

# **CH. 5 JURISDICTION OVER PERSONS & PROP.**

**What U.S. constitutional limitations apply for exercising long-arm jurisdiction when limited contacts exist with the [state] forum?**

**A “due process” claim.**

**Note International Shoe – re jurisdiction exists under U.S. constitution when based on “minimum contacts” adequate to establish “fair play and substantial justice.”**

# **Consent and Waiver**

## **p.394**

**Consider contracts with forum-selection clauses – parties agree the legal proceedings will (or may) be brought in the courts of that particular state. Further, what effect of a provision in an agreement that the state may exercise personal jurisdiction over the parties?**

**Actual consent to jurisdiction clauses are further examined in Chapter 8.**

**What about deemed consent?**

# **Sternberg v. O'Neil**

## **p. 394**

**“Double derivative suit” vs. GenCorp. & sub.**

**Double derivative suit is suit by shareholders of parent corp. on behalf of subsidiary corp.**

**Del. Chancery Ct. says no constitutionally permissible basis for assertion of personal jurisdiction & dismissed complaint.**

**Del. Sup. Ct. reverses: 1) GenCorp. registered to do business in Del. & appointed a Del. agent;**

**2) GenCorp's ownership of Del. Sub constitutes “minimum contact” necessary to proceed. Cont.**

# **Sternberg v. O'Neil**

## **p. 394, continued**

**Allegation of false statements to SEC and failure to manage in a prudent manner & breach of fiduciary duties.**

**Personal jurisdiction exists on basis of qualification to do business in the state – express statutory consent. Then, no need for “minimum contacts.” P.399. Implied consent – minimum contacts (Intl. Shoe case) - if no express consent.**

**Unreasonable burden on interstate commerce?**

**No coercive penalties in Del. for foreign corps.**

# **Re: Texas – Wenche Siemer (5<sup>th</sup> Cir.) p.401**

Registering an agent does not create a corporate presence in Texas. How accomplished?

This registration does not constitute a consent to jurisdiction. And, not a waiver of the right to due process.

Only where jurisdiction is constitutionally permissible.

Cf., (p.401) 3<sup>rd</sup> & 8<sup>th</sup> Circuits that registration is sufficient for general jurisdiction over a corp.

# **What if no corporate registration in a state?**

**P.403 Wait to comply with a state law corporate registration statute until necessary (e.g., to file lawsuit in that destination state) and then pay any delinquent corporate fees (including franchise fees) & any delinquent taxes and penalties?**

**Is this registration of retroactive effect?**

**Can this registration be withdrawn (e.g., after completion of litigation)?**

# Phillips Petroleum

p.403

(prior p.327)

Class action in Kansas seeking interest to be paid on royalties. Determined under Kan. law although many members of class outside Kans.

U.S. Sup. Ct: Using Kansas law not fair.

This segment: Assertion that non-Kansas plaintiffs must consent for Kansas to have jurisdiction over their claims.

Assertion: Failure to return the exclusion request is not consent to jurisdiction.

# **Phillips Petroleum**

## **p.403, cont. (prior p.327)**

Must an “opt-in” procedure exist to satisfy the due process clause? No; “Opt-out” is OK.

Jurisdiction exists even though no minimum contacts for class action plaintiffs.

What about Intl. Shoe “minimum contacts”?

Same test applicable for plaintiffs as for defendants – since the chose in action will be extinguished through res judicata?

No; but notice must be received by Pl. Judge must inquire into commonality of positions.

# **Class actions & jurisdictional concerns**

**A race to the courthouse effect here?**

**What if class action proceedings for injunctive relief rather than merely money damages?**

**Limit multi-state class actions to federal courts?**

# Insurance Corp of Ireland

**P.408**

**FRCP 37(b)**

Can a sanction for a failure to comply with a discovery order concerning jurisdictional facts produce a result of personal jurisdiction?

Does this result violate due process rights?

Any requirement to comply if no jurisdiction?

To order a party the Court must have both (1) personal and (2) subject matter jurisdiction.

Issue: How (for personal jurisdiction) can the “minimum contacts” facts be established?

**Requirement may be waived.**

**Cont.**

# **Insurance Corp of Ireland P.408, continued**

Actions of a defendant may constitute legal submission to the court's jurisdiction.

