UP CLOSE AND PERSONAL: A CLOSE-UP LOOK AT PERSONAL JURISDICTION

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INTRODUCTION

There is a perception that the law of personal jurisdiction is unclear.1 This Article will examine the accuracy of that perception based on United States Supreme Court cases beginning with the landmark case of International Shoe Co. v. Washington.2 This Article will examine several United States Supreme Court decisions regarding the law of personal jurisdiction.3 This Article will begin with a discussion of the Supreme Court's holdings in these personal jurisdiction cases.4 After a discussion of some of these cases, this Article will present an outline illustrating the status of the law of personal jurisdiction following the Court's decisions.5 Finally, this Article will conclude with suggestions for improving the law of personal jurisdiction.6

WHAT IS PERSONAL JURISDICTION?

The United States Supreme Court has stated:
It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant. . . . The existence of personal jurisdiction, in

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2. 326 U.S. 310 (1945). Prior to International Shoe, courts typically based jurisdiction on the physical presence of the defendant in the forum when process was served. There were some exceptions, such as jurisdiction based on consent, domicile, corporate presence and doing business, and in rem and quasi-in-rem. The United States Supreme Court in International Shoe changed the focus to accommodate a mobile society. J.H. Friedenthal et al., Civil Procedure 93-120 (2nd ed. West 1993) [hereinafter Friedenthal]. For a brief discussion of and new perspective on International Shoe, see Paul Horowitz et al., The Law of Prime Numbers, 68 N.Y.U. L. Rev. 185, 193 n.11, 13 (1993).

3. See infra notes 16-244 and accompanying text.
4. See infra notes 16-244 and accompanying text.
5. See infra notes 16-322 and accompanying text.
6. See infra notes 323-83 and accompanying text.
turn, depends upon . . . a sufficient connection between the defendant and the forum state to make it fair to require defense of the action in the forum.7

PERSONAL JURISDICTION IN STATE AND FEDERAL COURTS

In most cases, personal jurisdiction will be identical in state and federal court. This is because of Federal Rule of Civil Procedure 4(k).8 Rule 4(k) provides that federal courts acquire personal jurisdiction on the same basis as the state in which the federal court sits, whether the claim is based on a federal question or on diversity.9 There are exceptions authorized by federal statute.10 For example, federal courts have personal jurisdiction over parties throughout the United States in federal interpleader actions.11

FEDERAL DUE PROCESS

Personal jurisdiction in the state courts must satisfy the federal due process requirement under the Fourteenth Amendment to the United States Constitution.12 This Article primarily focuses on the requirements needed to obtain federal personal jurisdiction under due process of the law. This Article will analyze United States Supreme Court cases, identify key factors in the Supreme Court’s opinions, and fit the factors into a personal jurisdiction chart.

STATE LONG-ARM STATUTES

To assert personal jurisdiction over an out-of-state defendant a state court must satisfy federal due process and the state’s personal

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   Service of a summons . . . is effective to establish jurisdiction over the person of the defendant (A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located . . .
   (D) when authorized by a statute of the United States.

   Id. at 4(k)(1)(A) & (D).

10. See Fed. R. Civ. P. 4(k)(1)(D); see infra note 11 and accompanying text.
jurisdiction statute, known as the long-arm statute. Long-arm statutes are of two types: 1) those allowing personal jurisdiction whenever federal due process is satisfied; and 2) those allowing personal jurisdiction on narrower grounds, for example, the commission of a tort within the state or the breach of a contract within the state. Even though due process may be satisfied, personal jurisdiction may be disallowed if the state long-arm statute's requirements are not met. This Article will return to long-arm statutes following a discussion of pertinent cases.


14. For example, California's long-arm statute provides: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." CAL. CIV. PROC. CODE § 410.10 (West 1973 & Supp. 1996). California does not distinguish between state and federal constitutional requirements. Kulko, 436 U.S. at 89 n.3.

Texas, long-arm statute has been construed as being as broad as federal due process. Hall, 466 U.S. at 413 n.7. The Texas statute provides that jurisdiction attaches over "[a]ny foreign corporation . . . that engages in business in this State . . . upon causes of action arising out of such business done in this State . . ." TEX. REV. CIV. STAT. ANN. art. 2031 § 3 (West 1971 & Supp. 1991).

New York's personal jurisdiction statute provides:

Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:
1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
   (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
   (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
4. owns, uses or possesses any real property situated within the state.


See Burger King Corp., 471 U.S. at 463-64 (citing FLA. STAT. § 48.193(i)(g) (Supp. 1984)).

15. Jim Fox Enter., Inc. v. Air France, 664 F.2d 63, 64 (5th Cir. 1981). In the Jim Fox case, article 2031b § 3 of the Texas Revised Civil Statutes provided: "When any foreign corporation . . . shall engage in business in this state, in any action in which such corporation . . . is a party or is to be made a party arising out of such business, service may be made. . . ." Jim Fox Enter., Inc., 664 F.2d at 64 n.2 (citing Tex. Rev. Civ. STAT. ANN. art. 2031 § 2 (West 1971 & Supp. 1991)). The appellate court found that due process would have permitted personal jurisdiction. Jim Fox Enter., Inc., 664 F.2d at 64. However, the court noted that personal jurisdiction was denied because the long-arm statute was not satisfied. Id. at 64.
CASES AND DUE PROCESS

*International Shoe Co. v. Washington*[^16]

International Shoe — a corporation incorporated in Delaware and headquartered in St. Louis, Missouri — manufactured and sold shoes. Although International Shoe's manufacturing and distribution were done outside of the State of Washington, from 1937 until 1940, International Shoe employed between eleven and thirteen people in the State of Washington. International Shoe had no office or merchandise in Washington and supplied its Washington sales force with sample shoes. The sales staff occasionally rented show rooms for displaying the shoes. Orders were taken in Washington and sent to St. Louis for acceptance or rejection. Following acceptance of the order, International Shoe then shipped the shoes into Washington.[^17]

The State of Washington asserted that International Shoe owed the state unemployment compensation fund contributions. Washington filed suit in its own courts to collect the funds. The question arose whether, within the limitations of the Due Process Clause of the Fourteenth Amendment, Washington could assert personal jurisdiction over International Shoe.[^18]

The United States Supreme Court upheld Washington's assertion of personal jurisdiction, stating:

>[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'[^19]

The Supreme Court continued:

>Whether due process is satisfied must depend... upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That 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 contracts, ties, or relations....

But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those

[^16]: 326 U.S. 310 (1945).
[^18]: International Shoe Co., 326 U.S. at 311.
[^19]: Id. at 316. The Court did not say at which point in time one needed to be present. See id. Later, in *Burnham v. Superior Court*, 495 U.S. 604, 637-38 (1990), the Court said one needed to be present when served with notice of the lawsuit.
obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protections of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.\footnote{International Shoe Co., 326 U.S. at 319-20.}

The Court noted that "[a]n 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection."\footnote{Id. at 317.} The Court stated that "there have been instances in which the continuous corporate operations within a state were thought 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."\footnote{Id. at 318.}

Thus, the Court seemed to make the following points:

1. If a defendant is in the forum at some yet-to-be-specified time, personal jurisdiction will attach. The Court returned to this factor in a later case. Until this Article discusses the later case, this factor will be deleted from discussion.
2. Otherwise, contacts between the defendant and the forum are required.
3. If a corporation conducts activities within a state, it enjoys benefits and protections from the laws of the state. If a claim arises from or is connected with those activities, a lawsuit in the forum is fair.
4. Continuous and substantial activities within the forum state may give rise to a suit unconnected to those activities.

\begin{itemize}
\item \footnote{International Shoe Co., 326 U.S. at 319-20.}
\item \footnote{Id. at 317.}
\item \footnote{Id. at 318.}
\end{itemize}
5. Courts may consider inconveniences to a defendant resulting from a trial away from its home or principal place of business.

From these factors, two charts can be made: one dealing with situations where the claim arises from the forum contacts and the other dealing with situations where the claim does not arise from the forum contacts. Although the Court did not label these two situations, the Court in a later case did name the two situations in *International Shoe*. The labels the Court later used are “specific jurisdiction” and “general jurisdiction.” “Specific jurisdiction” refers to the situation in which the claim relates to, arises from, or is connected with the forum contacts. “General jurisdiction” refers to situations in which the contacts are substantial and the claim need not relate to nor arise from those contacts.

**SPECIFIC JURISDICTION CHART (from *International Shoe*)**

**Due Process**

1. Contacts between the defendant and the forum are required.

2. If a corporation conducts activities within a state, it enjoys benefits and protections from the laws of the state. If a claim arises from or is connected with those activities, a lawsuit in the forum is fair.

3. Inconveniences to a defendant resulting from a trial away from its home or principal place of business can be considered.

Next is the general jurisdiction chart. To avoid confusion by having charts for both specific and general jurisdiction during the discussion, specific jurisdiction will be discussed first. After this discussion, a general jurisdiction discussion will follow.

**PERKINS v. BENGUET CONSOLIDATE MINING CO.**

Benguet Consolidate Mining Co. ("Benguet") ran its business from Ohio, thereby conducting substantial activities within that state. The United States Supreme Court was faced with the question of whether federal due process would be violated if Ohio asserted personal jurisdiction over Benguet in a case unrelated to its Ohio contacts. The plaintiff, Perkins, sought approximately $68,400 in dividend pay-

ments and $2.5 million in damages for Benguet's failure to issue stock certificates to her.\(^{28}\)

In upholding personal jurisdiction, the United States Supreme Court stated that: "there have been instances in which the continuous corporate operations within a state were thought 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."\(^{29}\) In reaching this conclusion, the Supreme Court noted the necessity of deciding whether Benguet's Ohio business was sufficiently substantial to allow Ohio to entertain a cause of action distinct from Benguet's Ohio activities.\(^{30}\) The Court found that Benguet's activities in Ohio were substantial enough for Ohio to assert personal jurisdiction, even if the lawsuit was unrelated to Benguet's Ohio contacts.\(^{31}\) The Court stated:

Consideration of the circumstances which, under the law of Ohio, ultimately will determine whether the courts of that State will choose to take jurisdiction over the corporation is reserved for the courts of that State. Without reaching that issue of state policy, we conclude that, under the circumstances above recited, it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding.\(^{32}\)

Thus, the Court in *Perkins* permitted Ohio to take personal jurisdiction over a defendant for a claim unrelated to the defendant's Ohio contacts.\(^{33}\) The Court, however, stated that Benguet's Ohio contacts must be substantial.\(^{34}\)

The Court indicated that, even if due process permitted Ohio to assert jurisdiction, due process did not require that Ohio take jurisdiction.\(^{35}\) The Court noted, for example, that although due process may permit Ohio to assert jurisdiction over claims not arising in the state, Ohio constitutionally could decide to hear only cases arising within its borders.\(^{36}\) This indicates that Ohio's interests may be considered by courts in deciding whether to retain a case in which personal jurisdic-

\(^{28}\) *Perkins*, 342 U.S. at 439.
\(^{29}\) *Id.* at 446 (quoting *International Shoe Co.*, 326 U.S. at 318).
\(^{30}\) *Perkins*, 342 U.S. at 447.
\(^{31}\) *Id.* at 447-48.
\(^{32}\) *Id.* at 448.
\(^{33}\) *Id.* at 447-49.
\(^{34}\) *Id.* at 447. Author's Note: *Perkins* was a general jurisdiction case, and as indicated earlier in this article, a discussion of general jurisdiction will follow the discussion of specific jurisdiction. A discussion of *Perkins* at this point in this Article will be to determine if any of its analysis applies to specific jurisdiction cases.
\(^{35}\) *Id.* at 448.
\(^{36}\) *Id.* at 440, 448.
tion exists — not that Ohio's interests can be considered in order to establish jurisdiction.

Because Perkins was a general jurisdiction case, it will take reasoned speculation to know whether a forum state in a specific jurisdiction case may also decline jurisdiction that exists because of a state interest. It seems the answer should be yes. For example, a state may be able to hear a case in which a harmful effect has been felt within the state. The state may decline to do so because the activities giving rise to the harm occurred elsewhere, witnesses are primarily located outside of the forum state, and the court believes that justice would be served better by having the case heard where the activities occurred or where the witnesses are located.37

The Specific Jurisdiction Chart now becomes:

<table>
<thead>
<tr>
<th>SPECIFIC JURISDICTION CHART (after Perkins)</th>
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<tbody>
<tr>
<td><strong>Due Process</strong></td>
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<tr>
<td><strong>Factors Relating to the Defendant:</strong></td>
</tr>
<tr>
<td>1. Contacts between the defendant and the forum are required. (International Shoe)</td>
</tr>
<tr>
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<tr>
<td>3. Inconveniences to the defendant may be considered. (International Shoe)</td>
</tr>
<tr>
<td><strong>Factors not Relating to the Defendant:</strong></td>
</tr>
<tr>
<td>1. State interest may be considered in deciding if the forum state wishes to retain its acquired jurisdiction. (Inferred from Perkins)</td>
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**McGee v. International Life Ins. Co.**38

Lowell Franklin, a resident of California, purchased a life insurance policy in 1944 from the Empire Mutual Insurance Company ("Empire"), an Arizona corporation. In 1948, International Life Insurance Company ("International") assumed the insurance obligations of Empire. International informed Franklin of the assigned obligations and offered to insure him under the terms of his policy with Empire. Franklin agreed and mailed premiums from his California home to International's Texas office. Franklin died in 1950, and Lulu McGee, his mother, attempted to collect as the beneficiary under the policy. International refused to pay on the ground that Franklin committed suicide. Neither Empire nor International ever had any office or agent in California, and the record did not indicate any solicitation in Cali-

37. See infra notes 43-51 and accompanying text.
McGee sued International in a California state court and served International in Texas by registered mail. McGee won a judgment, but was unable to collect in California. The Texas courts refused to enforce the California judgment on the ground that the Fourteenth Amendment did not allow jurisdiction to attach based on service of process outside of California.

On appeal, the United States Supreme Court upheld personal jurisdiction over International in California, stating:

[T]he Due Process Clause did not preclude the California court from entering a judgment binding on respondent. It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State. . . . The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable. When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum — thus in effect making the company judgment proof. Often the crucial witnesses — as here on the company's defense of suicide — will be found in the insured's locality.

Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing which amounts to a denial of due process. . . .

In reaching this conclusion, the Supreme Court focused on four points: 1. The claim was based on a contract having a substantial connection with the forum, California. This is not a new idea for personal jurisdiction. For example, in International Shoe, the claim for unemployment fund payments was based on International Shoe's contacts with the State of Washington, and 3. The Court made two points regarding California's interest in the litigation.

