

**Civil Procedure**  
**Fall 2020**  
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**Section 3**

# SUPREME COURT OF THE UNITED STATES

No. 11-965

DAIMLER AG, PETITIONER v. BARBARA  
BAUMAN ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[January 14, 2014]

JUSTICE GINSBURG delivered the opinion of the Court.

## I

In 2004, plaintiffs (respondents here) filed suit in the United States District Court for the Northern District of California, alleging that MB Argentina collaborated with Argentinian state security forces to kidnap, detain, torture, and kill plaintiffs and their relatives during the military dictatorship in place there from 1976 through 1983, a period known as Argentina's "Dirty War." Based on those allegations, plaintiffs asserted claims under the Alien Tort Statute, 28 U. S. C. §1350, and the Torture Victim Protection Act of 1991, 106 Stat. 73, note following 28 U. S. C. §1350, as well as claims for wrongful death and intentional infliction of emotional distress under the laws of California and Argentina. The incidents recounted in the complaint center on MB Argentina's plant in Gonzalez Catan, Argentina; no part of MB Argentina's alleged collaboration with Argentinian authorities took place in California or anywhere else in the United States.

Plaintiffs' operative complaint names only one corporate defendant: Daimler, the petitioner here. Plaintiffs seek to hold Daimler vicariously liable for MB Argentina's alleged malfeasance. Daimler is a German *Aktiengesellschaft* (public stock company) that manufactures Mercedes-Benz vehicles in Germany and has its headquarters in Stuttgart. At times relevant to this case, MB Argentina was a subsidiary wholly owned by Daimler's predecessor in interest.

Daimler moved to dismiss the action for want of personal jurisdiction. Opposing the motion, plaintiffs submitted declarations and exhibits purporting to demonstrate the presence of Daimler itself in California. Alternatively,

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plaintiffs maintained that jurisdiction over Daimler could be founded on the California contacts of MBUSA, a distinct corporate entity that, according to plaintiffs, should be treated as Daimler's agent for jurisdictional purposes.

MBUSA, an indirect subsidiary of Daimler, is a Delaware limited liability corporation.<sup>3</sup> MBUSA serves as Daimler's exclusive importer and distributor in the United States, purchasing Mercedes-Benz automobiles from Daimler in Germany, then importing those vehicles, and ultimately distributing them to independent dealerships located throughout the Nation. Although MBUSA's principal place of business is in New Jersey, MBUSA has multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine. According to the record developed below, MBUSA is the largest supplier of luxury vehicles to the California market. In particular, over 10% of all sales of new vehicles in the United States take place in California, and MBUSA's California sales account for 2.4% of Daimler's worldwide sales.

The relationship between Daimler and MBUSA is delineated in a General Distributor Agreement, which sets forth requirements for MBUSA's distribution of Mercedes-Benz vehicles in the United States. That agreement established MBUSA as an "independent contracto[r]" that "buy[s] and sell[s] [vehicles] ... as an independent business for [its] own account." App. 179a. The agreement "does not make [MBUSA] ... a general or special agent, partner, joint venturer or employee of DAIMLERCHRYSLER or any DaimlerChrysler Group Company"; MBUSA "ha[s] no authority to make binding obligations for or act on behalf of DAIMLERCHRYSLER or any DaimlerChrysler Group Company." *Ibid*.

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<sup>3</sup>At times relevant to this suit, MBUSA was wholly owned by DaimlerChrysler North America Holding Corporation, a Daimler subsidiary.

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After allowing jurisdictional discovery on plaintiffs' agency allegations, the District Court granted Daimler's motion to dismiss. Daimler's own affiliations with California, the court first determined, were insufficient to support the exercise of all-purpose jurisdiction over the corporation. *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW (ND Cal., Nov. 22, 2005), App. to Pet. for Cert. 111a-112a, 2005 WL 3157472, \*9-\*10. Next, the court declined to attribute MBUSA's California contacts to Daimler on an agency theory, concluding that plaintiffs failed to demonstrate that MBUSA acted as Daimler's agent. *Id.*, at 117a, 138a, 2005 WL 3157472, \*12, \*19; *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW (ND Cal., Feb. 12, 2007), App. to Pet. for Cert. 83a-85a, 2007 WL 486389, \*2.

The Ninth Circuit at first affirmed the District Court's judgment. Addressing solely the question of agency, the Court of Appeals held that plaintiffs had not shown the existence of an agency relationship of the kind that might warrant attribution of MBUSA's contacts to Daimler. *Bauman v. DaimlerChrysler Corp.*, 579 F.3d 1088, 1096-1097 (2009). Judge Reinhardt dissented. In his view, the agency test was satisfied and considerations of "reasonableness" did not bar the exercise of jurisdiction. *Id.*, at 1098-1106. Granting plaintiffs' petition for rehearing, the panel withdrew its initial opinion and replaced it with one authored by Judge Reinhardt, which elaborated on reasoning he initially expressed in dissent. *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909 (CA9 2011).

Daimler petitioned for rehearing and rehearing en banc, urging that the exercise of personal jurisdiction over Daimler could not be reconciled with this Court's decision in *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. \_\_\_\_ (2011). Over the dissent of eight judges, the Ninth Circuit denied Daimler's petition. See *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774 (2011) (O'Scannlain,

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J., dissenting from denial of rehearing en banc).

We granted certiorari to decide whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad. 569 U. S. \_\_\_\_ (2013).

## II

Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons. See Fed. Rule Civ. Proc. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located"). Under California's long-arm statute, California state courts may exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal. Civ. Proc. Code Ann. §410.10 (West 2004). California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U. S. Constitution. We therefore inquire whether the Ninth Circuit's holding comports with the limits imposed by federal due process. See, e.g., *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 464 (1985).

*International Shoe* distinguished between, on the one hand, exercises of specific jurisdiction, as just described, and on the other, situations where a foreign corporation's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U. S., at 318. As we have since explained, "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear*, 564 U. S., at \_\_\_\_ (slip op., at 2); see *id.*, at \_\_\_\_ (slip op., at 7); *Helicopteros*, 466 U. S., at 414, n. 9.<sup>5</sup>

Most recently, in *Goodyear*, we answered the question: "Are foreign subsidiaries of a United States parent corporation amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?" 564 U. S., at \_\_\_\_ (slip op., at 1). That case arose from a bus accident outside Paris that killed two boys from North Carolina. The boys' parents brought a wrongful-death suit in North Carolina state court alleging that the bus's tire was defectively manufactured. The complaint named as defendants not only The Goodyear Tire and Rubber Company (Goodyear), an Ohio corporation, but also Goodyear's Turkish, French, and Luxembourgian subsidiaries. Those foreign subsidiaries, which manufactured tires for sale in Europe and Asia, lacked any affiliation with North Carolina. A small percentage of tires manufactured by the foreign subsidiaries were distributed in North Carolina, however, and on that ground, the North Carolina Court of Appeals held the subsidiaries amenable to the general jurisdiction of North Carolina courts.

We reversed, observing that the North Carolina court's analysis "elided the essential difference between case-specific and all-purpose (general) jurisdiction." *Id.*, at \_\_\_\_ (slip op., at 10). Although the placement of a product into the stream of commerce "may bolster an affiliation germane to specific jurisdiction," we explained, such contacts "do not warrant a determination that, based on those ties, the forum has general jurisdiction over a defendant." *Id.*, at \_\_\_\_ (slip op., at 10–11). As *International Shoe* itself teaches, a corporation's ~~continuous activity~~ activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.<sup>8</sup> 326 U. S., at 318. Because Goodyear's foreign subsidiaries were "in no sense at home in North Carolina," we held, those subsidiaries could not be required to submit to the general jurisdiction of that State's courts. 564 U. S., at \_\_\_\_ (slip op., at 13). See also *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U. S. \_\_\_\_ (2011) (GINSBURG, J., dissenting) (slip op., at 7) (noting unanimous agreement that a foreign manufacturer, which engaged an independent U. S.-based distributor to sell its machines throughout the United States, could not be exposed to all-purpose jurisdiction in New Jersey courts based on those contacts).

As is evident from *Perkins*, *Helicopteros*, and *Goodyear*, general and specific jurisdiction have followed markedly different trajectories post-*International Shoe*. Specific jurisdiction has been cut loose from *Pennoyer's* sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized.<sup>9</sup> As this Court has increasingly trained on the "relationship among the defendant, the forum, and the litigation," *Shaffer*, 433 U. S., at 204. i.e., specific jurisdiction,<sup>10</sup> general jurisdiction has come to occupy a less dominant place in the contemporary scheme.<sup>11</sup>

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## B

Even if we were to assume that MBUSA is at home in California, and further to assume MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render it at home there.<sup>16</sup>

*Goodyear* made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." 564 U. S., at \_\_\_\_ (slip op., at 7) (citing *Brilmayer et al.*, *A General Look at General Jurisdiction*, 66 *Texas L. Rev.* 721, 728 (1988)). With respect to a corpora-

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<sup>16</sup>By addressing this point, JUSTICE SOTOMAYOR asserts, we have strayed from the question on which we granted certiorari to decide an issue not argued below. *Post*, at 5-6. That assertion is doubly flawed. First, the question on which we granted certiorari, as stated in Daimler's petition, is "whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State." Pet. for Cert. i. That question fairly encompasses an inquiry into whether, in light of *Goodyear*, Daimler can be considered at home in California based on MBUSA's in-state activities. See also this Court's Rule 14.1(a) (a party's statement of the question presented "is deemed to comprise every subsidiary question fairly included therein"). Moreover, both in the Ninth Circuit, see, e.g., Brief for Federation of German Industries et al. as *Amici Curiae* in No. 07-15386 (CA9), p. 3, and in this Court, see, e.g., U. S. Brief 13-18; Brief for Chamber of Commerce of United States of America et al. as *Amici Curiae* 6-23; Brief for Lea Brilmayer as *Amica Curiae* 10-12, amici in support of Daimler homed in on the insufficiency of Daimler's California contacts for general jurisdiction purposes. In short, and in light of our pathmarking opinion in *Goodyear*, we perceive no unfairness in deciding today that California is not an all-purpose forum for claims against Daimler.

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tion, the place of incorporation and principal place of business are "paradig[m] . . . bases for general jurisdiction." *Id.*, at 735. See also Twitchell, 101 Harv. L. Rev., at 633. Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. Cf. *Hertz Corp. v. Friend*, 559 U. S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater predictability."). These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

*Goodyear* did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums. Plaintiffs would have us look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business." Brief for Respondents 16–17, and nn. 7–8. That formulation, we hold, is unacceptably grasping.

As noted, see *supra*, at 7–8, the words "continuous and systematic" were used in *International Shoe* to describe instances in which the exercise of *specific* jurisdiction would be appropriate. See 326 U. S., at 317 (jurisdiction can be asserted where a corporation's in-state activities are not only "continuous and systematic, but also give rise to the liabilities sued on").<sup>17</sup> Turning to all-purpose jurisdiction, in contrast, *International Shoe* speaks of "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify

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<sup>17</sup>*International Shoe* also recognized, as noted above, see *supra*, at 7–8, that "some single or occasional acts of the corporate agent in a state . . . , because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit." 326 U. S., at 318.

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suit . . . on causes of action arising from dealings entirely distinct from those activities." *Id.*, at 318 (emphasis added). See also Twitchell, *Why We Keep Doing Business With Doing-Business Jurisdiction*, 2001 U. Chi. Legal Forum 171, 184 (*International Shoe* "is clearly not saying that dispute-blind jurisdiction exists whenever 'continuous and systematic' contacts are found.").<sup>18</sup> Accordingly, the inquiry under *Goodyear* is not whether a foreign corporation's in-forum contacts can be said to be in some sense "continuous and systematic," it is whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." 564 U. S., at \_\_\_ (slip op., at 2).<sup>19</sup>

Here, neither Daimler nor MBUSA is incorporated in

<sup>18</sup>We do not foreclose the possibility that in an exceptional case, see, e.g., *Perkins*, described *supra*, at 10-12, and n. 8, a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State. But this case presents no occasion to explore that question, because Daimler's activities in California plainly do not approach that level. It is one thing to hold a corporation answerable for operations in the forum State, see *infra*, at 23, quite another to expose it to suit on claims having no connection whatever to the forum State.

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California, nor does either entity have its principal place of business there. If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp.*, 471 U. S., at 472 (internal quotation marks omitted).

It was therefore error for the Ninth Circuit to conclude that Daimler, even with MBUSA's contacts attributed to it, was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California.<sup>20</sup>

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<sup>20</sup>To clarify in light of JUSTICE SOTOMAYOR's opinion concurring in the judgment, the general jurisdiction inquiry does not "focu[s] solely on the magnitude of the defendant's in-state contacts." *Post*, at 8. General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, "at home" would be synonymous with "doing business" tests framed before specific jurisdiction evolved in the United States. See von Mehren & Trautman 1142-1144. Nothing in *International Shoe* and its progeny suggests that "a particular quantum of local activity" should give a State authority over a "far larger quantum of . . . activity" having no connection to any in-state activity. *Feder, supra*, at 604.

JUSTICE SOTOMAYOR would reach the same result, but for a different reason. Rather than concluding that Daimler is not at home in California, JUSTICE SOTOMAYOR would hold that the exercise of general jurisdiction over Daimler would be unreasonable "in the unique circumstances of this case." *Post*, at 1. In other words, she favors a resolution fit for this day and case only. True, a multipronged reasonableness check was articulated in *Asahi*, 480 U. S., at 113-114, but not as a free-floating test. Instead, the check was to be essayed when *specific* jurisdiction is at issue. See also *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 476-478 (1985). First, a court is to determine whether the

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## C

Finally, the transnational context of this dispute bears attention. The Court of Appeals emphasized, as supportive of the exercise of general jurisdiction, plaintiffs' assertion of claims under the Alien Tort Statute (ATS), 28 U. S. C. §1350, and the Torture Victim Protection Act of 1991 (TVPA), 106 Stat. 73, note following 28 U. S. C. §1350. See 644 F. 3d, at 927 ("American federal courts, be they in California or any other state, have a strong interest in adjudicating and redressing international human rights abuses."). Recent decisions of this Court, however, have rendered plaintiffs' ATS and TVPA claims infirm. See *Kiobel v. Royal Dutch Petroleum Co.*, 569 U. S. \_\_\_, \_\_\_ (2013) (slip op., at 14) (presumption against extra-territorial application controls claims under the ATS); *Mohamad v. Palestinian Authority*, 566 U. S. \_\_\_, \_\_\_ (2012)

connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction. Then, in a second step, the court is to consider several additional factors to assess the reasonableness of entertaining the case. When a corporation is genuinely at home in the forum State, however, any second-step inquiry would be superfluous.

JUSTICE SOTOMAYOR fears that our holding will "lead to greater unpredictability by radically expanding the scope of jurisdictional discovery." *Post*, at 14. But it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home. JUSTICE SOTOMAYOR's proposal to import *Asahi*'s "reasonableness" check into the general jurisdiction determination, on the other hand, would indeed compound the jurisdictional inquiry. The reasonableness factors identified in *Asahi* include "the burden on the defendant," "the interests of the forum State," "the plaintiff's interest in obtaining relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," "the shared interest of the several States in furthering fundamental substantive social policies," and, in the international context, "the procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction." 480 U. S., at 113–115 (some internal quotation marks omitted). Imposing such a checklist in cases of general jurisdiction would hardly promote the efficient disposition of an issue that should be resolved expeditiously at the outset of litigation.

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(slip op., at 1) (only natural persons are subject to liability under the TVPA).

The Ninth Circuit, moreover, paid little heed to the risks to international comity its expansive view of general jurisdiction posed. Other nations do not share the uninhibited approach to personal jurisdiction advanced by the Court of Appeals in this case. In the European Union, for example, a corporation may generally be sued in the nation in which it is "domiciled," a term defined to refer only to the location of the corporation's "statutory seat," "central administration," or "principal place of business." European Parliament and Council Reg. 1215/2012, Arts. 4(1), and 63(1), 2012 O. J. (L. 351) 7, 18. See also *id.*, Art. 7(5), 2012 O. J. 7 (as to "a dispute arising out of the operations of a branch, agency or other establishment," a corporation may be sued "in the courts for the place where the branch, agency or other establishment is situated" (emphasis added)). The Solicitor General informs us, in this regard, that "foreign governments' objections to some domestic courts' expansive views of general jurisdiction have in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments." U. S. Brief 2 (citing Juenger, *The American Law of General Jurisdiction*, 2001 U. Chi. Legal Forum 141, 161-162). See also U. S. Brief 2 (expressing concern that unpredictable applications of general jurisdiction based on activities of U. S.-based subsidiaries could discourage foreign investors); Brief for Respondents 35 (acknowledging that "doing business" basis for general jurisdiction has led to "international friction"). Considerations of international rapport thus reinforce our determination that subjecting Daimler to the general jurisdiction of courts in California would not accord with the "fair play and substantial justice" due process demands. *International Shoe*, 326 U. S., at 316 (quoting *Milliken v. Meyer*, 311 U. S. 457, 463 (1940)).

BURGER KING CORP.

v.

RUDZEWICZ

No. 83-2097.

Supreme Court of United States.

Argued January 8, 1985

Decided May 20, 1985

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

463 \*463 Joel S. Perwin argued the cause and filed briefs for appellant.

Thomas H. Oehmke argued the cause and filed a brief for appellee.

JUSTICE BRENNAN delivered the opinion of the Court.

464 The State of Florida's long-arm statute extends jurisdiction to "[a]ny person, whether or not a citizen or resident of this state," who, *inter alia*, "[b]reach[es] a contract in this state by failing to perform acts required by the contract to be performed in this state," so long as the cause of action \*464 arises from the alleged contractual breach. Fla. Stat. § 48.193 (1)(g) (Supp. 1984). The United States District Court for the Southern District of Florida, sitting in diversity, relied on this provision in exercising personal jurisdiction over a Michigan resident who allegedly had breached a franchise agreement with a Florida corporation by failing to make required payments in Florida. The question presented is whether this exercise of long-arm jurisdiction offended "traditional conception[s] of fair play and substantial justice" embodied in the Due Process Clause of the Fourteenth Amendment. International Shoe Co. v. Washington, 326 U. S. 310, 320 (1945).

I

A

465 Burger King Corporation is a Florida corporation whose principal offices are in Miami. It is one of the world's largest restaurant organizations, with over 3,000 outlets in the 50 States, the Commonwealth of Puerto Rico, and 8 foreign nations. Burger King conducts approximately 80% of its business through a franchise operation that the company styles the "Burger King System" — "a comprehensive restaurant format and operating system for the sale of uniform and quality food products." App. 46.<sup>[1]</sup> Burger King licenses its franchisees to use its trademarks and service marks for a period of 20 years and leases standardized restaurant facilities to them for the same term. In addition, franchisees acquire a variety of proprietary information concerning the "standards, specifications, procedures and methods for operating \*465 a Burger King Restaurant." *Id.*, at 52. They also receive market research and advertising assistance, ongoing training in restaurant management;<sup>[2]</sup> and accounting, cost-control, and inventory-control guidance. By permitting franchisees to tap into Burger King's established national reputation and to benefit from proven procedures for dispensing standardized fare, this system enables them to go into the restaurant business with significantly lowered barriers to entry.<sup>[3]</sup>

In exchange for these benefits, franchisees pay Burger King an initial \$40,000 franchise fee and commit themselves to payment of monthly royalties, advertising and sales promotion fees, and rent computed in part from monthly gross sales. Franchisees also agree to submit to the national organization's exacting regulation of virtually every conceivable

aspect of their operations.<sup>[4]</sup> Burger King imposes these standards and undertakes its rigid regulation out of conviction that "[u]niformity of service, appearance, and quality of product is essential to the preservation of the Burger King image and the benefits accruing therefrom to both Franchisee and Franchisor." *Id.*, at 31.

466 Burger King oversees its franchise system through a two-tiered administrative structure. The governing contracts \*466 provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required fees and forwarding of all relevant notices to the Miami headquarters.<sup>[5]</sup> The Miami headquarters sets policy and works directly with its franchisees in attempting to resolve major problems. See nn. 7, 9, *infra*. Day-to-day monitoring of franchisees, however, is conducted through a network of 10 district offices which in turn report to the Miami headquarters.

The instant litigation grows out of Burger King's termination of one of its franchisees, and is aptly described by the franchisee as "a divorce proceeding among commercial partners." 6 Record 4. The appellee John Rudzewicz, a Michigan citizen and resident, is the senior partner in a Detroit accounting firm. In 1978, he was approached by Brian MacShara, the son of a business acquaintance, who suggested that they jointly apply to Burger King for a franchise in the Detroit area. MacShara proposed to serve as the manager of the restaurant if Rudzewicz would put up the investment capital; in exchange, the two would evenly share the profits. Believing that MacShara's idea offered attractive investment and tax-deferral opportunities, Rudzewicz agreed to the venture. 6 *Id.*, at 438-439, 444, 460.

Rudzewicz and MacShara jointly applied for a franchise to Burger King's Birmingham, Michigan, district office in the autumn of 1978. Their application was forwarded to Burger King's Miami headquarters, which entered into a preliminary agreement with them in February 1979. During the ensuing four months it was agreed that Rudzewicz and MacShara would assume operation of an existing facility in Drayton Plains, Michigan. MacShara attended the prescribed management courses in Miami during this period, see n. 2, *supra*, and the franchisees purchased \$165,000  
467 worth of restaurant equipment from Burger King's Davmor Industries division in \*467 Miami. Even before the final agreements were signed, however, the parties began to disagree over site-development fees, building design, computation of monthly rent, and whether the franchisees would be able to assign their liabilities to a corporation they had formed.<sup>[6]</sup> During these disputes Rudzewicz and MacShara negotiated both with the Birmingham district office and with the Miami headquarters.<sup>[7]</sup> With some misgivings, Rudzewicz and MacShara finally obtained limited concessions from the Miami headquarters,<sup>[8]</sup> signed the final agreements, and commenced operations in June 1979. By signing the final agreements, Rudzewicz obligated himself personally to payments exceeding \$1 million over the 20-year franchise relationship.

468 \*468 The Drayton Plains facility apparently enjoyed steady business during the summer of 1979, but patronage declined after a recession began later that year. Rudzewicz and MacShara soon fell far behind in their monthly payments to Miami. Headquarters sent notices of default, and an extended period of negotiations began among the franchisees, the Birmingham district office, and the Miami headquarters. After several Burger King officials in Miami had engaged in prolonged but ultimately unsuccessful negotiations with the franchisees by mail and by telephone,<sup>[9]</sup> headquarters terminated the franchise and ordered Rudzewicz and MacShara to vacate the premises. They refused and continued to occupy and operate the facility as a Burger King restaurant.

## B

Burger King commenced the instant action in the United States District Court for the Southern District of Florida in May 1981, invoking that court's diversity jurisdiction pursuant to 28 U. S. C. § 1332(a) and its original jurisdiction over federal trademark disputes pursuant to § 1338(a).<sup>[10]</sup> Burger King alleged that Rudzewicz and MacShara had breached their franchise obligations "within [the jurisdiction of] this district court" by failing to make the required payments "at  
469 plaintiff's place of business in Miami, Dade County, Florida," ¶ 6, App. 121, and also charged that they were tortiously  
infringing \*469 its trademarks and service marks through their continued, unauthorized operation as a Burger King restaurant, ¶¶ 36-53, App. 130-135. Burger King sought damages, injunctive relief, and costs and attorney's fees.

Rudzewicz and MacShara entered special appearances and argued, *inter alia*, that because they were Michigan residents and because Burger King's claim did not "arise" within the Southern District of Florida, the District Court lacked personal jurisdiction over them. The District Court denied their motions after a hearing, holding that, pursuant to Florida's long-arm statute, "a non-resident Burger King franchisee is subject to the personal jurisdiction of this Court in actions arising out of its franchise agreements." *Id.*, at 138. Rudzewicz and MacShara then filed an answer and a counterclaim seeking damages for alleged violations by Burger King of Michigan's Franchise Investment Law, Mich. Comp. Laws § 445.1501 *et seq.* (1979).

After a 3-day bench trial, the court again concluded that it had "jurisdiction over the subject matter and the parties to this cause." App. 159. Finding that Rudzewicz and MacShara had breached their franchise agreements with Burger King and had infringed Burger King's trademarks and service marks, the court entered judgment against them, jointly and severally, for \$228,875 in contract damages. The court also ordered them "to immediately close Burger King Restaurant Number 775 from continued operation or to immediately give the keys and possession of said restaurant to Burger King Corporation," *id.*, at 163, found that they had failed to prove any of the required elements of their counterclaim, and awarded costs and attorney's fees to Burger King.

470 Rudzewicz appealed to the Court of Appeals for the Eleventh Circuit.<sup>111</sup> A divided panel of that Circuit reversed the '470 judgment, concluding that the District Court could not properly exercise personal jurisdiction over Rudzewicz pursuant to Fla. Stat. § 48.193(1)(g) (Supp. 1984) because "the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida." Burger King Corp. v. MacShara, 724 F. 2d 1505, 1513 (1984). Accordingly, the panel majority concluded that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." *Ibid.*

Burger King appealed the Eleventh Circuit's judgment to this Court pursuant to 28 U. S. C. § 1254(2), and we postponed probable jurisdiction. 469 U. S. 814 (1984). Because it is unclear whether the Eleventh Circuit actually held that Fla. Stat. § 48.193(1)(g) (Supp. 1984) *itself* is unconstitutional as applied to the circumstances of this case, we conclude that jurisdiction by appeal does not properly lie and therefore dismiss the appeal.<sup>112</sup> Treating the jurisdictional  
471 statement as a petition for a writ of certiorari, see 28 U. S. C. § 2103, we grant the petition and now reverse

## II

### A

472 The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a "472 forum with which he has established no meaningful "contacts, ties, or relations." International Shoe Co. v. Washington, 326 U. S. at 319.<sup>113</sup> By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," Shaffer v. Heitner, 433 U. S. 186, 218 (1977) (STEVENS, J., concurring in judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," World-Wide Volkswagen Corp. v. Woodson, 444 U. S. 286, 297 (1980).

Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there,  
473 <sup>114</sup> this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, Keston v. Hustler Magazine, Inc., 465 U. S. 770, 774 (1984), and the litigation results from alleged injuries that "arise out of or relate to" those activities, Helicopteros Nacionales de Colombia, S. A. v. Hall, 466 U. S. 408, 414  
473 (1984).<sup>115</sup> Thus "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" and those products subsequently injure forum consumers World-Wide Volkswagen Corp. v. Woodson, *supra*, at 297-298. Similarly, a publisher who distributes magazines in a

distant State may fairly be held accountable in that forum for damages resulting there from an allegedly defamatory story. Keeton v. Hustler Magazine, Inc., *supra*; see also Calder v. Jones, 465 U. S. 783 (1984) (suit against author and editor). And with respect to interstate contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. Travelers Health Assn. v. Virginia, 339 U. S. 643, 647 (1950). See also McGee v. International Life Insurance Co., 355 U. S. 220, 222-223 (1957).

474 We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who "purposefully directs" his activities toward forum residents. A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. *Id.*, at 223; see also Keeton v. Hustler Magazine, Inc., *supra*, at 776. Moreover, where individuals "purposefully derive benefit" from their interstate activities, Kulko v. California Superior Court, 474 U. S. 84, 96 (1978), it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because "modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity," it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity. McGee v. International Life Insurance Co., *supra*, at 223.

Notwithstanding these considerations, the constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. International Shoe Co. v. Washington, *supra*, at 316. Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require,<sup>[18]</sup> the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. World-Wide Volkswagen Corp. v. Woodson, 444 U. S., at 295. Instead, "the foreseeability that is critical to due-process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.*, at 297. In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of Hanson v. Denckla, 357 U. S. 235, 253 (1958):

475 "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts. Keeton v. Hustler Magazine, Inc., 465 U. S., at 774; World-Wide Volkswagen Corp. v. Woodson, *supra*, at 299, or of the "unilateral activity of another party or a third person," Helicopteros Nacionales de Colombia, S. A. v. Hall, *supra*, at 417.<sup>[17]</sup> Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum State. McGee v. International Life Insurance Co., *supra*, at 223; see also Kulko v. California Superior Court, *supra*, at 94, n. 7.<sup>[19]</sup> Thus where the defendant "deliberately" has engaged in significant activities within a State, Keeton v. Hustler Magazine, Inc., *supra*, at 781, or has created "continuing obligations" between himself and residents of the forum, Travelers Health Assn. v. Virginia, 339 U. S., at 648, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating

the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there. Keeton v. Hustler Magazine, Inc., *supra*, at 774-775; see also Calderv. Jones, 455 U. S., at 788-790; McGee v. International Life Insurance Co., 355 U. S., at 222-223. Cf. Hoopeston Canning Co. v. Cullen, 318 U. S. 313, 317 (1943).

477 Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." International Shoe Co. v. Washington, 326 U. S., at 320. Thus "477 courts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." World-Wide Volkswagen Corp. v. Woodson, 444 U. S., at 292. These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. See, e. g., Keeton v. Hustler Magazine, Inc., *supra*, at 780; Calderv. Jones, *supra*, at 788-789; McGee v. International Life Insurance Co., *supra*, at 223-224. On the other hand, where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional. For example, the potential clash of the forum's law with the "fundamental substantive social policies" of another State may be accommodated through application of the forum's choice-of-law rules.<sup>1191</sup> Similarly, a defendant claiming substantial inconvenience may seek a change of venue.<sup>1201</sup> Nevertheless, minimum requirements inherent in the concept of "fair play and substantial "478 justice" may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities. World-Wide Volkswagen Corp. v. Woodson, *supra*, at 292; see also Restatement (Second) of Conflict of Laws §§ 36-37 (1971). As we previously have noted, 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. The Bremen v. Zapata Off-Shore Co., 407 U. S. 1, 18 (1972) (re forum-selection provisions); McGee v. International Life Insurance Co., *supra*, at 223-224

## B

### (1)

Applying these principles to the case at hand, we believe there is substantial record evidence supporting the District Court's conclusion that the assertion of personal jurisdiction over Rudzewicz in Florida for the alleged breach of his franchise agreement did not offend due process. At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis.<sup>1211</sup> If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, International Shoe Co. v. Washington, *supra*, at 319, or on "conceptualistic . . . theories of the place of contracting or of performance," Hoopeston Canning Co. v. Cullen, 479 318 U. S., at 316. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.*, at 316-317. It is these factors — prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing — that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

In this case, no physical ties to Florida can be attributed to Rudzewicz other than MacShara's brief training course in Miami.<sup>[22]</sup> Rudzewicz did not maintain offices in Florida and, for all that appears from the record, has never even visited there. Yet this franchise dispute grew directly out of "a contract which had a *substantial* connection with that State." McGee v. International Life Insurance Co., 355 U. S., at 223 (emphasis added). Eschewing the option of operating an independent local enterprise, Rudzewicz deliberately "reach[ed] out beyond" Michigan and negotiated with a Florida corporation for the purchase of a long-term franchise and \*480 the manifold benefits that would derive from affiliation with a nationwide organization. Travelers Health Assn. v. Virginia, 339 U. S., at 647. Upon approval, he entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida. In light of Rudzewicz' voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the "quality and nature" of his relationship to the company in Florida can in no sense be viewed as "random," "fortuitous," or "attenuated." Hanson v. Denckla, 357 U. S., at 253; Keeton v. Hustler Magazine, Inc., 465 U. S., at 774; World-Wide Volkswagen Corp. v. Woodson, 444 U. S., at 299. Rudzewicz' refusal to make the contractually required payments in Miami, and his continued use of Burger King's trademarks and confidential business information after his termination, caused foreseeable injuries to the corporation in Florida. For these reasons it was, at the very least, presumptively reasonable for Rudzewicz to be called to account there for such injuries.

The Court of Appeals concluded, however, that in light of the supervision emanating from Burger King's district office in Birmingham, Rudzewicz reasonably believed that "the Michigan office was for all intents and purposes the embodiment of Burger King" and that he therefore had no "reason to anticipate a Burger King suit outside of Michigan." 724 F. 2d, at 1511. See also *post*, at 488-489 (STEVENS, J., dissenting). This reasoning overlooks substantial record evidence indicating that Rudzewicz most certainly knew that he was affiliating himself with an enterprise based primarily in Florida. The contract documents themselves emphasize that Burger King's operations are conducted and supervised from the Miami headquarters, that all relevant notices and payments must be sent there, and that the agreements were made in and enforced from Miami. See n. 5, *supra*. Moreover, the parties' actual course  
481 of dealing repeatedly confirmed that decisionmaking authority was vested in the Miami headquarters \*481 and that the district office served largely as an intermediate link between the headquarters and the franchisees. When problems arose over building design, site-development fees, rent computation, and the defaulted payments, Rudzewicz and MacShara learned that the Michigan office was powerless to resolve their disputes and could only channel their communications to Miami. Throughout these disputes, the Miami headquarters and the Michigan franchisees carried on a continuous course of direct communications by mail and by telephone, and it was the Miami headquarters that made the key negotiating decisions out of which the instant litigation arose. See nn. 7, 9, *supra*.

Moreover, we believe the Court of Appeals gave insufficient weight to provisions in the various franchise documents providing that all disputes would be governed by Florida law. The franchise agreement, for example, stated:

"This Agreement shall become valid when executed and accepted by BKC at Miami, Florida; It shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. The choice of law designation does not require that all suits concerning this Agreement be filed in Florida." App. 72.

See also n. 5, *supra*. The Court of Appeals reasoned that choice-of-law provisions are irrelevant to the question of personal jurisdiction, relying on Hanson v. Denckla for the proposition that "the center of gravity for choice-of-law purposes does not necessarily confer the sovereign prerogative to assert jurisdiction." 724 F. 2d, at 1511-1512, n. 10, citing 357 U. S., at 254. This reasoning misperceives the import of the quoted proposition. The Court in Hanson and subsequent cases has emphasized that choice-of-law analysis — which focuses on all elements of a transaction, and not simply on the defendant's conduct — is distinct from minimum-contracts jurisdictional analysis — which focuses at  
482 the threshold \*482 solely on the defendant's purposeful connection to the forum.<sup>[23]</sup> Nothing in our cases, however, suggests that a choice-of-law provision should be ignored in considering whether a defendant has "purposefully invoked the benefits and protections of a State's laws" for jurisdictional purposes. Although such a provision standing alone would be insufficient to confer jurisdiction, we believe that, when combined with the 20-year interdependent

relationship Rudzewicz established with Burger King's Miami headquarters, it reinforced his deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there. As Judge Johnson argued in his dissent below, Rudzewicz "purposefully availed himself of the benefits and protections of Florida's laws" by entering into contracts expressly providing that those laws would govern franchise disputes. 724 F. 2d, at 1513.<sup>[24]</sup>

## (2)

483 Nor has Rudzewicz pointed to other factors that can be said persuasively to outweigh the considerations discussed above and to establish the *unconstitutionality* of Florida's assertion of jurisdiction. We cannot conclude that Florida had no "legitimate interest in holding [Rudzewicz] answerable \*483 on a claim related to" the contacts he had established in that State. Keeton v. Hustler Magazine, Inc., 485 U. S., at 776; see also McGee v. International Life Insurance Co., 355 U. S., at 223 (noting that State frequently will have a "manifest interest in providing effective means of redress for its residents").<sup>[25]</sup> Moreover, although Rudzewicz has argued at some length that Michigan's Franchise Investment Law, Mich. Comp. Laws § 445.1501 *et seq.* (1979), governs many aspects of this franchise relationship, he has not demonstrated how Michigan's acknowledged interest might possibly render jurisdiction in Florida *unconstitutional*.<sup>[26]</sup> Finally, the Court of Appeals' assertion that the Florida litigation "severely impaired [Rudzewicz'] ability to call Michigan witnesses who might be essential to his defense and counterclaim," 724 F. 2d, at 1512-1513, is wholly without support 484 in the record.<sup>[27]</sup> And even to the extent that it is inconvenient \*484 for a party who has minimum contacts with a forum to litigate there, such considerations most frequently can be accommodated through a change of venue. See n. 20, *supra*. Although the Court has suggested that inconvenience may at some point become so substantial as to achieve constitutional magnitude, McGee v. International Life Insurance Co., supra, at 223, this is not such a case.

The Court of Appeals also concluded, however, that the parties' dealings involved "a characteristic disparity of bargaining power" and "elements of surprise," and that Rudzewicz "lacked fair notice" of the potential for litigation in Florida because the contractual provisions suggesting to the contrary were merely "boilerplate declarations in a lengthy printed contract." 724 F. 2d, at 1511-1512, and n. 10. See also *post*, at 489-490 (STEVENS, J., dissenting) Rudzewicz presented many of these arguments to the District Court, contending that Burger King was guilty of misrepresentation, fraud, and duress; that it gave insufficient notice in its dealings with him; and that the contract was one of adhesion. See 4 Record 687-689. After a 3-day bench trial, the District Court found that Burger King had made no misrepresentations, that Rudzewicz and MacShara "were and are experienced and sophisticated businessmen," and that "at no time" did they "act[] under economic duress or disadvantage imposed by" Burger King. App. 157-158. See also 7 Record 648-649. Federal Rule of Civil Procedure 52(a) requires that "[f]indings of fact shall not be set aside unless clearly erroneous," and neither Rudzewicz nor the Court of Appeals has pointed to record evidence that would support a "definite and firm conviction" that the District Court's findings are mistaken. United States v. United States Gypsum Co., 333 U. S. 364, 395 (1948). See also \*485 Anderson v. Bessemer City, 470 U. S. 564, 573-576 (1985). To the contrary, Rudzewicz was represented by counsel throughout these complex transactions and, as Judge Johnson observed in dissent below, was himself an experienced accountant "who for five months conducted negotiations with Burger King over the terms of the franchise and lease agreements, and who obligated himself personally to contracts requiring over time payments that exceeded \$1 million." 724 F. 2d, at 1514. Rudzewicz was able to secure a modest reduction in rent and other concessions from Miami headquarters, see nn. 8, 9, *supra*; moreover, to the extent that Burger King's terms were inflexible, Rudzewicz presumably decided that the advantages of affiliating with a national organization provided sufficient commercial benefits to offset the detriments.<sup>[28]</sup>

## III

Notwithstanding these considerations, the Court of Appeals apparently believed that it was necessary to reject jurisdiction in this case as a prophylactic measure, reasoning that an affirmance of the District Court's judgment would result in the exercise of jurisdiction over "out-of-state consumers to collect payments due on modest personal purchases" and would "sow the seeds of default judgments against franchisees owing smaller debts." 724 F. 2d, at

1511. We share the Court of Appeals' broader concerns and therefore reject any talismanic jurisdictional formulas, "the  
435 \*485 facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with  
"fair play and substantial justice." Kulko v. California Superior Court, 436 U. S., at 92.<sup>1291</sup> The "quality and nature" of an  
interstate transaction may sometimes be so "random," "fortuitous," or "attenuated"<sup>1291</sup> that it cannot fairly be said that  
the potential defendant "should reasonably anticipate being haled into court" in another jurisdiction. World-Wide  
Volkswagen Corp. v. Woodson, 444 U. S., at 297; see also n. 18, *supra*. We also have emphasized that jurisdiction  
may not be grounded on a contract whose terms have been obtained through "fraud, undue influence, or overweening  
bargaining power" and whose application would render litigation "so gravely difficult and inconvenient that [a party] will  
for all practical purposes be deprived of his day in court." The Bremen v. Zapala Off-Shore Co., 407 U. S., at 12, 18.  
Cf. Fuentes v. Shevin, 407 U. S. 67, 94-96 (1972); National Equipment Rental, Ltd. v. Szukhent, 375 U. S. 311, 329  
(1964) (Black, J., dissenting) (jurisdictional rules may not be employed against small consumers so as to "cripp[e] their  
defense") Just as the Due Process Clause allows flexibility in ensuring that commercial actors are not effectively  
"judgment proof" for the consequences of obligations they voluntarily assume in other States McGee v. International  
Life Insurance Co., 355 U. S., at 223, so too does it prevent rules that would unfairly enable them to obtain default  
judgments against unwitting customers. Cf. United States v. Rumely, 345 U. S. 41, 44 (1953) (courts must not be "  
"blind" "to what " [a]ll others can see and understand' ")

437 \*467 For the reasons set forth above, however, these dangers are not present in the instant case. Because Rudzewicz  
established a substantial and continuing relationship with Burger King's Miami headquarters, received fair notice from  
the contract documents and the course of dealing that he might be subject to suit in Florida, and has failed to  
demonstrate how jurisdiction in that forum would otherwise be fundamentally unfair, we conclude that the District  
Court's exercise of jurisdiction pursuant to Fla. Stat. § 48.193(1)(g) (Supp. 1984) did not offend due process. The  
judgment of the Court of Appeals is accordingly reversed, and the case is remanded for further proceedings consistent  
with this opinion.

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*It is so ordered.*

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20540, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

No. 12-574

ANTHONY WALDEN, PETITIONER v. GINA FIORE  
ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[February 25, 2014]

JUSTICE THOMAS delivered the opinion of the Court.

This case asks us to decide whether a court in Nevada may exercise personal jurisdiction over a defendant on the basis that he knew his allegedly tortious conduct in Georgia would delay the return of funds to plaintiffs with connections to Nevada. Because the defendant had no other contacts with Nevada, and because a plaintiff's contacts with the forum State cannot be "decisive in determining whether the defendant's due process rights are violated," *Rush v. Savchuk*, 444 U. S. 320, 332 (1980), we hold that the court in Nevada may not exercise personal jurisdiction under these circumstances.

I

Petitioner Anthony Walden serves as a police officer for the city of Covington, Georgia. In August 2006, petitioner was working at the Atlanta Hartsfield-Jackson Airport as a deputized agent of the Drug Enforcement Administration (DEA). As part of a task force, petitioner conducted investigative stops and other law enforcement functions in support of the DEA's airport drug interdiction program.

On August 8, 2006, Transportation Security Admin-

## Opinion of the Court

Administration agents searched respondents Gina Fiore and Keith Gipson and their carry-on bags at the San Juan airport in Puerto Rico. They found almost \$97,000 in cash. Fiore explained to DEA agents in San Juan that she and Gipson had been gambling at a casino known as the El San Juan, and that they had residences in both California and Nevada (though they provided only California identification). After respondents were cleared for departure, a law enforcement official at the San Juan airport notified petitioner's task force in Atlanta that respondents had boarded a plane for Atlanta, where they planned to catch a connecting flight to Las Vegas, Nevada.

When respondents arrived in Atlanta, petitioner and another DEA agent approached them at the departure gate for their flight to Las Vegas. In response to petitioner's questioning, Fiore explained that she and Gipson were professional gamblers. Respondents maintained that the cash they were carrying was their gambling "bank" and winnings. App. 15, 24. After using a drug-sniffing dog to perform a sniff test, petitioner seized the cash.<sup>1</sup> Petitioner advised respondents that their funds would be returned if they later proved a legitimate source for the cash. Respondents then boarded their plane.

After respondents departed, petitioner moved the cash to a secure location and the matter was forwarded to DEA headquarters. The next day, petitioner received a phone call from respondents' attorney in Nevada seeking return of the funds. On two occasions over the next month, petitioner also received documentation from the attorney regarding the legitimacy of the funds.

At some point after petitioner seized the cash, he helped draft an affidavit to show probable cause for forfeiture of

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<sup>1</sup> Respondents allege that the sniff test was "at best inconclusive," and there is no indication in the pleadings that drugs or drug residue were ever found on or with the cash. App. 21.

## Opinion of the Court

the funds and forwarded that affidavit to a United States Attorney's Office in Georgia.<sup>2</sup> According to respondents, the affidavit was false and misleading because petitioner misrepresented the encounter at the airport and omitted exculpatory information regarding the lack of drug evidence and the legitimate source of the funds. In the end, no forfeiture complaint was filed, and the DEA returned the funds to respondents in March 2007.

Respondents filed suit against petitioner in the United States District Court for the District of Nevada, seeking money damages under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971). Respondents alleged that petitioner violated their Fourth Amendment rights by (1) seizing the cash without probable cause; (2) keeping the money after concluding it did not come from drug-related activity; (3) drafting and forwarding a probable cause affidavit to support a forfeiture action while knowing the affidavit contained false statements; (4) willfully seeking forfeiture while withholding exculpatory information; and (5) withholding that exculpatory information from the United States Attorney's Office.

The District Court granted petitioner's motion to dismiss. Relying on this Court's decision in *Calder v. Jones*, 465 U. S. 783 (1984), the court determined that petitioner's search of respondents and his seizure of the cash in Georgia did not establish a basis to exercise personal jurisdiction in Nevada. The court concluded that even if petitioner caused harm to respondents in Nevada while knowing they lived in Nevada, that fact alone did not confer jurisdiction. Because the court dismissed the complaint for lack of personal jurisdiction, it did not determine

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<sup>2</sup>The alleged affidavit is not in the record. Because this case comes to us at the motion-to-dismiss stage, we take respondents' factual allegations as true, including their allegations regarding the existence and content of the affidavit.

## Opinion of the Court

whether venue was proper.

On appeal, a divided panel of the United States Court of Appeals for the Ninth Circuit reversed. The Court of Appeals assumed the District Court had correctly determined that petitioner's search and seizure in Georgia could not support exercise of jurisdiction in Nevada. The court held, however, that the District Court could properly exercise jurisdiction over "the false probable cause affidavit aspect of the case." 688 F. 3d 558, 577 (2011). According to the Court of Appeals, petitioner "expressly aimed" his submission of the allegedly false affidavit at Nevada by submitting the affidavit with knowledge that it would affect persons with a "significant connection" to Nevada.<sup>3</sup> *Id.*, at 581. After determining that the delay in returning the funds to respondents caused them "foreseeable harm" in Nevada and that the exercise of personal jurisdiction over petitioner was otherwise reasonable, the court found the District Court's exercise of personal jurisdiction to be proper.<sup>4</sup> *Id.*, at 582, 585. The Ninth Circuit denied rehearing en banc, with eight judges, in two separate opinions, dissenting. *Id.*, at 562, 568.

We granted certiorari to decide whether due process permits a Nevada court to exercise jurisdiction over petitioner. 568 U. S. \_\_\_\_ (2018). We hold that it does not and

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<sup>3</sup>The allegations in the complaint suggested to the Court of Appeals that petitioner "definitely knew, at some point *after* the seizure but *before* providing the alleged false probable cause affidavit, that [respondents] had a significant connection to Nevada." 688 F. 3d, at 578.

<sup>4</sup>Judge Ikuta dissented. In her view, the "false affidavit/forfeiture proceeding aspect" over which the majority found jurisdiction proper was not raised as a separate claim in the complaint, and she found it "doubtful that such a constitutional tort even exists." *Id.*, at 593. After the court denied rehearing en banc, the majority explained in a post-script that it viewed the filing of the false affidavit, which effected a "continued seizure" of the funds, as a separate Fourth Amendment violation. *Id.*, at 588–589. Petitioner does not dispute that reading here.

## Opinion of the Court

therefore reverse.<sup>5</sup>

II  
A

"Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Daimler AG v. Bauman*, 571 U. S. \_\_\_\_, \_\_\_\_ (2014) (slip op., at 6). This is because a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. Rule of Civ. Proc. 4(k)(1)(A). Here, Nevada has authorized its courts to exercise jurisdiction over persons "on any basis not inconsistent with . . . the Constitution of the United States." Nev. Rev. Stat. §14.065 (2011). Thus, in order to determine whether the Federal District Court in this case was authorized to exercise jurisdiction over petitioner, we ask whether the exercise of jurisdiction "comports with the limits imposed by federal due process" on the State of Nevada. *Daimler*, *supra*, at \_\_\_\_ (slip op., at 6).

B  
1

The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts. *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 291 (1980). Although a nonresident's physical presence within the territorial jurisdiction of the court is not required, the nonresident generally must have "certain minimum contacts . . . such that the maintenance of the suit does not

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<sup>5</sup> We also granted certiorari on the question whether Nevada is a proper venue for the suit under 28 U. S. C. §1391(b)(2). Because we resolve the case on jurisdictional grounds, we do not decide whether venue was proper in Nevada.

## Opinion of the Court

offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U. S. 457, 463 (1940)).

This case addresses the "minimum contacts" necessary to create specific jurisdiction.<sup>6</sup> The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant "focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Keeton v. Hustler Magazine, Inc.*, 465 U. S. 770, 775 (1984). (quoting *Shaffer v. Heitner*, 433 U. S. 186, 204 (1977)). For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State. Two related aspects of this necessary relationship are relevant in this case.

First, the relationship must arise out of contacts that the "defendant *himself*" creates with the forum State. *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 475 (1985).

Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties. See *World-Wide Volkswagen Corp.*, *supra*, at 291–292. We have consistently rejected attempts to satisfy the defendant-focused "minimum contacts" inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State. See *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U. S. 408, 417 (1984) ("[The] unilateral

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<sup>6</sup>"Specific" or "case-linked" jurisdiction "depends on an 'affiliatio[n] between the forum and the underlying controversy'" (i.e., an "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation"). *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U. S. \_\_\_\_ (2011) (slip op., at 2). This is in contrast to "general" or "all purpose" jurisdiction, which permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit (e.g., domicile). Respondents rely on specific jurisdiction only.

## Opinion of the Court

activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction"). We have thus rejected a plaintiff's argument that a Florida court could exercise personal jurisdiction over a trustee in Delaware based solely on the contacts of the trust's settlor, who was domiciled in Florida and had executed powers of appointment there. *Hanson v. Denckla*, 357 U. S. 235, 253–254 (1958). We have likewise held that Oklahoma courts could not exercise personal jurisdiction over an automobile distributor that supplies New York, New Jersey, and Connecticut dealers based only on an automobile purchaser's act of driving it on Oklahoma highways. *World-Wide Volkswagen Corp.*, *supra*, at 298. Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be "decisive in determining whether the defendant's due process rights are violated." *Rush*, 444 U. S., at 332.

Second, our "minimum contacts" analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there. See, e.g., *International Shoe*, *supra*, at 319 (Due process "does not contemplate that a state may make binding a judgment *in personam* against an individual . . . with which the state has no contacts, ties, or relations"); *Hanson*, *supra*, at 251 ("However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him"). Accordingly, we have upheld the assertion of jurisdiction over defendants who have purposefully "reach[ed] out beyond" their State and into another by, for example, entering a contractual relationship that "envisioned continuing and wide-reaching contacts" in the forum State, *Burger King*, *supra*, at 479–480, or by circulating maga-

## Opinion of the Court

zines to "deliberately exploi[t]" a market in the forum State, *Keeton, supra*, at 781. And although physical presence in the forum is not a prerequisite to jurisdiction, *Burger King, supra*, at 476, physical entry into the State—either by the defendant in person or through an agent, goods, mail, or some other means—is certainly a relevant contact. See, e.g., *Keeton, supra*, at 773-774.

But the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him. See *Burger King, supra*, at 478 ("If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot"); *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U. S. 84, 93 (1978) (declining to "find personal jurisdiction in a State . . . merely because [the plaintiff in a child support action] was residing there"). To be sure, a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties. But a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction. See *Rush, supra*, at 332 ("Naturally, the parties' relationships with each other may be significant in evaluating their ties to the forum. The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction"). Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts he makes by interacting with other persons affiliated with the State. *Burger King*, 471 U. S., at 475 (internal quotation marks omitted).

