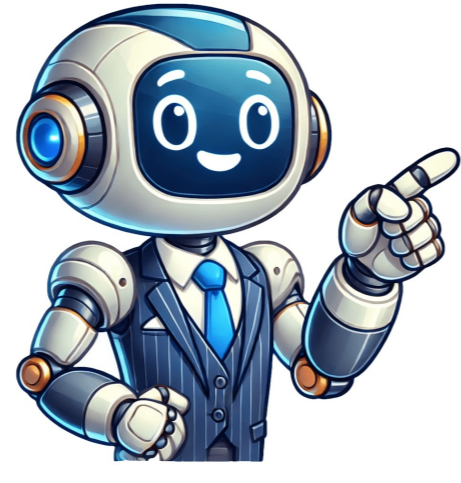


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In personam jurisdiction

In personam, literally translating to “ against the person ,” refers to courts’ power to adjudicate matters directed against a party. In personam jurisdiction is one of the two forms of personal jurisdiction with the other being in-rem jurisdiction. A court may exercise in personam jurisdiction over a person who resides in, maintains connections with, or is served notice of legal proceedings in that court’s area of territorial jurisdiction . For example, a Delaware district court has in personam jurisdiction over citizens of Delaware, companies which do business in Delaware, and people who are served while visiting Delaware on vacation. Additionally, a Delaware district court can exercise in personam jurisdiction over any person who consents to the exercise of it, regardless of if they fall into the three categories above. In personam judgments allow for a wide range of judicial remedies can be enforced against the person in jurisdictions other than the jurisdiction which gave the judgment due to the full faith and credit clause of the Constitution . [Last revised in January of 2023 by the Wex Definitions Team] Wex In personam jurisdiction is a legal term that refers to a court’s authority to make decisions that directly affect a specific person or entity involved in a case. Imagine you have a disagreement with someone, and you decide to take it to court. For the court to make a ruling that applies to that person, it must have in personam jurisdiction over them. This means the court has the power to enforce its decisions on that individual or organization. To understand this better, think about where a person lives or where a business operates. If you want to sue someone, the courts usually needs to be located in the same area where that person lives or where the business is based. This is because the court needs a connection to the person or entity to have the authority to make decisions about them. If the person lives far away, the court might not have the right to make a ruling that affects them. In personam jurisdiction can also depend on the actions of the person or entity. For example, if someone travels to a different state and gets into trouble there, that state’s court might have in personam jurisdiction over them because they were physically present and engaged in activities within that state. This is important because it ensures that people cannot simply avoid legal responsibilities by moving to another location. Another aspect of in personam jurisdiction is that it can be established through consent. If a person agrees to the jurisdiction of a court, perhaps by signing a contract that states they will resolve disputes in a specific court, then that court can exercise in personam jurisdiction over them. This is often seen in business agreements where companies agree to settle disputes in a particular location. In summary, in personam jurisdiction is all about a court’s power to make decisions that affect specific individuals or entities. It relies on the connection between the court and the person involved, whether through location, actions, or consent. Understanding this concept is essential for anyone involved in legal matters, as it determines where and how disputes can be resolved. What are some examples of “in personam jurisdiction” in legal contracts? Employment Contract: “The employment contract specifies that any disputes will be resolved in the courts of the state where the employee works, establishing in personam jurisdiction.” Lease Agreement: “The lease agreement states that any legal actions related to the property must be filed in the local court, thereby granting in personam jurisdiction to that court.” Partnership Agreement: “In the partnership agreement, the partners agree that any legal disputes will be handled in the jurisdiction where the partnership is registered, ensuring in personam jurisdiction.” Service Agreement: “The service agreement includes a clause that any lawsuits must be filed in the state where the service provider is located, which establishes in personam jurisdiction.” Sales Contract: “The sales contract indicates that any legal issues arising from the sale will be addressed in the courts of the buyer’s state, thus creating in personam jurisdiction.” Franchise Agreement: “The franchise agreement requires that any disputes be settled in the jurisdiction where the franchise operates, confirming in personam jurisdiction.” Loan Agreement: “The loan agreement specifies that any legal actions must be taken in the lender’s home state, establishing in personam jurisdiction over the borrower.” Non-Disclosure Agreement (NDA): “The NDA states that any breaches will be litigated in the jurisdiction where the disclosing party resides, thereby granting in personam jurisdiction.” FAQs about “in personam jurisdiction” What is in personam jurisdiction? In personam jurisdiction refers to a court’s power to make decisions about a specific person. This means the court can require that person to appear in court and follow its rulings. It’s about the court’s authority over individuals rather than over property or things. How does in personam jurisdiction work? In personam jurisdiction works by establishing a connection between the person and the location of the court. If a person lives in a certain state or has significant ties to it, that state’s courts usually have the authority to make legal decisions involving that person. Why is in personam jurisdiction important? In personam jurisdiction is important because it ensures that legal proceedings are fair and