutes were passed in reaction to *International Shoe* and its progeny. Once *International Shoe* and succeeding cases established that certain types of contacts were constitutionally sufficient bases for exercising personal jurisdiction over nonresidents, the states adopted long-arm statutes to authorize their courts to hear cases arising out of such contacts. Such enumerated act long-arm statutes frequently authorize

state courts to exercise jurisdiction over cases arising out of contacts such as committing a tortious act within the state, transacting business in the state, or owning property in the state. A fairly typical provision is the Uniform Interstate and International Procedure Act, 13 U.L.A. 355 (West 1986), which served as the model for the long-arm statutes of some 20 states. It is reproduced on p. 33 for use in the examples in this chapter.

Visually the relation of such statutes to the due process clause is represented by Figure 2-2. Such provisions convey a good deal of the jurisdiction authorized by the due process clause, but not necessarily all of it. Some areas remain (represented by the shaded area in the diagram) in which jurisdiction could be exercised, but the statute does not authorize it.

Students often ask why a state would enact an enumerated act long-arm when the California model is simpler and broader. One reason is historical: The first modern long-arm statute, the Illinois statute, used the enumerated act approach, and many states later used it as a model. Even if California's mellow approach is preferable in the abstract, many states are reluctant to tinker with statutes that have worked satisfactorily for years and have been construed repeatedly by their courts. In addition, the list of jurisdictionally sufficient acts in enumerated act long-arm statutes provides some guidance to nonresidents about the jurisdictional consequences of their choice to conduct particular activities in the state. Finally, some legislatures may not want to authorize jurisdiction in every case that barely passes constitutional muster. The enumerated act statutes give courts some leeway to reject jurisdiction in cases having little connection to the state, without making constitutional pronouncements.[1]

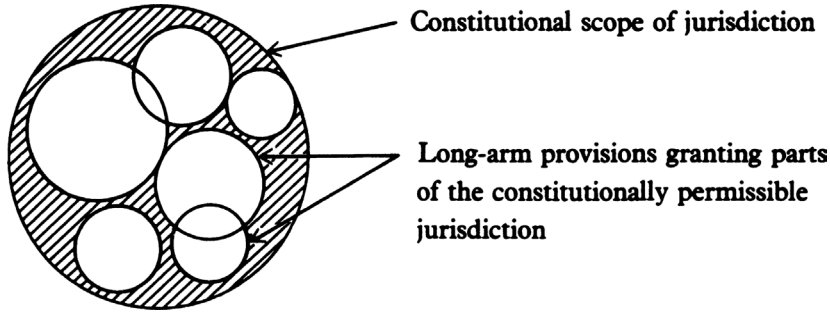


Figure 2-2.

1. A few states have taken the curious approach of *adding* a California-type, anything-constitutional-goes provision to their enumerated act statute. This seems calculated to confuse: Why specify enumerated acts that support jurisdiction, if everything else within due process limits does too? For a defense of this strategy, see K. Beyler, The Illinois Long-Arm Statute: Background, Meaning and Needed Repairs, 12 S. Ill. L.J. 293, 412-414 (1988).

Long-arm statutes take their colorful name from their primary purpose, which is to reach out of the state to call nonresident defendants back into the state to defend lawsuits. Even though a defendant has left the forum state before he is sued (or in some cases has never been in the state at all), he may be required to defend a suit there under the *International Shoe* analysis if the suit arises out of his prior contacts with the forum. Legislatures tend to grant such long-arm jurisdiction liberally since it is usually invoked by plaintiffs who live in the state and prefer to sue at home.

Be careful, however, not to conclude that every assertion of jurisdiction under a long-arm statute is automatically constitutional simply because the statute purports to authorize it. In the area of personal jurisdiction, it is not always easy to tell what is and is not constitutional. Consequently, the reach of a state's long-arm statute may sometimes exceed its constitutional grasp. Here are two questions that illustrate the point.

Two Early Questions

1. West Dakota enacts a long-arm statute that authorizes its courts to exercise personal jurisdiction over the defendant "in all cases in which the plaintiff is a resident of this state." Can you think of a case in which this statute would authorize the court to exercise jurisdiction but doing so would not be constitutional under due process analysis?

2. Now describe an example in which West Dakota's statute would authorize jurisdiction and it would be constitutionally proper for the court to require the out-of-state defendant to defend the claim in West Dakota.