## Opinion of the Court

## 2

These same principles apply when intentional torts are involved. In that context, it is likewise insufficient to rely on a defendant's "random, fortuitous, or attenuated contacts" or on the "unilateral activity" of a plaintiff. *Ibid.* (same). A forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum.

*Calder v. Jones*, 465 U.S. 783, illustrates the application of these principles. In *Calder*, a California actress brought a libel suit in California state court against a reporter and an editor, both of whom worked for the National Enquirer at its headquarters in Florida. The plaintiff's libel claims were based on an article written and edited by the defendants in Florida for publication in the National Enquirer, a national weekly newspaper with a California circulation of roughly 600,000.

We held that California's assertion of jurisdiction over the defendants was consistent with due process. Although we recognized that the defendants' activities "focus[ed]" on the plaintiff, our jurisdictional inquiry "focuse[d]" on "the relationship among the defendant, the forum, and the litigation." *Id.*, at 788 (quoting *Shaffer*, 433 U.S., at 204). Specifically, we examined the various contacts the defendants had created with California (and not just with the plaintiff) by writing the allegedly libelous story.

We found those forum contacts to be ample: The defendants relied on phone calls to "California sources" for the information in their article; they wrote the story about the plaintiff's activities in California; they caused reputational injury in California by writing an allegedly libelous article that was widely circulated in the State; and the "brunt" of that injury was suffered by the plaintiff in that State. 465 U.S., at 788–789. "In sum, California [wa]s the focal point both of the story and of the harm suffered."

## Opinion of the Court

*Id.*, at 789. Jurisdiction over the defendants was "therefore proper in California based on the 'effects' of their Florida conduct in California." *Ibid.*

The crux of *Calder* was that the reputation-based "effects" of the alleged libel connected the defendants to California, not just to the plaintiff. The strength of that connection was largely a function of the nature of the libel tort. However scandalous a newspaper article might be, it can lead to a loss of reputation only if communicated to (and read and understood by) third persons. See Restatement (Second) of Torts §577, Comment *b* (1976); see also *ibid.* ("[R]eputation is the estimation in which one's character is held by his neighbors or associates"). Accordingly, the reputational injury caused by the defendants' story would not have occurred but for the fact that the defendants wrote an article for publication in California that was read by a large number of California citizens. Indeed, because publication to third persons is a necessary element of libel, see *id.*, §558, the defendants' intentional tort actually occurred in California. *Keeton*, 465 U. S., at 777 ("The tort of libel is generally held to occur wherever the offending material is circulated"). In this way, the "effects" caused by the defendants' article—i.e., the injury to the plaintiff's reputation in the estimation of the California public—connected the defendants' conduct to California, not just to a plaintiff who lived there. That connection, combined with the various facts that gave the article a California focus, sufficed to authorize the California court's exercise of jurisdiction.<sup>7</sup>

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<sup>7</sup>The defendants in *Calder* argued that no contacts they had with California were sufficiently purposeful because their employer was responsible for circulation of the article. See *Calder v. Jones*, 465 U. S. 783, 789 (1984). We rejected that argument. Even though the defendants did not circulate the article themselves, they "expressly aimed" "their intentional, and allegedly tortious, actions" at California because they knew the *National Enquirer* "ha[d] its largest circulation" in

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## III

Applying the foregoing principles, we conclude that petitioner lacks the "minimal contacts" with Nevada that are a prerequisite to the exercise of jurisdiction over him. *Hanson*, 357 U. S., at 251. It is undisputed that no part of petitioner's course of conduct occurred in Nevada. Petitioner approached, questioned, and searched respondents, and seized the cash at issue, in the Atlanta airport. It is alleged that petitioner later helped draft a "false probable cause affidavit" in Georgia and forwarded that affidavit to a United States Attorney's Office in Georgia to support a potential action for forfeiture of the seized funds. 688 F. 3d, at 563. Petitioner never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada. In short, when viewed through the proper lens—whether the *defendant's* actions connect him to the *forum*—petitioner formed no jurisdictionally relevant contacts with Nevada.

The Court of Appeals reached a contrary conclusion by shifting the analytical focus from petitioner's contacts with the forum to his contacts with respondents. See *Rush*, 444 U. S., at 332. Rather than assessing petitioner's own contacts with Nevada, the Court of Appeals looked to petitioner's knowledge of respondents' "strong forum connections." 688 F. 3d, at 577–579, 581. In the court's view, that knowledge, combined with its conclusion that respondents suffered foreseeable harm in Nevada, satisfied the "minimum contacts" inquiry.<sup>8</sup> *Id.*, at 582.

This approach to the "minimum contacts" analysis

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California, and that the article would "have a potentially devastating impact" there. *Id.*, at 789–790.

<sup>8</sup> Respondents propose a substantially similar analysis. They suggest that "a defendant creates sufficient minimum contacts with a forum when he (1) intentionally targets (2) a known resident of the forum (3) for imposition of an injury (4) to be suffered by the plaintiff while she is residing in the forum state." Brief for Respondents 26–27.

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impermissibly allows a plaintiff's contacts with the defendant and forum to drive the jurisdictional analysis. Petitioner's actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections. Such reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections "decisive" in the jurisdictional analysis. See *Rush*, *supra*, at 332. It also obscures the reality that none of petitioner's challenged conduct had anything to do with Nevada itself.

Relying on *Calder*, respondents emphasize that they suffered the "injury" caused by petitioner's allegedly tortious conduct (i.e., the delayed return of their gambling funds) while they were residing in the forum. Brief for Respondents 14. This emphasis is likewise misplaced. As previously noted, *Calder* made clear that mere injury to a forum resident is not a sufficient connection to the forum.

Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.

Respondents' claimed injury does not evince a connection between petitioner and Nevada. Even if we consider the continuation of the seizure in Georgia to be a distinct injury, it is not the sort of effect that is tethered to Nevada in any meaningful way. Respondents (and only respondents) lacked access to their funds in Nevada not because anything independently occurred there, but because Nevada is where respondents chose to be at a time when they desired to use the funds seized by petitioner. Respondents would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled and found themselves wanting more money than

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they had. Unlike the broad publication of the forum-focused story in *Calder*, the effects of petitioner's conduct on respondents are not connected to the forum State in a way that makes those effects a proper basis for jurisdiction.<sup>9</sup>

The Court of Appeals pointed to other possible contacts with Nevada, each ultimately unavailing. Respondents' Nevada attorney contacted petitioner in Georgia, but that is precisely the sort of "unilateral activity" of a third party that "cannot satisfy the requirement of contact with the forum State." *Hanson*, 367 U.S., at 253. Respondents allege that some of the cash seized in Georgia "originated" in Nevada, but that attenuated connection was not created by petitioner, and the cash was in Georgia, not Nevada, when petitioner seized it. Finally, the funds were eventually returned to respondents in Nevada, but petitioner had nothing to do with that return (indeed, it seems likely that it was respondents' unilateral decision to have their funds sent to Nevada).

\* \* \*

Well-established principles of personal jurisdiction are sufficient to decide this case. The proper focus of the

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<sup>9</sup> Respondents warn that if we decide petitioner lacks minimum contacts in this case, it will bring about unfairness in cases where intentional torts are committed via the Internet or other electronic means (e.g., fraudulent access of financial accounts or "phishing" schemes). As an initial matter, we reiterate that the "minimum contacts" inquiry principally protects the liberty of the nonresident defendant, not the interests of the plaintiff. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291–292 (1980). In any event, this case does not present the very different questions whether and how a defendant's virtual "presence" and conduct translate into "contacts" with a particular State. To the contrary, there is no question where the conduct giving rise to this litigation took place: Petitioner seized physical cash from respondents in the Atlanta airport, and he later drafted and forwarded an affidavit in Georgia. We leave questions about virtual contacts for another day.

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"minimum contacts" inquiry in intentional-tort cases is "the relationship among the defendant, the forum, and the litigation." *Calder*, 465 U. S., at 788. And it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State. In this case, the application of those principles is clear: Petitioner's relevant conduct occurred entirely in Georgia, and the mere fact that his conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction. We therefore reverse the judgment of the Court of Appeals.

*It is so ordered.*

**WORLD-WIDE VOLKSWAGEN CORP. ET AL.**

**v.**

**WOODSON, DISTRICT JUDGE OF CREEK COUNTY, OKLAHOMA, ET. AL.**

No. 78-1078.

Supreme Court of United States.

Argued October 3, 1979.

Decided January 21, 1980.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

287 \*287 Herbert Rubin argued the cause for petitioners. With him on the briefs were Dan A. Rogers, Bernard J. Wald, and Ian Ceresney.

Jefferson G. Greer argued the cause for respondents. With him on the brief was Charles A. Whitebook.

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue before us is whether, consistently with the Due Process Clause of the Fourteenth Amendment, an Oklahoma court may exercise *in personam* jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products-liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma.

288 \*288 I

Respondents Harry and Kay Robinson purchased a new Audi automobile from petitioner Seaway Volkswagen, Inc (Seaway), in Massena, N. Y., in 1976. The following year the Robinson family, who resided in New York, left that State for a new home in Arizona. As they passed through the State of Oklahoma, another car struck their Audi in the rear, causing a fire which severely burned Kay Robinson and her two children.<sup>[1]</sup>

The Robinsons<sup>[2]</sup> subsequently brought a products-liability action in the District Court for Creek County, Okla., claiming that their injuries resulted from defective design and placement of the Audi's gas tank and fuel system. They joined as defendants the automobile's manufacturer, Audi NSU Auto Union Aktiengesellschaft (Audi); its importer, Volkswagen of America, Inc. (Volkswagen); its regional distributor, petitioner World-Wide Volkswagen Corp. (World-Wide); and its retail dealer, petitioner Seaway. Seaway and World-Wide entered special appearances,<sup>[3]</sup> claiming that Oklahoma's exercise of jurisdiction over them would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment.<sup>[4]</sup>

289 \*289 The facts presented to the District Court showed that World-Wide is incorporated and has its business office in New York. It distributes vehicles, parts, and accessories, under contract with Volkswagen, to retail dealers in New York, New Jersey, and Connecticut. Seaway, one of these retail dealers, is incorporated and has its place of business in New York. Insofar as the record reveals, Seaway and World-Wide are fully independent corporations whose relations with each other and with Volkswagen and Audi are contractual only. Respondents adduced no evidence that either World-Wide or Seaway does any business in Oklahoma, ships or sells any products to or in that State, has an agent to receive process there, or purchases advertisements in any media calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument, Tr. of Oral Arg. 32, there was no showing that any automobile sold

by World-Wide or Seaway has ever entered Oklahoma with the single exception of the vehicle involved in the present case..

## II

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant. Kulko v. California Superior Court, 436 U. S. 84, 91 (1978). A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennover v. Neff, 95 U. S. 714, 732-733 (1878). Due process requires that the defendant be given adequate notice of the suit, Mullane v. Central Hanover Trust Co., 339 U. S. 306, 313-314 (1950), and be subject to the personal jurisdiction of the court, International Shoe Co. v. Washington, 326 U. S. 310 (1945). In the present case, it is not contended that notice was inadequate; the only question is whether these particular petitioners were subject to the jurisdiction of the Oklahoma courts.

As has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the defendant and the forum State. International Shoe Co. v. Washington, *supra*, at 316. The concept of minimum contacts, in turn, can be seen to perform two related.  
292 but \*292 distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend

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"traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, *supra*, at 316, quoting Milliken v. Meyer, 311 U. S. 457, 463 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 328 U. S., at 317. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see McGee v. International Life Ins. Co., 355 U. S. 220, 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see Kulko v. California Superior Court, *supra*, at 92, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. Shaffer v. Heitner, 433 U. S. 186, 211, n. 37 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see Kulko v. California Superior Court, *supra*, at 93, 98.

293 The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in McGee v. International Life Ins. Co., *supra*, at 222-223 \*293 this trend is largely attributable to a fundamental transformation in the American economy:

"Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

The historical developments noted in McGee, of course, have only accelerated in the generation since that case was decided.

Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. The economic interdependence of the States was foreseen and desired by the Framers. In the Commerce Clause, they provided that the Nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities. H. P. Hood & Sons, Inc. v. Du Mond, 336 U. S. 525, 538 (1949). But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

294 Hence, even while abandoning the shibboleth that "[t]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established," Pennover v. Neff, *supra*, at 720, we emphasized that the reasonableness of asserting jurisdiction over the defendant must be assessed "in the context of our federal system of government," \*294 International Shoe Co. v. Washington, 326 U. S., at 317, and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws," *id.*, at 319. As we noted in Hanson v. Denckla, 357 U. S. 235, 250-251 (1958):

"As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of Pennover v. Neff, 95 U. S. 714, to the flexible standard of International Shoe Co. v. Washington, 326 U. S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citation omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States."

Thus, the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations," International Shoe Co. v.

Washington, supra, at 319. Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment. Hanson v. Denckla, supra, at 251, 254.

295 \*295 III

Applying these principles to the case at hand,<sup>119</sup> we find in the record before us a total absence of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

It is argued, however, that because an automobile is mobile by its very design and purpose it was "foreseeable" that the Robinsons' Audi would cause injury in Oklahoma. Yet "foreseeability" alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. In Hanson v. Denckla, supra, it was no doubt foreseeable that the settlor of a Delaware trust would subsequently move to Florida and seek to exercise a power of appointment there; yet we held that Florida courts could not constitutionally \*296 exercise jurisdiction over a Delaware trustee that had no other contacts with the forum State. In Kulko v. California Superior Court, 436 U. S. 84 (1978), it was surely "foreseeable" that a divorced wife would move to California from New York, the domicile of the marriage, and that a minor daughter would live with the mother. Yet we held that California could not exercise jurisdiction in a child-support action over the former husband who had remained in New York.

If foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there, see Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F. 2d 502, 507 (CA4 1956); a Wisconsin seller of a defective automobile jack could be haled before a distant court for damage caused in New Jersey, Reilly v. Phil. Tolkar Pontiac, Inc., 372 F. Supp. 1205 (NJ 1974); or a Florida soft-drink concessionaire could be summoned to Alaska to account for injuries happening there, see Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 170-171 (Minn. 1969). Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel. We recently abandoned the outworn rule of Harris v. Balk, 198 U. S. 215 (1905), that the interest of a creditor in a debt could be extinguished or otherwise affected by any State having transitory jurisdiction over the debtor. Shaffer v. Heitner, 433 U. S. 186 (1977). Having interred the mechanical rule that a creditor's amenability to a *quasi in rem* action travels with his debtor, we are unwilling to endorse an analogous principle in the present case.<sup>111</sup>

297 \*297 This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. See Kulko v. California Superior Court, supra, at 97-98; Shaffer v. Heitner, 433 U. S., at 216; and see *Id.*, at 217-219 (STEVENS, J., concurring in judgment). The Due Process Clause, by ensuring the "orderly administration of the laws," International Shoe Co. v. Washington, 326 U. S., at 319, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," Hanson v. Denckla, 357 U. S., at 253, it has clear notice that it is subject to suit there, and can act to alleviate the risk of

burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence 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. The forum State does not '298 exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Cf. Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

But there is no such or similar basis for Oklahoma jurisdiction over World-Wide or Seaway in this case. Seaway's sales are made in Massena, N. Y. World-Wide's market, although substantially larger, is limited to dealers in New York, New Jersey, and Connecticut. There is no evidence of record that any automobiles distributed by World-Wide are sold to retail customers outside this tri-state area. It is foreseeable that the purchasers of automobiles sold by World-Wide and Seaway may take them to Oklahoma. But the mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." Hanson v. Denckla, *supra*, at 253.

In a variant on the previous argument, it is contended that jurisdiction can be supported by the fact that petitioners earn substantial revenue from goods used in Oklahoma. The Oklahoma Supreme Court so found, 585 P. 2d, at 354-355, drawing the inference that because one automobile sold by petitioners had been used in Oklahoma, others might have been used there also. While this inference seems less than compelling on the facts of the instant case, we need not question the court's factual findings in order to reject its reasoning.

This argument seems to make the point that the purchase of automobiles in New York, from which the petitioners earn substantial revenue, would not occur *but for* the fact that the automobiles are capable of use in distant States like Oklahoma. Respondents observe that the very purpose of an automobile is to travel, and that travel of automobiles sold by petitioners is facilitated by an extensive chain of Volkswagen service centers throughout the country, including some in Oklahoma.<sup>123</sup> '299 However, financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. See Kulko v. California Superior Court, 436 U. S., at 94-95. In our view, whatever marginal revenues petitioners may receive by virtue of the fact that their products are capable of use in Oklahoma is far too attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them.

Because we find that petitioners have no "contacts, ties, or relations" with the State of Oklahoma, International Shoe Co. v. Washington, *supra*, at 319, the judgment of the Supreme Court of Oklahoma is

*Reversed.*

Opinion of KENNEDY, J.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 09–1343

J. MCINTYRE MACHINERY, LTD., PETITIONER v.  
ROBERT NICASTRO, INDIVIDUALLY AND AS  
ADMINISTRATOR OF THE ESTATE OF  
ROSEANNE NICASTRO

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF NEW  
JERSEY

[June 27, 2011]

JUSTICE KENNEDY announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join.

Whether a person or entity is subject to the jurisdiction of a state court despite not having been present in the State either at the time of suit or at the time of the alleged injury, and despite not having consented to the exercise of jurisdiction, is a question that arises with great frequency in the routine course of litigation. The rules and standards for determining when a State does or does not have jurisdiction over an absent party have been unclear because of decades-old questions left open in *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102 (1987).

Here, the Supreme Court of New Jersey, relying in part on *Asahi*, held that New Jersey's courts can exercise jurisdiction over a foreign manufacturer of a product so long as the manufacturer "knows or reasonably should know that its products are distributed through a nationwide distribu-

## Opinion of KENNEDY, J.

tion system that might lead to those products being sold in any of the fifty states." *Nicastro v. McIntyre Machinery America, Ltd.*, 201 N. J. 48, 76, 77, 987 A. 2d 575, 591, 592 (2010). Applying that test, the court concluded that a British manufacturer of scrap metal machines was subject to jurisdiction in New Jersey, even though at no time had it advertised in, sent goods to, or in any relevant sense targeted the State.

That decision cannot be sustained. Although the New Jersey Supreme Court issued an extensive opinion with careful attention to this Court's cases and to its own precedent, the "stream of commerce" metaphor carried the decision far afield. Due process protects the defendant's right not to be coerced except by lawful judicial power. As a general rule, the exercise of judicial power is not lawful unless the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U. S. 235, 253 (1958). There may be exceptions, say, for instance, in cases involving an intentional tort. But the general rule is applicable in this products-liability case, and the so-called "stream-of-commerce" doctrine cannot displace it.

## I

This case arises from a products-liability suit filed in New Jersey state court. Robert Nicastro seriously injured his hand while using a metal-shearing machine manufactured by J. McIntyre Machinery, Ltd. (J. McIntyre). The accident occurred in New Jersey, but the machine was manufactured in England, where J. McIntyre is incorporated and operates. The question here is whether the New Jersey courts have jurisdiction over J. McIntyre, notwithstanding the fact that the company at no time either marketed goods in the State or shipped them there. Nicastro was a plaintiff in the New Jersey trial court and is

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the respondent here; J. McIntyre was a defendant and is now the petitioner.

At oral argument in this Court, Nicaastro's counsel stressed three primary facts in defense of New Jersey's assertion of jurisdiction over J. McIntyre. See Tr. of Oral Arg. 29-30.

First, an independent company agreed to sell J. McIntyre's machines in the United States. J. McIntyre itself did not sell its machines to buyers in this country beyond the U.S. distributor, and there is no allegation that the distributor was under J. McIntyre's control.

Second, J. McIntyre officials attended annual conventions for the scrap recycling industry to advertise J. McIntyre's machines alongside the distributor. The conventions took place in various States, but never in New Jersey.

Third, no more than four machines (the record suggests only one, see App. to Pet. for Cert. 130a), including the machine that caused the injuries that are the basis for this suit, ended up in New Jersey.

In addition to these facts emphasized by respondent, the New Jersey Supreme Court noted that J. McIntyre held both United States and European patents on its recycling technology. 201 N. J., at 55, 987 A. 2d, at 579. It also noted that the U. S. distributor "structured [its] advertising and sales efforts in accordance with" J. McIntyre's "direction and guidance whenever possible," and that "at least some of the machines were sold on consignment to" the distributor. *Id.*, at 55, 987 A. 2d, at 579 (internal quotation marks omitted).

In light of these facts, the New Jersey Supreme Court concluded that New Jersey courts could exercise jurisdiction over petitioner without contravention of the Due Process Clause. Jurisdiction was proper, in that court's view, because the injury occurred in New Jersey; because petitioner knew or reasonably should have known "that its

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products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states"; and because petitioner failed to "take some reasonable step to prevent the distribution of its products in this State." *Id.*, at 77, 987 A. 2d, at 592.

Both the New Jersey Supreme Court's holding and its account of what it called "[t]he stream-of-commerce doctrine of jurisdiction," *id.*, at 80, 987 A. 2d, at 594, were incorrect, however. This Court's *Asahi* decision may be responsible in part for that court's error regarding the stream of commerce, and this case presents an opportunity to provide greater clarity.

## II

The Due Process Clause protects an individual's right to be deprived of life, liberty, or property only by the exercise of lawful power. Cf. *Giaccio v. Pennsylvania*, 382 U.S. 399, 403 (1966) (The Clause "protect[s] a person against having the Government impose burdens upon him except in accordance with the valid laws of the land"). This is no less true with respect to the power of a sovereign to resolve disputes through judicial process than with respect to the power of a sovereign to prescribe rules of conduct for those within its sphere. See *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998) ("Jurisdiction is power to declare the law"). As a general rule, neither statute nor judicial decree may bind strangers to the State. Cf. *Burnham v. Superior Court of Cal., County of Marin*, 495 U.S. 604, 608–609 (1990) (opinion of SCALIA, J.) (invoking "the phrase *coram non iudice*, 'before a person not a judge'—meaning, in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment*'").

A court may subject a defendant to judgment only when the defendant has sufficient contacts with the sovereign

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"such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U. S. 457, 463 (1940)). Freeform notions of fundamental fairness divorced from traditional practice cannot transform a judgment rendered in the absence of authority into law. As a general rule, the sovereign's exercise of power requires some act by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws," *Hanson*, 357 U. S., at 253, though in some cases, as with an intentional tort, the defendant might well fall within the State's authority by reason of his attempt to obstruct its laws. In products-liability cases like this one, it is the defendant's purposeful availment that makes jurisdiction consistent with "traditional notions of fair play and substantial justice."

A person may submit to a State's authority in a number of ways. There is, of course, explicit consent. *E.g.*, *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U. S. 694, 703 (1982). Presence within a State at the time suit commences through service of process is another example. See *Burnham*, *supra*. Citizenship or domicile—or, by analogy, incorporation or principal place of business for corporations—also indicates general submission to a State's powers. *Goodyear Dunlop Tires Operations, S. A. v. Brown*, *post*, p. \_\_\_\_\_. Each of these examples reveals circumstances, or a course of conduct, from which it is proper to infer an intention to benefit from and thus an intention to submit to the laws of the forum State. Cf. *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 476 (1985). These examples support exercise of the general jurisdiction of the State's courts and allow the State to resolve both matters that originate within the State and those based on activities and events elsewhere. *Helicop-*

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*teros Nacionales de Colombia, S. A. v. Hall*, 466 U. S. 408, 414, and n. 9 (1984). By contrast, those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter.

There is also a more limited form of submission to a State's authority for disputes that "arise out of or are connected with the activities within the state." *International Shoe Co., supra*, at 319. Where a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws," *Hanson, supra*, at 253, it submits to the judicial power of an otherwise foreign sovereign to the extent that power is exercised in connection with the defendant's activities touching on the State. In other words, submission through contact with and activity directed at a sovereign may justify specific jurisdiction "in a suit arising out of or related to the defendant's contacts with the forum." *Helicopteros, supra*, at 414, n. 8; see also *Goodyear, post*, at 2.

The imprecision arising from *Asahi*, for the most part, results from its statement of the relation between jurisdiction and the "stream of commerce." The stream of commerce, like other metaphors, has its deficiencies as well as its utility. It refers to the movement of goods from manufacturers through distributors to consumers, yet beyond that descriptive purpose its meaning is far from exact. This Court has stated that a defendant's placing goods into the stream of commerce "with the expectation that they will be purchased by consumers within the forum State" may indicate purposeful availment. *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 298 (1980) (finding that expectation lacking). But that statement does not amend the general rule of personal jurisdiction. It merely observes that a defendant may in an appropriate case be subject to jurisdiction without entering the

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forum—itself an unexceptional proposition—as where manufacturers or distributors “seek to serve” a given State’s market. *Id.*, at 295. The principal inquiry in cases of this sort is whether the defendant’s activities manifest an intention to submit to the power of a sovereign. In other words, 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.” *Hanson, supra*, at 253; *Insurance Corp., supra*, at 704–705 (“[A]ctions of the defendant may amount to a legal submission to the jurisdiction of the court”). Sometimes a defendant does so by sending its goods rather than its agents. The defendant’s transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.

In *Asahi*, an opinion by Justice Brennan for four Justices outlined a different approach. It discarded the central concept of sovereign authority in favor of considerations of fairness and foreseeability. As that concurrence contended, “jurisdiction premised on the placement of a product into the stream of commerce [without more] is consistent with the Due Process Clause,” for “[a]s long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise.” 480 U.S., at 117 (opinion concurring in part and concurring in judgment). It was the premise of the concurring opinion that the defendant’s ability to anticipate suit renders the assertion of jurisdiction fair. In this way, the opinion made foreseeability the touchstone of jurisdiction.

The standard set forth in Justice Brennan’s concurrence was rejected in an opinion written by Justice O’Connor; but the relevant part of that opinion, too, commanded the assent of only four Justices, not a majority of the Court.