that individuals are only held accountable in courts where they have a meaningful connection. This protects people from being dragged into courts far away from where they live or do business. What does it mean if a court has in personam jurisdiction over me? If a court has in personam jurisdiction over you, it means that the court has the legal authority to make decisions regarding you and can require you to participate in legal proceedings there. This could involve lawsuits or other legal actions. Who decides if a court has in personam jurisdiction? The judge in the court where a case is filed decides if the court has in personam jurisdiction. They look at factors like where the person lives, where the events occurred, and whether the person has done business in that state. Can a court have in personam jurisdiction over someone in another state? Yes, a court can have in personam jurisdiction over someone in another state if that person has sufficient connections to the state where the court is located. This could include things like owning property, conducting business, or committing a crime in that state. What happens if a court does not have in personam jurisdiction? If a court does not have in personam jurisdiction, it cannot legally require a person to appear in court or enforce its rulings against that person. The case may be dismissed or transferred to a court that does have the proper jurisdiction. How can I challenge in personam jurisdiction? You can challenge in personam jurisdiction by filing a motion in court. This motion argues that the court does not have the authority to make decisions about you based on your connections to that location. It’s best to consult with a lawyer for help with this process. What is the difference between in personam jurisdiction and in rem jurisdiction? In personam jurisdiction is about a court’s authority over a person, while in rem jurisdiction is about a court’s authority over property. In rem jurisdiction allows a court to make decisions regarding property located within its territory, regardless of the owner’s location. In personam is a Latin phrase meaning “against a particular person”. In a lawsuit in which the case is against a specific individual, that person must be served with a summons and complaint (in England & Wales known as Particulars of Claim (CPR 1999)) to give the court jurisdiction to try the case, and the judgment applies to that person and is called an “in personam judgment”. In personam is distinguished from in rem, which applies to property or “all the world” instead of a specific person. This technical distinction is important to determine where to file a lawsuit and how to serve a defendant. In personam means that a judgment can be enforceable against the person wherever he/she is. On the other hand, if the lawsuit is to determine title to property (in rem) then the action must be filed where the property exists and is only enforceable there.[1] Personal jurisdiction quasi in rem In rem sui iuris Prerogative legislation “ Black, Henry Campbell (1910). A Law Dictionary Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern. And Including the Principal Terms of International, Constitutional, Ecclesiastical, and Commercial Law, and Medical Jurisprudence, with a Collection of Legal Maxims... (2 ed.). West Publishing Co. p. 606. HUSThis legal article about a Latin phrase is a stub. You can help Wikipedia by expanding it.vte Retrieved from Your browser does not support this video. Discovery with purpose. Innovation with impact. Cornellians create solutions that improve lives in New York, the nation, and the world. Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. “Personal jurisdiction” or in personam jurisdiction refers to a court’s power over a person (or entity) who is a party to, or involved in, a case or controversy before the court, including its power to render judgments affecting that person’s rights.1 Prior to the states’ ratification of the Fourteenth Amendment and the Supreme Court’s 1877 decision in Pennoyer v. Neff, a nonresident who received an adverse judgment from one state court would often wait until the winning party sought to obtain enforcement of the judgment!2 In the nonresident’s state before challenging the issuing court’s exercise of personal jurisdiction over the nonresident.3 State (and, in some cases, federal)4 courts considering whether such judgments were enforceable would typically resolve such jurisdictional challenges on the basis of general, customary law principles5 that had been shaped by the rules for recognition of foreign judgments under international law.6 However, since the Supreme Court’s decision in Pennoyer, the Court has interpreted the Due Process Clause of the Fourteenth Amendment7 to limit the power of state courts to render judgments affecting the personal rights of defendants8 who do not reside within the state’s territory.9 Pennoyer converted the issue of personal jurisdiction into a question of federal constitutional law, allowing a party to obtain direct review of a state court’s judgment in federal court (i.e., review of the judgment on appeal) on the grounds that the state court lacked personal jurisdiction over the party.10 Under the Supreme Court’s interpretation of the Fourteenth Amendment, a state court that issued a judgment affecting a nonresident without violating the constitutional rights of that person by depriving them of property without due process of law.11 Over the years, the Supreme Court has offered three main justifications for the constitutional constraints on a court’s assertion of personal jurisdiction over nonresident persons and corporations. First, each state’s