Where applying a provision of a long-arm statute would be constitutional in some cases but exceed constitutional bounds in others, the

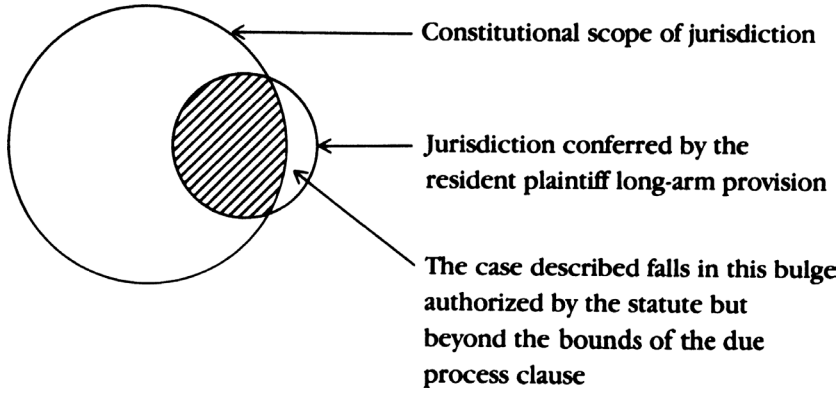


Figure 2-3.

courts do not invalidate the statute entirely; they simply refuse to apply it to cases that fall outside the bounds of due process. Consequently, the statute remains in force and may be applied in other cases that are within due process limits.

All long-arm statutes that base personal jurisdiction on specific enumerated acts require that the claim sued upon arise out of the act itself. See, e.g., Uniform Interstate and International Procedure Act §1.03(b), infra p. 33. This limitation is rooted in the *International Shoe* analysis, which holds that limited in-state contacts only support jurisdiction over claims that arise from those contacts. See the "*Shoe* spectrum" at p. 6. By echoing that limitation in the long-arm statute itself, the legislature ensures that the statute will not be used to reach cases beyond the constitutional bounds of due process.

JURISDICTION BASED ON ACTS COMMITTED OUTSIDE THE STATE

In many cases, a party commits acts that have an impact in a state, even though he doesn't actually enter the state. A party may contract to deliver goods in the state, or develop a computer program for an in-state company and deliver it over the Internet. A party might call into the state and defame a local citizen. A manufacturer might make its goods in Oregon and sell them to a wholesaler in Arizona, which resells them to consumers in Texas. In each of these cases, the out-of-state party has engaged in conduct that ultimately has effects in the state, without physically entering it.

In some circumstances, such contacts suffice under the due process clause to support the exercise of personal jurisdiction over the out-of-state actor. For example, in *International Ins. Co. v. McGee*, 355 U.S. 220 (1957), an insurer sent an offer to re-insure to a policy holder in California. The Supreme Court held that this was a deliberate reaching in that supported jurisdiction over the insurer. In *Calder v. Jones*, 465 U.S. 783 (1984), the defendant published an allegedly defamatory article about a California actress and distributed it in California. That too was held as a deliberate reaching into California that supported personal jurisdiction. And in *Burger King Co. v. Rudzewicz*, 471 U.S. 462 (1985), one of the defendants was held subject to jurisdiction in Florida when he established a twenty-year franchise relationship to a Florida franchisor, even though he never actually went to Florida.

A number of provisions in enumerated act long-arm statutes authorize jurisdiction in such cases, in which the defendant acts outside the state but causes an effect within it. Many such cases, for example, would satisfy

subsection 103(a)(1) of the Uniform Act, which authorizes jurisdiction for claims that arise out of "transacting business" in the forum state. In others, subsection 103(a)(2), dealing with contracting to supply services or things in the state, will apply. In others, subsection 103(a)(4), which premises jurisdiction on an out-of-state tortious act that causes tortious injury in the state, will authorize jurisdiction.

Perhaps the most extravagant example of a long-arm statute that authorizes jurisdiction for out-of-state acts is found in the Illinois Supreme Court's opinion in *Gray v. American Radiator and Standard Sanitary Corp.*, 176 N.E.2d 761 (1961). The *Gray* case interpreted Ill. Rev. Stat. Chap. 110, §17(1)(b),[2] which allowed jurisdiction if the defendant "commits a tortious act" in Illinois. In *Gray,* the plaintiff sued a defendant in Illinois that had negligently manufactured a water heater valve in Ohio, which was incorporated in a water heater in Pennsylvania by a different manufacturer. The assembled water heater was later sold in Illinois and exploded there. The *Gray* court concluded that the Ohio valve maker—which had done nothing in Illinois—had "committed a tortious act" in the state, since the explosion that injured the plaintiff took place in Illinois. This expansive interpretation of the Illinois long-arm statute (much criticized, but never overruled) authorizes jurisdiction in many cases in which the defendant did not act in Illinois, did not send goods there, and did not know or anticipate that its product would end up in Illinois. As the examples that follow will illustrate, in many cases, application of this provision would fall in the "bulge area" in Figure 2-3, in which the statute authorizes jurisdiction, but exercising that jurisdiction would exceed constitutional limits.