40. McGee, 355 U.S. at 221.
41. Id.
42. Id. at 223-24.
43. Id. at 223.
44. International Shoe Co., 326 U.S. at 311.
First, the state interest can be used in a due process analysis of personal jurisdiction. Second, the inconvenience to plaintiffs can also be used. In *McGee*, the Court found that California had an interest in providing redress for its "residents because its residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant state." The Court did not specifically identify the state interest. Perhaps the interest is that, if insureds could not collect from the insurer, the insureds may go on state welfare and thus create a drain of state tax money. Also, the Court does not explain why a state's interest applies to a due process analysis. The case's analysis is purportedly based upon the Fourteenth Amendment's Due Process Clause, which states, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law...." The Court does not make clear why the state is entitled to due process protection. Are the citizens of a state entitled to due process protection from loss of their money which may be collected as taxes in order to support plaintiffs who cannot afford to fight a lawsuit in a distant forum?

Additionally, the Court refers to inconveniences to plaintiffs who may be disadvantaged if forced to litigate in a distant forum. Thus, the Court appears to say that inconvenience to the plaintiff is a part of the due process analysis. If the plaintiff's interests are to be considered along with defendant's interests, the analysis must focus on the Fourteenth Amendment, which requires a deprivation of "property." Thus, the loss of an opportunity to seek relief apparently is deemed loss of property by the Court.

4. There might be inconvenience to the insurance company in defending in a foreign state, but such inconveniences do not amount to a due process violation. The idea of inconvenience to the defendant as an element in the due process analysis was discussed in *International Shoe*. Thus, the Court in *McGee* raises two new points — state interest in deciding whether personal jurisdiction exists and inconvenience to plaintiffs.

Specific Jurisdiction Chart (after *McGee*)

**Due Process**

Factors Relating to the Defendant:

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46. *Id.*
47. U.S. Const. amend XIV.
49. *See supra* note 47 and accompanying text.
51. 326 U.S. at 317.
1. Contacts between the defendant and the forum are required. *(International Shoe)*

2. If a corporation conducts activities within a state, it enjoys benefits and protections from the laws of the state. If a claim arises from or is connected with those activities, a lawsuit in the forum is fair. *(International Shoe)*

3. Inconveniences to the defendant resulting from a trial away from the defendant’s home or principal place of business may be considered. *(International Shoe)*

**Factors not Relating to the Defendant:**

1. The forum state's interest in the litigation may be considered in deciding whether jurisdiction exists. *(McGee)*

2. The state's interest may be considered in deciding whether the forum wishes to retain jurisdiction already established. *(Perkins)*

3. Inconveniences to the plaintiff may be considered. *(McGee)*

**Hanson v. Denckla**

The controversy in *Hanson* centered around $400,000 — part of a trust established in Delaware by a Pennsylvania woman who later moved to Florida. The woman died in Florida, and a dispute arose as to whether the $400,000 passed to one group under the trust or to another group under the woman's will.

Litigation arose between the two groups, and the United States Supreme Court ultimately heard the case. The Supreme Court construed Florida law as requiring the Delaware trust company to be made a party to the litigation. However, the Court found that Florida lacked personal jurisdiction over the trust company. In so holding, the Supreme Court, relying on *International Shoe*, found that the Delaware Trust Company lacked sufficient contacts with Florida to be brought before Florida's courts. The Court reasoned:

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. . . .

We fail to find such contacts in the circumstances of this case. The defendant trust company has no office in Florida, and transacts no business there. None of the trust assets has ever been held or administered in Florida, and the record dis-

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55. *Id.* at 251-54.
56. *Id.*
closes no solicitation of business in that State either in person or by mail. . . .

The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State.\footnote{57}

* * *

[T]his action involves the validity of an agreement that was entered without any connection with the forum State. The agreement was executed in Delaware by a trust company incorporated in that State and a settlor domiciled in Pennsylvania. The first relationship Florida had to the agreement was years later when the settlor became domiciled there, and the trustee remitted the trust income to her in that State. From Florida Mrs. Donner carried on several bits of trust administration that may be compared to the mailing of premiums in McGee. But the record discloses no instance in which the trustee performed any acts in Florida that bear the same relationship to the agreement as the solicitation in McGee. Consequently, this suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida. . . . \footnote{58}

Thus, the Court reiterated two points from prior cases:

1. Contacts between the forum state and the corporate defendant are required before personal jurisdiction can attach.

2. Personal jurisdiction likely would attach if the claim arose out of the forum contacts. In Hanson, the Court did not say that the minimum contacts test applies only to corporations. However, because Hanson dealt with a corporation, it is not yet known what test will apply to individuals.

In addition to the points just mentioned, the Court made two additional points:

1. Contacts with the forum must be those of the defendant, not unilateral acts of others.

2. The defendant must conduct activities in the forum, thereby invoking the benefits and protections of the forum's laws.\footnote{59}

Specific Jurisdiction Chart (after Hanson)

Due Process

Factors Relating to the Defendant:

\footnote{57. Id. at 251 (citations omitted).}
\footnote{58. Id. at 252.}
\footnote{59. Id. at 253.}
1. Contacts between the corporate defendant and the forum are required. *(International Shoe).* Unilateral contacts of another with the forum do not count as contacts of the defendant. *(Hanson).*

2. The claim must be related to or be connected with those contacts. *(International Shoe).*

3. A corporate defendant must conduct activities within the forum, thereby enjoying benefits and protections from the laws of the state. If a claim arises from or is connected with those activities, a lawsuit in the forum is fair. *(International Shoe and Hanson).*

4. Inconveniences to the defendant resulting from a trial away from the defendant's home or principal place of business may be considered. *(International Shoe).*

Factors not Relating to the Defendant:

1. The forum state's interest in the litigation may be considered in deciding whether jurisdiction exists. *(Mc Gee).*

2. State interest may be considered in deciding if the forum wishes to retain jurisdiction already established. *(Perkins).*

3. Inconveniences to the plaintiff may be considered. *(Mc Gee)*

*Shaffer v. Heitner*60

Heitner owned one share of stock in the Greyhound Corporation ("Greyhound"), which was incorporated in Delaware and had its principal place of business in Arizona. Heitner filed a shareholder's derivative suit in Delaware. The named defendants were Greyhound, Greyhound subsidiary Greyhound Lines, and twenty-eight present or former officers and directors of one or both corporations. Heitner alleged that the individual defendants violated their duties to Greyhound and its subsidiary, causing them to engage in actions resulting in liability for damages in a private antitrust suit and in a large fine for criminal contempt. The activities leading to these penalties took place in Oregon.61

Heitner attempted to obtain jurisdiction by sequestering shares of stock in the Delaware corporation owned by some of the defendants.62 Stop transfer orders were placed on the books of the Greyhound Corporation.63 Although no stock certificates were in Delaware, the stock

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62. Shaffer, 433 U.S. at 191-93.
63. Id. at 192.
was considered to be in Delaware.\textsuperscript{64} Delaware law permitted jurisdiction to attach by the seizure of property of the defendant within the state, even if the property was unrelated to the claim.\textsuperscript{65} The Delaware statute permitting jurisdiction based on the attachment of property within the forum state had its roots in United States Supreme Court cases permitting jurisdiction over those whose forum property was brought before the court by attachment.\textsuperscript{66} Because a court's jurisdiction depended upon the defendant's ownership of the property, a court's attachment was necessary to prevent jurisdiction being defeated by sale of the property.\textsuperscript{67}

On appeal, the United States Supreme Court recognized that jurisdiction over property is really jurisdiction over interests of people in that property.\textsuperscript{68} Therefore, the Supreme Court stated "that all assertions of state court jurisdiction must be evaluated according to the standards set forth in \textit{International Shoe} and its progeny."\textsuperscript{69}

The Court found no showing that any of the defendants had been to Delaware, nor that the claim arose in Delaware. While the defendants were officers and directors of a Delaware corporation, such may have served to show that Delaware law should have been used to determine the obligations of the defendants, but not to show that Delaware had personal jurisdiction over them.\textsuperscript{70} The Court found that the defendants had no contacts with Delaware and that an assertion of personal jurisdiction over the defendants would violate due process.\textsuperscript{71}

Dissenting Justice William Brennan stated that the defendants had received benefits which Delaware made available to corporate officials such as interest-free loans and indemnification and had undertaken powers derived from Delaware law. Thus, Justice Brennan stated that the receipt of such benefits subjected the defendants to the state's jurisdiction for claims relating to their exercise of those powers.\textsuperscript{72}

The Court in \textit{Shaffer} refused to allow personal jurisdiction over a defendant in a state based solely on defendant's ownership of property within the state.\textsuperscript{73} The Court did say, however, that presence of property in the forum state may favor jurisdiction in cases where the prop-

\textsuperscript{64} \textit{Id.}
\textsuperscript{65} \textit{Id.} at 190 n.4; \textit{Id.} at 193-94, 196.
\textsuperscript{66} \textit{Id.} at 196-98 (citing Pennoyer v. Neff, 95 U.S. 714 (1877)).
\textsuperscript{67} \textit{Shaffer}, 433 U.S. at 198 n.16.
\textsuperscript{68} \textit{Id.} at 206-08, 212.
\textsuperscript{69} \textit{Id.} at 212.
\textsuperscript{70} \textit{Id.} at 215-16.
\textsuperscript{71} \textit{Id.} at 216.
\textsuperscript{72} \textit{Id.} at 228 (Brennan, J., concurring).
\textsuperscript{73} \textit{See} \textit{Shaffer} v. Heitner, 433 U.S. 186, 190-93, 216 (1977) (refusing to assert personal jurisdiction even though the stock was considered to be in Delaware).
REVIEW OF PERSONAL JURISDICTION

Property is related to the claim. For example, the defendant's contacts with the state would be sufficient when an injury was suffered on the land of an absent owner or where ownership of the property was in dispute. Thus, the claim would be related to the defendant's contacts with the land in the forum. However, the presence of property in the forum, without more, will not support the assertion of personal jurisdiction.

Additionally, it appears that the Court would permit personal jurisdiction based on satisfaction of a long-arm statute requiring ownership of property in the forum even if the claim did not relate to the property, as long as minimum contacts were found. This would seem to be true because the Court in *Shaffer* said that, even if the stock was considered to be in Delaware, the claim did not take place in Delaware, and the stock was not related to the claim, particularly because stock ownership was not required of an officer or director of Greyhound. The Court's search for contacts by the defendants with Delaware indicates that jurisdiction may have been proper had contacts been found, even though the claim was unconnected to the property in the forum. State long-arm statutes, discussed earlier, will also be discussed later in this case.

For the portion of the chart following, it can be said that ownership of property in the forum, without more, will not give rise to personal jurisdiction.

**Specific Jurisdiction Chart (after *Shaffer*)**

**Due Process**

1. Contacts between the corporate defendant and the forum are required. (*International Shoe*).
   a) Unilateral contacts of another with the forum do not count as contacts of the defendant. (*Hanson*).
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction to attach. (*Shaffer*).

2. The claim must be related to or connected with those contacts. (*International Shoe*).

3. A corporate defendant must conduct activities within the forum, thereby enjoying benefits and protections from the laws of the

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74. *Shaffer*, 433 U.S. at 207-08.
75. Id.
76. Id. at 207-09.
77. Id. at 192, 194.
78. Id. at 213.
79. Id. at 214.
80. See supra notes 13-15 and accompanying text; see infra notes 305-17 and accompanying text.
81. See supra notes 60-76 and accompanying text.
state. If a claim arises from or is connected with those activities, a lawsuit in the forum is fair. (International Shoe and Hanson).

4. Inconveniences to the defendant resulting from a trial away from the defendant's home or principal place of business may be considered. (International Shoe).

Factors not Relating to the Defendant:

1. The forum state's interest in the litigation may be considered in deciding whether jurisdiction exists. (McGee).

2. State interest may be considered in deciding if the forum wishes to retain jurisdiction already established. (Perkins).

3. Inconveniences to the plaintiff may be considered. (McGee).

KULKO v. SUPERIOR COURT OF CALIFORNIA

Ezra Kulko and Sharon Horn were married in 1959 in California. Eventually they moved to New York where they had two children, a daughter and a son. Ezra and Sharon separated in 1972, and Sharon moved to San Francisco. Ezra and Sharon signed a separation agreement in 1972, which Sharon had incorporated into a divorce decree she obtained in Haiti. The agreement provided that the children would live primarily with Ezra and would spend vacations with Sharon. In 1973, the daughter told Ezra that she wanted to remain in California with Sharon after her vacation. Ezra bought his daughter a one-way airplane ticket, and she moved to California. In 1976, the son also moved to California. The son received an airplane ticket from Sharon.

Sharon soon began proceedings in California to modify the divorce decree to give her full custody of the children and to increase Ezra's child support payments. Ezra objected to personal jurisdiction in California. The case worked its way to the California Supreme Court, which ultimately upheld personal jurisdiction over Ezra. The California Supreme Court said that, because Ezra purposefully availed himself of the benefits and protections of the laws of California and had thereby caused an effect in California by sending his daughter to California, it was reasonable to assert personal jurisdiction over Ezra. Although Ezra had not given the son an airplane ticket, the California Supreme Court believed that it was reasonable to assert personal jurisdiction over Ezra for the support of both children because Ezra had provided the airline ticket to the daughter and had consented to the son's residency in California.

82. 436 U.S. 84 (1978).
84. Kulko, 437 U.S. at 86-89.
On appeal, the United States Supreme Court disagreed with the California Supreme Court's assertion of personal jurisdiction. "A father who agrees, in the interests of family harmony and his children's preferences, to allow them to spend more time in California than was required under a separation agreement can hardly be said to have 'purposefully availed himself' of the 'benefits and protections' of California's laws." The Court noted that any benefits, such as "police and fire protections, its school system, its hospital services, its recreational facilities, its libraries, and museums" were benefits to the children, not the father. Thus, the Court reiterated its pronouncement in Hanson that unilateral acts of one cannot be attributed to another. Apparently the Court believed that even though the father paid for the airplane ticket of one child and approved the other's move to California, the acts of going to and remaining in California were really those of the child and not of the father. Furthermore, the interests of family harmony apparently have now become a factor in the Court's analysis.

Additionally, the Court said that, because Ezra did not purposefully derive benefit from any California related activities, the California Supreme Court's reliance on his having caused an "effect" in California was misplaced. The Court said that the "effects" test was derived from the Restatement of Conflicts which stated:

A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable.