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That opinion stated: "The 'substantial connection' between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." *Id.*, at 112 (emphasis deleted; citations omitted).

Since *Asahi* was decided, the courts have sought to reconcile the competing opinions. But Justice Brennan's concurrence, advocating a rule based on general notions of fairness and foreseeability, is inconsistent with the premises of lawful judicial power. This Court's precedents make clear that it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment.

The conclusion that jurisdiction is in the first instance a question of authority rather than fairness explains, for example, why the principal opinion in *Burnham* "conducted no independent inquiry into the desirability or fairness" of the rule that service of process within a State suffices to establish jurisdiction over an otherwise foreign defendant. 495 U. S., at 621. As that opinion explained, "[t]he view developed early that each State had the power to hale before its courts any individual who could be found within its borders." *Id.*, at 610. Furthermore, were general fairness considerations the touchstone of jurisdiction, a lack of purposeful availment might be excused where carefully crafted judicial procedures could otherwise protect the defendant's interests, or where the plaintiff would suffer substantial hardship if forced to litigate in a foreign forum. That such considerations have not been deemed controlling is instructive. See, e.g., *World-Wide Volkswagen*, *supra*, at 294.

Two principles are implicit in the foregoing. First, personal jurisdiction requires a forum-by-forum, or sovereign-

## Opinion of KENNEDY, J.

by-sovereign, analysis. The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct. Personal jurisdiction, of course, restricts "judicial power not as a matter of sovereignty, but as a matter of individual liberty," for due process protects the individual's right to be subject only to lawful power. *Insurance Corp.*, 456 U. S., at 702. But whether a judicial judgment is lawful depends on whether the sovereign has authority to render it.

The second principle is a corollary of the first. Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State. This is consistent with the premises and unique genius of our Constitution. Ours is "a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U. S. Term. Limits, Inc. v. Thornton*, 514 U. S. 779, 838 (1995) (KENNEDY, J., concurring). For jurisdiction, a litigant may have the requisite relationship with the United States Government but not with the government of any individual State. That would be an exceptional case, however. If the defendant is a domestic domiciliary, the courts of its home State are available and can exercise general jurisdiction. And if another State were to assert jurisdiction in an inappropriate case, it would upset the federal balance, which posits that each State has a sovereignty that is not subject to unlawful intrusion by other States. Furthermore, foreign corporations will often target or concentrate on particular States, subjecting them to specific jurisdiction in those forums.

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It must be remembered, however, that although this case and *Asahi* both involve foreign manufacturers, the undesirable consequences of Justice Brennan's approach are no less significant for domestic producers. The owner of a small Florida farm might sell crops to a large nearby distributor, for example, who might then distribute them to grocers across the country. If foreseeability were the controlling criterion, the farmer could be sued in Alaska or any number of other States' courts without ever leaving town. And the issue of foreseeability may itself be contested so that significant expenses are incurred just on the preliminary issue of jurisdiction. Jurisdictional rules should avoid these costs whenever possible.

The conclusion that the authority to subject a defendant to judgment depends on purposeful availment, consistent with Justice O'Connor's opinion in *Asahi*, does not by itself resolve many difficult questions of jurisdiction that will arise in particular cases. The defendant's conduct and the economic realities of the market the defendant seeks to serve will differ across cases, and judicial exposition will, in common-law fashion, clarify the contours of that principle.

## III

In this case, petitioner directed marketing and sales efforts at the United States. It may be that, assuming it were otherwise empowered to legislate on the subject, the Congress could authorize the exercise of jurisdiction in appropriate courts. That circumstance is not presented in this case, however, and it is neither necessary nor appropriate to address here any constitutional concerns that might be attendant to that exercise of power. See *Asahi*, 480 U. S., at 113, n. Nor is it necessary to determine what substantive law might apply were Congress to authorize jurisdiction in a federal court in New Jersey. See *Hanson*, 357 U. S., at 254 ("The issue is personal jurisdiction, not

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choice of law"). A sovereign's legislative authority to regulate conduct may present considerations different from those presented by its authority to subject a defendant to judgment in its courts. Here the question concerns the authority of a New Jersey state court to exercise jurisdiction, so it is petitioner's purposeful contacts with New Jersey, not with the United States, that alone are relevant.

Respondent has not established that J. McIntyre engaged in conduct purposefully directed at New Jersey. Recall that respondent's claim of jurisdiction centers on three facts: The distributor agreed to sell J. McIntyre's machines in the United States; J. McIntyre officials attended trade shows in several States but not in New Jersey; and up to four machines ended up in New Jersey. The British manufacturer had no office in New Jersey; it neither paid taxes nor owned property there; and it neither advertised in, nor sent any employees to, the State. Indeed, after discovery the trial court found that the "defendant does not have a single contact with New Jersey short of the machine in question ending up in this state." App. to Pet. for Cert. 130a. These facts may reveal an intent to serve the U. S. market, but they do not show that J. McIntyre purposefully availed itself of the New Jersey market.

It is notable that the New Jersey Supreme Court appears to agree, for it could "not find that J. McIntyre had a presence or minimum contacts in this State—in any jurisprudential sense—that would justify a New Jersey court to exercise jurisdiction in this case." 201 N. J., at 61, 987 A. 2d, at 582. The court nonetheless held that petitioner could be sued in New Jersey based on a "stream-of-commerce theory of jurisdiction." *Ibid.* As discussed, however, the stream-of-commerce metaphor cannot supersede either the mandate of the Due Process Clause or the limits on judicial authority that Clause ensures. The New Jersey Supreme Court also cited "significant policy rea-

## Opinion of KENNEDY, J.

sons" to justify its holding, including the State's "strong interest in protecting its citizens from defective products." *Id.*, at 75, 987 A. 2d, at 590. That interest is doubtless strong, but the Constitution commands restraint before discarding liberty in the name of expediency.

\* \* \*

Due process protects petitioner's right to be subject only to lawful authority. At no time did petitioner engage in any activities in New Jersey that reveal an intent to invoke or benefit from the protection of its laws. New Jersey is without power to adjudge the rights and liabilities of J. McIntyre, and its exercise of jurisdiction would violate due process. The contrary judgment of the New Jersey Supreme Court is

*Reversed.*

BREYER, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 09-1343

J. MCINTYRE MACHINERY, LTD., PETITIONER v.  
ROBERT NICASTRO, INDIVIDUALLY AND AS  
ADMINISTRATOR OF THE ESTATE OF  
ROSEANNE NICASTRO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW  
JERSEY

[June 27, 2011]

JUSTICE BREYER, with whom JUSTICE ALITO joins, concurring in the judgment.

The Supreme Court of New Jersey adopted a broad understanding of the scope of personal jurisdiction based on its view that "[t]he increasingly fast-paced globalization of the world economy has removed national borders as barriers to trade." *Nicastro v. McIntyre Machinery America, Ltd.*, 201 N. J. 48, 52, 987 A. 2d 575, 577 (2010). I do not doubt that there have been many recent changes in commerce and communication, many of which are not anticipated by our precedents. But this case does not present any of those issues. So I think it unwise to announce a rule of broad applicability without full consideration of the modern-day consequences.

In my view, the outcome of this case is determined by our precedents. Based on the facts found by the New Jersey courts, respondent Robert Nicastro failed to meet his burden to demonstrate that it was constitutionally proper to exercise jurisdiction over petitioner J. McIntyre Machinery, Ltd. (British Manufacturer), a British firm that manufactures scrap-metal machines in Great Britain and sells them through an independent distributor in the United States (American Distributor). On that basis, I

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agrees with the plurality that the contrary judgment of the Supreme Court of New Jersey should be reversed.

I

In asserting jurisdiction over the British Manufacturer, the Supreme Court of New Jersey relied most heavily on three primary facts as providing constitutionally sufficient "contacts" with New Jersey, thereby making it fundamentally fair to hale the British Manufacturer before its courts: (1) The American Distributor on one occasion sold and shipped one machine to a New Jersey customer, namely, Mr. Nicastro's employer, Mr. Curcio; (2) the British Manufacturer permitted, indeed wanted, its independent American Distributor to sell its machines to anyone in America willing to buy them; and (3) representatives of the British Manufacturer attended trade shows in "such cities as Chicago, Las Vegas, New Orleans, Orlando, San Diego, and San Francisco." *Id.*, at 54-55, 987 A. 2d, at 578-579. In my view, these facts do not provide contacts between the British firm and the State of New Jersey constitutionally sufficient to support New Jersey's assertion of jurisdiction in this case.

None of our precedents finds that a single isolated sale, even if accompanied by the kind of sales effort indicated here, is sufficient. Rather, this Court's previous holdings suggest the contrary. The Court has held that a single sale to a customer who takes an accident-causing product to a different State (where the accident takes place) is not a sufficient basis for asserting jurisdiction. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286 (1980). And the Court, in separate opinions, has strongly suggested that a single sale of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant, even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place. See *Asahi Metal*

BREYER, J., concurring in judgment

*Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U. S. 102, 111, 112 (1987) (opinion of O'Connor, J.) (requiring "something more" than simply placing "a product into the stream of commerce," even if defendant is "awar[e]" that the stream "may or will sweep the product into the forum State"); *id.*, at 117 (Brennan, J., concurring in part and concurring in judgment) (jurisdiction should lie where a sale in a State is part of "the regular and anticipated flow" of commerce into the State, but not where that sale is only an "edd[y]," i.e., an isolated occurrence); *id.*, at 122 (Stevens, J., concurring in part and concurring in judgment) (indicating that "the volume, the value, and the hazardous character" of a good may affect the jurisdictional inquiry and emphasizing Asahi's "regular course of dealing").

Here, the relevant facts found by the New Jersey Supreme Court show no "regular . . . flow" or "regular course" of sales in New Jersey; and there is no "something more," such as special state-related design, advertising, advice, marketing, or anything else. Mr. Nicastro, who here bears the burden of proving jurisdiction, has shown no specific effort by the British Manufacturer to sell in New Jersey. He has introduced no list of potential New Jersey customers who might, for example, have regularly attended trade shows. And he has not otherwise shown that the British Manufacturer "purposefully avail[ed] itself of the privilege of conducting activities" within New Jersey, or that it delivered its goods in the stream of commerce "with the expectation that they will be purchased" by New Jersey users. *World-Wide Volkswagen, supra*, at 297–298 (internal quotation marks omitted).

There may well have been other facts that Mr. Nicastro could have demonstrated in support of jurisdiction. And the dissent considers some of those facts. See *post*, at 3 (opinion of GINSBURG, J.) (describing the size and scope of New Jersey's scrap-metal business). But the plaintiff

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bears the burden of establishing jurisdiction, and here I would take the facts precisely as the New Jersey Supreme Court stated them. *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U. S. 694, 709 (1982); *Blakey v. Continental Airlines, Inc.*, 164 N. J. 38, 71, 751 A. 2d 538, 557 (2000); see 201 N. J., at 54–56, 987 A. 2d, at 578–579; App. to Pet. for Cert. 128a–137a (trial court's “reasoning and finding(s)”).

Accordingly, on the record present here, resolving this case requires no more than adhering to our precedents.

## II

I would not go further. Because the incident at issue in this case does not implicate modern concerns, and because the factual record leaves many open questions, this is an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules.

### A

The plurality seems to state strict rules that limit jurisdiction where a defendant does not “inten[d] to submit to the power of a sovereign” and cannot “be said to have targeted the forum.” *Ante*, at 7. But what do those standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through popup advertisements that it knows will be viewed in a forum? Those issues have serious commercial consequences but are totally absent in this case.

### B

But though I do not agree with the plurality's seemingly strict no-jurisdiction rule, I am not persuaded by the absolute approach adopted by the New Jersey Supreme

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Court and urged by respondent and his *amici*. Under that view, a producer is subject to jurisdiction for a products-liability action so long as it "knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states." 201 N.J., at 76-77, 987 A.2d, at 592 (emphasis added). In the context of this case, I cannot agree.

For one thing, to adopt this view would abandon the heretofore accepted inquiry of whether, focusing upon the relationship between "the defendant, the *forum*, and the litigation," it is fair, in light of the defendant's contacts *with that forum*, to subject the defendant to suit there. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) (emphasis added). It would ordinarily rest jurisdiction instead upon no more than the occurrence of a product-based accident in the forum State. But this Court has rejected the notion that a defendant's amenability to suit "travel[s] with the chattel." *World-Wide Volkswagen*, 444 U.S., at 296.

For another, I cannot reconcile so automatic a rule with the constitutional demand for "minimum contacts" and "purposeful[] avail[ment]," each of which rest upon a particular notion of defendant-focused fairness. *Id.*, at 291, 297 (internal quotation marks omitted). A rule like the New Jersey Supreme Court's would permit every State to assert jurisdiction in a products-liability suit against any domestic manufacturer who sells its products (made anywhere in the United States) to a national distributor, no matter how large or small the manufacturer, no matter how distant the forum, and no matter how few the number of items that end up in the particular forum at issue. What might appear fair in the case of a large manufacturer which specifically seeks, or expects, an equal-sized distributor to sell its product in a distant State might seem unfair in the case of a small manufacturer (say, an Appalachian potter) who sells his product (cups and sa-

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cers) exclusively to a large distributor, who resells a single item (a coffee mug) to a buyer from a distant State (Hawaii). I know too little about the range of these or in-between possibilities to abandon in favor of the more absolute rule what has previously been this Court's less absolute approach.

Further, the fact that the defendant is a foreign, rather than a domestic, manufacturer makes the basic fairness of an absolute rule yet more uncertain. I am again less certain than is the New Jersey Supreme Court that the nature of international commerce has changed so significantly as to require a new approach to personal jurisdiction.

It may be that a larger firm can readily "alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen, supra*, at 297. But manufacturers come in many shapes and sizes. It may be fundamentally unfair to require a small Egyptian shirt maker, a Brazilian manufacturing cooperative, or a Kenyan coffee farmer, selling its products through international distributors, to respond to products-liability tort suits in virtually every State in the United States, even those in respect to which the foreign firm has no connection at all but the sale of a single (allegedly defective) good. And a rule like the New Jersey Supreme Court suggests would require every product manufacturer, large or small, selling to American distributors to understand not only the tort law of every State, but also the wide variance in the way courts within different States apply that law. See, e.g., Dept. of Justice, Bureau of Justice Statistics Bulletin, *Tort Trials and Verdicts in Large Counties*, 2001, p. 11 (reporting percentage of plaintiff winners in tort trials among 46 populous counties, ranging from 17.9% (Worcester, Mass.) to 69.1% (Milwaukee, Wis.)).

BREYER, J., concurring in judgment

## C

At a minimum, I would not work such a change to the law in the way either the plurality or the New Jersey Supreme Court suggests without a better understanding of the relevant contemporary commercial circumstances. Insofar as such considerations are relevant to any change in present law, they might be presented in a case (unlike the present one) in which the Solicitor General participates. Cf. Tr. of Oral Arg. in *Goodyear Dunlop Tires Operations, S. A. v. Brown*, O. T. 2010, No. 10-76, pp. 20-22 (Government declining invitation at oral argument to give its views with respect to issues in this case).

This case presents no such occasion, and so I again reiterate that I would adhere strictly to our precedents and the limited facts found by the New Jersey Supreme Court. And on those grounds, I do not think we can find jurisdiction in this case. Accordingly, though I agree with the plurality as to the outcome of this case, I concur only in the judgment of that opinion and not its reasoning.

GINSBURG, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 09-1343

J. MCINTYRE MACHINERY, LTD., PETITIONER v.  
ROBERT NICASTRO, INDIVIDUALLY AND AS  
ADMINISTRATOR OF THE ESTATE OF  
ROSEANNE NICASTRO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW  
JERSEY

[June 27, 2011]

JUSTICE GINSBURG, with whom JUSTICE SOTOMAYOR  
and JUSTICE KAGAN join, dissenting.

A foreign industrialist seeks to develop a market in the United States for machines it manufactures. It hopes to derive substantial revenue from sales it makes to United States purchasers. Where in the United States buyers reside does not matter to this manufacturer. Its goal is simply to sell as much as it can, wherever it can. It excludes no region or State from the market it wishes to reach. But, all things considered, it prefers to avoid products liability litigation in the United States. To that end, it engages a U. S. distributor to ship its machines state-side. Has it succeeded in escaping personal jurisdiction in a State where one of its products is sold and causes injury or even death to a local user?

Under this Court's pathmarking precedent in *International Shoe Co. v. Washington*, 326 U. S. 310 (1945), and subsequent decisions, one would expect the answer to be unequivocally, "No." But instead, six Justices of this Court, in divergent opinions, tell us that the manufacturer has avoided the jurisdiction of our state courts, except perhaps in States where its products are sold in sizeable quantities. Inconceivable as it may have seemed yester-

day, the splintered majority today "turn[s] the clock back to the days before modern long-arm statutes when a manufacturer, to avoid being haled into court where a user is injured, need only Pilate-like wash its hands of a product by having independent distributors market it." Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U. C. Davis L. Rev. 531, 555 (1995).

### III

This case is illustrative of marketing arrangements for sales in the United States common in today's commercial world.<sup>6</sup> A foreign-country manufacturer engages a U. S. company to promote and distribute the manufacturer's products, not in any particular State, but anywhere and everywhere in the United States the distributor can attract purchasers. The product proves defective and injures a user in the State where the user lives or works. Often, as here, the manufacturer will have liability insurance covering personal injuries caused by its products. See Cupp, *Redesigning Successor Liability*, 1999 U. Ill. L. Rev. 845, 870-871 (noting the ready availability of products liability insurance for manufacturers and citing a study showing, "between 1986 and 1996, [such] insurance cost manufacturers, on average, only sixteen cents for each \$100 of product sales"); App. 129-130.

In sum, McIntyre UK, by engaging McIntyre America to promote and sell its machines in the United States, "purposefully availed itself" of the United States market nationwide, not a market in a single State or a discrete collection of States. McIntyre UK thereby availed itself of

the market of all States in which its products were sold by its exclusive distributor. "Th[e] 'purposeful availment' requirement," this Court has explained, simply "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." *Burger King*, 471 U. S., at 475. Adjudicatory authority is appropriately exercised where "actions by the defendant *himself*" give rise to the affiliation with the forum. *Ibid.* How could McIntyre UK not have intended, by its actions targeting a national market, to sell products in the fourth largest destination for imports among all States of the United States and the largest scrap metal market? See *supra*, at 3, 10, n. 6. But see *ante*, at 11 (plurality opinion) (manufacturer's purposeful efforts to sell its products nationwide are "not . . . relevant" to the personal jurisdiction inquiry).

1985 CARNIVAL CRUISE LINES,  
INC., Petitioner

v.

Eulala SHUTE, et vir.

No. 89-1647.

Argued Jan. 15, 1991.

Decided April 17, 1991.

1991 Justice BLACKMUN delivered the opinion of the Court.

In this admiralty case we primarily consider whether the United States Court of Appeals for the Ninth Circuit correctly refused to enforce a forum-selection clause contained in tickets issued by petitioner Carnival Cruise Lines, Inc., to respondents Eulala and Russel Shute.

## I

The Shutes, through an Arlington, Wash., travel agent, purchased passage for a 7-day cruise on petitioner's ship, the *Tropicale*. Respondents paid the fare to the agent who forwarded the payment to petitioner's headquarters in Miami, Fla. Petitioner then prepared the tickets and sent them to respondents in the State of Washington. The face of each ticket, at its left-hand lower corner, contained this admonition:

"SUBJECT TO CONDITIONS OF CONTRACT ON LAST PAGES IMPORTANT! PLEASE READ CONTRACT—ON LAST PAGES 1, 2, 3" App. 15.

The following appeared on "contract page 1" of each ticket:

### "TERMS AND CONDITIONS OF PASSAGE CONTRACT TICKET

"8. (a) The acceptance of this ticket by the person or persons named hereon as

passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.

"8. It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract 1985 shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country." *Id.*, at 16.

The last quoted paragraph is the forum-selection clause at issue.

## II

Respondents boarded the *Tropicale* in Los Angeles, Cal. The ship sailed to Puerto Vallarta, Mexico, and then returned to Los Angeles. While the ship was in international waters off the Mexican coast, respondent Eulala Shute was injured when she slipped on a deck mat during a guided tour of the ship's galley. Respondents filed suit against petitioner in the United States District Court for the Western District of Washington, claiming that Mrs. Shute's injuries had been caused by the negligence of Carnival Cruise Lines and its employees. *Id.*, at 4.

Petitioner moved for summary judgment, contending that the forum clause in respondents' tickets required the Shutes to bring their suit against petitioner in a court in the State of Florida. Petitioner contended, alternatively, that the District Court lacked personal jurisdiction over petitioner because petitioner's contacts with the State of Washington were insubstantial. The District Court granted the motion, holding that petitioner's contacts with Washington were constitutionally insufficient to support the exercise of personal jurisdiction. See App. to Pet. for Cert. 60a.

The Court of Appeals reversed. Reasoning that "but for" petitioner's solicitation of business in Washington, respondents

would not have taken the cruise and Mrs. Shute would not have been injured, the court concluded that petitioner had sufficient contacts with Washington to justify the District Court's exercise of personal jurisdiction. 897 F.2d 377, 385-386 (CA9 1990).\*

<sup>1525</sup>Turning to the forum-selection clause, the Court of Appeals acknowledged that a court concerned with the enforceability of such a clause must begin its analysis with *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 92 S.Ct. 1907, 82 L.Ed.2d 513 (1972), where this Court held that forum-selection clauses, although not "historically ... favored," are "prima facie valid." *Id.*, at 9-10, 92 S.Ct., at 1913. See 897 F.2d, at 388. The appellate court concluded that the forum clause should not be enforced because it "was not freely bargained for." *Id.*, at 389. As an "independent justification" for refusing to enforce the clause, the Court of Appeals noted that there was evidence in the record to indicate that "the Shutes are physically and financially incapable of pursuing this litigation in Florida" and that the enforcement of the clause would operate to deprive them of their day in court and thereby contravene this Court's holding in *The Bremen*. 897 F.2d, at 389.

We granted certiorari to address the question whether the Court of Appeals was correct in holding that the District Court should hear respondents' tort claim against petitioner. 498 U.S. 807-808, 111 S.Ct. 39, 112 L.Ed.2d 16 (1990). Because we find the forum-selection clause to be dispositive of this question, we need not consider petition-

er's constitutional argument as to personal jurisdiction. See *Ashwander v. TVA*, 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring) ("It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case," quoting *Burton v. United States*, 196 U.S. 283, 295, 25 S.Ct. 243, 245, 49 L.Ed. 482 (1905)).

\*The Court of Appeals had filed an earlier opinion also reversing the District Court and ruling that the District Court had personal jurisdiction over the cruise line and that the forum-selection clause in the tickets was unreasonable and was not to be enforced. 863 F.2d 1437 (CA9 1983). That opinion, however, was withdrawn when the court certified to the Supreme Court of Washington the question whether the Washington long-arm statute, Wash.Rev.Code § 4.28.185 (1988), conferred personal jurisdiction over Carnival

Within this context, respondents urge that the forum clause should not be enforced because, contrary to this Court's teachings in *The Bremen*, the clause was not the product of negotiation, and enforcement effectively would deprive respondents of their day in court. Additionally, respondents contend that the clause violates the Limitation of Vessel Owner's Liability Act, 46 U.S.C.App. § 188c. We consider these arguments in turn.

#### IV

##### A

[2] Both petitioner and respondents argue vigorously that the Court's opinion in *The Bremen* governs this case, and each side purports to find ample support for its position in that [591] opinion's broad-ranging language. This seeming paradox derives in large part from key factual differences between this case and *The Bremen*, differences that preclude an automatic and simple application of *The Bremen*'s general principles to the facts here.

In *The Bremen*, this Court addressed the enforceability of a forum-selection clause in a contract between two business corporations. An American corporation, Zapata, made a contract with Unterweser, a German corporation, for the towage of Zapata's oceangoing drilling rig from Louisiana to a point in the Adriatic Sea off the coast of Italy. The agreement provided that any dispute arising under the contract was to be resolved in the London Court of Justice. After a storm in the Gulf of Mexico seriously damaged the rig, Zapata ordered Unterweser's ship to tow the rig to Tampa, Fla., the nearest point of refuge. Thereafter, Zapata sued Unterweser in admiralty in federal court at Tampa. Citing the forum clause, Unterweser moved to dismiss. The District Court denied Unterweser's motion, and the Court of Appeals for the Fifth Circuit, sitting en banc on rehearing, and by a sharply divided vote, affirmed. *In re Complaint of Unterweser Reederei GmbH*, 446 F.2d 907 (1971).

This Court vacated and remanded, stating that, in general, "a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power, such as that involved here, should be given full effect." 407 U.S., at 12-13, 92 S.Ct. at 1914-1915 (footnote omitted). The Court further generalized that "in the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside." *Id.*, at 15, 92 S.Ct., at 1916. The Court did not define precisely the circumstances that would make it unreasonable for a court to enforce a forum clause. Instead, the Court discussed a number of factors that made it reasonable to enforce the clause at issue in *The Bremen* and [592] that, presumably, would be pertinent in any determination whether to enforce a similar clause.

In this respect, the Court noted that there was "strong evidence that the forum clause was a vital part of the agreement, and [that] it would be unrealistic to think that the parties did not conduct their negotiations, including fixing the monetary terms, with the consequences of the forum clause figuring prominently in their calculations." *Id.*, at 14, 92 S.Ct., 1915 (footnote omitted). Further, the Court observed that it was not "dealing with an agreement between two Americans to resolve their essentially local disputes in a remote alien forum," and that in such a case, "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." *Id.*, at 17, 92 S.Ct., at 1917. The Court stated that even where the forum clause establishes a remote forum for resolution of conflicts, "the party claiming [unfairness] should bear a heavy burden of proof." *Ibid.*

In applying *The Bremen*, the Court of Appeals in the present litigation took note of the foregoing "reasonableness" factors and rather automatically decided that the forum-selection clause was unenforceable because,

unlike the parties in *The Bremen*, respondents are not business persons and did not negotiate the terms of the clause with petitioner. Alternatively, the Court of Appeals ruled that the clause should not be enforced because enforcement effectively would deprive respondents of an opportunity to litigate their claim against petitioner.