status as a “co-equal sovereign” in a federal system of government implies at least some limits on the power of its courts to render judgments affecting the rights of entities outside of that state’s boundaries.12 Second, constitutional limits on personal jurisdiction attempt to address concerns about the unfairness of subjecting defendants to litigation in a distant or inconvenient forum.13 Finally, constitutional limits on the exercise of personal jurisdiction recognize that the Due Process Clause protects defendants from being deprived of life, liberty, or property by a tribunal without lawful power.14 The Supreme Court’s jurisprudence addressing the doctrine of personal jurisdiction as applied in state courts spans a period of American history that has witnessed a significant expansion of interstate and global commerce, as well as major technological advancements in transportation and communication.15 These changes produced a fundamental shift in the Court’s views concerning the doctrine.16 Although the Court initially considered the defendant’s physical presence within the forum state to be the touchstone of the exercise of personal jurisdiction over him or her,17 it later rejected strict adherence to this rule in favor of a more flexible standard that examines a nonresident defendant’s contacts with the forum state to determine whether those contacts make it reasonable to require him to respond to a lawsuit there.18 The Supreme Court’s opinions in International Shoe Co. v. Washington and subsequent cases have established a two-part test for determining when a state court’s exercise of personal jurisdiction over each nonresident defendant sued by a plaintiff comports with due process: (1) the defendant must have established minimum contacts with the forum state that demonstrate an intent to avail itself of the benefits and protection of state law; and (2) it must be reasonable to require the defendant to defend the lawsuit in the forum.19 Since that fundamental shift, much of the Court’s jurisprudence addressing the limits that the Constitution places on state courts’ exercise of personal jurisdiction has addressed the quality and nature of the “minimum contacts” among the defendant, the forum, and litigation that the Constitution requires before a court may exercise jurisdiction over the defendant.20 Questions over personal jurisdiction have become one of the most frequent constitutional issues resolved by lower federal courts,21 and are the basis for a dismissal of complaints in a considerable number of cases lodged in both federal and state court.22 When determining whether a defendant has minimum contacts with the court in which the action is initially filed, the Court has distinguished the types of contacts sufficient for a court’s exercise of “general” personal jurisdiction over the defendant from those contacts sufficient for its exercise, alternatively, of “specific” jurisdiction. A court’s exercise of specific jurisdiction may be constitutional when the defendant has contacts with the forum that give rise to, or are related to, the plaintiff’s cause of action (e.g., an act or occurrence caused by the defendant that takes place in the forum or has an impact there).23 By contrast, a court’s exercise of general jurisdiction over a nonresident defendant for any claim—even if all the incidents underlying the claim occurred in a different state—may be constitutional when the defendant’s activities in the forum state are so substantial that it is reasonable to require it to defend a lawsuit that did not arise out of its activities in the forum state and is unrelated to those activities.24 In more recent years, the Court has significantly limited the types of activities or affiliations of the defendant in the forum state sufficient for general jurisdiction, holding that those contacts must be so substantial as to render the defendant “essentially at home” in the forum state.25 The Court has clarified that, absent exceptional circumstances, a corporate defendant is “at home” when it is incorporated in the forum state or maintains its principal place of business there (e.g., the corporation is headquartered in the state).26 Although the Supreme Court has adopted a more flexible standard for general jurisdiction in the forum state, it has also confirmed that several traditional bases for the exercise of judicial power over a nonresident defendant for claims against him enjoy a presumption of constitutionality without requiring an independent inquiry into the contacts among the defendant, the forum, and the litigation. These traditional bases include: a defendant who is domiciled in the forum;27 a defendant who has consented to jurisdiction;28 and a defendant who is a natural person (i.e., not a business or governmental entity) and is served with process while physically present within the forum.29 The Court has also indicated that a state court may adjudicate the personal status of a plaintiff in relation to the defendant (e.g., marital status) without considering whether personal jurisdiction over the defendant is constitutionally valid.30 Although the Supreme Court has decided several cases addressing the Fourteenth Amendment’s limits on state courts’ exercise of personal jurisdiction, it has generally declined to resolve questions about the extent to which the Fifth Amendment31 may place similar jurisdictional limitations on federal courts. For example, the Supreme Court has declined to rule on whether it is constitutional for Congress to authorize nationwide service of process so that any federal court may exercise personal jurisdiction over a foreign defendant who has, in the aggregate, substantial