The Court noted that the "effects" test was not binding on the Court, and, even if it were, the provision did not support jurisdiction. Citing to examples provided in the Restatement, the Court stated that the provision "was intended to reach wrongful activity outside of the State causing injury within the state . . . or commercial activity affecting state residents." Furthermore, the Court said that California's assertion of jurisdiction violated the Restatement's requirement that jurisdiction not be "unreasonable" inasmuch as there was no claim

85. Id. at 94.
86. Id. at 94 n.7 (quoting Kulko v. Superior Court, 564 P.2d 353, 356 (Cal. 1977)).
87. Id. at 93-94 (citing Hanson, 357 U.S. at 253).
88. Id. at 94.
89. Id. at 96-98.
90. Id. at 96 (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971)).
91. Id. (citing RESTATEMENT (SECOND) CONFLICT OF LAWS § 37, cmt. a (1971)). The Court cited the Restatement's example of a situation satisfying the "effects" test when a person shoots a bullet from one state into another. Id.
that Ezra caused physical injury to persons or property in California or engaged in commercial activity in California.\textsuperscript{92}

The Court reiterated that the defendant must have contacts with the forum, that the interest of the forum state and of the plaintiff may be considered in choosing a forum, that a defendant must purposefully avail himself or herself of the benefits and protections of the forum's laws, and that unilateral acts of others will not be attributed to the defendant.\textsuperscript{93} Because Ezra was an individual and not a corporation, we know from the Court's discussion in \textit{Kulko} that the various personal jurisdiction tests articulated by the Court apply to both corporations and individuals.

The Court discussed the "effects" test, but said that the provision was not binding on the Court.\textsuperscript{94} The Court indicted that the "effects" test would still require that there be purposeful availment of the benefits and protection of the laws of the state.\textsuperscript{95} The "effects" test itself does not have this requirement.\textsuperscript{96} The Court's requirement of "purposeful availment" is puzzling because the example cited by the Court as fulfilling the requirements of the "effects" test would not seem to be one where purposeful availment of the benefits and protections of the laws of the forum state would necessarily be satisfied. The Court cited the example of shooting a bullet from one state into another, causing physical injury.\textsuperscript{97} Certainly no state has laws permitting such behavior. The example appears to be one where purposeful availment of the benefits and protections of the forum's laws ought not be required, especially if the shooting was intentional. One who shoots bullets over a state boundary, intending to injure another, should not be able to complain about an assertion of personal jurisdiction in the forum because the defendant has not purposefully availed itself of the benefits and protections of the forum's laws.

The Supreme Court also mentioned that a parent who acquiesced to his children living in another state would not expect to be haled into that state for litigation.\textsuperscript{98} Thus, the concept of foreseeability of litigation in the forum is mentioned.

The Court refused to be bound by the "effects" test, and yet the Court did discuss the test.\textsuperscript{99} However, the Court indicated that, if the "effects" test were to be used, the defendant must have received the

\begin{footnotes}
\item[92.] \textit{Kulko}, 436 U.S. at 96-97.
\item[93.] \textit{Id.} at 92, 94, and 94 n.7.
\item[94.] \textit{See supra} notes 90-92 and accompanying text.
\item[95.] \textit{Kulko}, 436 U.S. at 96.
\item[96.] \textit{See supra} notes 90-95 and accompanying text.
\item[97.] \textit{Kulko}, 436 U.S. at 96.
\item[98.] \textit{Id.} at 97-98.
\item[99.] \textit{See supra} notes 90-98 and accompanying text.
\end{footnotes}
benefits and protections of the forum's laws. The Court stated that personal jurisdiction may attach if the defendant shoots bullets into the forum, indicating that benefits of the forum's laws may not be required for some possibly reckless activity.

Specific Jurisdiction (after Kulko)

Due Process

Factors Relating to the Defendant:

1. Contacts between the defendant and the forum are required. (*International Shoe*).
   a) Unilateral contacts of another with the forum do not count as contacts of the defendant. (*Hanson*).
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction to attach. (*Shaffer*).

2. The claim must relate to or be connected with those contacts. (*International Shoe*).

3. A defendant must conduct activities relating to the forum, thereby enjoying benefits and protections from the laws of the state. (*Hanson*).
   a) If a claim arises from or is connected with those activities, a lawsuit in the forum is fair. (*International Shoe* and *Hanson*).
   b) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:
      i) Physical injury is caused (*Kulko*).
         1) Personal (*Kulko*)
         2) Property (*Kulko*) or
      ii) Defendant's commercial activity affects forum residents. (*Kulko*).

4. The defendant must be able to foresee litigation in the forum resulting from the defendant's activities. (*Kulko*).

5. Matters relating to the defendant may be considered.
   a) Inconveniences to the defendant resulting from a trial away from the defendant's home or principal place of business may be considered. (*International Shoe*).
   b) Defendant's family harmony may be considered. (*Kulko*).

Factors not Relating to the Defendant:

1. The forum state's interest in the litigation may be considered in deciding whether jurisdiction exists. (*McGee*).

2. State interest may be considered in deciding if the forum wishes to retain jurisdiction already established. (*Perkins*).

3. Inconvenience to the plaintiff may be considered. (*McGee*).

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100. *Kulko*, 436 U.S. at 96-97.
101. *Id.* at 96.
Henry and Kay Robinson, residents of New York, purchased a new Audi automobile from Seaway Volkswagen, Inc. ("Seaway"). Seaway did business only in New York. Seaway purchased the automobile from World-Wide Volkswagen Corp. ("World-Wide"), the regional distributor for New York, New Jersey, and Connecticut. The next year, the Robinson family left New York and moved to Arizona. En route to Arizona, the Robinsons drove their car through Oklahoma. The car was struck in the rear by another car while traveling through Oklahoma, and Kay Robinson and her two children suffered burn injuries.103

As a result of the accident, the Robinsons brought a products liability action in an Oklahoma court based on the defective design and placement of the Audi gasoline tank and fuel system. The Robinsons joined the manufacturer (Audi), the importer (Volkswagen), the regional distributor (World-Wide), and the retailer (Seaway). Seaway and World-Wide claimed that Oklahoma's exercise of personal jurisdiction violated the due process protections afforded by the Fourteenth Amendment.104

Oklahoma's personal jurisdiction statute allowed jurisdiction if permitted by the United States Constitution.105 In this case, the Oklahoma Supreme Court found that the assertion of jurisdiction over the defendants did not violate the federal Due Process Clause and thus allowed jurisdiction.

On appeal, the United States Supreme Court quoted the Oklahoma Supreme Court's rationale in upholding personal jurisdiction, stating:

"In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. . . .

[Under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justi-
fied in concluding that the petitioners derive substantial revenue from goods used or consumed in this State.\textsuperscript{106}

The Supreme Court reversed the finding of personal jurisdiction.\textsuperscript{107}

Again, the Court relied on the "minimum contacts" test of International Shoe. The Court stated:

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. . . .

* * *

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 . . . 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. . . .

* * *

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." 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. . . .

Applying these principles to the case at hand, 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*, . . . 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 exercise jurisdiction over a Delaware trustee that had no other contacts with the forum State.

* ***

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. . . . The Due Process Clause, by ensuring the "orderly administration of the laws," . . . 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," . . . 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 exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of com-
merce with the expectation that they will be purchased by consumers in the forum State. . . . 108

The Court in World-Wide emphasized that contacts between the defendant and the forum state were required.109 Importantly, the Court noted that foreseeability of litigation in the forum, based upon the defendant's conduct and connection with the forum, was critical to the due process analysis.110 The Court stated that one way of being able to foresee forum litigation is to avail oneself purposefully of the privilege of conducting activities within the forum.111 The Court did not quote the entire sentence from Hanson which included the enjoyment of the benefits and protections of the forum state's laws in the due process analysis.112 Thus, benefits and protections fall under the foreseeability of forum litigation element.

The Court provided several examples of foreseeable litigation. These included efforts "to serve, directly or indirectly, the market for its product in other states . . ." and delivering the product into the stream of commerce with expected purchase by consumers in the forum.113 The Court did not say which, if any, of these also required the defendant to enjoy the benefits and protections of the laws of the forum. Because all examples occurred in a single paragraph that began by stating that one has clear notice of forum litigation by purposefully conducting activities within the forum, it may be safe to say that all examples would require the defendant to enjoy the benefits and protections of the state law.

The Court stated that direct or indirect serving of the forum market by either the manufacturer or distributor of the product may result in jurisdiction.114 Additionally, the Court noted that delivery into the stream of commerce with the expectation that the product will be purchased in the forum may result in jurisdiction.115 Thus, the Court suggested that the benefits and protections of the forum's laws provided to the distributor or seller of the product may be attributed to the manufacturer because the manufacturer elected to have another sell the product in the forum. Additionally, the Court listed factors

108. Id. at 291, 292, 294-98 (citations omitted).
109. Id. at 294.
110. Id. at 297.
111. Id. (citing Hanson v. Denckla, 357 U.S. 235, 253 (1958)).
112. Id. at 297; see Hanson, 357 U.S. at 253 (stating that "it is essential in each case that there be 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").
114. Id. at 297.
115. Id. at 297-98.
unrelated to the defendant as being part of the due process consider-
ation, such as the interests of the plaintiff and the state.\footnote{116}

Specific Jurisdiction (after \textit{World-Wide Volkswagen})

Due Process

Factors Relating to the Defendant:

1. Contacts between the defendant and the forum are required. (\textit{International Shoe}).
   a) Unilateral contacts of another do not count. (\textit{Hanson}).
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction. (\textit{Shaffer}).
   c) Contacts of another may count if done on behalf of and with approval of the defendant. (\textit{World-Wide Volkswagen}).

2. The claim must arise from or be connected with those contacts. (\textit{International Shoe}).

3. The defendant must be able to foresee litigation in the forum resulting from the contacts. (\textit{Kulko} and \textit{World-Wide Volkswagen}).

Examples of how this might occur are:

   a) The defendant, or one acting on the defendant's behalf, must enjoy the benefits and protections of the forum's laws. (\textit{World-Wide Volkswagen}).

   Examples are:

   i) If a claim arises from or is connected to those activities. (\textit{International Shoe}).

   ii) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:

       1) Physical injury is caused. (\textit{Kulko}).

          a) Personal. (\textit{Kulko}).

          b) Property. (\textit{Kulko}).

       2) Defendant's commercial activity affects forum residents. (\textit{Kulko}).

   iii) The defendant delivers products into the stream of commerce expecting these products to be purchased by consumers in the forum. (\textit{World-Wide Volkswagen}).

       1) The defendant directly serves the market. (\textit{World-Wide Volkswagen}).

       2) The defendant indirectly serves the market. (\textit{World-Wide Volkswagen}).

4. Other matters relating to the defendant may be considered.

   a) Inconvenience to the defendant resulting from a trial away from the defendant's home or principal place of business may be considered. (\textit{International Shoe}).

\footnote{116. See \textit{supra} note 108 and accompanying text.}
b) Defendant’s family harmony. (Kulko).

Factors not Relating to the Defendant:
1. The forum state’s interest in the litigation may be considered in deciding whether jurisdiction exists. (McGee).
2. State interest may be considered in determining if the forum wishes to retain jurisdiction already established. (Perkins).
3. Plaintiff’s interests
   a) Inconvenience to the plaintiff may be considered. (McGee).
   b) Effective relief (World-Wide Volkswagen).
4. Interstate judicial system’s interest in the efficient resolution of disputes. (World-Wide Volkswagen).
5. State interest in the furtherance of substantive social policy objectives. (World-Wide Volkswagen).

Keeton v. Hustler Magazine, Inc.117

Kathy Keeton, a New York resident, brought a libel suit against Hustler Magazine, an Ohio corporation, in United States District Court for the District of New Hampshire.118 The lawsuit’s only connection with New Hampshire was the circulation in that state of copies of Hustler Magazine (“Hustler”) which Keeton claimed libeled her.119 The New Hampshire long-arm statute allowed jurisdiction when permitted by the Due Process Clause.120 The United States Court of Appeals for the First Circuit held that Keeton’s lack of contacts with New Hampshire rendered New Hampshire’s interest in redressing the tort of libel too attenuated to assert jurisdiction over Hustler.121

The United States Supreme Court granted certiorari to decide whether New Hampshire could assert personal jurisdiction over Hustler in New Hampshire.122 The Supreme Court found that jurisdiction existed, stating that a court should focus on “the relationship among the defendant, the forum, and the litigation.”123 The Court also noted that it had never required the plaintiff to have “minimum contacts” with the forum.124 The Court stated that Hustler regularly sold thousands of magazines in New Hampshire, thus leading to jurisdiction over a claim based on those contacts.125 The Court agreed that

120. Id. at 774.
121. Id. at 772-73.
122. Id. at 772-74.
123. Id. at 775 (citing Shaffer v. Heitner, 433 U.S. 186, 204 (1977)).
124. Id. at 779.
125. Id. at 774.
the fairness of bringing Hustler into New Hampshire depended in part on New Hampshire's interest in hearing the matter. However, the Court stated that New Hampshire had an interest in providing a forum for those libeled in New Hampshire in order to discourage libel. While Keeton had never before been to New Hampshire, the Court stated that her reputation prior to the publication of the offending issue of Hustler Magazine was unblemished.

The Court permitted New Hampshire to hear all libel claims, even those stemming from publication in other states. The Court stated that New Hampshire and other states have an interest in litigating all issues arising from a libel claim in one proceeding in order to reduce the drain on judicial resources and save a defendant from multiple suits.

The Court concluded by noting that Hustler continuously sold its product in New Hampshire as well as the rest of the country. Therefore, the Court stated that Hustler must anticipate being called to answer in one lawsuit for all alleged nationwide harm.

In reaching its conclusion in Keeton, the Court noted these three new points:

1. A plaintiff need not have "minimum contacts" with the forum.
2. A forum can assume personal jurisdiction over a defendant for claims relating to or connected with the forum claim, although those other claims occurred outside of the forum.
3. An example of the interstate judicial system's interest in obtaining efficient resolution of controversies was that one court can hear the nationwide libel claims.

Specific Jurisdiction (after Keeton)

Due Process

Factors Relating to the Defendant:
1. Contacts between the defendant and the forum are required. (International Shoe).
   a) Unilateral contacts of another do not count. (Hanson)
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction. (Shaffer).
c) Contacts of another may count if made on behalf of and with approval of the defendant. (*World-Wide Volkswagen*).

d) Plaintiff need not have contacts with the forum. (*Keeton*).

2. The claim must arise from or be connected with those contacts. (*International Shoe*).
   a) The suit can include claims from other states if those claims relate to the forum’s claim. (*Keeton*).

3. The defendant must be able to foresee litigation in the forum resulting from the contacts. (*Kulko* and *World-Wide Volkswagen*).

Examples of how this might occur are:
   a) The defendant, or one acting on the defendant’s behalf, must enjoy benefits and protections of the forum’s laws. (*World-Wide Volkswagen*).

Examples are:
   i) If a claim arises from or is connected to those activities. (*International Shoe*).
   ii) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:
      1) Physical injury is caused. (*Kulko*).
         a) Personal. (*Kulko*).
         b) Property. (*Kulko*).
      2) Defendant’s commercial activity affects forum residents. (*Kulko*).
   iii) The defendant delivers products into the stream of commerce expecting those products to be purchased by consumers in the forum. (*World-Wide Volkswagen*).
      1) The defendant directly serves the market. (*World-Wide Volkswagen*).
      2) The defendant indirectly serves the market. (*World-Wide Volkswagen*).

4. Other matters relating to the defendant may be considered.
   a) Inconvenience to the defendant resulting from a trial away from home or its principal place of business may be considered. (*International Shoe*).
   b) Defendant’s family harmony. (*Kulko*).