*The Bremen* concerned a "far from routine transaction between companies of two different nations contemplating the tow of an extremely costly piece of equipment from Louisiana across the Gulf of Mexico and the Atlantic Ocean, through the Mediterranean Sea to its final destination in the Adriatic Sea." *Id.*, at 13, 92 S.Ct., at 1915. These facts suggest that, even apart from the evidence of negotiation regarding the forum clause, it was entirely reasonable for the Court in *The Bremen* to have expected Unterweser and Zapata to have negotiated with care in selecting a forum for the resolution of disputes arising from their special towing contract.

In contrast, respondents' passage contract was purely routine and doubtless nearly identical to every commercial passage contract issued by petitioner and most other cruise lines. See, e.g., *Hodes v. S.N.C. Achille Lauro ed Altri-Gestione*, 858 F.2d 905, 910 (CA8 1988), cert. dismissed, 490 U.S. 1001, 109 S.Ct. 1633, 104 L.Ed.2d 149 (1989). In this context, it would be entirely unreasonable for us to assume that respondents—or any other cruise passenger—would negotiate with petitioner the terms of a forum-selection clause in an ordinary commercial cruise ticket. Common sense dictates that a ticket of this kind will be a form contract the terms of which are not subject to negotiation, and that an individual purchasing the ticket will not have bargaining parity with the cruise line. But by ignoring the crucial differences in the business contexts in which the respective contracts were executed, the Court of Appeals' analysis seems to us to have distorted somewhat this Court's holding in *The Bremen*.

In evaluating the reasonableness of the forum clause at issue in this case, we must refine the analysis of *The Bremen* to account for the realities of form passage contracts. As an initial matter, we do not adopt the Court of Appeals' determination that a non-negotiated forum-selection clause in a form ticket contract is never enforceable simply because it is not the subject of bargaining. Including a reasonable forum clause in a form contract of this kind well may be permissible for several reasons: First, a cruise line has a special interest in limiting the fora in which it potentially could be subject to suit. Because a cruise ship typically carries passengers from many locales, it is not unlikely that a mishap on a cruise could subject the cruise line to litigation in several different fora. See *The Bremen*, 407 U.S., at 13, and n. 15, 92 S.Ct., at 1915, and n. 15; *Hodes*, 858 F.2d, at 913. Additionally, a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions. See *Stewart Organization*, 487 U.S., at 33, 108 S.Ct., at 2246 (concurring opinion). Finally, it stands to reason that passengers who purchase tickets containing a forum clause like that at issue in this case benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued. Cf. *Northwestern Nat. Ins. Co. v. Donovan*, 916 F.2d 372, 378 (CA7 1990).

We also do not accept the Court of Appeals' "independent justification" for its conclusion that *The Bremen* dictates that the clause should not be enforced because "[t]here is evidence in the record to indicate that the Shutes are physically and financially incapable of pursuing this litigation in Florida." 897 F.2d, at 389. We do not defer to the Court of Appeals' findings of fact. In

dismissing the case for lack of personal jurisdiction over petitioner, the District Court made no finding regarding the physical and financial impediments to the Shutes' pursuing their case in Florida. The Court of Appeals' conclusory reference to the record provides no basis for this Court to validate the finding of inconvenience. Furthermore, the Court of Appeals did not place in proper context this Court's statement in *The Bremen* that "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." 407 U.S., at 17, 92 S.Ct., at 1917. The Court made this statement in evaluating a hypothetical "agreement between two Americans to resolve their essentially local disputes in a remote alien forum." *Ibid.* In the present case, Florida is not a "remote alien forum," nor—given the fact that Mrs. Shute's accident occurred off the coast of Mexico—is this dispute an essentially local one inherently more suited to resolution in the State of Washington than in Florida. In light of these distinctions, and because respondents do not claim lack of notice of the forum clause, we conclude that they have not satisfied the "heavy burden of proof," *ibid.*, required to set aside the clause on grounds of inconvenience.

rejecting the contract with impunity. In the case before us, therefore, we conclude that the Court of Appeals erred in refusing to enforce the forum-selection clause.

[3] It bears emphasis that forum-selection clauses contained in form passage contracts are subject to judicial scrutiny for fundamental fairness. In this case, there is no indication that petitioner set Florida as the forum in which disputes were to be resolved as a means of discouraging cruise passengers from pursuing legitimate claims. Any suggestion of such a bad-faith motive is belied by two facts: Petitioner has its principal place of business in Florida, and many of its cruises depart from and return to Florida ports. Similarly, there is no evidence that petitioner obtained respondents' accession to the forum clause by fraud or overreaching. Finally, respondents have conceded that they were given notice of the forum provision and, therefore, presumably retained the option of

## TERMS AND CONDITIONS OF PASSAGE CONTRACT TICKET

1. (a) Whenever the word "Carrier" is used in this Contract it shall mean and include, jointly and severally, the Vessel, its owners, operators, charterers and tenders. The term "Passenger" shall include, the plural where appropriate, and all persons engaging to and/or traveling under this Contract. The masculine includes the feminine.  
(b) The Master, Officers and Crew of the Vessel shall have the benefit of all of the terms and conditions of this contract.
2. This ticket is valid only for the person or persons named hereon as the passenger or passengers and cannot be transferred without the Carrier's consent written hereon. Passage money shall be deemed to be earned when paid and not refundable.
3. (a) The acceptance of this ticket by the person or persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.  
(b) The passenger admits a full understanding of the character of the Vessel and assumes all risk incident to travel and transportation and handling of passengers and cargo. The Vessel may or may not carry a ship's physician at the election of the Carrier. The fare includes full board, ordinary ship's food during the voyage, but no spirits, wine, beer or mineral waters.
4. The Carrier shall not be liable for any loss of life or personal injury or delay whatsoever wheresoever arising and howsoever caused even though the same may have been caused by the negligence or default of the Carrier or its servants or agents. No undertaking or warranty is given or shall be implied respecting the seaworthiness, fitness or condition of the Vessel. This exemption from liability shall extend to the employees, servants and agents of the Carrier and for this purpose this exemption shall be deemed to constitute a Contract entered into between the passenger and the Carrier on behalf of all persons who are or become from time to time its employees, servants or agents and all such persons shall to this extent be deemed to be parties to this Contract.

5. The Carrier shall not be liable for losses of valuables unless stored in the Vessel's safety depository and then not exceeding \$500 in any event.
6. If the Vessel carries a surgeon, physician, masseuse, barber, hair dresser or manicurist, it is done solely for the convenience of the passenger and any such person in dealing with the passenger is not and shall not be considered in any respect whatsoever, as the employee, servant or agent of the Carrier and the Carrier shall not be liable for any act or omission of such person or those under his orders or assisting him with respect to treatment, advice or care of any kind given to any passenger.  
The surgeon, physician, masseuse, barber, hair-dresser or manicurist shall be entitled to make a proper charge for any service performed with respect to a passenger and the Carrier shall not be concerned in any way whatsoever in any such arrangement.
7. The Carrier shall not be liable for any claims whatsoever of the passenger unless full particulars thereof in writing be given to the Carrier or their agents within 185 days after the passenger shall be landed from the Vessel or in the case the voyage is abandoned within 185 days thereafter. Still to recover any claim shall not be maintainable in any event unless commenced within one year after the date of the loss, injury or death.
8. It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country.
9. The Carrier in arranging for the service called for by all shore feature coupons or shore excursion tickets, acts only as agent for the holder thereof and assumes no responsibility and in no event shall be liable for any loss, damage, injury or delay to or of said person and/or baggage; property or effects in connection with said services, nor does Carrier guarantee the performance of any such service.

CONTRACT PAGE 1

- 10 Each fully paid adult passenger will be allowed an unlimited amount of baggage free of charge. Baggage means only trunks, valises, satchels, bags, hangers and bundles with their contents consisting of only such wearing apparel, toilet articles and similar personal effects as are necessary and appropriate for the station in life of the passenger and for the purpose of the journey.
- 11 No tools of trade, household goods, presents and/or property of others, jewelry, money, documents, valuables of any description including but not limited to such articles as are described in Section 4281 Revised Statute of the U.S.A. (46 USCA § 181) shall be carried except under and subject to the terms of a special written contract or Bill of Lading entered into with the Carrier prior to embarkation upon application of the passenger and the passenger hereby warrants that no such articles are contained in any receptacle or container presented by him as baggage hereunder, and if any such article or articles are shipped and the passenger's baggage in breach of this warranty no liability for negligence, gross or ordinary, shall attach to the Carrier for any loss or damage thereto.
12. It is stipulated and agreed that the aggregate value of each passenger's property under the Adult ticket does not exceed \$100.00 (half ticket, \$50.00) and any liability of the Carrier for any cause whatsoever with respect to said property shall not exceed such sum, unless the passenger shall in writing, delivered to the Carrier prior to embarkation, declare the true value thereof and pay to the Carrier prior to embarkation a sum (in U.S. Dollars) equal to 5% of the excess of such value, in which event the Carrier's liability shall be limited to the actual damages sustained to the property but not in excess of the declared value.
13. The Vessel shall be entitled to leave and enter ports with or without pilots or tugs, to tow and assist other vessels in any circumstances to return to or enter any port at the Master's discretion and for any purpose and to deviate in any direction or for any purpose from the direct or usual course, all such deviations being considered as forming part of and included in the proposed voyage.
14. If the performance of the proposed voyage is hindered or prevented) or in the opinion of the Carrier or the Master is likely to be hindered or prevented) by war, hostilities, blockade, ice, labor con-

licts, strikes on board or ashore, Restraint of Rulers or Princes, breakdown of the Vessel, congestion, docking difficulties, or any other cause whatsoever, or if the Carrier or the Master considers that for any reason whatsoever, proceeding to, attempting to enter, or entering or remaining at the port of passenger's destination may expose the Vessel to risk or loss or damage or be likely to delay her, the passenger and his baggage may be landed at the port of embarkation or at any port or place at which the Vessel may call when the responsibility of the Carrier shall cease and this contract shall be deemed to have been fully performed, or if the passenger has not embarked the Carrier may cancel the proposed voyage without liability to refund passage money or fares paid in advance.

15. The Carrier and the Master shall have liberty to comply with any orders, recommendations or directions whatsoever given by the Government of any nation or by any Department thereof or by any person acting or purporting to act with the authority of such Government or Department or by any Committee or person having under the terms of the War Risks Insurance on the Vessel the right to give such orders, recommendations or directions, and if by reason of and in compliance with any such orders, recommendations or directions anything is done or is not done the same shall not be deemed a deviation or a breach of this Contract. Disembarkation of any passenger or discharge of his baggage in accordance with such orders, recommendations or directions shall constitute due and proper fulfillment of the obligations of the Carrier under this Contract.
16. (a) The Carrier shall not be liable to make any refund to passengers in respect of lost tickets or in respect of tickets wholly or partly not used by a passenger.
- (b) If for any reason whatsoever the passenger is refused permission to land at the port of disembarkation or such other ports as is provided for in Clauses 14 and 15 hereof, the passenger and his baggage may be landed at any port or place at which the Vessel calls or be carried back to the port of embarkation and shall pay the Carrier full fare according to its tariff in use at such time for such further carriage, which shall be upon the terms herein contained.

17. The Carrier and the Vessel shall have a lien upon all baggage, money, motor cars and other property whatsoever accompanying the passenger and the right to sell the same by public auction or otherwise for all sums whatsoever due from the passenger under this contract and for the costs and expenses of enforcing such lien and of such sale.
18. The passenger or if a minor his parent or guardian shall be liable to the Carrier and to the Master for any fines or penalties imposed on the Carrier by the authorities for his failure to observe or comply with local requirements in respect of immigration, Customs and Excise or any other Government regulations whatsoever.
19. No passenger shall be allowed to bring on board the Vessel Weapons, Firearms, Ammunition, Explosives or other dangerous goods without written permission from the Carrier.
20. The Carrier shall have liberty without previous notice to cancel at the port of embarkation or at any port this Contract and shall thereupon return to the passenger, if the Contract is cancelled at the port of embarkation, his passage money, or, if the Contract is cancelled later, a proportionate part thereof.
21. The passenger warrants that he and those travelling with him are physically fit at the time of embarkation. The Carrier and Master each reserves the right to refuse passage to anyone whose health or welfare would be considered a risk to his own well-being or that of any other passenger.
22. Should the Vessel deviate from its course due to passenger's negligence, said passenger or his estate shall be liable for any related costs incurred.
23. The Carrier reserves the right to increase published fares without prior notice. In the event of an increase, the passenger has the option of accepting the increased fare or cancelling reservations without penalty.
24. In addition to all of the restrictions and exemptions from liability provided in this Contract the Carrier shall have the benefit of all Statutes of the United States of America providing for limitation and exoneration from liability and the procedures provided thereby, including but not limited to Sections 4282, 4282A, 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States of America (46 USCA Sections 182, 183, 183b, 184, 185 and 186); nothing in this Contract is intended to nor shall it operate to limit or deprive the Carrier of any such statutory limitation of or exoneration from liability.
25. Should any provision of this Contract be contrary to or invalid by virtue of the law of any jurisdiction or be so held by a Court of competent jurisdiction, such provision shall be deemed to be severed from the Contract and of no effect and all remaining provisions herein shall be in full force and effect and constitute the Contract of Carriage.

# THE ARBITRATION-LITIGATION PARADOX

Pamela K. Bookman\*

forthcoming VANDERBILT LAW REVIEW 2019

## A. DOMESTIC COMMERCIAL ARBITRATION

The origin story of the FAA has been told many times.<sup>69</sup> The 1925 Act responded to the then-prevalent refusal of courts to specifically enforce arbitration agreements.<sup>70</sup> It instructed courts to put arbitration clauses on an “equal footing” with other kinds of contract terms,<sup>71</sup> and “set forth the procedures to be followed in federal court for litigation about arbitration.”<sup>72</sup> The federal law followed in the footsteps of the 1920 New York state arbitration statute and other similar statutes.<sup>73</sup>

According to scholars, the Act “was originally designed to cover contractual disputes between merchants of relatively co-equal bargaining power.”<sup>74</sup> Its lead proponents, Julius Cohen and Charles Bernheimer, worked for the New York State Chamber of Commerce and appeared before Congress as representatives of dozens of “business men’s organizations.” They sang arbitration’s praises “as a way ‘to make the disposition of business in the commercial world less expensive,’ faster, and more just.”<sup>75</sup> Also appearing before Congress were Herbert Hoover, the Secretary of Commerce; W.H.H. Piatt, Chairman of the Committee on Commerce, Trade, and Commercial Law of the American Bar Association (who testified that the Act should not be read to apply to labor disputes); and others advocating for “arbitration in

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<sup>69</sup> MacNeil, Chap. 4; IMRE SZALAI, *OUTSOURCING JUSTICE: THE RISE OF MODERN ARBITRATION LAWS IN AMERICA* (2013); Hiro N. Aragaki, *The Federal Arbitration Act As Procedural Reform*, 89 N.Y.U. L. Rev. 1939 (2014); see also Amalia D. Kessler, *Arbitration and Americanization: The Paternalism of Progressive Procedural Reform*, 124 YALE L.J. 2940, 2957 (2015); AMALIA D. KESSLER, *INVENTING AMERICAN EXCEPTIONALISM: THE ORIGINS OF AMERICAN ADVERSARIAL LEGAL CULTURE, 1800-1877* (2017).

<sup>70</sup> David L. Noll, *Regulating Arbitration*, 105 CAL. L. REV. 985, 994 (2017).

<sup>71</sup> E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 293 (2002).

<sup>72</sup> Aragaki, *supra* note \_\_.

<sup>73</sup> MacNeil, *supra* note \_\_, at §8.1; IAN MACNEIL, *AMERICAN ARBITRATION LAW: REFORMATION--NATIONALIZATION--INTERNATIONALIZATION*, Part I (1992).

<sup>74</sup> Szalai, *supra* note \_\_, at 524-525 (footnotes omitted); Leslie, *supra* note \_\_, at 305-306; Margaret L. Moses, *Statutory Misconstruction: How the Supreme Court Created A Federal Arbitration Law Never Enacted by Congress*, 34 FLA. ST. U. L. REV. 99, 106 (2006). But compare *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001) (“[T]he FAA compels judicial enforcement of a wide range of written arbitration agreements.”) with *id.* at 125 (Stevens, J., dissenting) (“The history of the Act, which is extensive and well documented, makes clear that the FAA was a response to the refusal of courts to enforce commercial arbitration agreements....”). In fascinating new work, Amalia Kessler sheds important light on Progressive lawyers’ influence on the FAA and their understanding of arbitration as part of “their program for urban civil justice.” Amalia D. Kessler, *Arbitration and Americanization: The Paternalism of Progressive Procedural Reform*, 124 YALE L.J. 2940, 2962 (2015). But she does not purport to rebut the foundational assumption that the Act originally targeted arbitration clauses in commercial contracts.

<sup>75</sup> Leslie, *supra* note \_\_, at 302 (citations omitted); Moses, *supra* note \_\_, at 103.

commercial matters.”<sup>76</sup> Indeed, in the proceedings leading up to the FAA’s enactment, “every witness, every Senator, and every Representative discussed one issue and one issue only: arbitration of contract disputes between merchants.”<sup>77</sup> The cited examples discussed contracts between merchants, often involving international transactions.<sup>78</sup>

The business world had legitimate complaints about litigation. Civil procedure before the 1938 adoption of the Federal Rules of Civil Procedure was rigid and complex; it notoriously provided lawyers with incentives to “insist on procedural formalities for strategic gain.”<sup>79</sup> It involved long delays.<sup>80</sup> Hiro Aragaki argues that the FAA was developed in the context of “[an] increasingly intolerable situation in the courts and the seeming stagnation of judicial reform efforts in Congress,” by advocates who “saw privatization as the most effective vehicle for improving adjudicative dispute resolution.”<sup>81</sup>

There was much to recommend arbitration in these commercial contexts. An extensive literature explores how and why arbitration, the “creature of contract,”<sup>82</sup> can provide sophisticated parties with important opportunities to craft the fate of their disputes in the name of maintaining party autonomy, procedural flexibility, and other private law virtues.<sup>83</sup> The ability to choose arbitration can be an expression of contractual freedom.<sup>84</sup> These are the private-law values of arbitration. They have particular force in combination with essentialist values, that is, in circumstances when litigation is viewed as “intolerable” and arbitration seems to offer a cure for litigation’s ills.

The Supreme Court’s version of the FAA’s origin story is superficially consistent with the scholarly account just described. The Court cites two main reasons for the FAA’s enactment: first, to “revers[e] centuries of judicial hostility to arbitration agreements” and “to place arbitration agreements ‘upon the same footing as other contracts,’” and second, “to allow parties to avoid ‘the costliness and delays of litigation.’”<sup>85</sup> The Court does not consider the business interests driving the arbitration reform movement to limit its interpretation of the statute.<sup>86</sup> Conversely, the Court has focused on the

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<sup>76</sup> Leslie, *supra* note \_\_, at 303–04.

<sup>77</sup> *Id.* at 305.

<sup>78</sup> *Id.* at 306.

<sup>79</sup> Aragaki, *supra* note \_\_, at 1966.

<sup>80</sup> *Id.* at 1968.

<sup>81</sup> *Id.* at 1976.

<sup>82</sup> See Aragaki, *Creature of Contract*, *supra* note \_\_ (discussing the popularity of and problems with this term).

<sup>83</sup> See, e.g., Drahozal & Ware, *Why Do Businesses Use (Or Not Use) Arbitration Clauses?*, Ohio State Journal on Dispute Resolution (2010).

<sup>84</sup> See, e.g., Gaillard, *supra* (“autonomy and freedom are at the heart of [international arbitration]”).

<sup>85</sup> *Scherk v. Alberto-Culver, Co.*, 417 U.S. 506, 511 (1974).

<sup>86</sup> See *Conception; Epic*.

importance of arbitration *displacing* litigation.<sup>87</sup> As a result, while the Court recognizes the private-law values of arbitration, it focuses its attention on safeguarding the essentialist values. Scholars' historical account that the FAA sought to promote arbitration as a flexible alternative to litigation lends credence to the idea that businesses favored arbitration for its perceived speed and low cost and efficiency, especially as compared to courts. But the FAA was also a procedural reform effort that could proceed in parallel with reform efforts in the courts.<sup>88</sup> In other words, one can view the FAA as valuing better procedures in dispute resolution rather than simply (or only) valuing the avoidance of litigation.

At its most basic, however, the FAA mandated judicial support for arbitration when parties chose it as their dispute resolution mechanism of choice.<sup>89</sup> It placed exceedingly few limits on what counts as arbitration. The statute does not define arbitration, either vis-à-vis litigation or otherwise.

#### B. ENTHUSIASM FOR ARBITRATION

Litigation-avoidance values have driven the Court's love affair with arbitration since the 1970s. Scholars have noted that a likely motivator "was the Court's view that litigation had become excessive and needed to be curtailed."<sup>150</sup> Chief Justice Burger, who often expressed concern with judicial workload pressures, consistently criticized "'litigiousness'" and linked it to a "'mass neurosis ... [that] leads people to think courts were created to solve all the problems of society.'"<sup>151</sup> At the Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice in 1976, Burger's "chief message" "was that the 'litigation explosion would have to be controlled.'"<sup>152</sup> This message was consonant with "the business community's growing dissatisfaction with the legal system."<sup>153</sup>

At the same time, the Court has exalted arbitration. The Court has described the FAA as embodying "a national policy favoring arbitration,"<sup>154</sup> which does not just put arbitration contracts on equal footing with other kinds of contracts, but seems to affirmatively favor arbitration over litigation.<sup>155</sup> As the most recent Restatement of the U.S. Law of International Commercial Arbitration reports, "U.S. law now has a now long-established history of providing strong support to both party autonomy in arbitration and to the enforceability of arbitral agreements and awards."<sup>156</sup>

The Court identifies the purpose of the FAA's pro-arbitration policies as twofold: first, to enforce arbitration agreements and preserve freedom of contract,<sup>157</sup> and second, to avoid or replace litigation.<sup>158</sup> An extensive literature examines arbitration as a manifestation of contractual freedom<sup>159</sup> and a

hallmark of private law.<sup>160</sup> According to these private-law values, the signature features of arbitration are the choice, autonomy, and flexibility that it affords parties. As Alan Rau argues, “if there is any ‘public policy’ at all implicated in arbitration, it ... lies in making a relatively inexpensive and efficient process of dispute resolution available to the parties if and to the extent they wish to take advantage of it.”<sup>161</sup> In the 1980s, the Court cited arbitration’s “adaptability” of as one of its key virtues.<sup>162</sup>

In recent decades, however, the Court has focused intensely on the importance of arbitration’s function as a substitute for litigation. Relying on the FAA’s legislative history,<sup>163</sup> the Court often states that the FAA was intended “to allow parties to avoid ‘the costliness and delays of litigation’”<sup>164</sup> because arbitration was supposed to be able to “largely eliminate[]” that cost and delay.<sup>165</sup> This litigation-avoidance purpose, the Court has now held in multiple contexts, prevails over Congress’s intent in other statutes to provide claimants with their day in court<sup>166</sup> or to allow collective action,<sup>167</sup> and over many areas of state law.<sup>168</sup> As noted, these policies often align with developments that mark the Court’s hostility to litigation.<sup>169</sup> The vision of arbitration as a substitute for litigation goes hand in hand with an understanding of arbitration’s “essential” virtues as those that differentiate it from the litigation “it was meant to displace”—e.g., its speed, low cost, and efficiency.<sup>170</sup> The Court has accordingly seen the FAA’s purpose as protecting those virtues.<sup>171</sup>

In international commercial cases, a third set of values is also at play:

<sup>160</sup> See Steven Ware, *Minn. L. Rev.* (1999).

<sup>161</sup> Alan Scott Rau, *Fear of Freedom*, 17 *AM. REV. INT’L ARB.* 469, 479 (2006).

<sup>162</sup> See, e.g., *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).

<sup>163</sup> Commentators have noted that the course of developing this robust FAA, “the Court’s reading of legislative history [of the FAA] appears selective.” Miller, *supra* note \_\_\_, at 327-328 & n.156; see also Aragaki, *supra* note \_\_.

<sup>164</sup> *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974) (citing H.R.Rep.No.96, 68th Cong., 1st Sess., 1, 2 (1924); S.Rep.No.536, 68th Cong., 1st Sess. (1924)).

<sup>165</sup> *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 220 (1985).

<sup>166</sup> Of course, in international contexts, the Court may emphasize that the Court has made clear that this policy “applies with special force in the field of international commerce.” *Mitsubishi*, etc.

<sup>167</sup> See *Epic*.

<sup>168</sup> See *Southland* \_\_\_\_, MacNeil § 8.6. But see [O’Connor’s dissent] (saying that the legislative history plainly does not suggest that congress intended the FAA to preempt state law).

<sup>169</sup> See *supra* [notes discussing Siegel]; MacNeil § 8.6 (“Underlying this pro-arbitration stance appears to be the desire to help clear court dockets, not as a simple consequence of party choice to use arbitration, but as a policy in its own right.”). Writing in 1994, MacNeil noted that *Volt Information Sciences v. Stanford University* (1986) provided a potential exception to this trend because it permitted parties to direct that state law would govern their arbitration agreements, but *DIRECTV, Inc. v. Imburgia*, 577 U.S. \_\_\_\_ (2015) has undermined that holding.

<sup>170</sup> See *Epic*.