contacts with the United States.32 Consequently, this essay focuses on the Court’s cases addressing the Fourteenth Amendment, which imposes due process requirements on actions by state governments.33 However, it is important to note that the Federal Rules of Civil Procedure give federal district courts power to assert personal jurisdiction over a defendant to the same extent that a state court in the state where the federal district court is located may assert that power, meaning the same Fourteenth Amendment limits on personal jurisdiction generally apply to federal courts.34 Page 2 Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Prior to ratification of the Fourteenth Amendment and the Supreme Court’s 1877 decision in Pennoyer v. Neff, a defendant that objected to the plaintiff’s state court exercising personal jurisdiction over him would typically wait to object to such exercise of jurisdiction until the plaintiff sought to have the defendant’s state court recognize and enforce the first court’s judgment.1 State (and, in some cases, federal)2 courts considering whether such judgments were enforceable would resolve such jurisdictional challenges on the basis of general, customary law principles derived from English common law and international law addressing the recognition of foreign judgments rather than by applying the federal Constitution.3 However, in Pennoyer, the Supreme Court stated that the Fourteenth Amendment’s Due Process Clause imposes constitutional limits on state courts’ exercise of personal jurisdiction over nonresident defendants.4 Pennoyer converted the issue of personal jurisdiction into a question of federal constitutional law, allowing a party to obtain direct review of a state court’s judgment in a federal court that was not bound to apply state statutes or judicial precedent when deciding whether the issuing court had personal jurisdiction over the parties.5 In Pennoyer, the Court indicated that, absent a defendant’s consent, a state court’s jurisdiction generally extends only to persons or property within its territory.6 The Court grounded this “physical presence” approach in principles of federalism: each state of the union is a coequal and independent sovereign in the federal system, and thus possesses exclusive authority over persons and property within its domain.7 Although the Court’s decision in Pennoyer addressed personal jurisdiction over natural persons or people, the Court’s early jurisprudence following the 1877 case established that state courts could potentially exercise jurisdiction over foreign corporations doing business in the state because the law presumed that those corporations had implicitly consented to personal jurisdiction, or could be deemed “present” within the state, based on their in-state activities.8 The Pennoyer Court’s “physical presence” test established the constitutional foundation for strict limits on state courts’ authority to exercise in personam jurisdiction over a nonresident defendant—that is, to render judgments concerning that defendant’s personal rights and obligations.9 Thus, for example, service upon a defendant by publishing notice of the lawsuit in a newspaper circulating in the forum state was insufficient to confer jurisdiction on a court to adjudicate the personal liability of a defendant who had left the state and did not intend to return.10 Nevertheless, even in the absence of a nonresident defendant’s physical presence or consent, courts could still attain jurisdiction over the defendant indirectly through the attachment (i.e., seizure) of the defendant’s property interests within the forum and the provision of notice to the defendant.11 In particular, a state court could exercise in rem jurisdiction12 over a nonresident defendant’s property interest in the state in order to adjudicate all of the rights or claims in a piece of property.13 It could also exercise quasi in rem jurisdiction14 over a nonresident defendant by adjudicating a plaintiff’s claim to the property in relation to the defendant or to satisfy the claims of its own citizens against the defendant personally.15 However, judgments resting upon the exercise of in rem or quasi in rem jurisdiction would not personally bind the defendant to an extent greater than the value of the property.16 Page 3 Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Although Pennoyer’s physical presence test informed the Supreme Court’s jurisprudence related to jurisdiction for several decades, a significant expansion of the U.S. economy in the mid-twentieth century altered that focus. As commerce and travel among the states and between the states and foreign countries increased,1 a more interconnected, global economy meant that a corporation’s activities had greater potential to cause harm in distant jurisdictions, but also meant that businesses could more easily defend lawsuits arising from that harm in distant fora.3 Faced with these new realities, the Court reconsidered the nature of the due process limitations on the jurisdiction of state courts over non-resident individuals and corporations that conducted activities in the states.4 In the 1945 case International Shoe Co. v. Washington, the Court explained its rejection of a strict adherence to the physical presence test, holding that a state could authorize its courts to subject an out-of-state entity to in personam jurisdiction, consistent with due process, and thus require it to defend a lawsuit, if that entity had “certain minimum contacts” with the forum state “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” 5 The Court rested its holding in part on the notion that an entity conducting activities in a state