Factors not Relating to the Defendant:
1. The forum state’s interest in the litigation may be considered in deciding whether jurisdiction exists. (*McGee*).

2. State interest may be considered in determining if the forum wishes to retain jurisdiction already established. (*Perkins*).

3. Plaintiff’s interests:
   a) Inconvenience to the plaintiff may be considered. (*McGee*).
   b) Effective relief. (*World-Wide Volkswagen*).
4. Interstate judicial system's interest in the efficient resolution of disputes. (*World-Wide Volkswagen*).
   a) Example: Nationwide libel suit. (*Keeton*).
5. State interest in the furtherance of substantive social policy objectives. (*World-Wide Volkswagen*).

**Calder v. Jones**

John South was a reporter for the weekly National Enquirer newspaper. South resided in Florida, where he wrote a story for the newspaper stating that Shirley Jones, an actress, drank so heavily that she could not fulfill her professional obligations. Some of South's research was done by telephoning sources in California. Iain Calder, as president and editor of the newspaper, reviewed, approved, and edited South's article, which appeared in a 1979 issue. Calder was also a Florida resident. The newspaper's circulation was about five million, and California had the most sales totalling approximately 600,000.

Jones sued South, Calder, the Enquirer, and the distributing company in California for libel, intentional infliction of emotional distress, and invasion of privacy. South and Calder objected to personal jurisdiction.

The California courts found that jurisdiction existed, because South and Calder intended to and did cause effects in California.

On appeal, the United States Supreme Court upheld personal jurisdiction over both South and Calder, stating:

The Due Process Clause of the Fourteenth Amendment to the United States Constitution permits personal jurisdiction over a defendant in any State with which the defendant has "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" . . . In judging minimum contacts, a court properly focuses on "the relationship among the defendant, the forum, and the litigation."

* * *

The allegedly libelous story concerned the California activities of a California resident. It impugned the professionalism of an entertainer whose television career was centered in California. The article was drawn from California sources, and the brunt of the harm, in terms both of respondent's emotional distress and the injury to her professional reputation,

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138. *Id.* at 784-85.
139. *Id.* at 787.
was suffered in California. In sum, California is the focal point both of the story and of the harm suffered. Jurisdiction over petitioners is therefore proper in California based on the "effects" of the Florida conduct in California.

Petitioner South wrote and petitioner Calder edited an article that they knew would have a potentially devastating impact upon respondent. And they knew that the brunt of that injury would be felt by respondent in the State in which she lives and works and in which the National Enquirer has its largest circulation. Under the circumstances, petitioners must "reasonably anticipate being haled into court there" to answer for the truth of the statements made in their article.

An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California.

A careful reading of Calder reveals that the United States Supreme Court did not require that the defendants receive the benefits and protections of the forum's laws. The Supreme Court nevertheless upheld personal jurisdiction over the defendants because of their intentional conduct, which was calculated to cause injury in the forum. The Court noted that this conduct should have indicated to the defendants that they could anticipate being haled before a California court.

Additionally, the Court mentioned the "effects" test, discussed in Kulko, where the Court stated that it was not bound by the test. In Calder, the Court approved the "effects" test, at least as it applied to intentional torts. It can not be stated with certainty that the Court would approve the test in situations other than intentional tort. Further, in Kulko, the Court indicated that, even if using the "effects" test, benefits and protections of the forum would still be required. Although purposeful availment was not required by the Court in Calder for an intentional tort, purposeful availment may be required when applying the "effects" test for other types of claims.

Specific Jurisdiction (after Calder)

Due Process

Factors Relating to the Defendant:

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140. Id. at 788-90 (citations omitted).
141. See id. at 783.
142. Id. at 791.
143. Id. at 790.
144. See id. at 789 (mentioning the effects test); Kulko v. Superior Court of California, 436 U.S. 84, 96 (1978) (stating that the "effects test" is not binding on the United States Supreme Court).
146. Kulko, 436 U.S. at 96-97.
1. Contacts between the defendant and the forum are required. (International Shoe).
   a) Unilateral contacts of another do not count. (Hanson).
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction. (Shaffer).
   c) Contacts of another may count if done on behalf of and with approval of the defendant. (World-Wide Volkswagen).
   d) Plaintiff need not have contacts with the forum. (Keeton).

2. The claim must arise from or be connected with those contacts. (International Shoe).
   a) The suit can include claims from other states if those claims relate to the forum claim. (Keeton).

3. The defendant must be able to foresee litigation in the forum resulting from the contacts. (Kulko and World-Wide Volkswagen).
   Examples of how this might occur are:
   a) The defendant, or one acting on the defendant's behalf, must enjoy benefits and protections of the forum's laws. (World-Wide Volkswagen).
      Examples are:
      i) If a claim arises from or is connected to those activities. (International Shoe).
      ii) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:
         1) Benefits and protections are not required under the "effects" test for intentional torts. (Calder).
         2) Physical injury is caused. (Kulko).
            a) Personal. (Kulko).
            b) Property. (Kulko).
         3) Defendant's commercial activity affects forum residents. (Kulko).
      iii) The defendant delivers products into the stream of commerce expecting those products to be purchased by consumers in the forum. (World-Wide Volkswagen).
         1) The defendant directly serves the market. (World-Wide Volkswagen).
         2) The defendant indirectly serves the market. (World-Wide Volkswagen).
   b) Intentionally directs wrongful conduct at forum. (Calder).

4. Other matters relating to the defendant may be considered.
   a) Inconvenience to the defendant resulting from a trial away from the defendant's home or principal place of business may be considered. (International Shoe).
   b) Defendant's family harmony. (Kulko).
Factors not Relating to the Defendant:

1. The forum state's interest in the litigation may be considered in determining whether jurisdiction exists. *(McGee).*

2. State interest may be considered in determining if the forum wishes to retain jurisdiction already established. *(Perkins).*

3. Plaintiff's interests:
   a) Inconvenience to the plaintiff may be considered. *(McGee).*
   b) Effective relief. *(World-Wide Volkswagen).*

4. Interstate judicial system's interest in the efficient resolution of disputes. *(World-Wide Volkswagen).*
   a) Example: Nationwide libel suit. *(Keeton).*

5. State interest in the furtherance of substantive social policy objectives. *(World-Wide Volkswagen).*

**Helicopteros Nacionales de Colombia, S.A. v. Hall**

A helicopter crashed in Peru, and a lawsuit was subsequently filed in Texas by survivors of the accident and representatives of four people who were killed. Defendant Helicol, a Colombian corporation, had Texas contacts, which included the purchase of helicopters, the training of pilots, and discussions with the company needing helicopter service relating to the flight which ultimately crashed. Nevertheless, the parties agreed that the claim did not arise out of nor relate to Helicol's Texas contacts and proceeded to argue whether Texas had general jurisdiction over the defendant. The case reached the United States Supreme Court, which concluded that there was no general jurisdiction in Texas.147

*Helicopteros* is included in the specific jurisdiction discussion of this Article in order to incorporate the phrase “relate to” into the chart. The United States Supreme Court stated that the parties agreed that the claim did not arise out of or relate to Helicol's Texas activities.148 Dissenting Justice William Brennan argued that the plaintiffs had not conceded that the claims were unrelated to Helicol's Texas contacts and that the Court should have discussed specific jurisdiction.149

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147. 466 U.S. 408 (1984). Author's Note: This case deals with general rather than specific jurisdiction and will be discussed in greater depth in the discussion of general jurisdiction. However, it is being mentioned here to emphasize one point — the United States Supreme Court's use of the phrase "relate to." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8, n.9, 415-16 (1984). See infra notes 217-24 and accompanying text.


149. *Id.* at 415.

150. *Id.* at 424-25 n.3 (Brennan, J., dissenting).
Justice Brennan stated that, while the claim did not arise out of Helicol's Texas contacts, it was related to those contacts. Justice Brennan pointed out that the negotiations leading to the contract in which Helicol agreed to furnish the helicopter services occurred in Texas. Additionally, Justice Brennan noted that the helicopter involved was purchased in Texas and the pilot whose negligence allegedly caused the crash was trained in Texas. Justice Brennan thus stated the claim related to Helicol's Texas contacts. The majority declined to discuss possible differences between "arising out of" and "related to" because the parties had not presented the issue, agreeing that the case was one to be decided under general jurisdiction.

Specific Jurisdiction (after Helicopteros)

Due Process

Factors Relating to the Defendant:

1. Contacts between the defendant and the forum are required. (International Shoe).
   a) Unilateral contacts of another do not count. (Hanson).
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction. (Shaffer).
   c) Contacts of another may count if done on behalf of and with approval of the defendant. (World-Wide Volkswagen).
   d) Plaintiff need not have contacts with the forum. (Keeton).

2. The claim must arise from (International Shoe), be connected with (International Shoe), or relate to (Helicopteros) those contacts.
   a) The suit can include claims from other states if those claims relate to the forum claim. (Keeton).

3. The defendant must be able to foresee litigation in the forum resulting from the contacts. (Kulko and World-Wide Volkswagen).

Examples of how this might occur are:
   a) The defendant, or one acting on the defendant's behalf, must enjoy benefits and protections of the forum's laws. (World-Wide Volkswagen).

   Examples are:
   i) If a claim arises from or is connected to those activities. (International Shoe).
   ii) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:

151. Id. (Brennan, J., dissenting).
152. Id. at 426 (Brennan, J., dissenting).
153. Id. (Brennan, J., dissenting).
154. Id. at 425-26.
155. Id. at 415 n.10, 415-16.
1) Benefits and protections are not required under the “effects” test for intentional torts. *(Calder).*

2) Physical injury is caused. *(Kulko).*
   a) Personal. *(Kulko).*
   b) Property. *(Kulko).*

3) Defendant’s commercial activity affects forum residents. *(Kulko).*
   iii) The defendant delivers products into the stream of commerce expecting those products to be purchased by consumers in the forum. *(World-Wide Volkswagen).*
   1) The defendant directly serves the market. *(World-Wide Volkswagen).*
   2) The defendant indirectly serves the market. *(World-Wide Volkswagen).*

   b) Intentionally direct wrongful conduct at forum. *(Calder).*

4. Other matters relating to the defendant may be considered.
   a) Inconvenience to the defendant resulting from a trial away from the defendant’s home or principal place of business may be considered. *(International Shoe).*
   b) Defendant’s family harmony. *(Kulko).*

Factors not Relating to the Defendant:
1. The forum state’s interest in the litigation may be considered in determining whether jurisdiction exists. *(McGee).*

2. State interest may be considered in deciding if the forum wishes to retain jurisdiction already established. *(Perkins).*

3. Plaintiff’s interests:
   a) Inconvenience to the plaintiff may be considered. *(McGee).*
   b) Effective relief. *(World-Wide Volkswagen).*

4. Interstate judicial system’s interest in the efficient resolution of disputes. *(World-Wide Volkswagen).*
   a) Example: Nationwide libel suit. *(Keeton).*

5. State interest in the furtherance of substantive social policy objectives. *(World-Wide Volkswagen).*

*BURGER KING CORP. v. RUDZEWICZ*¹⁵⁶

John Rudzewicz and Brian MacShara jointly applied to Burger King’s district office in Michigan for a franchise in the Detroit area. Their application was forwarded to Burger King’s headquarters in Miami, Florida. Rudzewicz and MacShara negotiated the agreement with both Burger King’s Michigan and Florida offices. The final agreements were signed in 1979.¹⁵⁷

At first, the restaurant enjoyed steady business, but patronage soon declined. Rudzewicz and MacShara fell behind in their monthly franchise payments. Headquarters sent notices of default, and negotiations by mail and telephone began among the franchisees, the Michigan office, and the Miami office. Burger King's headquarters ordered the franchisees to vacate, and they refused. Burger King then filed a lawsuit in Florida, alleging breach of the franchise agreement.\textsuperscript{158} Rudzewicz and MacShara contested personal jurisdiction in Florida, and eventually this issue reached the United States Supreme Court, which upheld jurisdiction.\textsuperscript{159}

In so holding, the United States Supreme Court stated that the "dispute grew directly out of 'a contract which had substantial connection with that State.'"\textsuperscript{160} The Supreme Court noted that the defendants negotiated with a Florida corporation, while envisioning continuing and widespread contacts with Burger King in Florida.\textsuperscript{161} Furthermore, the Court stated that the defendants' failure to make payments to Burger King in Florida and their continuous use of the Burger King trademark and corporate information caused injuries to Burger King in Florida.\textsuperscript{162} Thus, the Court found it reasonable that the defendants would be haled to Florida to account for their actions.\textsuperscript{163}

Also, because the franchise agreement had a clause stating that Florida law would govern all disputes, the Court determined that the defendants had the benefits and protections of Florida's laws.\textsuperscript{164} The Court indicated in dicta that, when commercial activities are carried out in the forum state by one party on behalf of another party, those activities may be ascribed to the other, when the other is a primary participant and directs the activities.\textsuperscript{165} For instance, the Court noted that MacShara had gone to Florida for Burger King training.\textsuperscript{166}

\begin{thebibliography}{99}
\bibitem{}\textbf{158.} Burger King Corp., 471 U.S. at 467-68.
\bibitem{}\textbf{159.} Id. at 469-71, 478. The Florida long-arm statute extends to "'any 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 arises from the alleged contractual breach." Burger King Corp., 471 U.S. at 463-64 (quoting FLA. STAT. § 48.193 (1)(g) (Supp. 1984)).
\bibitem{}\textbf{160.} Burger King Corp., 471 U.S. at 479 (quoting McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957)).
\bibitem{}\textbf{161.} Id. at 479-80.
\bibitem{}\textbf{162.} Id. at 480.
\bibitem{}\textbf{163.} Id.
\bibitem{}\textbf{164.} Id. at 481-82.
\bibitem{}\textbf{165.} Id. at 479 n.22 (citations omitted).
\bibitem{}\textbf{166.} Id.
\end{thebibliography}
training was not pivotal, so the permissible bounds of attribution did not need to be resolved.\textsuperscript{167}

In a general discussion of how to weigh various factors, the Court indicated that the defendant must purposefully establish minimum contacts with the forum.\textsuperscript{168} The Court stated that lower courts then "may evaluate 'the burden on the defendant,' 'the forum state's interest in adjudicating the dispute,' 'the plaintiff's interest in 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 substantive social policies.'"\textsuperscript{169} The Court noted that a lesser showing of contacts than otherwise would be required might be appropriate where other factors are strong.\textsuperscript{170}

The Court in \textit{Burger King} added several factors to the personal jurisdiction test. These new factors include:

1. Contacts of one may count as contacts of another if the two are acting together.\textsuperscript{171}
2. Negotiations from outside of the forum with someone in the forum may count as contacts.\textsuperscript{172}
3. Sending payments on a contract into the forum may count as contacts.\textsuperscript{173}
4. Resolving disputes from outside of the forum with someone in the forum may count as a contact.\textsuperscript{174}
5. Entering into a contract with someone from the forum and envisioning continuing dealings with the forum person may count as contacts.\textsuperscript{175}
6. Including a choice of law provision in a contract will be seen as purposefully availing oneself of the benefits and protections of the forum state's law.\textsuperscript{176}
7. Fewer contacts of the defendant with the forum are required as the factors unrelated to the defendant grow in quality.\textsuperscript{177}

\begin{flushright}
\textsuperscript{167} \textit{Id.}  \\
\textsuperscript{168} \textit{Id. at} 476.  \\
\textsuperscript{169} \textit{Id. at} 476-77 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980)).  \\
\textsuperscript{170} \textit{Id. at} 477.  \\
\textsuperscript{171} \textit{Id. at} 479 n.22.  \\
\textsuperscript{172} \textit{Id.}  \\
\textsuperscript{173} \textit{Id.}  \\
\textsuperscript{174} \textit{Id.}  \\
\textsuperscript{175} \textit{Id.}  \\
\textsuperscript{176} \textit{Id. at} 481-82.  \\
\textsuperscript{177} \textit{Id. at} 477.
\end{flushright}
Specific Jurisdiction (after Burger King)

Due Process

Factors Relating to the Defendant:

1. Contacts between the defendant and the forum are required. (International Shoe).
   a) Unilateral contacts of another do not count. (Hanson).
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction. (Shaffer).
   c) Contacts of another may count if done on behalf of and with approval of the defendant. (Burger King).
   d) Negotiations from outside the forum with someone in the forum may count as contacts. (Burger King).
   e) Plaintiff need not have contacts with the forum. (Keeton).