Failure to enter a timely objection to personal jurisdiction constitutes a waiver of objection.

Defendant's silence enables the conclusion that actual jurisdiction does exist.

Concurrence: Here the actual facts demonstrate the existence of personal jurisdiction to impose sanctions. This is a diversity case and forum state law controls.

# How Protest the Absence of Jurisdiction?

Make a “special appearance”? But, will the court recognize the special appearance (or treat as a waiver of jurisdictional claim)?

Alternative: Make no appearance, default judgment is entered, and make a collateral attack when judgment is sought to be enforced?

**FRCP 12(h) – motion must include an objection to jurisdiction.**

# **“Activities” as a Basis for Jurisdiction**

Jurisdiction over a corporation can be based on:

- Place of organization
- Place of principal place of business

What about the place where conducting substantial business activities?

If so, what are substantial business activities?

# Helicopteros Nacionales p.415

Tex. Sup. Ct. rules jurisdiction exists over a foreign corp. with contacts in the state unrelated to the cause of action. Certiorari granted.

U.S. citizens killed in Peru helicopter accident.

Helicol providing helicopter transportation – its principal business in Columbia.

Employees of a Houston based joint venture.

Residence of corp. parties declared as Peru and disputes under contract under Peru jurisdiction.

# **Helicopteros Nacionales p.415, cont.**

Helicol activities in Texas: (1) negotiation of helicopter services contract; and (2) previously purchased helicopters & pilot training.

Helicol not authorized to do business in Texas.

No employees or contract signings in Texas.

But, dead employees hired in Houston.

Wrongful death action in Houston against Helicol which filed “special appearance” and claimed no personal jurisdiction.

**Tex. Ct. rules personal jurisdiction exists. Cont.**

# Helicopteros Nacionales p.415, cont.

Issue: Does due process clause limit Texas in personam jurisdiction in this situation?

Intl. Shoe: must have “minimum contacts.”

Due process can be satisfied even when in personam jurisdiction & unrelated contacts.

Cf., “specific” vs. “general” jurisdiction.

Holding: Insufficient contacts with Texas – not continuous and systematic general business contacts. Purchase trips not sufficient basis.

# **Helicopteros Nacionales p.415, cont.**

**Brennan dissent (p.419): Helicol had numerous and frequent commercial transactions in Texas. Numerous benefits derived by Helicol in Texas. Wrongful death claim related to contacts between Helicol and the Texas forum. E.g., negotiations in Texas; pilot trained in Texas. Contacts with Texas directly related to event. Tex. juris. if “eminently fair and reasonable.”  
Note: What if no jurisdiction over all Def.?**

# **Jurisdictional relevance of purchases p.423**

Should purchases be treated a different than other contacts in the state for determining personal jurisdiction in the state?

# **Burnham v. Superior Ct.**

## **p.425**

**Non-resident served with process in Cal. While temporarily in Cal. for unrelated matter.**

**She filed divorce action in Cal. He was served when in Cal. for a trip. He made special appearance in Cal. court – asserting lack of personal jurisdiction based on due process.**

**Cal. held that presence in state was sufficient.**

**Majority: Jurisdiction exists & not due process violation; he should expect he could be served.**

# **“Tag” jurisdiction**

## **p.438**

**What if defendant in the jurisdiction because of fraud or unlawful force?**

**Immunity from service of process in these situations?**

**Or, refrain from exercise of jurisdiction as a matter of comity, fairness?**

# **Purposeful Availment & Foreseeability p.439**

**Issue: What is the constitutional standard for specific in personam jurisdiction?**

**Jurisdiction exists when Defendant sends defective products into the state and injury occurs there.**

**What if causal link between (1) Defendant's activities and (2) occurrence inside the forum is more attenuated?**

**Does SCOTUS have any overarching structure for analyzing these cases?**

# **World-Wide VW Corp.**

## **p.439      Product Liability**

NY residents buy VW in NY and then move to Arizona. Accident in Okla. & injuries.

Okla. Sup. Ct. holds accident in another state was foreseeable and “minimum contacts” test was satisfied.

U.S. Sup. Ct.: Okla. could not exercise personal jurisdiction over VW (distributor). Merely selling goods is not sufficient to constitute conducting business within the jurisdiction.

No “contacts, ties, or relations” with Okla. Cont.