<sup>171</sup> See *infra* discussion of *Concepcion* and *Epic*.

promoting trade, orderliness, and predictability in international commerce. Indeed, in the international commercial context, the argument in favor of arbitration is especially strong.<sup>172</sup> Enforcement of arbitration agreements not only supports freedom of contract and avoiding litigation in potentially biased national courts (which international business operators seem justified in wanting to avoid).<sup>173</sup> At its best, it also enables parties from different nations to choose a neutral and expert arbiter for potential disputes and, if the arbitration clause will be enforced, to create some much-desired predictability.<sup>174</sup> In the international commercial context, the Supreme Court has sensibly acknowledged, the success of international trade and commerce requires the United States to recognize the validity of laws and dispute resolution outside of U.S. courts.<sup>175</sup>

It is no wonder that the Supreme Court's major shifts to enforcing arbitration and forum selection clauses occurred in cases involving international commercial contracts, with the Court explaining that the international context weighed heavily in favor of enforcing the parties' choices in those contracts.<sup>176</sup> As discussed in Part I, *The Bremen* and *Scherk* explicitly relied on the particular circumstances in international business transactions to justify enforcement of such clauses.

In the 1980s, the Court acknowledged the important role that national courts play in supporting the institution of international commercial arbitration. It played that role by prioritizing private-law and international business values over essentialist ones. In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, the Court noted:

If they are to take a central place in the international legal order, national courts will need to "shake off the old judicial

<sup>172</sup> In the investment arbitration context, there is also a strong argument in favor of arbitration, but the calculus about judicial review is somewhat different. See Roberts & Trahanas, *supra* note \_\_\_\_.

<sup>173</sup> See *supra* Part I.B. (discussing *The Bremen* and *Scherk*).

<sup>174</sup> See, e.g., Bermann, *supra* note \_\_\_\_; Cuniberti, *supra* note \_\_\_\_; Sussman, *supra* note \_\_\_\_\_. There are also arguments in favor of arbitration that go beyond its role as a dispute resolution mechanism. See Helfand, *supra* note \_\_\_\_ (questioning that that's arbitration's only purpose); Markovits, *supra* note \_\_\_\_ (similar). But see Dammann & Hansmann, *supra* note \_\_\_\_ (arguing that arbitration affords less predictable results because arbitrators want to provide a resolution that pleases both sides rather than following more predictable legal reasoning).

<sup>175</sup> *Scherk*, 417 U.S. at 519 (invalidating the arbitration clause "would ... reflect a 'parochial concept that all disputes must be resolved under our laws and in our courts.' ... We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts."); *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9.

<sup>176</sup> See *Bremen*, 407 U.S. at 11-12 (enforcing forum selection clauses "accords with ancient concepts of freedom of contract and reflects an appreciation of the expanding horizons of American contractors who seek business in all parts of the world"); *Scherk*, 417 U.S. at 515 (finding it "significant ... and ... crucial" that the contract involved was a "truly international agreement"); Main, *supra* note \_\_\_\_ (discussing *Bremen* as the "taproot of [the] kudzu vine" that is arbitration).

hostility to arbitration," and also their customary and understandable unwillingness to cede jurisdiction of a claim arising under domestic law to a foreign or transnational tribunal. To this extent, at least, it will be necessary for national courts to subordinate domestic notions of arbitrability to the international policy favoring commercial arbitration.<sup>177</sup>

There, the Court asserted that arbitration's "hallmarks" were its "adaptability and access to expertise," rather than its contrasts to litigation. Indeed, had the Court prioritized the differences between arbitration and litigation and sought to safeguard arbitration's "essential" characteristics, it might have reached a different result. The claimants had argued that the Court should not enforce the agreement to arbitrate antitrust claims because arbitration was less equipped than litigation to handle such complex disputes and important federal statutory rights.<sup>178</sup> The Court rejected this argument. Instead, it found that arbitration was up to the challenge and recognized the importance of courts' support for arbitration in the context of international trade.<sup>179</sup>

Key to the Court's decision in *Mitsubishi* was recognizing this conflict of values and then subordinating essentialist concerns to the more important considerations of private-law values and supporting international business. As discussed below, the essentialist view has serious flaws—for example not valuing arbitration's adaptability and capacity for complexity, as *Mitsubishi* understood. *Mitsubishi* provides an example of the Court not only prioritizing other arbitration values over essentialist ones, but also acknowledging that the multiple values underlying arbitration can conflict, considering courts' important role in supporting international commercial arbitration system, and balancing the different competing values.

In the past few decades, however, the Court has shifted to prioritize arbitration's essentialist values over its private-law or international-business ones, either without recognizing the possibility of a conflict, or discounting its

<sup>177</sup> *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 638–39 (1985).

<sup>178</sup> *Id.* at 633. Notably, the Court in *Mitsubishi* was not as enthusiastic about arbitration as it seemed. In dicta, *Mitsubishi* assumed that courts could invalidate an arbitral award as against public policy if they interpreted a foreign choice-of-law clause to preclude the effective vindication of federal statutory rights. *Id.* at 637 n.19 ("We . . . note that in the event the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue statutory remedies for antitrust violations, we would have little hesitation in condemning the agreement as against public policy."). But subsequent Supreme Court decisions have all but eliminated the public policy defense in public cases, and this dictum has "proven to be largely an empty threat." Rogers, *supra* note \_\_, at 367 n.154. U.S. courts do not decline to enforce arbitral awards based on the public policy considerations in *Mitsubishi*. Sweet & Grisel, *supra* note \_\_, at 178 n.38 ("We are not aware of any" U.S. court refusing "to enforce awards based on public policy considerations after *Mitsubishi*").

<sup>179</sup> *Id.*

importance. In this shift, there is rarely balancing analysis or even consideration of the possibility that these different values could conflict in theory or do conflict in practice.<sup>180</sup> As discussed in Part IV, this development has important consequences for many unresolved legal issues concerning international commercial arbitration in U.S. courts. The next section discusses the Court's recent embrace of arbitration's essentialist values and hostility to litigation, to the exclusion of other values that are critically important to international commercial arbitration.

## Syllabus

## ----- JONES v. FLOWERS ET AL. -----

CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 04-1477. Argued January 17, 2006—Decided April 26, 2006

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner “notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). We granted certiorari to determine whether, when notice of a tax sale is mailed to the owner and returned undelivered, the government must take additional reasonable steps to provide notice before taking the owner’s property.

## I

In 1967, petitioner Gary Jones purchased a house at 717 North Bryan Street in Little Rock, Arkansas. He lived in the house with his wife until they separated in 1993. Jones then moved into an apartment in Little Rock, and his wife continued to live in the North Bryan Street house. Jones paid his mortgage each month for 30 years, and the mortgage company paid Jones’ property taxes. After Jones paid off his mortgage in 1997, the property taxes went unpaid, and the property was certified as delinquent.

In April 2000, respondent Mark Wilcox, the Commissioner of State Lands (Commissioner), attempted to notify Jones of his tax delinquency, and his right to redeem the property, by mailing a certified letter to Jones at the North Bryan Street address. See Ark. Code Ann. §26-37-301 (1997). The packet of information stated that unless Jones redeemed the property, it would be subject to public sale two years later on April 17, 2002. See *ibid.* Nobody was home to sign for

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the letter, and nobody appeared at the post office to retrieve the letter within the next 15 days. The post office returned the unopened packet to the Commissioner marked "unclaimed." Pet. for Cert. 3.

Two years later, and just a few weeks before the public sale, the Commissioner published a notice of public sale in the Arkansas Democrat Gazette. No bids were submitted, which permitted the State to negotiate a private sale of the property. See §26-37-202(b). Several months later, respondent Linda Flowers submitted a purchase offer. The Commissioner mailed another certified letter to Jones at the North Bryan Street address, attempting to notify him that his house would be sold to Flowers if he did not pay his taxes. Like the first letter, the second was also returned to the Commissioner marked "unclaimed." Pet. for Cert. 3. Flowers purchased the house, which the parties stipulated in the trial court had a fair market value of \$80,000, for \$21,042.15. Record 224. Immediately after the 30-day period for postsale redemption passed, see §26-37-202(e), Flowers had an unlawful detainer notice delivered to the property. The notice was served on Jones' daughter, who contacted Jones and notified him of the tax sale. *Id.*, at 11 (Exh. B).

Jones filed a lawsuit in Arkansas state court against the Commissioner and Flowers, alleging that the Commissioner's failure to provide notice of the tax sale and of Jones' right to redeem resulted in the taking of his property without due process. The Commissioner and Flowers moved for summary judgment on the ground that the two unclaimed letters sent by the Commissioner were a constitutionally adequate attempt at notice, and Jones filed a cross-motion for summary judgment. The trial court granted summary judgment in favor of the Commissioner and Flowers. App. to Pet. for Cert. 12a-13a. It concluded that the Arkansas tax sale statute, which set forth the notice procedure fol-

lowed by the Commissioner, complied with constitutional due process requirements.

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## II

## A

Due process does not require that a property owner receive actual notice before the government may take his property. *Dusenbery, supra*, at 170. Rather, we have stated that due process requires the government to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U. S., at 314. The Commissioner argues that once the State provided notice reasonably calculated to apprise Jones of the impending tax sale by mailing him a certified letter, due process was satisfied. The Arkansas statutory scheme is reasonably calculated to provide notice, the Commissioner continues, because it provides for notice by certified mail to an address that the property owner is responsible for keeping up to date. See Ark. Code Ann. §26-35-705 (1997). The Commissioner notes this Court's ample precedent condoning notice by mail, see, e. g., *Dusenbery, supra*, at 169; *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U. S. 478, 490 (1988); *Mennonite Bd. of Missions v. Adams*, 462 U. S. 791, 798 (1983); *Mullane, supra*, at 318-319, and adds that the Arkansas scheme exceeds constitutional requirements by requiring the Commissioner to use certified mail. Brief for Respondent Commissioner 14-15.

It is true that this Court has deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent. See, e. g., *Dusenbery, supra*, at 168-169; *Mullane*, 339 U. S., at 314. In each of these cases, the government attempted to provide notice and heard nothing back indicating that anything had gone awry, and we stated that "[t]he reasonableness and hence the constitutional validity of [the] chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected." *Id.*, at 315; see also *Dusenbery, supra*, at

170. But we have never addressed whether due process entails further responsibility when the government becomes aware prior to the taking that its attempt at notice has failed. That is a new wrinkle, and we have explained that the "notice required will vary with circumstances and conditions." *Walker v. City of Hutchinson*, 352 U. S. 112, 115 (1956). The question presented is whether such knowledge on the government's part is a "circumstance and condition" that varies the "notice required."

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In *Mullane*, we stated that “when notice is a person’s due . . . [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” 339 U. S., at 315, and that assessing the adequacy of a particular form of notice requires balancing the “interest of the State” against “the individual interest sought to be protected by the Fourteenth Amendment,” *id.*, at 314. Our leading cases on notice have evaluated the adequacy of notice given to beneficiaries of a common trust fund, *Mullane*, *supra*; a mortgagee, *Mennonite*, 462 U. S. 791; owners of seized cash and automobiles, *Dusenbery*, 534 U. S. 161; *Robinson v. Hanrahan*, 409 U. S. 38 (1972) (*per curiam*); creditors of an estate, *Tulsa Professional*, 485 U. S. 478; and tenants living in public housing, *Greene v. Lindsey*, 456 U. S. 444 (1982). In this case, we evaluate the adequacy of notice prior to the State extinguishing a property owner’s interest in a home.

We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter sent to the owner is returned unclaimed. If the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner’s office to prepare a new stack of letters and send them again. No one “desirous of actually informing” the owners would simply shrug his shoulders as the letters disappeared and say “I tried.” Failure to follow up would be unreasonable, despite the fact that the letters were reasonably calculated to reach their intended recipients when delivered to the postman.

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foreclosure by the Secretary of Housing and Urban Development); §3758(2)(B)(ii) (requiring that notice be posted on the property if occupants are unknown).

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By the same token, when a letter is returned by the post office, the sender will ordinarily attempt to resend it, if it is practicable to do so. See *Small v. United States*, 136 F. 3d 1334, 1337 (CADC 1998). This is especially true when, as here, the subject matter of the letter concerns such an important and irreversible prospect as the loss of a house. Although the State may have made a reasonable calculation of how to reach Jones, it had good reason to suspect when the notice was returned that Jones was "no better off than if the notice had never been sent." *Malone*, 614 A. 2d, at 37. Deciding to take no further action is not what someone "desirous of actually informing" Jones would do; such a person would take further reasonable steps if any were available.

In prior cases, we have required the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case. In *Robinson v. Hanrahan*, we held that notice of forfeiture proceedings sent to a vehicle owner's home address was inadequate when the State knew that the property owner was in prison. 409 U.S., at 40. In *Covey v. Town of Somers*, 351 U.S. 141 (1956), we held that notice of foreclosure by mailing, posting, and publication was inadequate when town officials knew that the property owner was incompetent and without a guardian's protection. *Id.*, at 146-147.

The Commissioner points out that in these cases, the State was aware of such information *before* it calculated how best to provide notice. But it is difficult to explain why due process would have settled for something less if the government had learned after notice was sent, but before the taking occurred, that the property owner was in prison or was incompetent. Under *Robinson* and *Covey*, the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice. That knowledge was one of the "practicalities and peculiarities of the case,"

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*Mullane, supra*, at 314–315, that the Court took into account in determining whether constitutional requirements were met. It should similarly be taken into account in assessing the adequacy of notice in this case. The dissent dismisses the State's knowledge that its notice was ineffective as "learned long after the fact," *post*, at 246, n. 5 (opinion of THOMAS, J.), but the notice letter was promptly returned to the State two to three weeks after it was sent, and the Arkansas statutory regime precludes the State from taking the property for two *years* while the property owner may exercise his right to redeem, see Ark. Code Ann. § 26–37–301 (Supp. 2005).

It is certainly true, as the Commissioner and Solicitor General contend, that the failure of notice in a specific case does not establish the inadequacy of the attempted notice; in that sense, the constitutionality of a particular procedure for notice is assessed *ex ante*, rather than *post hoc*. But if a feature of the State's chosen procedure is that it promptly provides additional information to the government about the effectiveness of notice, it does not contravene the *ex ante* principle to consider what the government does with that information in assessing the adequacy of the chosen procedure. After all, the State knew *ex ante* that it would promptly learn whether its effort to effect notice through certified mail had succeeded. It would not be inconsistent with the approach the Court has taken in notice cases to ask, with respect to a procedure under which telephone calls were placed to owners, what the State did when no one answered. Asking what the State does when a notice letter is returned unclaimed is not substantively different.

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Jones should have been more diligent with respect to his property, no question. People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property. But before forcing a citizen to satisfy his debt by forfeiting his property, due process requires the government to provide adequate notice of the impending taking. U. S. Const., Amdt. 14; *Menmonite*, *supra*, at 799.

## B

In response to the returned form suggesting that Jones had not received notice that he was about to lose his property, the State did—nothing. For the reasons stated, we conclude the State should have taken additional reasonable steps to notify Jones, if practicable to do so. The question remains whether there were any such available steps. While “[i]t is not our responsibility to prescribe the form of service that the [government] should adopt,” *Greene*, 456 U. S., at 455, n. 9, if there were no reasonable additional steps the government could have taken upon return of the unclaimed notice letter, it cannot be faulted for doing nothing.

We think there were several reasonable steps the State could have taken. What steps are reasonable in response to new information depends upon what the new information reveals. The return of the certified letter marked “unclaimed” meant either that Jones still lived at 717 North Bryan Street, but was not home when the postman called and did not retrieve the letter at the post office, or that Jones no longer resided at that address. One reasonable step primarily addressed to the former possibility would be for the State to resend the notice by regular mail, so that a signature was not required. The Commissioner says that use of certified mail makes actual notice more likely, because requiring the recipient’s signature protects against misdelivery. But that is only true, of course, when someone is home to sign for the letter, or to inform the mail carrier that he has arrived at the wrong address. Otherwise, “[c]ertified

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mail is dispatched and handled in transit as ordinary mail," United States Postal Service, Domestic Mail Manual § 503.3.2.1 (Mar. 16, 2006), and the use of certified mail might make actual notice less likely in some cases—the letter cannot be left like regular mail to be examined at the end of the day, and it can only be retrieved from the post office for a specified period of time. Following up with regular mail might also increase the chances of actual notice to Jones if—as it turned out—he had moved. Even occupants who ignored certified mail notice slips addressed to the owner (if any had been left) might scrawl the owner's new address on the notice packet and leave it for the postman to retrieve, or notify Jones directly.

Other reasonable followup measures, directed at the possibility that Jones had moved as well as that he had simply not retrieved the certified letter, would have been to post notice on the front door, or to address otherwise undeliverable mail to "occupant." Most States that explicitly outline additional procedures in their tax sale statutes require just such steps. See n. 2, *supra*. Either approach would increase the likelihood that the owner would be notified that he was about to lose his property, given the failure of a letter deliverable only to the owner in person. That is clear in the case of an owner who still resided at the premises. It is also true in the case of an owner who has moved: Occupants who might disregard a certified mail slip not addressed to them are less likely to ignore posted notice, and a letter addressed to them (even as "occupant") might be opened and read. In either case, there is a significant chance the occupants will alert the owner, if only because a change in ownership could well affect their own occupancy. In fact, Jones first learned of the State's effort to sell his house when he was alerted by one of the occupants—his daughter—after she was served with an unlawful detainer notice.

Jones believes that the Commissioner should have searched for his new address in the Little Rock phonebook

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and other government records such as income tax rolls. We do not believe the government was required to go this far. As the Commissioner points out, the return of Jones' mail marked "unclaimed" did not necessarily mean that 717 North Bryan Street was an incorrect address; it merely informed the Commissioner that no one appeared to sign for the mail before the designated date on which it would be returned to the sender. An open-ended search for a new address—especially when the State obligates the taxpayer to keep his address updated with the tax collector, see Ark. Code Ann. §26-35-705 (1997)—imposes burdens on the State significantly greater than the several relatively easy options outlined above.

\* \* \*

There is no reason to suppose that the State will ever be less than fully zealous in its efforts to secure the tax revenue it needs. The same cannot be said for the State's efforts to ensure that its citizens receive proper notice before the State takes action against them. In this case, the State is exerting extraordinary power against a property owner—taking and selling a house he owns. It is not too much to insist that the State do a bit more to attempt to let him know about it when the notice letter addressed to him is returned unclaimed.

The Commissioner's effort to provide notice to Jones of an impending tax sale of his house was insufficient to satisfy due process given the circumstances of this case. The judgment of the Arkansas Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

*It is so ordered.*

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## Notice Pleading Problem – Fall 2007 exam

Essay Question No 3. total points 23 1/3

Assume the State of Texas the following statute, which we will refer to as Art 1, that provides for service of process against a corporation. [Texas actually has something like this, but I have intentionally modified the statute in certain respects for purposes of this exam question].

Assume Art. 1 provides for service on the president, any vice presidents and/or registered agent of the corporation and that whenever a corporation shall fail to appoint or maintain a registered agent in this State, then the Secretary of State shall be an agent of such corporation upon whom any process may be served.

Furthermore, when process is served on the Secretary of State Art. 1 directs that the Secretary of State shall immediately cause one of the copies to be forwarded by registered mail, addressed to the corporation at its registered office and that this address shall be given to the Secretary of State by the person seeking that process be served.

Then, Art. 1 provides as follows:

If the Secretary of State fails to mail the process to the correct address given to it by the person seeking that process be served, such service shall still be considered valid provided that the address given to the Secretary of State was correct and current as of the date of transmittal to the Secretary of State.

Assume that Paul sues D Inc., an Illinois corporation, in Texas state court and that D Inc. is supposed to (under another provision of Texas law) have a registered agent for service of process in the state but does not. Paul seeks to use Art. 1 to mail service to the Secretary of State and correctly gives D Inc.'s address to the Secretary of State as D, Inc., 1234 Wacker Drive, Chicago Illinois 60601. The Secretary of State receives the process from Paul but incorrectly mails it to D Inc. at the following address: 5678 Wacky Drive, Chicago Illinois 60602.

D Inc fails to appear and Paul obtains a default judgment. On notice of the default judgment (which Paul correctly mailed to D's actual address), D Inc. files a motion to set aside the default on the ground that this judgment violates their due process rights. How should the court rule?

Venue Problems

1. Peter and Dennis are in a car accident. Peter is a Massachusetts citizen. Dennis from New York and his home is in Brooklyn, which is in the Eastern District of New York. The accident occurred in Maine. Assume that Peter brings a lawsuit in federal court and that his claim is for more than \$75,000.
  - (A) In what federal district courts would venue be proper?
  - (B) Now assume Peter decides to sue Dennis in the United States District Court for the District of Vermont. (There is only one district in Vermont.) Assume Dennis resides in Vermont while attending college there. Is venue proper in Vermont?
  - (C) Now assume Dennis is a citizen of France. Where would venue be proper now? Would it matter if he were admitted for permanent residence? See 28 U.S.C. 1332(a).
  - (D) Now assume Peter sues Dennis in the United States District Court for the District of Massachusetts. (There is only one federal district in MA.) If Peter sues Dennis while Dennis is in Massachusetts, on vacation, is venue proper there?
2. Suppose Peter decides to sue Car, Inc., the manufacturer of her car, alleging defective design and manufacture of the vehicle. Car, Inc. is incorporated in Delaware with its headquarters and a factory in the Western District of Michigan. It also has factories in the Western District of Tennessee and the Northern District of Georgia. Assume that Peter's claim exceeds \$75,000.
  - (A) In Peter v. Car, Inc. where is venue proper?
  - (B) Assume that Car, Inc. did not acquire the factory in Tennessee until after the accident between Peter and Dennis. In Peter v. Car, Inc. would venue be proper in the Western District of Tennessee?
  - (C) In addition to the facts described above, Car, Inc. is licensed to do business in New York and has an agent for service of process there. The agent is located in the Western District of New York. Currently, Car, Inc. has no operations in New York. In Peter v. Car, Inc. would venue be proper in the Western District of New York? The Eastern District of New York?
  - (D) Assume that the facts are as described in 2(C). Peter sues Dennis and Car, Inc. Would venue be proper in the Western District of Michigan? The Eastern District of New York? The Western District of New York? The Western District of Tennessee?
3. Assume that in Questions 1 and 2 above there was federal question jurisdiction. Would this change any of your answers?

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**SUPREME COURT OF THE UNITED STATES**

No. 12-929

**ATLANTIC MARINE CONSTRUCTION COMPANY, INC.,  
PETITIONER v. UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

[December 3, 2013]

JUSTICE ALITO delivered the opinion of the Court.

The question in this case concerns the procedure that is available for a defendant in a civil case who seeks to enforce a forum-selection clause. We reject petitioner's argument that such a clause may be enforced by a motion to dismiss under 28 U. S. C. §1406(a) or Rule 12(b)(3) of the Federal Rules of Civil Procedure. Instead, a forum-selection clause may be enforced by a motion to transfer under §1404(a) (2006 ed., Supp. V), which provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." When a defendant files such a motion, we conclude, a district court should transfer the case unless extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer. In the present case, both the District Court and the Court of Appeals misunderstood the standards to be applied in adjudicating a §1404(a) motion in a case involving a forum-

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selection clause, and we therefore reverse the decision below.

I

Petitioner Atlantic Marine Construction Co., a Virginia corporation with its principal place of business in Virginia, entered into a contract with the United States Army Corps of Engineers to construct a child-development center at Fort Hood in the Western District of Texas. Atlantic Marine then entered into a subcontract with respondent J-Crew Management, Inc., a Texas corporation, for work on the project. This subcontract included a forum-selection clause, which stated that all disputes between the parties "shall be litigated in the Circuit Court for the City of Norfolk, Virginia, or the United States District Court for the Eastern District of Virginia, Norfolk Division." *In re Atlantic Marine Constr. Co.*, 701 F.3d 736, 737-738 (CA5 2012).

When a dispute about payment under the subcontract arose, however, J-Crew sued Atlantic Marine in the Western District of Texas, invoking that court's diversity jurisdiction. Atlantic Marine moved to dismiss the suit, arguing that the forum-selection clause rendered venue in the Western District of Texas "wrong" under §1406(a) and "improper" under Federal Rule of Civil Procedure 12(b)(3). In the alternative, Atlantic Marine moved to transfer the case to the Eastern District of Virginia under §1404(a). J-Crew opposed these motions.

The District Court denied both motions. It first concluded that §1404(a) is the exclusive mechanism for enforcing a forum-selection clause that points to another federal forum. The District Court then held that Atlantic Marine bore the burden of establishing that a transfer would be appropriate under §1404(a) and that the court would "consider a nonexhaustive and nonexclusive list of public and private interest factors," of which the "forum-

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selection clause [was] only one such factor." *United States ex rel. J-Crew Management, Inc. v. Atlantic Marine Constr. Co.*, 2012 WL 8499879, \*5 (WD Tex., Apr. 6, 2012). Giving particular weight to its findings that "compulsory process will not be available for the majority of J-Crew's witnesses" and that there would be "significant expense for those willing witnesses," the District Court held that Atlantic Marine had failed to carry its burden of showing that transfer "would be in the interest of justice or increase the convenience to the parties and their witnesses." *Id.*, at \*7-\*8; see also 701 F.3d, at 743.

Atlantic Marine petitioned the Court of Appeals for a writ of mandamus directing the District Court to dismiss the case under §1406(a) or to transfer the case to the Eastern District of Virginia under §1404(a). The Court of Appeals denied Atlantic Marine's petition because Atlantic Marine had not established a "clear and indisputable" right to relief. *Id.*, at 738; see *Cheney v. United States Dist. Court for D. C.*, 542 U.S. 367, 381 (2004) (mandamus "petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable" (internal quotation marks omitted; brackets in original)). Relying on *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988), the Court of Appeals agreed with the District Court that §1404(a) is the exclusive mechanism for enforcing a forum-selection clause that points to another federal forum when venue is otherwise proper in the district where the case was brought. See 701 F.3d, at 739-741.<sup>1</sup> The court stated, however, that if a forum-selection clause points to a nonfederal forum, dismissal under Rule 12(b)(3) would be the correct mechanism to

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<sup>1</sup>Venue was otherwise proper in the Western District of Texas because the subcontract at issue in the suit was entered into and was to be performed in that district. See *United States ex rel. J-Crew Management, Inc. v. Atlantic Marine Constr. Co.*, 2012 WL 8499879, \*5 (WD Tex., Apr. 6, 2012) (citing 28 U.S.C. §1391(b)(2)).