2. The claim must arise from (International Shoe), be connected with (International Shoe), or relate to (Helicopteros) those contacts.
   a) The suit can include claims from other states if those claims relate to the forum claim. (Keeton).

3. The defendant must be able to foresee litigation in the forum resulting from the contacts. (Kulko and World-Wide Volkswagen).
   Examples of how this might occur are:
   a) The defendant, or one acting on the defendant's behalf, must enjoy the benefits and protections of the forum's laws. (World-Wide Volkswagen and Burger King).
      Examples are:
      i) If a claim arises from or is connected with those activities. (International Shoe).
      ii) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:
         1) Benefits and protections are not required under the "effects" test for intentional torts. (Calder).
         2) Physical injury is caused. (Kulko).
            a) Personal. (Kulko).
            b) Property. (Kulko).
   3) Defendant's commercial activity affects forum residents. (Kulko). Examples are:
      a) Failure to make payments to someone in the forum. (Burger King).
      b) Continue to use trademarks of a forum resident. (Burger King).
      c) Continue to use confidential business information of someone in the forum. (Burger King).
iii) The defendant delivers products into the stream of commerce expecting those products to be purchased by consumers in the forum. (*World-Wide Volkswagen*).

1) The defendant directly serves the market. (*World-Wide Volkswagen*).

2) The defendant indirectly serves the market. (*World-Wide Volkswagen*).

b) Intentionally directs wrongful activity at the forum. (*Calder*).

4. Other factors relating to the defendant may be considered.

a) Inconvenience to the defendant resulting from a trial away from the defendant’s home or principal place of business may be considered. (*International Shoe*).

i) Fewer contacts may be required if litigation in the forum is not inconvenient. (*Burger King*).

b) Defendant’s family harmony. (*Kulko*).

Factors not Relating to the Defendant:

1. The forum state’s interest in the litigation may be considered in determining whether jurisdiction exists. (*McGee*).

a) Includes interest in providing forum to own residents. (*McGee*).

2. State interest may be considered in determining if the forum wishes to retain jurisdiction already established. (*Perkins*).

3. Plaintiff’s interests:

a) Inconvenience to the plaintiff may be considered. (*McGee*).

b) Effective relief. (*World-Wide Volkswagen*).

4. Interstate judicial system’s interest in the efficient resolution of disputes. (*World-Wide Volkswagen*).

a) Example: Nationwide libel suit. (*Keeton*).

5. State interest in the furtherance of substantive social policy objectives. (*World-Wide Volkswagen*).

6. Fewer contacts of the defendant with the forum are required as the factors unconnected to the defendant grow in quality. (*Burger King*).

**ASAHI METAL INDUSTRY CO., LTD. v. SUPERIOR COURT OF CALIFORNIA**¹⁷⁸

Gary Zurcher lost control of his motorcycle while driving through California and crashed into a tractor. Zurcher was severely injured, and his wife was killed. Zurcher filed a products liability action in a California court, alleging that an explosion was caused by a defective tire, tube, and sealant. Among others, Zurcher sued Cheng Shin Rub-

ber Industrial Co., Ltd. ("Cheng Shin"), the Taiwanese manufacturer of the tire tube. Cheng Shin sought indemnification from Asahi Metal Industry Co., Ltd. ("Asahi"), a Japanese corporation and the manufacturer of the tube's valve assembly. The evidence showed that about twenty percent of Cheng Shin's United States' sales were in California. Some of these sales included tires having Asahi's valve stems.\(^1\)

Zurcher settled his claims against Cheng Shin and the other defendants which left only Cheng Shin's indemnification claim against Asahi.\(^2\) Asahi moved to dismiss for lack of personal jurisdiction. California's long-arm statute allowed jurisdiction to attach "on any basis not inconsistent with the Constitution of this state or of the United States."\(^3\) Therefore, the United States Supreme Court's analysis was based entirely on federal due process considerations.\(^4\)

On appeal, the United States Supreme Court held in a plurality opinion that personal jurisdiction was not proper.\(^5\) The Supreme Court essentially divided its opinion into two issues: stream of commerce analysis and reasonableness.\(^6\)

The Court split in its opinion, joined by three others, regarding stream of commerce analysis. Four justices stated that, under the "stream of commerce" analysis, jurisdiction did not exist; four other justices stated that stream of commerce analysis did result in personal jurisdiction.\(^7\) The ninth Justice, Justice John Paul Stevens, stated that a determination under "stream of commerce" analysis was unnecessary to the determination of the personal jurisdiction issue, because all nine justices agreed that an assertion of personal jurisdiction was unreasonable.\(^8\)

Justice Sandra Day O'Connor's opinion, joined by three others, noted that "[t]he '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."\(^9\) Justice O'Connor continued:

\(^1\) Id. at 106.
\(^3\) Id. at 116.
\(^4\) Id. at 112-16.
\(^7\) Id. at 121-22 (Stevens, J., concurring).
\(^8\) Id. at 112 (citations omitted).
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. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.  

Justice O'Connor stated that, even if Asahi was aware that its product would enter California, the record did not indicate that Asahi purposefully availed itself of the California market. Justice O'Connor noted that Asahi did no business in California; had no office, agent, employees, or property in California; and did not advertise or solicit business in California. Therefore, a plurality of the Court concluded that the assertion of personal jurisdiction over Asahi in California would exceed the limits of due process.

Justice William Brennan, joined by three other justices, argued that the stream of commerce analysis was satisfied by the facts of the case. Justice Brennan stated:

The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As 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. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State.

188. Id.
189. Id.
190. Id.
191. Id. at 113, 116.
192. Id. at 116-21 (Brennan, J., concurring).
193. Id. at 117 (Brennan, J., concurring).
Justice Brennan further noted that "[t]he Court in World-Wide Volkswagen . . . took great care [to] distinguish 'between a case involving goods which reach a distant State through a chain of distribution and a case involving goods which reach the same State because a consumer . . . took them there.'" 194 Justice Brennan agreed with the California Supreme Court that "[a]lthough Asahi did not design or control the system of distribution that carried its valve assemblies into California, Asahi was aware of the distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components." 195

Because the plurality believed that something more was required than awareness that the product would be sold in the forum State, and four other justices believed that mere awareness was enough, the law in this area is unsettled. Justice John Paul Stevens stated that a decision on the issue was not necessary, but indicated that the more products sent into the forum, the more likely personal jurisdiction would attach. 196

Eight of the nine justices agreed that an assertion of jurisdiction over Asahi would be unreasonable and thus denied personal jurisdiction. 197 The Court noted that a finding of personal jurisdiction would result in Asahi's need to travel a great distance and submit to the burden of a foreign legal system. 198 While one can easily imagine the uncertainty involved in submitting to a foreign legal system, the Court did not spell out precisely what it found objectionable about travelling overseas to the forum state. If the Court was concerned that a party would be unable to tend to matters at home and work, the same concern would hold true for someone travelling a much shorter distance to a trial. Also, Cheng Shin had not shown that California was a more convenient forum for litigation than Taiwan or Japan. 199

Furthermore, because the sole remaining issue in California was indemnification, the California court had little interest in hearing the case. 200 The Court stated that the California Supreme Court indicated that California had an interest in ensuring that foreign manufacturers comply with California safety standards. 201 However, because California's interest could be met if California tort law ap-

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194. Id. at 120 (Brennan, J., concurring) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 306-07 (1980) (Brennan, J., dissenting)).
195. Id. at 121 (Brennan, J., concurring) (internal quotations omitted).
196. Id. at 121-22 (Stevens, J., concurring).
197. Id. at 105, 113-16. Justice Antonin Scalia did not join in this part of the opinion. Id. at 105.
199. Id. at 114.
200. Id.
201. Id. at 114 (citing Asahi Metal Indus. Co., Ltd., 702 P.2d 543, 550 (Cal. 1985)).
plied to a personal injury case, California's interest could be protected adequately.

The Court also noted that California had little interest in the indemnification claim. The Court should have explained this in more detail. In an indemnity claim involving an accident in California, surely California would have an interest in whether Asahi's product was defective, causing the accident. If so, Asahi should indemnify Cheng Shin. California law therefore might be used to decide if Asahi's product was defective in California. Apparently, California felt its courts were best equipped to decide California law.

Additionally, the Court noted that foreign relations might be strained if jurisdiction were extended to Asahi in this case. The Court was not precise as to what strain may occur. Did the Court mean, for example, that foreign manufacturers would discontinue distributing products in the United States?

Specific Jurisdiction (after Asahi)

Due Process

Factors Relating to the Defendant:

1. Contacts between the defendant and the forum are required. *(International Shoe).*
   a) Unilateral contacts of another do not count. *(Hanson).*
   b) Ownership of property in the forum, without more, is insufficient for jurisdiction. *(Shaffer).*
   c) Contacts of another may count if done on behalf of and with approval of the defendant. *(Burger King).*
   d) Negotiations from outside the forum with someone in the forum may count as contacts. *(Burger King).*
   e) Plaintiff need not have contacts with the forum. *(Keeton).*

2. The claim must arise from *(International Shoe),* be connected with *(International Shoe),* or relate to *(Helicopteros)* those contacts.
   a) The suit can include claims from other states if those claims relate to the forum claim. *(Keeton).*

3. The defendant must be able to foresee litigation in the forum resulting from the contacts. *(Kulko and World-Wide Volkswagen)*. Examples of how this might occur are:
   a) The defendant, or one acting on the defendant's behalf, must enjoy the benefits and protections of the forum's laws. *(World-Wide Volkswagen and Burger King).*
   Examples are:
   i) If a claim arises from or is connected with those activities. *(International Shoe).*

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202. *Id.* at 114-15.
203. *Id.* at 115-16.
ii) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:

1) Benefits and protections are not required under the “effects” test for intentional torts. (*Calder*).

2) Physical injury is caused. (*Kulko*).
   a) Personal. (*Kulko*).
   b) Property. (*Kulko*).

3) Defendant’s commercial activity affects forum residents. (*Kulko*). Examples are:
   a) Failure to make payments to someone in the forum. (*Burger King*).
   b) Continue to use trademarks of a forum resident. (*Burger King*).
   c) Continue to use confidential business information of someone in the forum. (*Burger King*).

iii) The defendant delivers products into the stream of commerce expecting those products to be purchased by consumers in the forum. (*World-Wide Volkswagen*).

1) The defendant directly serves the market. (*World-Wide Volkswagen*).

2) The defendant indirectly serves the market. (*World-Wide Volkswagen*).

3) Some justices believe awareness of forum sale is enough. (*Asahi*).

4) Other justices require more than mere awareness (*Asahi*); examples:
   a) Design product for forum (*Asahi*).
   b) Provide advice in forum (*Asahi*).
   c) Market through sales agent in forum (*Asahi*).

b) Intentionally directs wrongful activity at the forum. (*Calder*).

4. Other factors relating to the defendant may be considered, called “reasonableness.” (*Kulko* and *Asahi*).

   a) Inconvenience to the defendant resulting from a trial away from its home or principal place of business may be considered. (*International Shoe*).
      i) Fewer contacts may be required if litigation in the forum is not inconvenient. (*Burger King*).
      ii) Great distance to travel. (*Asahi*).
      iii) Foreign legal system. (*Asahi*).

   b) Defendant's family harmony. (*Kulko*).

Factors not Relating to the Defendant:

1. The forum state's interest in the litigation may be considered in determining whether jurisdiction exists. (*McGee*).
a) Includes interest in providing forum to own residents. *(McGee and Burger King).*

2. State interest may be considered in determining if the forum wishes to retain jurisdiction already established. *(Perkins).*

3. Plaintiff’s interests:
   a) Inconvenience to the plaintiff may be considered. *(McGee).*
   b) Effective relief. *(World-Wide Volkswagen).*

4. Interstate judicial system’s interest in the efficient resolution of disputes. *(World-Wide Volkswagen).*
   a) Example: Nationwide libel suit. *(Keeton).*

5. State interest in the furtherance of substantive social policy objectives. *(World-Wide Volkswagen).*

6. Foreign relations. *(Asahi).*

7. Fewer contacts of the defendant with the forum are required as the factors unconnected to the defendant grow in quality. *(Burger King).*

**GENERAL JURISDICTION**

Since deciding *International Shoe Co. v. Washington*, the United States Supreme Court has decided only two cases involving general jurisdiction. Because of this lack of cases, it is difficult to define the parameters of general jurisdiction and much analysis in this area will necessarily be limited to reasoned speculation.

**PERKINS v. BENGUET CONSOLIDATED MINING CO.**

Benguet Consolidated Mining Co. ("Benguet") owned and ran mining operations in the Philippine Islands. Benguet's operations halted during World War II during the occupation of the Philippine Islands by the Japanese. During that time, Benguet's president, who was also the general manager and principal stockholder, returned home to Ohio where he maintained an office and ran Benguet.

Perkins filed two lawsuits in Ohio against Benguet. In the first suit, Perkins sought approximately $68,400 claimed as stockholder dividends. In the second, Perkins sought $2,500,000 for the value of stock certificates Benguet failed to issue to her. The claims did not

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204. 326 U.S. 310 (1945).
205. See Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447-49 (1952) (concluding that a state may assert personal jurisdiction over a foreign corporation even though the cause of action did not arise from the corporation's activities within the state); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415-19 (1984) (holding that Texas could not assert specific or general jurisdiction over the defendant).
206. 342 U.S. 437 (1952). *See supra* notes 26-37 and accompanying text for a further discussion of this case.
arise out of the corporation's Ohio activities. Nevertheless, the United States Supreme Court allowed an Ohio court to hear the claims, because Benguet's activities in Ohio were so substantial that it was reasonable for Ohio to hear claims even unrelated to Benguet's Ohio activities.