# **World-Wide VW Corp. p.439, cont.**

Dissent (Brennan) (p.444): The constitutionally significant burden relates to the “mobility” of the Defendant’s defense.

Constitution does not require the forum with the “best contacts.”

Witnesses and evidence were in Okla.

Automobile is a mobile instrument.

Cf., chain of distribution vs. consumer move.

This is not at the outer limits of Intl. Shoe case.

# **Kulko v. Superior Court** **p.450 Due Process Claim**

Assertion of personal jurisdiction – motion to quash service to be granted based on lack of personal jurisdiction.

Couple lived in NY (although married in Cal.) under separation & she moved to Cal.

Child relocated to Cal. & she then initiated divorce matter in Haiti for divorce & then Cal. action for increased child support, etc.

Issue re using long arm statute in Cal. to effectuate service of process on him.

*Cont.*

# **Kulko v. Superior Court** **p.450** **continued**

Majority: Father did not derive any benefit from any activities concerning California.

Restatement §37 “effects” test directed towards wrongful activity causing injury in other state.

Here controversy arises from a separation agreement made in N.Y. Not from an injury.

Cal. as “center of gravity” for choice of law.

Could use Uniform Reciprocal Enforcement of Support Act. Cont.

# **Kulko v. Superior Court** **p.450** **continued**

Dissent: Father had the necessary minimum contacts in Cal. to enable jurisdiction (and no due process violation).

Reasonableness and fairness implicit in due process clause was satisfied.

Did marriage in Cal. provide adequate basis for establishing jurisdiction?

# **Asahi Metal Industry**

## **P.456**

**Lawsuit re product liability in Cal. motorcycle accident. Motorcycle tire defect & claim for indemnification by Taiwan Co. (tube manufacturer) against Japan valve manufacturer.**

**Only indemnity action in Cal. & question whether jurisdiction over Japan co. exists.**

**Cal. Sup. Ct. authorized summons vs. Japan Co. But, was this exercise of personal jurisdiction in Cal. violative of the “due process” clause? Cont.**

# Asahi Metal Industry

P.456

Continued

Part IIA (p. 458): No personal jurisdiction over Japan Co. as a nonresident defendant.

Did not purposefully establish “minimum contacts” in Cal.; a “substantial connection” in Cal. must arise from action “purposefully directed” to the forum state. The mere placement of an item in commerce is not an act purposefully directed towards Cal. as the forum state. Due process clause violated.

Cont.

# Asahi Metal Industry

P.456

Continued

Part IIB (p. 460): Due process clause necessitates observance of “traditional notions of fair play and substantial justice” (Intl. Shoe).

Here an indemnification claim by Taiwan Co. against Japan Co. for a transaction in Taiwan.

Plaintiff is not a California resident.

Consider: (1) international context; (2) burden on foreign defendant; (3) slight interests of the forum state: personal jurisdiction would be unreasonable & unfair. Not minimum contacts.

# **Asahi Metal Industry**

## **P.456**

## **Continued**

Concurring Opinions: (p. 462 & 463):

Asahi did purposefully avail itself of the Cal. market – was intentionally in the Cal. stream of commerce.

But, the exercise of personal jurisdiction would not comport with Intl. Shoe concepts of “fair play and substantial justice.”

# Burger King case

## p.464 Florida jurisdiction

Florida jurisdiction over Michigan based franchises? Defendants had applied to MI office for MI franchises. Application to MI for franchise forwarded to Miami office. Defendants directly contacting FL office.

Holding that Defendant “purposefully directs” activities towards forum residents; contacts proximately result from actions by the Defendant. See (p.465) factors supporting Fl. contacts. Cf., dissent re (1) purely local (MI) and (2) franchisees are disadvantaged.

# **Nicastro v. McIntyre**

**p.465 U.S. Sup. Ct.-2011**

**N.J. state courts assert jurisdiction over British manufacturer of machine that injured scrap metal worker. Separate U.S. distributor sells machine to Plaintiff's employer. Under the "stream-of-commerce" doctrine, the Sup.Ct. of N.J. held the 14<sup>th</sup> Amendment's Due Process Clause was not violated by the New Jersey court's exercise of jurisdiction. Reversed.**

**No N.J. personal jurisdiction. (6-3 vote, 2011).**

**No proof of conduct by Def. directed to N.J.**

# Brown v. Meter

p.465-6

Sup. Ct.-2011

Goodyear Tire Co. subs manufactured tires sold in N.C. distribution through other companies.