GOING TO THE LIMITS OF DUE PROCESS

You will frequently read in the cases that an enumerated act long-arm statute is "intended to reach to the limits of due process." This is one of the most frequently misunderstood phrases in the civil procedure lexicon. Although innumerable cases broadly hold that the long-arm statute in question is intended to extend jurisdiction to the constitutional limits, this is *not* generally intended to mean that a statute like the Uniform Act occupies the entire constitutional field, as the California statute does. It would make little sense for the legislature to pass a statute enumerating specific contacts that support jurisdiction if it actually intended all minimum contacts to do so. Instead, this phrase is better interpreted to mean that the *specific categories* of

2. See now 735 I.L.C.S. 5/2-209(a)(2).

jurisdiction conveyed by the long-arm statute are to be interpreted as liberally as the due process clause will allow.

For example, the phrase "transacting business" in a long-arm statute might be interpreted quite narrowly, to apply only in cases where the defendant has ongoing commercial activities and permanent employees within the state. Alternately, it might be interpreted more broadly, to apply whenever the defendant enters into a single business transaction with an in-state party. If the statute is intended to go to the limits of due process, the court will interpret this language to reach all cases that are within the statutory language and can be reached under the due process clause. See Moore's Federal Practice §108.60[3][a]. Since a single business transaction (depending on the facts) may be sufficient under due process analysis to give rise to personal jurisdiction over claims arising out of it, the statute should be broadly interpreted to reach such a case. In other words, the going-to-the-limits-of-due-process language commands liberal interpretation of the specific provisions of the long-arm statute; it does not fill in any interstices those provisions fail to cover.

Unfortunately, courts have not always grasped this distinction between broad interpretation of the enumerated acts and absorbing the whole constitutional sphere. Many decisions holding that the relevant long-arm is intended to "go to the limits of due process" really do mean, rightly or wrongly, that it fills all the shaded interstices in Figure 2-2.[3] Thus, if you are researching a case and find such language, it should set off a little alarm in the personal jurisdiction corner of your brain, stimulating some very careful reading of the cases under your long-arm statute to determine what the court really means to say.

In analyzing the following examples, consider first whether the applicable long-arm statute authorizes the court to exercise jurisdiction. Then consider whether it would be constitutional under the minimum contacts test for the court to exercise jurisdiction on the facts given. The Uniform Act, which is used in the examples, is set forth below.

UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT

§1.03. [Personal Jurisdiction Based upon Conduct]

(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a [cause of action] [claim for relief] arising from the person's

(1) transacting any business in this state;

(2) contracting to supply services or things in this state;

(3) causing tortious injury by an act or omission in this state;

---

3. For an example of the confusion such loose language has generated under one long-arm provision, see Comment, Georgia's Not-So-Long Arm Statute: Exposing the Myth, 6 Ga. St. L. Rev. 487 (1990).

(4) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; [or]

(5) having an interest in, using, or possessing real property in this state; or

(6) contracting to insure any person, property, or risk located within this state at the time of contracting,

(b) When jurisdiction over a person is based solely upon this section, only a [cause of action] [claim for relief] arising from acts enumerated in this section may be asserted against him.

EXAMPLES

Examples

Torts and the Long-Arm: Basic Cases

3. Hardy throws a pie at Fields while the two are making a movie in New York. Fields fails to see the joke and sues Hardy for assault in Pennsylvania, where Fields lives. Hardy has no other contacts with Pennsylvania.
   a. Could the Pennsylvania court assert jurisdiction over Hardy if the Uniform Act applied in Pennsylvania?
   b. Would it be constitutional for the court to do so?

4. Assume that Hardy, a comedian, performs two or three times a year at clubs in Pennsylvania. Fields sues him in Pennsylvania for the New York assault.
   a. Is jurisdiction proper under the Uniform Act?
   b. Would it be constitutional for the court to take jurisdiction?

5. While traveling to Pittsburgh for a performance, Hardy collides with Fields on Interstate 83 near Harrisburg. After the performance, Hardy returns to New York. Fields, fast losing his sense of humor, sues Hardy in Pennsylvania.
   a. May Fields do so under the Uniform Act?
   b. Would it be constitutional for the Pennsylvania court to take personal jurisdiction over Hardy?

6. West, in California, learns that Paramount Pictures plans to offer Fields a lucrative contract to make a movie in New York. She calls the producer in New York and tries to talk him out of it. During the conversation, she offers several vivid and distinctly uncomplimentary opinions concerning Fields' sense of humor. Fields is not amused; he sues West in New York for defamation.
   a. Does the Uniform Act authorize jurisdiction on these facts?
   b. Would it be constitutional for the New York court to exercise jurisdiction over West on this claim?