The United States Supreme Court listed Benguet's Ohio contacts:

The company's mining properties were in the Philippine Islands. Its operations there were completely halted during the occupation of the Islands by the Japanese. During that interim the president, who was also the general manager and principal stockholder of the company, returned to his home in Clermont County, Ohio. There he maintained an office in which he conducted his personal affairs and did many things on behalf of the company. He kept there office files of the company. He carried on there correspondence relating to the business of the company and to its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as transfer agent for the stock of the company. Several directors' meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation. Thus he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company. He there discharged his duties as president and general manager, both during the occupation of the company's properties by the Japanese and immediately thereafter. While no mining properties in Ohio were owned or operated by the company, many of its wartime activities were directed from Ohio and were being given the personal attention of its president in that State.

Based upon these significant contacts, the Court found that Ohio could hear claims not related to or arising out of those contacts. However, the Court noted that Ohio was not required to hear the claims.

209. Id. at 445-46, 448.
210. Id. at 447-48.
211. Id. at 448.
212. Id.
Perkins v. Benguet Consolidated Mining Co.\textsuperscript{213} is the only United States Supreme Court case since International Shoe Co. v. Washington\textsuperscript{214} in which the Court found that general jurisdiction existed.\textsuperscript{215} Therefore, it is difficult to predict with precision the exact contours of general jurisdiction. Most of the general jurisdiction chart will be reasoned speculation. However, the first chart will be constructed from factors specifically mentioned by the Court in International Shoe and Perkins.\textsuperscript{216}

General Jurisdiction (after Benguet)

Due Process

Factors Relating to the Defendant:

1. Defendant must have substantial, continuous, and systematic forum contacts. (International Shoe and Perkins).
2. The claim need not relate to the forum contacts. (International Shoe and Perkins).

Factors not Relating to the Defendant:

1. Forum state is not required to hear a case merely because due process permits the forum state to do so (Perkins); for example:
   a) State may choose to hear only cases arising in the forum. (Perkins).

Helicopteros Nacionales De Colombia, S. A. v. Hall\textsuperscript{217}

Helicopteros involved a helicopter crash in Peru, and a subsequent lawsuit in Texas filed by survivors of the accident and representatives of four people who died in the accident. The defendant, Helicopteros Nacionales de Columbia, S.A. ("Helicol"), a Colombian corporation, did have Texas contacts, including the purchase of helicopters, accessories, and spare parts totalling over four million dollars. Helicol also sent its pilots to Texas for training and to transport the aircraft back to South America. Additionally, Helicol sent maintenance personnel and management to Texas for technical consultation. Helicol also received over five million dollars in payments drawn upon a bank account in Houston, Texas.\textsuperscript{218}

The United States Supreme Court seemed eager to point out that Helicol had no other business contacts with Texas and gave several examples of business contacts that would have been typical but were

\textsuperscript{213} 342 U.S. 437 (1952).
\textsuperscript{214} 326 U.S. 310 (1945).
\textsuperscript{215} Perkins, 342 U.S. at 447-49; see Helicopteros, 466 U.S. at 415-16, 419 (holding that Texas could not assert general jurisdiction over Helicol).
\textsuperscript{216} See infra notes 216-17 and accompanying text.
\textsuperscript{217} 466 U.S. 408 (1984). See supra notes 147-55 and accompanying text for a further discussion of this case.
absent in this case. For instance, the Supreme Court noted that Helicol had never been issued authorization to conduct business in Texas, had an agent within the state for service of process, performed helicopter operations, sold products, solicited business, signed a contract, employed or recruited people, owned property, maintained an office, maintained records, or had shareholders in Texas.\textsuperscript{219}

The Court found that the trip to Texas by Helicol's chief executive officer to negotiate for transportation services could not be regarded as "systematic and continuous" as required by \textit{Perkins} and \textit{International Shoe}.\textsuperscript{220} The Court also concluded that Helicol's "acceptance . . . of checks drawn on a Texas bank was of negligible significance."\textsuperscript{221} The Court noted that the banks on which the checks were drawn were not designated by Helicol and were left entirely to the party paying Helicol.\textsuperscript{222} Moreover, Helicol's purchasing of helicopters and its sending of employees into Texas for training were small, brief encounters and were not sufficient to warrant personal jurisdiction in Texas for a claim occurring elsewhere.\textsuperscript{223} The Court's decision in \textit{Helicopteros} relied heavily on \textit{Perkins} and \textit{International Shoe} and applies the facts to the law from \textit{Perkins} and \textit{International Shoe} to reach its conclusion that there were insufficient systematic and continuous contacts to assert jurisdiction over a claim unrelated to those contacts.\textsuperscript{224}

General Jurisdiction (after \textit{Helicopteros})

Due Process

Factors Relating to the Defendant:

1. Defendant must have substantial, continuous, and systematic forum contacts. \textit{(International Shoe, Perkins, and Helicopteros); examples:}
   a) Sufficient contacts (from \textit{Perkins}).
      i) Office maintained in the forum
      ii) Office files maintained in the forum
      iii) Company correspondence from the forum
      iv) Employee checks paid from the forum
      v) Bank accounts in the forum
      vi) Directors' meetings held in the forum
      vii) Continuous systematic supervision from the forum
      viii) Mining properties not in forum

\textsuperscript{219} \textit{Helicopteros}, 466 U.S. at 411-12.
\textsuperscript{220} \textit{Id}. at 416 (citations omitted).
\textsuperscript{221} \textit{Id}. at 416-17.
\textsuperscript{222} \textit{Id}. at 417-19.
\textsuperscript{223} \textit{Id}. at 416-19 (citations omitted). Author's note: It may be appropriate to place examples from \textit{Perkins} and \textit{Helicopteros} into the chart to show situations where general jurisdiction attached, and where it did not.
b) Insufficient contacts (from *Helicopteros*).
   i) One negotiating session to supply transportation
   ii) Four million dollars in purchases of helicopters, parts, and accessories
   iii) Pilots trained in the forum
   iv) Management personnel visited the forum for training
   v) Received funds drawn on Texas banks
   vi) Factors that were absent in forum
       1) Not authorized to do business
       2) No agent for service of process
       3) No helicopter operations performed
       4) No products sold
       5) No business solicited
       6) No contacts signed
       7) No employees
       8) No employees recruited
       9) No property owned
       10) No office maintained

2. The claim need not relate to the forum contacts. For example:
   a) Shareholder lawsuit. (*Perkins*).
      i) For dividends due
      ii) For issuance of certificates of stock

Factors not Relating to the Defendant:
1. Forum state is not required to hear a case merely because due process permits the forum state to do so. (*Perkins*).
   a) May choose to hear only cases arising in forum.

   Because there have been only two general jurisdiction cases decided by the United States Supreme Court since *International Shoe*, many of the remainder of the general jurisdiction chart must be derived from reasoned speculation gleaned from examining the specific jurisdiction chart and by trying to decide which factors shall also apply to the general jurisdiction chart.

*Foreseeability of Forum Litigation*

The United States Supreme Court has required that a defendant be able to foresee litigation in the forum and has stated that a state may not assert jurisdiction over a defendant having no contacts with that state. The Due Process Clause provides predictability to the law of personal jurisdiction, allowing potential defendants to structure
their behavior so as to know where they will be subject to a lawsuit in the forum state.\textsuperscript{227}

Presumably, if a defendant has substantial, continuous, and systematic contacts with a forum, the defendant should be able to foresee litigation in that forum for a claim arising outside the forum.\textsuperscript{228} Thus, foreseeability of forum litigation will be borrowed from the specific jurisdiction chart and inserted into the general jurisdiction chart.

\textit{Reasonableness}

This prong of the specific jurisdiction chart relates to inconvenience to the defendant, possibly measured by having to travel a great distance to the forum or having to become familiar with a foreign legal system.\textsuperscript{229} These examples typically would not apply to one having substantial, systematic, and continuous contacts with the forum, because that defendant would not be expected to have to travel a great distance to the forum or be unfamiliar with the forum's legal system. However, it is possible that the claim would not arise in the forum and that it might be inconvenient for the defense witnesses to travel to the forum. This might count as an inconvenience to the defendant.

\textit{Interest of the Forum and of Other States, Plaintiff’s Interest, and Foreign Relations}

The Court in \textit{Perkins} indicated that a forum state may decline to exercise general jurisdiction already acquired if, for example, the forum wishes to hear only cases arising in the forum.\textsuperscript{230} This point has already been entered into the general jurisdiction chart.

In \textit{Burger King}, the United States Supreme Court stated that jurisdictional “considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.”\textsuperscript{231} However, if the defendant’s contacts are not substantial, systematic, and continuous, may a forum state's interest in hearing a case, or several states' interest in resolving a controversy, or the plaintiff's interest in having the case heard in the forum, or foreign relation considerations support an assertion of general jurisdiction when the defendant’s contacts fall short of being

\begin{itemize}
  \item \textsuperscript{227} \textit{Burger King Corp.}, 471 U.S. at 472 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).
  \item \textsuperscript{229} \textit{International Shoe Co.}, 326 U.S. at 317; \textit{Asahi Metal Indus. Co., Ltd. v. Superior Court of California}, 480 U.S. 102, 114 (1987).
  \item \textsuperscript{230} \textit{Perkins}, 342 U.S. at 440.
  \item \textsuperscript{231} \textit{Burger King Corp.}, 471 U.S. at 477.
\end{itemize}
substantial, systematic, and continuous? If the defendant does not have such contacts, neither the states' interests nor any of the other jurisdictional factors unrelated to the defendant, will create sufficient contacts. However, the Court stated that these factors may reduce the "minimum contacts" required to assert personal jurisdiction in a specific jurisdiction case.

The Court's decision in Helicopteros may provide some guidance. The case involved a lawsuit in Texas arising out of a helicopter accident in Peru. The suit was filed by survivors of the accident and relatives of those killed in the accident. The Court noted that none of the plaintiffs or the deceased were domiciled in Texas. The Court noted that this fact was important "to show that nothing in the nature of the relationship between [plaintiffs] and [the defendant] could possibly enhance [the defendant's] contacts with Texas." Thus, in deciding whether Texas had general jurisdiction, the Court seemed to be concerned with the defendant's forum contacts and not effective relief for the plaintiffs. It might be inferred that other factors, unrelated to the defendant, also cannot be used to create general jurisdiction, but, as in Perkins, only to assist the Court in deciding if it should retain the jurisdiction already found to exist.

Thus, once a forum has determined that general jurisdiction exists over a defendant, the Court may look at the forum's interests, the plaintiff's interests, the interests of other states, and foreign relations in order to determine if the Court wishes to exercise jurisdiction. As indicated in Perkins, although jurisdiction may exist, the forum may wish to decline to hear cases arising elsewhere.

Next, both general and specific jurisdiction charts will be provided. The charts will include factual situations from the cases that will serve as examples of when jurisdiction will and will not exist.

General Jurisdiction

Factors Relating to the Defendant:
1. Defendant must have substantial, continuous, and systematic forum contacts. (International Shoe, Perkins, and Hall); examples:
   a) The claim need not relate to the forum contacts. (International Shoe, Perkins, and Helicopteros); example:
      1) Shareholder lawsuit. (Perkins).
      i) For dividends due

232. See id. at 477-78.
233. Burger King Corp., 471 U.S. at 476-77.
234. See supra notes 217-18 and accompanying text.
235. See supra notes 217-18 and accompanying text.
236. Hall, 466 U.S. at 411-12.
237. Id. at 412 n.5.
238. Perkins, 342 U.S. at 440.
ii) For issuance of stock
b) Litigation is foreseeable based on substantial contacts. (*International Shoe* and *Perkins*).
c) Sufficient contacts examples (*Perkins*):
   i) Office maintained in the forum
   ii) Office files maintained in the forum
   iii) Company correspondence from the forum
   iv) Employee checks paid from the forum
   v) Bank accounts in the forum
   vi) Directors’ meetings held in the forum
   vii) Continuous systematic supervision from the forum
   viii) Mining properties not in forum
d) Insufficient contacts example (*Helicopteros*):
   i) One negotiating session to supply transportation
   ii) Four million dollars in purchases of helicopters, parts, and accessories
   iii) Pilots trained in the forum
   iv) Management personnel visited the forum for training
   v) Received funds drawn on Texas banks
   vi) Factors absent in forum
      1) Not authorized to do business
      2) No agent for service of process
      3) No helicopter operations performed
      4) No products sold
      5) No business solicited
      6) No contacts signed
      7) No employees
      8) No employees recruited
      9) No property owned
      10) No office maintained

2. Reasonableness. (*International Shoe*, *Kulko*, and *Asahi*),
a) Convenience to the defendant. (*International Shoe*, *Kulko*, and *Asahi*).
   i) Possibly applies when claim arose far from the defendant’s home or principal place of business. (*Asahi*).
   ii) Burden on defendant’s witnesses (*Asahi*).
   iii) Foreign legal system (*Asahi*).
   iv) Great distance to travel (*Asahi*).
   v) Family harmony (*Kulko*).

3. Factors Unrelated to Defendant
a) Forum state’s interest. (*Perkins*).
   1) Can use only to decide if want to retain jurisdiction that already exists. (*Perkins* and *Helicopteros*).
      a) May wish to hear only claims arising in forum. (*Perkins*).
b) Several states' interest. *(Burger King).*
   1) Can use only to decide if want to retain jurisdiction that already exists. *(Perkins).*
   2) Efficient resolution of controversy. *(World-Wide Volkswagen)*; example:
      a) Nationwide libel. *(Keeton).*

c) Foreign relations. *(Asahi).*
   1) Can use only to decide if want to retain jurisdiction that already exists. *(Perkins).*

**Specific Jurisdiction**

Factors Relating to the Defendant:

1. Less than substantial contacts between the defendant and the forum are required. *(International Shoe).*
   a) Unilateral contacts of another do not count. *(Hanson).*
   b) Ownership of property in the forum without more is insufficient for jurisdiction. *(Shaffer).* Possible examples of "more":
      i) Dispute over ownership of property. *(Shaffer).*
      ii) Injury suffered on property. *(Shaffer).*
   c) Contacts of another may count if done on behalf of and with approval of the defendant. *(Burger King).*
   d) Negotiations from outside the forum with someone in the forum may count as contacts. *(Burger King).*
   e) Plaintiff need not have contacts with the forum. *(Keeton).*
   f) Examples of sufficient contacts:
      i) *International Shoe*\(^{239}\)
         1) eleven to thirteen salespeople
         2) Rent sample rooms to display shoes
         3) Solicit orders
         4) Merchandise shipped into forum
      ii) *McGee*\(^{240}\)
         1) Mailed insurance solicitation into forum
         2) Apparently mailed premium notices into forum
      iii) *Keeton*\(^{241}\)
         1) Circulated magazines in forum
         2) Magazines caused harm (libel) in forum
      iv) *Calder*\(^{242}\)
         1) Telephone calls into forum
         2) Newspaper sent into forum
         3) Harm felt in forum

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v) Burger King\textsuperscript{243}

1) Negotiations from outside the forum with people inside the forum during contract formation
2) Sending payments into forum
3) Resolving disputes from outside the forum with people in the forum
4) Contract having substantial connection with forum.