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enforce the clause because §1404(a) by its terms does not permit transfer to any tribunal other than another federal court. *Id.*, at 740. The Court of Appeals then concluded that the District Court had not clearly abused its discretion in refusing to transfer the case after conducting the balance-of-interests analysis required by §1404(a). *Id.*, at 741-743; see *Cheney, supra*, at 380 (permitting mandamus relief to correct "a clear abuse of discretion" (internal quotation marks omitted)). That was so even though there was no dispute that the forum-selection clause was valid. See 701 F. 3d, at 742; *id.*, at 744 (concurring opinion). We granted certiorari. 569 U. S. \_\_\_\_ (2013).

II.

Atlantic Marine contends that a party may enforce a forum-selection clause by seeking dismissal of the suit under §1406(a) and Rule 12(b)(3). We disagree. Section 1406(a) and Rule 12(b)(3) allow dismissal only when venue is "wrong" or "improper." Whether venue is "wrong" or "improper" depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws, and those provisions say nothing about a forum-selection clause.

A

Section 1406(a) provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." Rule 12(b)(3) states that a party may move to dismiss a case for "improper venue." These provisions therefore authorize dismissal only when venue is "wrong" or "improper" in the forum in which it was brought.

This question—whether venue is "wrong" or "improper"—is

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generally governed by 28 U. S. C. §1391 (2006 ed., Supp. V).<sup>2</sup> That provision states that “[e]xcept as otherwise provided by law . . . this section *shall* govern the venue of *all civil actions* brought in district courts of the United States.” §1391(a)(1) (emphasis added). It further provides that “[a] civil action may be brought in—(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.” §1391(b).<sup>3</sup> When venue is challenged, the court must determine whether the case falls within one of the three categories set out in §1391(b). If it does, venue is proper; if it does not, venue is improper, and the case must be dismissed or transferred under §1406(a). Whether the parties entered into a contract containing a forum-selection clause has no bearing on whether a case falls into one of the categories of cases listed in §1391(b). As a result, a case filed in a district that falls within §1391 may not be dismissed under §1406(a) or Rule 12(b)(3).

Petitioner’s contrary view improperly conflates the special statutory term “venue” and the word “forum.” It is certainly true that, in some contexts, the word “venue” is used synonymously with the term “forum,” but §1391 makes clear that venue in “all civil actions” must be determined in accordance with the criteria outlined in that

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<sup>2</sup>Section 1391 governs “venue generally,” that is, in cases where a more specific venue provision does not apply. Cf., e.g., §1400 (identifying proper venue for copyright and patent suits).

<sup>3</sup>Other provisions of §1391 define the requirements for proper venue in particular circumstances.

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section. That language cannot reasonably be read to allow judicial consideration of other, extrastatutory limitations on the forum in which a case may be brought.

The structure of the federal venue provisions confirms that they alone define whether venue exists in a given forum. In particular, the venue statutes reflect Congress' intent that venue should always lie in *some* federal court whenever federal courts have personal jurisdiction over the defendant. The first two paragraphs of §1391(b) define the preferred judicial districts for venue in a typical case, but the third paragraph provides a fallback option: If no other venue is proper, then venue will lie in "*any judicial district* in which any defendant is subject to the court's personal jurisdiction" (emphasis added). The statute thereby ensures that so long as a federal court has personal jurisdiction over the defendant, venue will always lie somewhere. As we have previously noted, "Congress does not in general intend to create venue gaps, which take away with one hand what Congress has given by way of jurisdictional grant with the other." *Smith v. United States*, 507 U. S. 197, 203 (1993) (internal quotation marks omitted). Yet petitioner's approach would mean that in some number of cases—those in which the forum-selection clause points to a state or foreign court—venue would not lie in any federal district. That would not comport with the statute's design, which contemplates that venue will always exist in some federal court.

The conclusion that venue is proper so long as the requirements of §1391(b) are met, irrespective of any forum-selection clause, also follows from our prior decisions construing the federal venue statutes. In *Van Dusen v. Barrack*, 376 U. S. 612 (1964), we considered the meaning of §1404(a), which authorizes a district court to "transfer any civil action to any other district or division where it might have been brought." The question in *Van Dusen* was whether §1404(a) allows transfer to a district in which

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venue is proper under §1391 but in which the case could not have been pursued in light of substantive state-law limitations on the suit. See *id.*, at 614–615. In holding that transfer is permissible in that context, we construed the phrase “where it might have been brought” to refer to “the federal laws delimiting the districts in which such an action ‘may be brought,’” *id.*, at 624, noting that “the phrase ‘may be brought’ recurs at least 10 times” in §§1391–1406, *id.*, at 622. We perceived “no valid reason for reading the words ‘where it might have been brought’ to narrow the range of permissible federal forums beyond those permitted by federal venue statutes.” *Id.*, at 623.

As we noted in *Van Dusen*, §1406(a) “shares the same statutory context” as §1404(a) and “contain[s] a similar phrase.” *Id.*, at 621, n. 11. It instructs a court to transfer a case from the “wrong” district to a district “in which it could have been brought.” The most reasonable interpretation of that provision is that a district cannot be “wrong” if it is one in which the case could have been brought under §1391. Under the construction of the venue laws we adopted in *Van Dusen*, a “wrong” district is therefore a district other than “those districts in which Congress has provided by its venue statutes that the action ‘may be brought.’” *Id.*, at 618 (emphasis added). If the federal venue statutes establish that suit may be brought in a particular district, a contractual bar cannot render venue in that district “wrong.”

Our holding also finds support in *Stewart*, 487 U. S. 22. As here, the parties in *Stewart* had included a forum-selection clause in the relevant contract, but the plaintiff filed suit in a different federal district. The defendant had initially moved to transfer the case or, in the alternative, to dismiss for improper venue under §1406(a), but by the time the case reached this Court, the defendant had abandoned its §1406(a) argument and sought only transfer under §1404(a). We rejected the plaintiff’s argument that

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state law governs a motion to transfer venue pursuant to a forum-selection clause, concluding instead that "federal law, specifically 28 U. S. C. §1404(a), governs the District Court's decision whether to give effect to the parties' forum-selection clause." *Id.*, at 32. We went on to explain that a "motion to transfer under §1404(a) . . . calls on the district court to weigh in the balance a number of case-specific factors" and that the "presence of a forum-selection clause . . . will be a significant factor that figures centrally in the district court's calculus." *Id.*, at 29.

The question whether venue in the original court was "wrong" under §1406(a) was not before the Court, but we wrote in a footnote that "[t]he parties do not dispute that the District Court properly denied the motion to dismiss the case for improper venue under 28 U. S. C. §1406(a) because respondent apparently does business in the Northern District of Alabama. See 28 U. S. C. §1391(c) (venue proper in judicial district in which corporation is doing business)." *Id.*, at 28, n. 8. In other words, because §1391 made venue proper, venue could not be "wrong" for purposes of §1406(a). Though *dictum*, the Court's observation supports the holding we reach today. A contrary view would all but drain *Stewart* of any significance. If a forum-selection clause rendered venue in all other federal courts "wrong," a defendant could always obtain automatic dismissal or transfer under §1406(a) and would not have any reason to resort to §1404(a). *Stewart*'s holding would be limited to the presumably rare case in which the defendant inexplicably fails to file a motion under §1406(a) or Rule 12(b)(3).

B

Although a forum-selection clause does not render venue in a court "wrong" or "improper" within the meaning of §1406(a) or Rule 12(b)(3), the clause may be enforced through a motion to transfer under §1404(a). That provi-

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sion states that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.” Unlike §1406(a), §1404(a) does not condition transfer on the initial forum’s being “wrong.” And it permits transfer to any district where venue is also proper (i.e., “where [the case] might have been brought”) or to any other district to which the parties have agreed by contract or stipulation.

Section 1404(a) therefore provides a mechanism for enforcement of forum-selection clauses that point to a particular federal district. And for the reasons we address in Part III, *infra*, a proper application of §1404(a) requires that a forum-selection clause be “given controlling weight in all but the most exceptional cases.” *Stewart, supra*, at 83 (KENNEDY, J., concurring).

Atlantic Marine argues that §1404(a) is not a suitable mechanism to enforce forum-selection clauses because that provision cannot provide for transfer when a forum-selection clause specifies a state or foreign tribunal, see Brief for Petitioner 18–19, and we agree with Atlantic Marine that the Court of Appeals failed to provide a sound answer to this problem. The Court of Appeals opined that a forum-selection clause pointing to a nonfederal forum should be enforced through Rule 12(b)(3), which permits a party to move for dismissal of a case based on “improper venue.” 701 F. 3d, at 740. As Atlantic Marine persuasively argues, however, that conclusion cannot be reconciled with our construction of the term “improper venue” in §1406 to refer only to a forum that does not satisfy federal venue laws. If venue is proper under federal venue rules, it does not matter for the purpose of Rule 12(b)(3) whether the forum-selection clause points to a federal or a nonfederal forum.

Instead, the appropriate way to enforce a forum-

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selection clause pointing to a state or foreign forum is through the doctrine of *forum non conveniens*. Section 1404(a) is merely a codification of the doctrine of *forum non conveniens* for the subset of cases in which the transferee forum is within the federal court system; in such cases, Congress has replaced the traditional remedy of outright dismissal with transfer. See *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U. S. 422, 430 (2007) ("For the federal court system, Congress has codified the doctrine . . ."); see also notes following §1404 (Historical and Revision Notes) (Section 1404(a) "was drafted in accordance with the doctrine of *forum non conveniens*, permitting transfer to a more convenient forum, even though the venue is proper"). For the remaining set of cases calling for a nonfederal forum, §1404(a) has no application, but the residual doctrine of *forum non conveniens* "has continuing application in federal courts." *Sinochem*, 549 U. S., at 430 (internal quotation marks and brackets omitted); see also *ibid.* (noting that federal courts invoke *forum non conveniens* "in cases where the alternative forum is abroad, and perhaps in rare instances where a state or territorial court serves litigational convenience best" (internal quotation marks and citation omitted)). And because both §1404(a) and the *forum non conveniens* doctrine from which it derives entail the same balancing-of-interests standard, courts should evaluate a forum-selection clause pointing to a nonfederal forum in the same way that they evaluate a forum-selection clause pointing to a federal forum. See *Stewart*, 487 U. S., at 37 (SCALIA, J., dissenting) (Section 1404(a) "did not change 'the relevant factors' which federal courts used to consider under the doctrine of *forum non conveniens*" (quoting *Norwood v. Kirkpatrick*, 349 U. S. 29, 32 (1955))).

C

An *amicus* before the Court argues that a defendant in a

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breach-of-contract action should be able to obtain dismissal under Rule 12(b)(6) if the plaintiff files suit in a district other than the one specified in a valid forum-selection clause. See Brief for Stephen E. Sachs as *Amicus Curiae*. Petitioner, however, did not file a motion under Rule 12(b)(6), and the parties did not brief the Rule's application to this case at any stage of this litigation. We therefore will not consider it. Even if a defendant could use Rule 12(b)(6) to enforce a forum-selection clause, that would not change our conclusions that §1406(a) and Rule 12(b)(3) are not proper mechanisms to enforce a forum-selection clause and that §1404(a) and the *forum non conveniens* doctrine provide appropriate enforcement mechanisms.<sup>4</sup>

## III

Although the Court of Appeals correctly identified §1404(a) as the appropriate provision to enforce the forum-selection clause in this case, the Court of Appeals erred in failing to make the adjustments required in a §1404(a) analysis when the transfer motion is premised on a forum-selection clause. When the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause.<sup>5</sup> Only under extraordinary circumstances unrelated to the convenience of the parties should a §1404(a) motion be denied. And no such exceptional factors appear to be present in this case:

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<sup>4</sup>We observe, moreover, that a motion under Rule 12(b)(6), unlike a motion under §1404(a) or the *forum non conveniens* doctrine, may lead to a jury trial on venue if issues of material fact relating to the validity of the forum-selection clause arise. Even if Professor Sachs is ultimately correct, therefore, defendants would have sensible reasons to invoke §1404(a) or the *forum non conveniens* doctrine in addition to Rule 12(b)(6).

<sup>5</sup>Our analysis presupposes a contractually valid forum-selection clause.

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A

In the typical case not involving a forum-selection clause, a district court considering a §1404(a) motion (or a *forum non conveniens* motion) must evaluate both the convenience of the parties and various public-interest considerations.<sup>6</sup> Ordinarily, the district court would weigh the relevant factors and decide whether, on balance, a transfer would serve "the convenience of parties and witnesses" and otherwise promote "the interest of justice." §1404(a).

The calculus changes, however, when the parties' contract contains a valid forum-selection clause, which "represents the parties' agreement as to the most proper forum." *Stewart*, 487 U.S., at 31. The "enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system." *Id.*, at 33 (KENNEDY, J., concurring). For that reason, and because the overarching consideration under §1404(a) is whether a transfer would promote "the interest of justice," "a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases." *Id.*, at 33 (same). The presence of a valid forum-selection clause requires district courts to adjust their usual §1404(a) analysis in three ways.

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<sup>6</sup>Factors relating to the parties' private interests include "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241, n. 6 (1981) (internal quotation marks omitted). Public-interest factors may include "the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; [and] the interest in having the trial of a diversity case in a forum that is at home with the law." *Ibid.* (internal quotation marks omitted). The Court must also give some weight to the plaintiffs' choice of forum. See *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955).

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First, the plaintiff's choice of forum merits no weight. Rather, as the party defying the forum-selection clause, the plaintiff bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted. Because plaintiffs are ordinarily allowed to select whatever forum they consider most advantageous (consistent with jurisdictional and venue limitations), we have termed their selection the "plaintiff's venue privilege." *Van Dusen*, 376 U. S., at 635.<sup>7</sup> But when a plaintiff agrees by contract to bring suit only in a specified forum—presumably in exchange for other binding promises by the defendant—the plaintiff has effectively exercised its "venue privilege" before a dispute arises. Only that initial choice deserves deference, and the plaintiff must bear the burden of showing why the court should not transfer the case to the forum to which the parties agreed.

Second, a court evaluating a defendant's §1404(a) motion to transfer based on a forum-selection clause should not consider arguments about the parties' private interests. When parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation. A court accordingly must deem the private-interest factors to weigh entirely in favor of the preselected forum. As we have explained in a different but "instructive" context, *Stewart*, *supra*, at 23, "[w]hatever 'inconvenience' [the parties] would suffer by being forced to litigate in the contractual forum as [they] agreed to do was clearly foreseeable at the time of contracting." *The Bremen v. Zapata Off-Shore Co.*, 407 U. S. 1, 17–18 (1972); see also *Stewart*.

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<sup>7</sup>We note that this "privilege" exists within the confines of statutory limitations, and "[i]n most instances, the purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy v. Great Western United Corp.*, 443 U. S. 173, 183–184 (1979).

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- *supra*, at 33 (KENNEDY, J., concurring) (stating that *Bremen*'s "reasoning applies with much force to federal courts sitting in diversity").

As a consequence, a district court may consider arguments about public-interest factors only. See n. 6, *supra*. Because those factors will rarely defeat a transfer motion, the practical result is that forum-selection clauses should control except in unusual cases. Although it is "conceivable in a particular case" that the district court "would refuse to transfer a case notwithstanding the counterweight of a forum-selection clause," *Stewart, supra*, at 30-31, such cases will not be common.

Third, when a party bound by a forum-selection clause flouts its contractual obligation and files suit in a different forum, a §1404(a) transfer of venue will not carry with it the original venue's choice-of-law rules—a factor that in some circumstances may affect public-interest considerations. See *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241, n. 6 (1981) (listing a court's familiarity with the "law that must govern the action" as a potential factor). A federal court sitting in diversity ordinarily must follow the choice-of-law rules of the State in which it sits. See *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 494-496 (1941). However, we previously identified an exception to that principle for §1404(a) transfers, requiring that the state law applicable in the original court also apply in the transferee court. See *Van Dusen*, 376 U.S., at 639. We deemed that exception necessary to prevent "defendants, properly subjected to suit in the transferor State," from "invok[ing] §1404(a) to gain the benefits of the laws of another jurisdiction . . ." *Id.*, at 638; see *Ferens v. John Deere Co.*, 494 U.S. 516, 522 (1990) (extending the *Van Dusen* rule to §1404(a) motions by plaintiffs).

The policies motivating our exception to the *Klaxon* rule for §1404(a) transfers, however, do not support an extension to cases where a defendant's motion is premised on

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enforcement of a valid forum-selection clause. See *Ferens*, *supra*, at 523. To the contrary, those considerations lead us to reject the rule that the law of the court in which the plaintiff inappropriately filed suit should follow the case to the forum contractually selected by the parties. In *Van Dusen*, we were concerned that, through a §1404(a) transfer, a defendant could “defeat the state-law advantages that might accrue from the exercise of [the plaintiff’s] venue privilege.” 376 U.S., at 635. But as discussed above, a plaintiff who files suit in violation of a forum-selection clause enjoys no such “privilege” with respect to its choice of forum, and therefore it is entitled to no concomitant “state-law advantages.” Not only would it be inequitable to allow the plaintiff to fasten its choice of substantive law to the venue transfer, but it would also encourage gamesmanship. Because “§1404(a) should not create or multiply opportunities for forum shopping,” *Ferens*, *supra*, at 523, we will not apply the *Van Dusen* rule when a transfer stems from enforcement of a forum-selection clause: The court in the contractually selected venue should not apply the law of the transferor venue to which the parties waived their right.<sup>3</sup>

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<sup>3</sup>For the reasons detailed above, see Part II–B, *supra*, the same standards should apply to motions to dismiss for *forum non conveniens* in cases involving valid forum-selection clauses pointing to state or foreign forums. We have noted in contexts unrelated to forum-selection clauses that a defendant “invoking *forum non conveniens* ordinarily bears a heavy burden in opposing the plaintiff’s chosen forum.” *Sinochem Int’l Co. v. Malaysia Int’l Shipping Co.*, 549 U.S. 422, 430 (2007). That is because of the “hars[h] result” of that doctrine: Unlike a §1404(a) motion, a successful motion under *forum non conveniens* requires dismissal of the case. *Norwood*, 349 U.S., at 32. That inconveniences plaintiffs in several respects and even “makes it possible for [plaintiffs] to lose out completely, through the running of the statute of limitations in the forum finally deemed appropriate.” *Id.*, at 31 (internal quotation marks omitted). Such caution is not warranted, however, when the plaintiff has violated a contractual obligation by filing suit in a forum other than the one specified in a valid forum-selection

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When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties' settled expectations. A forum-selection clause, after all, may have figured centrally in the parties' negotiations and may have affected how they set monetary and other contractual terms; it may, in fact, have been a critical factor in their agreement to do business together in the first place. In all but the most unusual cases, therefore, "the interest of justice" is served by holding parties to their bargain.

B

The District Court's application of §1404(a) in this case did not comport with these principles. The District Court improperly placed the burden on Atlantic Marine to prove that transfer to the parties' contractually preselected forum was appropriate. As the party acting in violation of the forum-selection clause, J-Crew must bear the burden of showing that public-interest factors overwhelmingly disfavor a transfer.

The District Court also erred in giving weight to arguments about the parties' private interests, given that all private interests, as expressed in the forum-selection clause, weigh in favor of the transfer. The District Court stated that the private-interest factors "militat[e] against a transfer to Virginia" because "compulsory process will not be available for the majority of J-Crew's witnesses" and there will be "significant expense for those willing witnesses." 2012 WL 8499879, \*6-\*7; see 701 F.3d, at 743 (noting District Court's "concer[n] with J-Crew's ability to secure witnesses for trial"). But when J-Crew entered into a contract to litigate all disputes in Virginia, it knew that a distant forum might hinder its ability to call certain witnesses and might impose other burdens on

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clause. In such a case, dismissal would work no injustice on the plaintiff.

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its litigation efforts. It nevertheless promised to resolve its disputes in Virginia, and the District Court should not have given any weight to J-Crew's current claims of inconvenience.

The District Court also held that the public-interest factors weighed in favor of keeping the case in Texas because Texas contract law is more familiar to federal judges in Texas than to their federal colleagues in Virginia. That ruling, however, rested in part on the District Court's belief that the federal court sitting in Virginia would have been required to apply Texas' choice-of-law rules, which in this case pointed to Texas contract law. See 2012 WL 8499879, \*8 (citing *Van Dusen*, *supra*, at 639). But for the reasons we have explained, the transferee court would apply Virginia choice-of-law rules. It is true that even these Virginia rules may point to the contract law of Texas, as the State in which the contract was formed. But at minimum, the fact that the Virginia court will not be required to apply Texas choice-of-law rules reduces whatever weight the District Court might have given to the public-interest factor that looks to the familiarity of the transferee court with the applicable law. And, in any event, federal judges routinely apply the law of a State other than the State in which they sit. We are not aware of any exceptionally arcane features of Texas contract law that are likely to defy comprehension by a federal judge sitting in Virginia.

\* \* \*

We reverse the judgment of the Court of Appeals for the Fifth Circuit. Although no public-interest factors that might support the denial of Atlantic Marine's motion to transfer are apparent on the record before us, we remand the case for the courts below to decide that question.

*It is so ordered.*

PIPER AIRCRAFT CO.

v.

REYNO, PERSONAL REPRESENTATIVE OF THE ESTATES OF FEHILLY ET AL.

No. 80-848.

Supreme Court of United States.

Argued October 14, 1981

Decided December 8, 1981<sup>[1]</sup>

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

237 \*237 *James M. Fitzsimons* argued the cause for petitioner in No. 80-848. With him on the brief were *Charles J.*  
238 *McKelvey*, *Ann S. Pepperman*, and *Keith A. Jones*. *Warner W. Gardner* argued the cause for petitioner in \*238 No. 80-  
883. With him on the briefs were *Nancy J. Bregstein* and *Ronald C. Scott*.

*Daniel C. Cathcart* argued the cause and filed a brief for respondent in both cases.<sup>[2]</sup>

JUSTICE MARSHALL delivered the opinion of the Court.

These cases arise out of an air crash that took place in Scotland. Respondent, acting as representative of the estates of several Scottish citizens killed in the accident, brought wrongful-death actions against petitioners that were ultimately transferred to the United States District Court for the Middle District of Pennsylvania. Petitioners moved to dismiss on the ground of *forum non conveniens*. After noting that an alternative forum existed in Scotland, the District Court granted their motions. 479 F. Supp. 727 (1979). The United States Court of Appeals for the Third Circuit reversed. 630 F. 2d 149 (1980). The Court of Appeals based its decision, at least in part, on the ground that dismissal is automatically barred where the law of the alternative forum is less favorable to the plaintiff than the law of the forum chosen by the plaintiff. Because we conclude that the possibility of an unfavorable change in law should not, by itself, bar dismissal, and because we conclude that the District Court did not otherwise abuse its discretion, we reverse.

I

A

239 In July 1976, a small commercial aircraft crashed in the Scottish highlands during the course of a charter flight from  
\*239 Blackpool to Perth. The pilot and five passengers were killed instantly. The decedents were all Scottish subjects and residents, as are their heirs and next of kin. There were no eyewitnesses to the accident. At the time of the crash the plane was subject to Scottish air traffic control.

The aircraft, a twin-engine Piper Aztec, was manufactured in Pennsylvania by petitioner Piper Aircraft Co. (Piper). The propellers were manufactured in Ohio by petitioner Hartzell Propeller, Inc. (Hartzell). At the time of the crash the aircraft was registered in Great Britain and was owned and maintained by Air Navigation and Trading Co., Ltd. (Air Navigation). It was operated by McDonald Aviation, Ltd. (McDonald), a Scottish air taxi service. Both Air Navigation and McDonald were organized in the United Kingdom. The wreckage of the plane is now in a hangar in Farnborough, England.

The British Department of Trade investigated the accident shortly after it occurred. A preliminary report found that the plane crashed after developing a spin, and suggested that mechanical failure in the plane or the propeller was

responsible. At Hartzell's request, this report was reviewed by a three-member Review Board, which held a 9-day adversary hearing attended by all interested parties. The Review Board found no evidence of defective equipment and indicated that pilot error may have contributed to the accident. The pilot, who had obtained his commercial pilot's license only three months earlier, was flying over high ground at an altitude considerably lower than the minimum height required by his company's operations manual.

240 In July 1977, a California probate court appointed respondent Gaynell Reyno administratrix of the estates of the five passengers. Reyno is not related to and does not know any of the decedents or their survivors; she was a legal secretary to the attorney who filed this lawsuit. Several days after her appointment, Reyno commenced separate wrongful-death \*240 actions against Piper and Hartzell in the Superior Court of California, claiming negligence and strict liability.<sup>[1]</sup> Air Navigation, McDonald, and the estate of the pilot are not parties to this litigation. The survivors of the five passengers whose estates are represented by Reyno filed a separate action in the United Kingdom against Air Navigation, McDonald, and the pilot's estate.<sup>[2]</sup> Reyno candidly admits that the action against Piper and Hartzell was filed in the United States because its laws regarding liability, capacity to sue, and damages are more favorable to her position than are those of Scotland. Scottish law does not recognize strict liability in tort. Moreover, it permits wrongful-death actions only when brought by a decedent's relatives. The relatives may sue only for "loss of support and society."<sup>[3]</sup>

241 On petitioners' motion, the suit was removed to the United States District Court for the Central District of California. Piper then moved for transfer to the United States District Court for the Middle District of Pennsylvania, pursuant to 28 U. S. C. § 1404(a).<sup>[4]</sup> Hartzell moved to dismiss for lack of personal jurisdiction, or in the alternative, to transfer.<sup>[5]</sup> In December 1977, the District Court quashed service on \*241 Hartzell and transferred the case to the Middle District of Pennsylvania. Respondent then properly served process on Hartzell.