benefits from the protections of state law, and thus should have to respond to legal complaints arising out of its actions in the forum even if it is not “physically present” in the state.6 Thus, the Supreme Court’s opinions in International Shoe and subsequent cases have established a more flexible two-part test for determining when a court’s exercise of personal jurisdiction over a nonresident defendant sued by a plaintiff comports with due process: (1) the defendant has established minimum contacts with the forum state that demonstrate an intent to avail itself of the benefits and protections of state law; and (2) it is reasonable to require the defendant to defend the lawsuit in the forum.7 Nevertheless, as noted, the Court has confirmed that several traditional bases for exercising judicial power over a nonresident defendant continue to enjoy a presumption of constitutionality without requiring an independent inquiry into the contacts among the defendant, the forum, and the litigation. Specifically, the traditional bases for jurisdiction include if: (1) the defendant is domiciled in the forum state (e.g., a defendant is a natural person who is domiciled in the forum state or a corporation whose principal place of business is in the forum state);8 (2) the defendant has consented to jurisdiction;9 or (3) a defendant who is a natural person is served with process while he is physically present—even temporarily—within the forum.10 The Court has also indicated that a state court may adjudicate the personal status of a plaintiff in relation to the defendant (e.g., marital status) without considering whether personal jurisdiction over the defendant is constitutionally valid.11 Page 4 Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Since its 1945 decision in International Shoe, the Supreme Court has elaborated on the nature and quality of the minimum contacts that a defendant must have with the forum in order for a court to subject him or her to personal jurisdiction in that forum consistent with due process. When determining whether a defendant has minimum contacts with the forum, the Court has distinguished the types of contacts sufficient for a court’s exercise of “general” personal jurisdiction over the defendant from those contacts sufficient for its exercise, alternatively, of “specific” jurisdiction. A court’s exercise of specific jurisdiction may be constitutional when the defendant has contacts with the forum that give rise to, or are related to, the plaintiff’s cause of action (e.g., an act or occurrence caused by the defendant that takes place in the forum or has an impact there).1 However, when there is “no such connection between the forum and the particular claims at issue], specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” 2 By contrast, a state court’s exercise of general jurisdiction over a nonresident defendant for any claim—even if all the incidents underlying the claim occurred in a different state—may be constitutional when the defendant’s activities in the forum state are so substantial that it is reasonable to require it to defend a lawsuit that did not arise out of its activities in the forum state and is unrelated to those activities.3 Perhaps in order to ensure greater predictability for defendants attempting to discern where they may be subject to suits on claims arising anywhere in the world,4 in more recent years, the Court has significantly limited the types of activities or affiliations of the defendant in the forum state sufficient for general jurisdiction, holding that those contacts must be so substantial as to render the defendant “essentially at home” in the forum state.5 The Court has clarified that, absent exceptional circumstances, a corporate defendant is “at home” when it is incorporated in the forum state or maintains its principal place of business there.6 Insubstantial in-state business, in and of itself, does not suffice to permit an assertion of jurisdiction over claims that are unrelated to any activity occurring in a state.7 For example, the Court in 2017 held in BNSF Railway v. Tyrrell that Montana courts could not exercise general jurisdiction over a railroad company that had over 2,000 miles of track and more than 2,000 employees in the state because the company was not incorporated or headquartered in Montana and the overall activity of the company in Montana was not “so substantial” as compared to its activities throughout all of the jurisdictions in which it conducted business so as to render the corporation “at home” in the state.8 Although the Supreme Court has decided only a few cases that explore the scope of general personal jurisdiction since its opinion in International Shoe, leaving the bulk of such determinations to lower federal and state courts, it has decided several cases elaborating on the quality and nature of the defendant’s contacts with the forum and litigation necessary for a court’s exercise of specific jurisdiction over the defendant.9 A common theme throughout many of these decisions is that “unilateral activity” in the forum state by a person who has some family, business, or other relationship with a nonresident defendant will not suffice to establish a defendant’s minimum contacts with the forum.10 In other words, jurisdiction is not proper merely because the defendant could have foreseen that a third party with which it has a family or business relationship (e.g., a defendant’s family member or customer or a defendant corporation) would have contacts with the forum.11 Rather, the defendant must “purposefully avail” itself “of the privilege of conducting activities within the forum State,” thus invoking the benefits and