2. The claim must arise from (International Shoe), be connected with (International Shoe), or relate to (Helicopteros) those contacts.
   a) Selling shoes in forum gave rise to state's claim for unemployment taxes. (International Shoe).
   b) Soliciting insurance policy, and apparently premiums, from someone in the forum. Gave rise to claim for payment of policy. (McGee).
   c) Sent libelous news story into forum, knowing it to be libelous. Gave rise to claim for harm felt in forum. (Calder).
   d) Franchise restaurant had many dealings with forum company. Gave rise to suit for payments. (Burger King).
   e) Libelous magazine sent into forum and gave rise to claim for harm felt in forum. Same libelous magazine sent into other states and gave rise to claim related to claim in forum. (Keeton).

3. The defendant must be able to foresee litigation in the forum resulting from the contacts. (Kulko and World-Wide Volkswagen). Examples of how this might occur are:
   a) The defendant, or one acting on the defendant's behalf, must enjoy the benefits and protections of the forum's laws. (World-Wide Volkswagen and Burger King).

Examples are:
   i) If a claim arises from or is connected with those activities. (International Shoe).
   ii) If the defendant, who is outside of the forum, causes an effect in the forum while conducting those activities, jurisdiction will attach if:
1) Benefits and protections are not required under the "effects" test for intentional torts. (Calder).
2) Physical injury is caused. (Kulko).
   a) Personal. (Kulko).
   b) Property. (Kulko).
3) Defendant's commercial activity affects forum residents. (Kulko). Examples are:

\textsuperscript{243} Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).
REVIEW OF PERSONAL JURISDICTION

a) Failure to make payments to someone in the forum. (Burger King).

b) Continue to use trademarks of a forum resident. (Burger King).

c) Continue to use confidential business information of someone in the forum. (Burger King).

d) Send libelous news story into forum. (Keeton).

iii) The defendant delivers products into the stream of commerce expecting them to be purchased by consumers in the forum. (World-Wide Volkswagen).

1) The defendant directly serves the market. (World-Wide Volkswagen).

2) The defendant indirectly serves the market. (World-Wide Volkswagen).

3) Some Justices stated awareness of forum sale is enough. (Asahi).

4) Others require more (Asahi); examples:
   a) Design product for forum (Asahi).
   b) Provide advice in forum (Asahi).
   c) Market through sales agent in forum (Asahi).

b) Intentionally directs wrongful activity at the forum. (Calder).

4. Other factors relating to the defendant may be considered, called "reasonableness." (Kulko and Asahi).

a) Inconvenience to the defendant resulting from a trial away from the defendant’s home or principal place of business may be considered. (International Shoe).

i) Fewer contacts may be required litigation in the forum is not inconvenient. (Burger King).

ii) Great distance to travel (Asahi).

iii) Foreign legal system (Asahi).

b) Defendant’s family harmony. (Kulko).

Factors not Relating to the Defendant:

1. Forum state’s interest
   a) May be considered in determining whether jurisdiction exists. (McGee).

      i) Includes interest in providing forum to own residents. (McGee and Burger King).

   b) May be considered in determining if the forum wishes to retain jurisdiction already established. (Perkins).

2. Plaintiff’s interests:
   a) Inconvenience to the plaintiff may be considered. (McGee).

      i) May be economically infeasible to travel to another state. (McGee).

   b) Effective relief. (World-Wide Volkswagen).
3. a) Interstate judicial system's interest in the efficient resolution of disputes. (World-Wide Volkswagen), example:
   i) Nationwide libel suit. (Keeton).

b) State interest in the furtherance of substantive social policy objectives. (World-Wide Volkswagen).

4. Foreign relations. (Asahi).

5. Fewer contacts of the defendant with the forum are required as the factors unconnected to the defendant grow in quality. (Burger King).

Domicile

Perhaps a type of contacts case was Milliken v. Meyer, in which Milliken sued Meyer, a Wyoming domiciliary residing in Colorado, in a Wyoming state court. Personal service was made in Colorado pursuant to a Wyoming statute. Meyer failed to appear, and a default judgment was entered against him. Milliken attempted to have the judgment enforced in Colorado. The Colorado Supreme Court, without considering whether Wyoming could assert personal jurisdiction over Meyer, refused to enforce the Wyoming court's judgment.

On appeal, the United States Supreme Court held that Wyoming had personal jurisdiction over Meyer and that Colorado was required to give full faith and credit to the Wyoming judgment. In discussing the personal jurisdiction of the Wyoming state court, the Supreme Court stated that "[d]omicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment. . . ." The Court continued:

The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also extract reciprocal duties. . . . The responsibilities of [state] citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incident of domicile is amenability to suit within the state even during sojourns without the state. . . .

244. 311 U.S. 457 (1940).
245. Milliken v. Meyer, 311 U.S. 457, 459-61 (1940). The Colorado Supreme Court held that the Wyoming decree was void because of an irreconcilable contradiction between the findings and the decree. Id. at 461.
246. Milliken, 311 U.S. at 460-62.
247. Id. at 462.
248. Id. at 463-64.
Thus, the defendant’s domicile within the forum state appears to give that state personal jurisdiction over the defendant for all matters, i.e., general jurisdiction. However, courts have had difficulty defining domicile. For example, when considering whether the parties have diversity of citizenship the United States Court of Appeals for the Fifth Circuit stated:

For diversity purposes, citizenship means domicile; mere residence in the State is not sufficient.

* * *

A person’s domicile is the place of “his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom...” A change of domicile may be effected only upon a combination of two elements: (a) taking up residence in a different domicile with (b) the intention to remain there.\(^{249}\)

If this definition is used for personal jurisdiction purposes, a person could establish citizenship by moving into the forum state, taking up residence and remaining briefly with the intent to return to the state of his previous residence. If that temporary resident took an extended trip never intending to change domicile, the holding of \(\text{Milliken}\) nevertheless would allow the forum to assert general jurisdiction over the defendant, even if the defendant left no property in the forum being protected by the state.\(^{250}\) Possibly, the Court envisioned more, or lengthier, contacts than this example in order for a forum state to assert general personal jurisdiction over one of its domiciliaries.

Perhaps the Court’s conclusion that a defendant’s domicile in the forum permits the forum to assert general jurisdiction over the defendant assumes that the defendant has substantial, systematic, and continuous contacts.\(^{251}\) If so, no separate category for “domicile” is required. Jurisdiction over the defendant would be general if a forum citizen had the required substantial contacts; otherwise, a specific jurisdiction analysis would be required.

**OTHER WAYS OF SATISFYING DUE PROCESS**

In addition to satisfying federal due process through the contacts of the defendant, the Court has indicated that there are four other ways: 1) Consent, 2) Service of Process in the Forum, 3) Class Action Plaintiffs, and 4) Valid State Purpose.

1. Consent

\(^{250}\) See supra notes 245-50 and accompanying text.
\(^{251}\) See supra note 23 and accompanying text.
a. In *M/S Bremen v. Zapata Off-Shore Co.*, the question before the United States Supreme Court was whether to enforce a forum-selection clause in a contract between a Houston-based United States corporation (Zapata) and a German corporation (Unterweser). The contract was for the German company to tow the Houston company's ocean-going drilling rig from Louisiana to Italy. The contract provided that any dispute would be "treated before the London Court of Justice." During the tow, a storm arose, and the rig was damaged. Rather than filing a claim in the English courts, Zapata filed in a United States district court in Tampa, Florida. Unterweser moved to dismiss for lack of personal jurisdiction on the ground that the forum selection clause specified that the dispute must be submitted to the London Court of Justice.

The case ultimately worked its way to the United States Supreme Court, which upheld the forum selection clause. The Supreme Court, quoting *National Equipment Rental, Limited v. Szukhent*, stated that "it is settled . . . that parties to a contract may agree in advance to submit to the jurisdiction of a given court. . . ." The Court said that this approach "accords with ancient concepts of freedom of contract. . . ." The Court also noted that "there is 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 . . . forum clause in mind." Thus, the Court remanded the case back to the trial court with instructions to enforce the forum clause unless it would be unjust or unreasonable or if the clause was overreaching or induced by fraud.

b. In *Carnival Cruise Lines, Inc. v. Shute*, Mr. and Mrs. Shute purchased tickets through a travel agent in the State of Washington for a seven day cruise on the defendant's ship. Each ticket contained a clause stating that any litigation resulting would take place in Flor-

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255. *Id.* at 3-4.
256. *Id.*
257. *Id.* at 2, 7-9, 20.
260. *Id.* at 11.
261. *Id.* at 14.
262. *Id.* at 15.
While on board, Mrs. Shute was injured, and she filed suit in the State of Washington, claiming that Carnival Cruise Lines and its employees were negligent. Carnival contended that the forum selection clause required that the case be heard in Florida. The United States Supreme Court granted certiorari and upheld the forum selection clause.

The Supreme Court concluded that, unlike the facts of Bremen, the contract for passage was routine and nearly identical to other commercial cruise contracts. The Court stated that it would have been unreasonable to assume the terms were negotiated. Furthermore, it was a contract not involving business people.

Nevertheless, the Court enforced the forum selection clause for several reasons. First, the Court stated that it would not be unlikely that a mishap could result in litigation in several places. Also, the Court noted that fixing a forum dispels confusion about where suits will be brought and spares time and expense of litigation to determine the forum. Additionally, the Court said that a forum selection clause might result in reduced fares by reflecting the savings to the cruise line by limiting the places it may be sued.

The Court noted that forum selection clauses are subject to scrutiny for fairness. The Court noted that there was no indication that Florida was chosen to discourage lawsuits. Rather, the Court noted that the cruise line had its principal office in Florida and began many cruises from Florida. Also, there was no indication of fraud or overreaching.

c. In addition to a court’s acquiring personal jurisdiction because the defendant has previously agreed in a contract to a choice of forum clause, personal jurisdiction can also exist when the defendant fails to object to personal jurisdiction. For example, personal jurisdiction

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265. Shute, 499 U.S. at 588.
266. Id.
267. Id.
268. Id. at 589.
269. Id. at 593.
270. Id.
271. Id.
272. Id. at 594.
273. Id. at 595.
274. Id.
275. Id.
276. Id.
277. FED. R. CIV. P. 12(h)(1). Federal Rule of Civil Procedure 12 (h)(1) provides in pertinent part:
A defense of lack of jurisdiction over the person . . . is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is
is waivered when the defendant answers the plaintiff's complaint without objecting to personal jurisdiction.\textsuperscript{278}

The Court agreed that personal jurisdiction can be waivered when it stated:

It is true that we have stated that the requirement of personal jurisdiction, as applied to state courts, reflects an element of federalism and the character of state sovereignty vis-a-vis other States. . . . The restriction on state sovereign power . . . must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns. Furthermore, if the federalism concept operated as an independent restriction on the sovereign power of the court, it would not be possible to waiver the personal jurisdiction requirement: Individual actions cannot change the powers of sovereignty, although the individual can subject himself to powers from which he may otherwise be protected.\textsuperscript{279}

d. Thus, it appears that there could be specific jurisdiction created by consent, as where the parties agree that any dispute arising under a contract will be resolved in a certain forum.\textsuperscript{280} It is not necessary that the claim relate to any of the defendant's contacts with the forum, but only that the claim must relate to the specific contract. Additionally, by failing to object, a defendant seems to be consenting to specific jurisdiction in a particular case, i.e., just to personal jurisdiction for that case but not for any others that subsequently may be filed.

2. Service of Process in the Forum State

In \textit{Burnham v. Superior Court of California},\textsuperscript{281} the United States Supreme Court decided whether mere service of process within the forum was sufficient to give the forum personal jurisdiction over the defendant in a suit unrelated to the defendant's forum contacts.\textsuperscript{282} If so, in-state service would permit an exercise of general jurisdiction.

Dennis Burnham, a New Jersey resident, was in California to conduct business and visit his children. While in California, Burnham

\textsuperscript{278} See Friedenthal, \textit{supra} note 2, § 3.26, at 183-84.

\textsuperscript{279} Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702-03 n.10 (1982).

\textsuperscript{280} See \textit{supra} notes 264-80 and accompanying text.