## B

In May 1978, after the suit had been transferred, both Hartzell and Piper moved to dismiss the action on the ground of *forum non conveniens*. The District Court granted these motions in October 1979. It relied on the balancing test set forth by this Court in *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501 (1947), and its companion case, *Koster v. Lumbemens Mut. Cas. Co.*, 330 U. S. 518 (1947). In those decisions, the Court stated that a plaintiff's choice of forum should rarely be disturbed. However, when an alternative forum has jurisdiction to hear the case, and when trial in the chosen forum would "establish . . . oppressiveness and vexation to a defendant. . . out of all proportion to plaintiff's convenience," or when the "chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems," the court may, in the exercise of its sound discretion, dismiss the case. *Koster, supra*, at 524. To guide trial court discretion, the Court provided a list of "private interest factors" affecting the convenience of the litigants, and a list of "public interest factors" affecting the convenience of the forum. *Gilbert, supra*, at 508-509.<sup>[6]</sup>

242 \*242 After describing our decisions in *Gilbert* and *Koster*, the District Court analyzed the facts of these cases. It began by observing that an alternative forum existed in Scotland; Piper and Hartzell had agreed to submit to the jurisdiction of the Scottish courts and to waive any statute of limitations defense that might be available. It then stated that plaintiff's choice of forum was entitled to little weight. The court recognized that a plaintiff's choice ordinarily deserves substantial deference. It noted, however, that Reyno "is a representative of foreign citizens and residents seeking a forum in the United States because of the more liberal rules concerning products liability law," and that "the courts have been less solicitous when the plaintiff is not an American citizen or resident, and particularly when the foreign citizens seek to benefit from the more liberal tort rules provided for the protection of citizens and residents of the United States." 479 F. Supp., at 731.

The District Court next examined several factors relating to the private interests of the litigants, and determined that these factors strongly pointed towards Scotland as the appropriate forum. Although evidence concerning the design, manufacture, and testing of the plane and propeller is located in the United States, the connections with Scotland are

otherwise "overwhelming." *Id.*, at 732. The real parties in interest are citizens of Scotland, as were all the decedents. Witnesses who could testify regarding the maintenance of the aircraft, the training of the pilot, and the investigation of the accident — all essential to the defense — are in Great Britain. Moreover, all witnesses to damages are located in Scotland. Trial would be aided by familiarity with Scottish topography, and by easy access to the wreckage.

243 The District Court reasoned that because crucial witnesses and evidence were beyond the reach of compulsory process, and because the defendants would not be able to implead potential Scottish third-party defendants, it would be "unfair to make Piper and Hartzell proceed to trial in this forum." *Id.*, \*243 at 733. The survivors had brought separate actions in Scotland against the pilot, McDonald, and Air Navigation. "[I]t would be fairer to all parties and less costly if the entire case was presented to one jury with available testimony from all relevant witnesses." *Ibid.* Although the court recognized that if trial were held in the United States, Piper and Hartzell could file indemnity or contribution actions against the Scottish defendants, it believed that there was a significant risk of inconsistent verdicts.<sup>[1]</sup>

244 The District Court concluded that the relevant public interests also pointed strongly towards dismissal. The court determined that Pennsylvania law would apply to Piper and Scottish law to Hartzell if the case were tried in the Middle District of Pennsylvania.<sup>[2]</sup> As a result, "trial in this forum would be hopelessly complex and confusing for a jury." *Id.*, at 734. In addition, the court noted that it was unfamiliar with Scottish law and thus would have to rely upon experts from that country. The court also found that the trial would be enormously costly and time-consuming; that it would be unfair to burden citizens with jury duty when the Middle District \*244 of Pennsylvania has little connection with the controversy; and that Scotland has a substantial interest in the outcome of the litigation.

In opposing the motions to dismiss, respondent contended that dismissal would be unfair because Scottish law was less favorable. The District Court explicitly rejected this claim. It reasoned that the possibility that dismissal might lead to an unfavorable change in the law did not deserve significant weight; any deficiency in the foreign law was a "matter to be dealt with in the foreign forum." *Id.*, at 738.

## C

On appeal, the United States Court of Appeals for the Third Circuit reversed and remanded for trial. The decision to reverse appears to be based on two alternative grounds. First, the Court held that the District Court abused its discretion in conducting the *Gilbert* analysis. Second, the Court held that dismissal is never appropriate where the law of the alternative forum is less favorable to the plaintiff.

The Court of Appeals began its review of the District Court's *Gilbert* analysis by noting that the plaintiff's choice of forum deserved substantial weight, even though the real parties in interest are nonresidents. It then rejected the District Court's balancing of the private interests. It found that Piper and Hartzell had failed adequately to support their claim that key witnesses would be unavailable if trial were held in the United States: they had never specified the witnesses they would call and the testimony these witnesses would provide. The Court of Appeals gave little weight to the fact that Piper and Hartzell would not be able to implead potential Scottish third-party defendants, reasoning that this difficulty would be "burdensome" but not "unfair," 630 F. 2d, at 162.<sup>[3]</sup> Finally, the court stated that resolution of the 245 suit \*245 would not be significantly aided by familiarity with Scottish topography, or by viewing the wreckage.

The Court of Appeals also rejected the District Court's analysis of the public interest factors. It found that the District Court gave undue emphasis to the application of Scottish law: "the mere fact that the court is called upon to determine and apply foreign law does not present a legal problem of the sort which would justify the dismissal of a case otherwise properly before the court." *Id.*, at 163 (quoting *Hoffman v. Gobenman*, 420 F. 2d 423, 427 (CA3 1970)). In any event, it believed that Scottish law need not be applied. After conducting its own choice-of-law analysis, the Court of Appeals determined that American law would govern the actions against both Piper and Hartzell.<sup>[4]</sup> The same choice-of-law analysis apparently led it to conclude that Pennsylvania and Ohio, rather than Scotland, are the jurisdictions with the greatest policy interests in the dispute, and that all other public interest factors favored trial in the United States.<sup>[11]</sup>

246 \*246 In any event, it appears that the Court of Appeals would have reversed even if the District Court had properly balanced the public and private interests. The court stated:

"[I]t is apparent that the dismissal would work a change in the applicable law so that the plaintiff's strict liability claim would be eliminated from the case. But . . . a dismissal for forum non conveniens, like a statutory transfer, 'should not, despite its convenience, result in a change in the applicable law.' Only when American law is not applicable, or when the foreign jurisdiction would, as a matter of its own choice of law, give the plaintiff the benefit of the claim to which she is entitled here, would dismissal be justified." 630 F. 2d, at 163-164 (footnote omitted) (quoting DeMateos v. Texaco, Inc., 562 F. 2d 895, 899 (CA3 1977), cert. denied, 435 U. S. 904 (1978)).

In other words, the court decided that dismissal is automatically barred if it would lead to a change in the applicable law unfavorable to the plaintiff.

We granted certiorari in these case to consider the questions they raise concerning the proper application of the doctrine of *forum non conveniens*. 450 U. S. 909 (1981).<sup>[12]</sup>

247 \*247 II

The Court of Appeals erred in holding that plaintiffs may defeat a motion to dismiss on the ground of *forum non conveniens* merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiffs than that of the present forum. The possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the *forum non conveniens* inquiry.

We expressly rejected the position adopted by the Court of Appeals in our decision in Canada Malting Co. v. Paterson Steamships, Ltd., 285 U. S. 413 (1932). That case arose out of a collision between two vessels in American waters. The Canadian owners of cargo lost in the accident sued the Canadian owners of one of the vessels in Federal District Court. The cargo owners chose an American court in large part because the relevant American liability rules were more favorable than the Canadian rules. The District Court dismissed on grounds of *forum non conveniens*. The plaintiffs argued that dismissal was inappropriate because Canadian laws were less favorable to them. This Court nonetheless affirmed:

248 "We have no occasion to enquire by what law rights of the parties are governed, as we are of the opinion \*248 that, under any view of that question, it lay within the discretion of the District Court to decline to assume jurisdiction over the controversy. . . . '[T]he court will not take cognizance of the case if justice would be as well done by remitting the parties to their home forum.'" *Id.*, at 419-420 (quoting Charter Shipping Co. v. Bowring, Jones & Tidy, Ltd., 281 U. S. 515, 517 (1930).

The Court further stated that "[t]here was no basis for the contention that the District Court abused its discretion." 285 U. S., at 423.

249 It is true that *Canada Malting* was decided before *Gilbert*, and that the doctrine of *forum non conveniens* was not fully crystallized until our decision in that case.<sup>[13]</sup> However, *Gilbert* in no way affects the validity of *Canada Malting*. Indeed, \*249 by holding that the central focus of the *forum non conveniens* inquiry is convenience, *Gilbert* implicitly recognized that dismissal may not be barred solely because of the possibility of an unfavorable change in law.<sup>[14]</sup> Under *Gilbert*, dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice.<sup>[15]</sup> If substantial weight were given to the possibility of an unfavorable change in law, however, dismissal might be barred even where trial in the chosen forum was plainly inconvenient.

The Court of Appeals' decision is inconsistent with this Court's earlier *forum non conveniens* decisions in another respect. Those decisions have repeatedly emphasized the need to retain flexibility. In *Gilbert*, the Court refused to

identify specific circumstances "which will justify or require either grant or denial of remedy." 330 U. S., at 508. Similarly, in *Koster*, the Court rejected the contention that where a trial would involve inquiry into the internal affairs of a foreign corporation, dismissal was always appropriate. "That is one, but only one, factor which may show convenience." 330 U. S., at 527. And in *Williams v. Green Bay & Western R. Co.*, 326 U. S. 549, 557 (1946), we stated that we would not lay down a rigid rule to govern discretion, and that "[e]ach case turns on its facts." If central emphasis were \*250 placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable.

In fact, if conclusive or substantial weight were given to the possibility of a change in law, the *forum non conveniens* doctrine would become virtually useless. Jurisdiction and venue requirements are often easily satisfied. As a result, many plaintiffs are able to choose from among several forums. Ordinarily, these plaintiffs will select that forum whose choice-of-law rules are most advantageous. Thus, if the possibility of an unfavorable change in substantive law is given substantial weight in the *forum non conveniens* inquiry, dismissal would rarely be proper.

Except for the court below, every Federal Court of Appeals that has considered this question after *Gilbert* has held that dismissal on grounds of *forum non conveniens* may be granted even though the law applicable in the alternative forum is less favorable to the plaintiff's chance of recovery. See, e. g., *Pain v. United Technologies Corp.*, 205 U. S. App. D. C. 229, 248-249, 637 F. 2d 775, 794-795 (1980); *Fitzgerald v. Texaco, Inc.*, 521 F. 2d 448, 453 (CA2 1975), cert. denied, 423 U. S. 1052 (1976); *Anastasiadis v. S.S. Little John*, 346 F. 2d 281, 283 (CA5 1965), cert. denied, 384 U. S. 920 (1966).<sup>[18]</sup> Several Courts have relied expressly on *Canada Malting* to hold that the possibility of an unfavorable change of law should not, by itself, bar dismissal. See *Fitzgerald*, \*251 *v. Texaco, Inc.*, *supra*; *Anglo-American Grain Co. v. The S/T Mina D'Amico*, 169 F. Supp. 908 (ED Va., 1959).

The Court of Appeals' approach is not only inconsistent with the purpose of the *forum non conveniens* doctrine, but also poses substantial practical problems. If the possibility of a change in law were given substantial weight, deciding motions to dismiss on the ground of *forum non conveniens* would become quite difficult. Choice-of-law analysis would become extremely important, and the courts would frequently be required to interpret the law of foreign jurisdictions. First, the trial court would have to determine what law would apply if the case were tried in the chosen forum, and what law would apply if the case were tried in the alternative forum. It would then have to compare the rights, remedies, and procedures available under the law that would be applied in each forum. Dismissal would be appropriate only if the court concluded that the law applied by the alternative forum is as favorable to the plaintiff as that of the chosen forum. The doctrine of *forum non conveniens*, however, is designed in part to help courts avoid conducting complex exercises in comparative law. As we stated in *Gilbert*, the public interest factors point towards dismissal where the court would be required to "untangle problems in conflict of laws, and in law foreign to itself." 330 U. S., at 509.

Upholding the decision of the Court of Appeals would result in other practical problems. At least where the foreign plaintiff named an American manufacturer as defendant,<sup>[17]</sup> a court could not dismiss the case on grounds of *forum non* \*252 *conveniens* where dismissal might lead to an unfavorable change in law. The American courts, which are already extremely attractive to foreign plaintiffs,<sup>[18]</sup> would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts.<sup>[19]</sup>

\*253 The Court of Appeals based its decision, at least in part, on an analogy between dismissals on grounds of *forum non conveniens* and transfers between federal courts pursuant to § 1404(a). In *Van Dusen v. Barrack*, 376 U. S. 612 (1964), this Court ruled that a § 1404(a) transfer should not result in a change in the applicable law. Relying on dictum in an earlier Third Circuit opinion interpreting *Van Dusen*, the court below held that that principle is also applicable to a dismissal on *forum non conveniens* grounds. 630 F. 2d, at 164, and n. 51 (citing *DeMateos v. Texaco, Inc.*, 562 F. 2d, at 899). However, § 1404(a) transfers are different than dismissals on the ground of *forum non conveniens*.

Congress enacted § 1404(a) to permit change of venue between federal courts. Although the statute was drafted in accordance with the doctrine of *forum non conveniens*, see Revisor's Note, H. R. Rep. No. 308, 80th Cong., 1st Sess., A132 (1947); H. R. Rep. No. 2646, 79th Cong., 2d Sess., A127 (1946), it was intended to be a revision rather than a

codification of the common law. Norwood v. Kirkpatrick, 349 U. S. 29 (1955). District courts were given more discretion to transfer under § 1404(a) than they had to dismiss on grounds of *forum non conveniens*. *Id.*, at 31-32.

254 The reasoning employed in Van Dusen v. Barrack is simply inapplicable to dismissals on grounds of *forum non conveniens*. That case did not discuss the common-law doctrine. Rather, it focused on "the construction and application" of § 1404(a). 376 U. S., at 613.<sup>[20]</sup> Emphasizing the remedial \*254 purpose of the statute, *Barrack* concluded that Congress could not have intended a transfer to be accompanied by a change in law. *Id.*, at 622. The statute was designed as a "federal housekeeping measure," allowing easy change of venue within a unified federal system. *Id.*, at 613. The Court feared that if a change in venue were accompanied by a change in law, forum-shopping parties would take unfair advantage of the relaxed standards for transfer. The rule was necessary to ensure the just and efficient operation of the statute.<sup>[21]</sup>

255 We do not hold that the possibility of an unfavorable change in law should *never* be a relevant consideration in a *forum non conveniens* inquiry. Of course, if the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all, the unfavorable change in law may be given substantial weight; the district court may conclude that dismissal would not be in the interests of justice.<sup>[22]</sup> In these cases, however, the remedies that \*255 would be provided by the Scottish courts do not fall within this category. Although the relatives of the decedents may not be able to rely on a strict liability theory, and although their potential damages award may be smaller, there is no danger that they will be deprived of any remedy or treated unfairly.

### III

The Court of Appeals also erred in rejecting the District Court's *Gilbert* analysis. The Court of Appeals stated that more weight should have been given to the plaintiff's choice of forum, and criticized the District Court's analysis of the private and public interests. However, the District Court's decision regarding the deference due plaintiff's choice of forum was appropriate. Furthermore, we do not believe that the District Court abused its discretion in weighing the private and public interests.

### A

The District Court acknowledged that there is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum. It held, however, that the presumption applies with less force when the plaintiff or real parties in interest are foreign.

256 The District Court's distinction between resident or citizen plaintiffs and foreign plaintiffs is fully justified. In *Koster*, the Court indicated that a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum. 330 U. S., at 524.<sup>[23]</sup> When the home forum has \*256 been chosen, it is reasonable to assume that this choice is convenient. When the plaintiff is foreign, however, this assumption is much less reasonable. Because the central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference.<sup>[24]</sup>

257 \*257 **B**

The *forum non conveniens* determination is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference. Gilbert, 330 U. S., at 511-512; Koster, 330 U. S., at 531. Here, the Court of Appeals expressly acknowledged that the standard of review was one of abuse of discretion. In examining the District Court's analysis of the public and private

interests, however, the Court of Appeals seems to have lost sight of this rule, and substituted its own judgment for that of the District Court.

## (1)

258 In analyzing the private interest factors, the District Court stated that the connections with Scotland are "overwhelming." 479 F. Supp., at 732. This characterization may be somewhat exaggerated. Particularly with respect to the question of relative ease of access to sources of proof, the private interests point in both directions. As respondent emphasizes, records concerning the design, manufacture, and testing of the propeller and plane are located in the United States. She would have greater access to sources of proof relevant to her strict liability and negligence theories if trial were held here.<sup>[25]</sup> However, the District Court did not act \*258 unreasonably in concluding that fewer evidentiary problems would be posed if the trial were held in Scotland. A large proportion of the relevant evidence is located in Great Britain.

The Court of Appeals found that the problems of proof could not be given any weight because Piper and Hartzell failed to describe with specificity the evidence they would not be able to obtain if trial were held in the United States. It suggested that defendants seeking *forum non conveniens* dismissal must submit affidavits identifying the witnesses they would call and the testimony these witnesses would provide if the trial were held in the alternative forum. Such detail is not necessary.<sup>[26]</sup> Piper and Hartzell have moved for dismissal precisely because many crucial witnesses are located beyond the reach of compulsory process, and thus are difficult to identify or interview. Requiring extensive investigation would defeat the purpose of their motion. Of course, defendants must provide enough information to enable the District Court to balance the parties' interests. Our examination of the record convinces us that sufficient information \*259 was provided here. Both Piper and Hartzell submitted affidavits describing the evidentiary problems they would face if the trial were held in the United States.<sup>[27]</sup>

The District Court correctly concluded that the problems posed by the inability to implead potential third-party defendants clearly supported holding the trial in Scotland. Joinder of the pilot's estate, Air Navigation, and McDonald is crucial to the presentation of petitioners' defense. If Piper and Hartzell can show that the accident was caused not by a design defect, but rather by the negligence of the pilot, the plane's owners, or the charter company, they will be relieved of all liability. It is true, of course, that if Hartzell and Piper were found liable after a trial in the United States, they could institute an action for indemnity or contribution against these parties in Scotland. It would be far more convenient, however, to resolve all claims in one trial. The Court of Appeals rejected this argument. Forcing petitioners to rely on actions for indemnity or contributions would be "burdensome" but not "unfair." 630 F. 2d, at 162. Finding that trial in the plaintiff's chosen forum would be burdensome, however, is sufficient to support dismissal on grounds of *forum non conveniens*.<sup>[28]</sup>

## (2)

260 The District Court's review of the factors relating to the public interest was also reasonable. On the basis of its \*260 choice-of-law analysis, it concluded that if the case were tried in the Middle District of Pennsylvania, Pennsylvania law would apply to Piper and Scottish law to Hartzell. It stated that a trial involving two sets of laws would be confusing to the jury. It also noted its own lack of familiarity with Scottish law. Consideration of these problems was clearly appropriate under *Gilbert*; in that case we explicitly held that the need to apply foreign law pointed towards dismissal.<sup>[29]</sup> The Court of Appeals found that the District Court's choice-of-law analysis was incorrect, and that American law would apply to both Hartzell and Piper. Thus, lack of familiarity with foreign law would not be a problem. Even if the Court of Appeals' conclusion is correct, however, all other public interest factors favored trial in Scotland.

Scotland has a very strong interest in this litigation. The accident occurred in its airspace. All of the decedents were Scottish. Apart from Piper and Hartzell, all potential plaintiffs and defendants are either Scottish or English. As we

stated in *Gilbert*, there is "a local interest in having localized controversies decided at home." 330 U. S., at 509. Respondent argues that American citizens have an interest in ensuring that American manufacturers are deterred from producing defective products, and that additional deterrence might be obtained if Piper and Hartzell were tried in the United States, where they could be sued on the basis of both negligence and strict liability. However, the incremental  
261 deterrence that would be gained if this trial were held in an \*261 American court is likely to be insignificant. The American interest in this accident is simply not sufficient to justify the enormous commitment of judicial time and resources that would inevitably be required if the case were to be tried here.

#### IV

The Court of Appeals erred in holding that the possibility of an unfavorable change in law bars dismissal on the ground of *forum non conveniens*. It also erred in rejecting the District Court's *Gilbert* analysis. The District Court properly decided that the presumption in favor of the respondent's forum choice applied with less than maximum force because the real parties in interest are foreign. It did not act unreasonably in deciding that the private interests pointed towards trial in Scotland. Nor did it act unreasonably in deciding that the public interests favored trial in Scotland. Thus, the judgment of the Court of Appeals is

*Reversed.*

JUSTICE POWELL took no part in the decision of these cases.

JUSTICE O'CONNOR took no part in the consideration or decision of these cases.

JUSTICE WHITE, concurring in part and dissenting in part.

I join Parts I and II of the Court's opinion. However, like JUSTICE BRENNAN and JUSTICE STEVENS, I would not proceed to deal with the issues addressed in Part III. To that extent, I am in dissent.

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins, dissenting.

In No. 80-848, only one question is presented for review to this Court:

262 "Whether, in an action in federal district court brought by foreign plaintiffs against American defendants, the plaintiffs may defeat a motion to dismiss on the ground of \*262 *forum non conveniens* merely by showing that the substantive law that would be applied if the case were litigated in the district court is more favorable to them than the law that would be applied by the courts of their own nation." Pet. for Cert. in No. 80-848, p. i.

In No. 80-883, the Court limited its grant of certiorari, see 450 U. S. 909, to the same question:

"Must a motion to dismiss on grounds of *forum non conveniens* be denied whenever the law of the alternate forum is less favorable to recovery than that which would be applied by the district court?" Pet. for Cert. in No. 80-883, p. i.

I agree that this question should be answered in the negative. Having decided that question, I would simply remand the case to the Court of Appeals for further consideration of the question whether the District Court correctly decided that Pennsylvania was not a convenient forum in which to litigate a claim against a Pennsylvania company that a plane was defectively designed and manufactured in Pennsylvania.

[\*] Together with No. 80-883, *Hartzell Propeller, Inc. v. Reyno, Personal Representative of the Estates of Fehilly et al.*, also on certiorari to the same court.

[†] John D. Dillow, Samuel F. Pearce, John J. Hennelly, Jr., and Thomas C. Walsh filed a brief for Boeing Co. et al. as *amici curiae* urging reversal.

## Memorandum

To: Associate  
From: Partner  
Re: *Abel, et al. v. Tex-a-Pharm*, in U.S. District Court for Northern District of Texas

Our client, Tex-a-Pharm, is a Texas company with its principal place of business in Dallas. The company developed and used a new antibiotic to fight an epidemic of bacterial meningitis in Kano, Nigeria. In February 2002, the media reported an outbreak of bacterial meningitis in Kano. Tex-a-Pharm had been working on a new antibiotic, Trovan, which could be used to treat meningitis, but it had not received FDA approval by February 2002. In April 2002, Tex-a-Pharm sought and received FDA authorization to export Trovan to Nigeria. In that same month, Tex-a-Pharm researchers departed from the U.S. in a chartered DC-9 bound for Kano, Nigeria. Tex-a-Pharm's research team spent approximately a month in Nigeria; it provided no follow up care to the children. By the end of May, all Tex-a-Pharm employees had returned home.

Many children were severely injured or died from the epidemic in total. All plaintiffs in this case are Nigerian and live in Nigeria. They have brought suit under the Torture Victim Prevention Act (TVPA), which both provides for original jurisdiction in the federal courts and for a private right of action by United States citizens and aliens who allege torture by a defendant acting allegedly "under color of law" of a foreign nation ("under color of law" is typically interpreted to mean acting with the support or backing of the foreign nation's government). The TVPA was enacted in 1991. Some plaintiffs are the surviving family members of these children; other plaintiffs are Nigerian children who took the drug and survived with disabilities.

The survival rate for the children who received Trovan was higher than it was for those who did not receive it, but the fatality rate was still extraordinarily high. Moreover, a high percentage of those who survived have sustained permanent physical and mental disabilities which plaintiffs allege is the result not of the epidemic but of having taken Trovan. The strongest evidence plaintiffs can cite in support of this allegation is that of all of the surviving children, only those treated with Trovan seem to have these disabilities.

The Nigerian government provided Tex-a-Pharm with a letter necessary to secure the FDA's approval for the export of Trovan. The Nigerian government also facilitated Tex-a-Pharm's efforts to conduct the Kano Trovan Test by arranging for Tex-a-Pharm's accommodations in Kano, and providing access to two of the hospital's wards to conduct the Kano Trovan Test, as well arranging for Tex-a-Pharm's use of the services of hospital's nurses and physicians.

All research on the drug was performed in Dallas. The drug was manufactured in Dallas. Also, in various places throughout the United States the company gathered data from clinical trials used to further research and development efforts of the drug. Plaintiffs have alleged that Tex-a-Pharm intended to use the experiments in Nigeria to aid its efforts to obtain FDA regulatory approval of the drug in America. Such FDA approval of the new antibiotic would, in turn, pave the way for sale of Trovan in the U.S., according to plaintiffs. To date, however, no Trovan has been sold in this country.

I want you to consider whether we should file a forum non conveniens motion. As always, I want you to consider not only the strength of the arguments for dismissal but also the force of the argument that plaintiffs will make against dismissal, so we can make a fully informed decision about what to do.