protections of its laws.12 The defendant must have reasonably intended being haled into court there—a standard that potentially allows a defendant to predict where it will be subject to suit and plan the geographic scope of its activities or insure against the risk of being sued in a distant forum accordingly.13 The Court has also emphasized that the minimum contacts inquiry should not focus on the location of the resulting injury to the plaintiff; instead, the proper question is whether the defendant’s conduct connects him to the forum in a meaningful way.14 Since the Supreme Court decided International Shoe in 1945, many of its decisions on the minimum contacts test have addressed specific categories of contacts between the defendant and forum, such as the alleged tortious conduct of the defendant in the forum state; a contract between the defendant and an entity in the forum state; a business relationship between the defendant and a party in the forum state; and property interests of the defendant in the forum state. For example, in cases in which the plaintiff alleged that a nonresident had committed the tort of libel causing harm in the forum state, the Court upheld the exercise of specific personal jurisdiction over a defendant that intentionally targeted the state with publication of allegedly libelous material.15 The Court determined that regularly publishing a widely circulated magazine with knowledge that harm could occur to the state’s residents amounted to a sufficient contact between the defendant, the forum, and the litigation.16 As a result, the Court has recognized that, provided there is a sufficient connection between the defendant and the forum, states have a “significant interest” in permitting their courts to exercise jurisdiction over defendants in order to redress harm that occurs within state boundaries.17 Particularly since the 1980s, there has been disagreement among the Supreme Court Justices, however, as to when a nonresident corporation whose product causes injury within the forum state has “purposefully availed” itself of the privilege of conducting business within the state, and should therefore be subject to personal jurisdiction in that state in a tort action for products liability. In the 1987 case Asahi Metal Industry Co. v. Superior Court, four Justices agreed that a nonresident defendant’s awareness that a product it manufactured would end up in the forum state through its intentional placement of the product in the stream of commerce outside of the forum did not by itself constitute an act directed at the forum sufficient for specific personal jurisdiction.18 Writing for a plurality of the Court, Justice O’Connor maintained that a tribunal lacked the authority to exercise personal jurisdiction over a defendant that had not performed additional actions in the forum state that demonstrated an intent to serve that state’s market.19 According to her plurality opinion, because the defendant did not have clear notice that it could be subject to suit in California, it would have been unfair to subject the defendant to suit there.20 However, another four Justices would have held that the defendant’s intentional placement of a product into the stream of commerce by itself was sufficient for personal jurisdiction because the defendant could foresee being sued in any state in which the product was regularly sold and marketed.21 Those Justices would have grounded this result in the benefits that defendants derive from the regular retail sale of their products in the forum and the protections of state law.22 The Justices’ disagreement over when a nonresident corporation whose product causes injury within the forum state has “purposefully availed” itself of the privilege of conducting business within the state, and should therefore be subject to personal jurisdiction in that state in a tort action for products liability, appears to remain unresolved after a 2011 case. In J. McIntyre Machinery, Ltd. v. Nicastro, a plurality of the Court indicated that a foreign manufacturer of a product cannot be subject to the jurisdiction of a state court based on its mere expectation that the products it manufactures in its home country and ships to an independent U.S. distributor might be distributed in the forum state.23 Instead, according to the plurality written by Justice Kennedy and joined by Chief Justice Roberts, Justice Scalia, and Justice Thomas, the defendant must have directly targeted the individual state with its goods, thereby “purposefully availing” itself of the privilege of conducting in-state business.24 However, the plurality’s view did not command a majority of the Court, and a narrower concurring opinion authored by Justice Breyer and joined by Justice Alito would have found jurisdiction lacking under any of the various tests for personal jurisdiction articulated in the Justices’ opinions in Asahi because the shipment of products into, or their sale in, the forum state did not occur regularly, and there was no additional sales-related conduct (e.g., marketing) by the defendant in the forum.25 In addition to addressing cases involving a defendant’s alleged tortious conduct, the Supreme Court has also addressed minimum contacts in the context of out-of-state defendants reaching out to a forum state to establish a continuing business relationship in that state. For example, the Court upheld a California court’s exercise of specific personal jurisdiction over a Texas mail order insurance company that had no office or agent in California because the Texas company mailed an offer of insurance to the plaintiff’s son in California.26 The son accepted the offer and continued to send