N.C. Ct. says personal jurisdiction based on Def.

“purposely injecting its product into stream of commerce” including N.C. Here, bus accident in France from tire manufactured in Turkey.

But, small portion of tires were sold into N.C.

Sup. Ct. says (9-0) subs not subject to general jurisdiction in N.C. because no continuous contact. No contact with N.J. for specific claim.

# **Considering the Business Structure p.466**

Should the parent corporation subsidiary corporation structure be respected?

Should a “single enterprise” theory be applied?

See Goodyear case where Sup. Ct. rejected this argument as too late.

Cf., India courts in Bhopal/Union Carbide (now Dow) incident.

Use “independent” companies? How determined?

# **Activities Based Personal Jurisdiction & Internet**

P. 468 – Passive web sites as not providing personal jurisdiction where viewed.

What if web site information “purposefully directed” to a situation in another jurisdiction?

What about “interactive” websites, e.g., exchange of information is occurring (e.g., downloading info). If contracts implemented?

Any basis for “general jurisdiction”? Where continuous contacts are occurring in the jurisdiction (internet brokerage)? LL Bean?

# **Jurisdiction Based on Property p.469**

Consider this option: One's property – not person - as being the basis for establishing court jurisdiction in a particular state.

For special jurisdiction?

For general jurisdiction?

E.g., where is a debt located on which the creditor can sue? At the location of the debtor.

Cf., cross-border taxation & income sourcing rules.

# **Traditional *In Rem* Matters**

Suits about rights to property could be exercised based merely on the presence of property in the forum, and pre-judgment attachment.

A suit *in rem* would decide rights to the property among all claimants.

A suit *quasi in rem* would decide rights only as between parties to the suit.

*Quasi in rem* litigation involves (1) dispute about rights to that property, or (2) dispute which is unrelated & only to enable judgment payment.

# Shaffer v. Heitner

## P.470

Issue re constitutionality (due process clause) of Del. sequestration statute allowing jurisdiction over any property of a defendant in the state.

Dissident shareholder sues Del. corporation and officers & directors, seeking seizure of their Del. based stock. Directors make special appearance to vacate the sequestration order.

Holding: Not sufficient jurisdiction in Del.

Issue: Does the property itself constitute a sufficient basis for establishing jurisdiction?

# Shaffer v. Heitner

P.470

continued

Quasi in rem proceeding - These assertions of state court jurisdiction must be evaluated by reference to Intl. Shoe case standards.

Is the specific property the subject matter of the litigation? Not here; completely unrelated.

Does jurisdiction exist if the property is not itself the basis for initiating the specific litigation? What state interest of Del. here?

Cf, jurisdiction to enforce a judgment when property in the state to be levied on.

# **What impact of stock ownership on jurisdiction?**

If jurisdiction based on property ownership can always be established consider ownership of stock of:

- 1) Delaware corporation, i.e, the place of “chartering,” and Delaware laws applicable for the management of enterprise and directors’ obligations
- 2) Foreign organized corporation, e.g., Royal Dutch Shell (Netherlands) or Baidu (PRC).

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**p. 479**

**(p.394)**

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No coercive penalties in Del. for foreign corps.

# **Sternberg v. O'Neil**

**p.479**

**Del. Sup.Ct.**

Additional question: Implied consent to specific jurisdiction in double derivative action attributable to parent (non-Del.) corporation ownership of Del. subsidiary. Satisfying due process minimum contacts requirement?

Consider relationship between: (1) defendant, (2) forum and (3) the litigation.

Chancery Ct. had determined Parent's ownership of Del. Sub. not sufficient contact to enable personal jurisdiction. Cont.

# **Sternberg v. O'Neil**

## **p.479, continued**

**Del. Sup. Ct.: Parent Corp. has made conscious decision to operate a Del. Sub. This decision is sufficient to enable minimum contact with Del. – permitting an exercise of specific jurisdiction.**

**Del. has an interest in monitoring operation of a Del. Corp. - including in a shareholder's double derivative suit. Any damages received are paid to the parent corp. as sole shareholder of the subsidiary. Del. obligated to provide forum!**

**Parent's ownership of sub as minimum contact.**