the company premium payments through the mail to Texas from California until the son died in California.27 The Court noted that the suit arose from a contract that had a “substantial connection” with California, holding that the state had a significant interest in providing redress for its residents in cases in which insurance companies refuse to pay claims.28 Similarly, when a nonresident defendant establishes an office in a state to conduct business through agents in the state, he may have to answer a lawsuit related to those business activities when an agent is served in the forum, regardless of whether he consented to service of process through his agent.29 Another context in which the Supreme Court has addressed the minimum contacts test involves contractual disputes between the parties to a lawsuit. Thus, when a franchisor headquartered in Florida brought suit in a local federal court against Michigan franchisees for the alleged breach of a franchise agreement to make required payments in Florida, the Court held that specific jurisdiction over defendants was proper based on the specific private processes surrounding the contractual relationship.30 The Court stated that a contract between an out-of-state party and an individual in the forum state is insufficient by itself to establish personal jurisdiction if the contract lacks a substantial connection to the state as established by, among other things, an (1) explanation of the parties’ prior negotiations (e., whether the defendant reached into the forum to negotiate the contract); (2) the terms of the contract (e.g., where payments were to be made and which state’s law was to govern); and (3) the course of dealing (e.g., whether the defendant established a “substantial and continuing relationship” in the forum state).31 The Court has also opined on when a defendant’s property interests in the forum may serve as a contact for purposes of personal jurisdiction. In Shaffer v. Heitner, the Supreme Court held that a state court could not exercise quasi in rem jurisdiction over a nonresident defendant by attaching the defendant’s property interests in the state without inquiring separately into whether these property interests and any other connections between the defendant, forum, and litigation established sufficient minimum contacts to satisfy the first prong of the International Shoe test.32 Thus, a Delaware court could not subject nonresident officers and directors of a Delaware corporation to personal jurisdiction for the alleged breach of duties to the corporation based solely on the court’s attachment of their stock and stock options in the corporation.33 The Court noted that jurisdiction over property must in fact have a direct effect on the interests of the defendant in that property and therefore affect its personal rights.34 However, the Court also noted that in some cases, such as cases establishing title to real property, ownership of the property itself may establish sufficient contacts among the defendant, forum, and litigation.35 Page 5 Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Even if a nonresident defendant has minimum contacts with the forum, the Supreme Court has, at times, considered whether a state court’s exercise of personal jurisdiction over him would comport with due process by examining the reasonableness of the exercise of jurisdiction.1 In International Shoe and its subsequent opinions, the Court has established a multi-factor test that seeks to ensure that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.” 2 The Court has subsequently clarified that in applying this test to evaluate the reasonableness of the exercise of jurisdiction in light of the defendant’s contacts with the forum and litigation, it will examine several factors, including: (1) “the burden on the defendant”; (2) “the forum State’s interest in adjudicating the dispute”; (3) “the plaintiff’s interest in obtaining convenient and effective relief”; (4) “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies”; (5) and the “shared interest of the several States in furthering fundamental substantive social policies.” 3 Although the Supreme Court has addressed the reasonableness prong of the International Shoe test for personal jurisdiction only in Asahi and Daimler, it has provided some guidance as to when courts may deem it reasonable to subject a defendant to suit. Thus, the Justices have, for example, suggested that courts should remain cautious about exercising personal jurisdiction over corporations domiciled abroad, particularly when most of the conduct at issue occurred overseas.4 Courts may therefore evaluate the risks that subjecting a foreign corporation to suit in the United States for overseas conduct would have on international relations between the United States and its trading partners.5 In a case involving the exercise of personal jurisdiction over a foreign corporation, moreover, the policies of other nations are relevant and must be carefully considered.6 In addition, when considering the burden on the defendant of litigating the case in the forum state, the Court may consider it a heavy burden for a company domiciled abroad to travel from its foreign headquarters to have a dispute with another foreign corporation litigated in U.S. courts.7 This concern may stem in part from the notion that the interests of the plaintiff and forum are minimal when the claim is based on overseas transactions, the plaintiff is not a resident of the United States, and the allegedly tortious conduct could be deterred by subjecting companies over which the court has lawful judicial power to suit.8

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