\textsuperscript{281} 495 U.S. 604 (1990).

was served with a summons as part of a divorce proceeding brought in California by his wife. Burnham contested personal jurisdiction, claiming that he lacked the requisite minimum contacts with California.283

The case reached the United States Supreme Court, which upheld the state’s assertion of personal jurisdiction.284 However, a majority of the Supreme Court could not agree on a single rationale for its decision.285 Four justices stated that a formidable body of precedent throughout the history of English commonlaw and decisions in the United States reflected the nearly unanimous view that service of process conferred forum state personal jurisdiction over a non-resident.286 Additionally, the Court stated that the “minimum contacts” requirement of International Shoe v. Washington287 applied when the defendant was not served with process while in the forum.288

Four other justices agreed that personal jurisdiction existed, but not because of historical precedent.289 These justices stated that “all rules of jurisdiction, even ancient ones, must satisfy contemporary notions of due process.”2890 These justices also stated that, when one visits a state, that person can reasonably expect that the state may exercise power over him or her while there.2891 The Court noted that the non-resident is benefitted by the forum’s fire, police, and emergency medical services and is free to travel throughout the state and enjoy the benefits of the forum’s economy.2892

 Apparently, because the non-resident enjoys the benefits of the forum, the non-resident has the reciprocal obligation of participation in forum litigation. What is puzzling about this portion of Justice Brennan’s concurring opinion is that non-residents who are fortunate enough not to be served with process in the forum state receive the same benefits as non-residents who are not as fortunate. Yet personal jurisdiction does not attach to those non-residents who are not served. Justice Brennan did not clarify the conundrum of his analysis which

283. Burnham, 495 U.S. at 608.
284. Id. at 628.
285. See generally Burnham, 495 U.S. at 607-40.
287. 326 U.S. 310 (1945).
289. Id. at 628-30 (Brennan, J., concurring). Justice Thurgood Marshall, Justice Harry Blackmun, and Justice Sandra Day O’Connor joined Justice William Brennan’s opinion. Id. at 628 (Brennan, J., concurring).
290. Burnham, 495 U.S. at 630 (Brennan, J., concurring).
291. Id. at 637 (Brennan, J., concurring).
292. Id. (Brennan, J., concurring).
does not seem to extend personal jurisdiction to those who had received benefits in the forum state but had not been served with process.293

Justice Byron White wrote a concurring opinion in which he stated that the rule, allowing personal jurisdiction based on service of process in the forum, was not arbitrary or irrational. Therefore, Justice White stated that “it should [not] be held violative of due process in every case.”294 Justice John Paul Stevens concurred, agreeing with the historical reasoning of Justice Antonin Scalia, the fairness considerations identified by Justice Brennan, and the common sense displayed by Justice White.295

3. Plaintiff's Class Action

In Phillips Petroleum Co. v. Shutts,296 Phillips Petroleum (“Phillips”) purchased or produced natural gas from leased land in eleven states. Shutts and several other royalty owners with rights in the leases brought a class action against Phillips in a Kansas state court to recover interest due on royalty payments. The class consisted of 33,000 royalty owners, each of whom was notified of an option to opt out of the class. The final class consisted of 28,100 members, residing throughout the United States and in several foreign countries. About ninety-seven percent of the class members only apparent connection with Kansas was the lawsuit.297 Consequently, a question arose as to whether Kansas had personal jurisdiction over class plaintiffs having no contacts with Kansas aside from the lawsuit.298

The United States Supreme Court distinguished absent class-action plaintiffs from defendants.299 The Supreme Court noted that defendants generally must hire counsel, travel to the forum to participate in the litigation, participate in discovery, and possibly pay damages and costs.300 On the other hand, the Court stated that class action plaintiffs are not required to go to the forum or to do much at all.301 Instead, the Court noted that class action plaintiffs rarely are subject to counterclaims or cross-claims, do not need to hire counsel, and rarely must pay a judgment.302 Thus, the Court found that the

293. See Burnham, 495 U.S. at 623-24 (criticizing the analysis in Justice Brennan's concurring opinion).
294. Burnham, 495 U.S. at 628 (White, J., concurring).
295. Id. at 640 (Stevens, J., concurring).
298. Shutts, 472 U.S. at 802-03, 806-08.
299. Id. at 808.
300. Id.
301. Id. at 610.
302. Id.
interests of the class action plaintiffs were protected adequately if they could opt out and if they received adequate representation.\textsuperscript{303}

4) Valid State Purpose

Situations might arise in which many parties are involved, and no one state is capable of exercising personal jurisdiction over all of the parties, because the parties do not have sufficient contacts with any one state. \textit{Mullane v. Central Hanover Bank \& Trust Co.}\textsuperscript{304} is one such a case.

Rising overhead costs have made the administration of small trusts prohibitive to corporate trustees. New York and other states passed legislation permitting pooling of small trust estates into one fund for investment administration purposes and to allow donors and testators of small trusts to receive the benefit of corporate fiduciaries. The dispute in \textit{Mullane} involved the administration of trust funds in New York. The proceedings took place in New York.\textsuperscript{305} The trust company as trustee in \textit{Mullane} exercised exclusive management and control over the common fund. Provisions were made for periodic accountings. Each judicial settlement of accounts was conclusive upon any matter set forth in the account and was binding upon everyone having an interest in the common fund or any participating estate, trust, or fund.\textsuperscript{306} Thus, the accounting would be binding even on those who had never been to New York and had no intentional connection to New York. For example, a child who had been given a gift of a portion of a fund would be bound by the settlement.

On appeal, the United States Supreme Court upheld the procedure, stating:

\textit{[T]he interest of each state in providing means to close trusts that exist by the grace of its laws and are administered under the supervision of its courts is so insistent and rooted in custom as to establish beyond doubt the right of its courts to determine the interests of all claimants, resident or non-resident, provided its procedure accords full opportunity to hear and be heard.}\textsuperscript{307}

The Supreme Court stated that beneficiaries could be affected, because their rights to have the trustee answer for negligent or illegal impairments of their interests could be lost.\textsuperscript{308} Also, the Court noted that the beneficiaries' interests could be subject to diminution by al-
allowance of fees and expenses in the conducting of a fruitless contest.\textsuperscript{309}

Providing notice to the beneficiaries of their rights to be heard was required by due process, but requiring contacts between a beneficiary and the State of New York prior to New York’s affecting a beneficiary’s interests was not.\textsuperscript{310} The Court seemingly found that there might not be personal jurisdiction over some of the beneficiaries when it stated, “[O]f course personal service even without the jurisdiction of the issuing authority serves the end of actual and personal notice, whatever power of compulsion it might lack.”\textsuperscript{311}

The Court explained that, under the circumstances, those over whom New York lacked jurisdiction and who did not appear at the New York proceedings would still have their personal rights protected. The Court explained:

This type of trust presupposes a large number of small interests. The individual interest does not stand alone but is identical with that of a class. The rights of each in the integrity of the fund and the fidelity of the trustee are shared by many other beneficiaries. Therefore, notice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all, since any objections sustained would inure to the benefit of all.\textsuperscript{312}

Based on the necessity of having a hearing dealing with the proper administration of the funds, the Court allowed New York to acquire jurisdiction over peoples’ interests, even those people having no intentional connection with New York.\textsuperscript{313} Although the Court noted that New York may not be acquiring personal jurisdiction over absent beneficiaries, it seems that New York actually was acquiring personal jurisdiction. This is because the ability to affect beneficiaries’ interests appears to be an assertion of personal jurisdiction over the beneficiaries. This reasoning is similar to that in \textit{Shaffer v. Heitner}.\textsuperscript{314} In that case, the United States Supreme Court considered “the significance of the long history of jurisdiction based solely on the presence of property in a State.”\textsuperscript{315} The Court stated:

The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the

\textsuperscript{309} Id.
\textsuperscript{310} Id. at 313-20.
\textsuperscript{311} Id. at 319.
\textsuperscript{312} Id.
\textsuperscript{313} Id. at 313-14.
\textsuperscript{314} 433 U.S. 186 (1977).
property supports an ancient form without substantial modern justification.\textsuperscript{316}

Similarly, assertion of power over a beneficiary's interests in a fund would be an assertion of jurisdiction over the beneficiary. As with \textit{Shutts}, where class action plaintiffs were not subjected to paying attorney fees or costs, were not likely to participate in discovery or be subjected to cross or counterclaims, the beneficiaries in the fund in \textit{Mullane} also would be unlikely to be subjected to these aspects.

\textbf{Personal Jurisdiction Chart}

Recalling the information about state long-arm statutes from earlier in this Article and placing that information into the chart along with information about domicile, consent, service of process in the forum, and valid state purpose, the chart has now evolved as follows:

\begin{flushleft}
\textbf{Personal Jurisdiction}
\end{flushleft}

\begin{enumerate}
\item \textbf{Personal jurisdiction statute}
\begin{enumerate}
\item \textbf{Narrow, e.g.}
\begin{enumerate}
\item Commit tort in forum (\textit{New York}).
\item Breach of contract in the forum (\textit{Burger King}).
\item Own property in forum (\textit{Shaffer}).
\begin{itemize}
\item a) Claim need not relate to the property (\textit{Shaffer}).
\end{itemize}
\end{enumerate}
\item As broad as federal due process.
\begin{enumerate}
\item Seemingly broad statute so construed. (\textit{Kulko}).
\item Seemingly narrow statute construed broadly. (\textit{Helicopteros}).
\end{enumerate}
\end{enumerate}
\item \textbf{Due Process}
\begin{enumerate}
\item Needs to be satisfied (\textit{International Shoe} and all other United States Supreme Court cases cited herein).
\item \textbf{General Jurisdiction}
\begin{enumerate}
\item Factors Relating to Defendant
\begin{enumerate}
\item Service of process in forum. (\textit{Burnham}).
\begin{enumerate}
\item Not through fraud. (\textit{Zapata}).
\end{enumerate}
\item Domicile in forum. (\textit{Milliken}).
\begin{enumerate}
\item Possibly really a contacts case.
\end{enumerate}
\item Consent by not objecting (e.g., Federal Rules of Civil Procedure 12(h)(i))
\begin{enumerate}
\item Unlikely a defendant would consent to every possible case.
\end{enumerate}
\item Defendant's contacts with forum. (\textit{International Shoe, Perkins,} and \textit{Helicopteros}).
\end{enumerate}
\end{enumerate}
\end{enumerate}
\end{enumerate}
1) Substantial, systematic, and continuous contacts. (International Shoe, Perkins, and Helicopteros).
   a) Claim need not relate to, be connected with, nor arise from contacts. (International Shoe, Perkins, and Helicopteros).
   b) Litigation is foreseeable based on substantial contacts. (International Shoe and Perkins).
   c) Sufficient contacts example. (Perkins).
      i) Office maintained in the forum
      ii) Office files maintained in the forum
      iii) Company correspondence from the forum
      iv) Employee checks paid from the forum
      v) Bank accounts in the forum
      vi) Directors' meetings held in the forum
      vii) Continuous systematic supervision from the forum
      viii) Mining properties not in forum
   d) Insufficient contacts example. (Helicopteros).
      i) One negotiation session to supply transportation
      ii) Four million dollars in purchases of helicopters, parts, and accessories
      iii) Pilots trained in the forum
      iv) Management personnel visited Bell Helicopters
      v) Received funds drawn from Texas bank
   iv) Factors that were absent in forum:
      1) Not authorized to do business
      2) No agent for service of process
      3) No helicopter operations performed
      4) No products sold
      5) No business solicited
      6) No contracts signed
      7) No employees
      8) No employees recruited
      9) No property owned
      10) No office maintained
 2) Reasonableness. (International Shoe, Kulko, and Asahi).
   a) Convenience to the defendant. (Shoe, Kulko, and Asahi); examples:
      i) May apply when claim arose far from the forum or far from defendant's witnesses. (Asahi).
ii) Burden on defendant’s witnesses. (Asahi).

iii) Foreign legal system. (Asahi).

iv) Great distance to travel. (Asahi).

v) Family harmony. (Kulko).

2. Factors Unrelated to Defendant
a) Forum state’s interest. (Perkins).
   1) Can use only to decide if want to retain jurisdiction that already exists. (Perkins).
   a) May wish to hear only claims arising in forum. (Perkins).

b) Several states’ interests. (Burger King).
   1) Can use only to decide if want to retain jurisdiction that already exists. (Perkins).
   2) Efficient resolution of controversy (World-Wide Volkswagen); example:
      a) Nationwide libel. (Keeton).

c) Foreign relations. (Asahi).
   1) Can use only to decide if want to retain jurisdiction that already exists. (Perkins).

B. Specific Jurisdiction (Less than substantial contacts between the defendant and the forum are required. International Shoe).

1. Factors relating to defendant. (Burger King)
   a) Consent (Zapata, Carnival Cruise, and Federal Rules).
      1) Choice of forum clause in contract (Zapata and Carnival Cruise).
      2) Not objecting (e.g., Federal Rule of Civil Procedure 12(h)(1)).

b) Contacts. (International Shoe).
   1) Less than substantial, systematic, and continuous contacts. (International Shoe).
      a) Substantial, systematic, and continuous contacts may give rise to general jurisdiction. (International Shoe, Perkins, and Hall).
      b) Unilateral contacts of another do not count. (Hanson).
      c) Contacts of another count if defendant:
         i) Authorizes the acts of another (Burger King and World-Wide Volkswagen).
      d) Contacts can be defendant’s dealings from outside the forum with plaintiff residing in the forum (Burger King).
e) Defendant’s ownership of property in the forum, without more, does not establish personal jurisdiction. *(Shaffer).* Possible examples of “more”:
   i) Dispute over ownership of property. *(Shaffer).*
   ii) Injury suffered on property. *(Shaffer).*

f) Plaintiff need not have contacts with the forum. *(Keeton).*

g) Examples of sufficient contacts:
   i) *International Shoe*\(^{317}\)
      1) Eleven to thirteen salespeople
      2) Rent sample rooms to display shoes
      3) Solicit orders
      4) Merchandise shipped into forum
   ii) *McGee*\(^{318}\)
      1) Mailed insurance solicitation into forum
      2) Apparently mailed premium notices into forum
   iii) *Keeton*\(^{319}\)
      1) Circulated magazines in forum
      2) Magazines caused harm (libel) in the forum
   iv) *Calder*\(^{320}\)
      1) Telephone calls into forum
      2) Newspaper sent into forum
      3) Harm felt in forum
   v) *Burger King*\(^{321}\)
      1) Negotiations from outside forum with people in forum during contract formation
      2) Sending payments into forum
      3) Resolving disputes from outside forum with people in forum
      4) Contract having substantial connection with forum

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2. Claim arises out of (International Shoe), connected with (International Shoe), or relates to (Helicopteros) the contacts; examples:
   a) Selling shoes in forum. Gave rise to state's claim for unemployment taxes. (International Shoe).
   b) Soliciting insurance policy, and apparently premiums, from someone in forum. Gave rise to claim for payment of policy. (McGee).
   c) Sent libelous news story sent into forum. Gave rise to claim for harm felt in forum. (Calder).
   d) Franchise restaurant had many dealings with forum company. Gave rise to suit for payments. (Burger King).
   e) Libelous magazine sent into forum, gave rise to claim for harm felt in forum; same libelous magazine sent into other states, gave rise to claims related to claim in forum. (Keeton).

   a) The defendant, or one acting on the defendant's behalf, must enjoy the benefits and protections of the forum's laws. (World Wide Volkswagen and Burger King); examples:
      i) Expect product to be purchased in the forum. (World Wide Volkswagen).
         2) Indirectly marketed. (World Wide Volkswagen).
      3) Some justices stated awareness of forum sale is enough. (Asahi).
      4) Other justices require more (Asahi); examples:
         a) design product for forum (Asahi)
         b) provide advice in forum (Asahi)
         c) market through sales agent in forum (Asahi).
      5) Justice John Paul Stevens (Asahi) — the more products sent into the forum, the more likely jurisdiction will attach
      6) Claim must relate to the product. (World Wide Volkswagen and Asahi).
   ii) Forum effect caused by act outside the forum. (Kulko).
1) Benefits and protections not required under the “effects” test for intentional torts. (*Calder*).

2) Physical injury. (*Kulko*).
   a) Personal. (*Kulko*).
   b) Property. (*Kulko*).

3) Commercial transaction relating to forum. (*Kulko*).

   iii) If a claim arises from or is connected with those activities. (*International Shoe*).
   1) Failure to make payments to someone in the forum. (*Burger King*).
   2) Continue to use trademarks of a forum resident. (*Burger King*).
   3) Continue to use confidential business information of someone in the forum. (*Burger King*).
   4) Send libelous news story into forum. (*Keeton*).

iv) Other examples:
   1) Rely on forum law in a contract. (*Burger King*).
   2) Corporate benefits. (Justice William Brennan dissent in *Shaffer*).
      a) Interest-free loans
      b) Indemnification
   3) Benefits provided for transient in the forum (Justice Brennan's opinion in *Burnham*).
      a) Police
      b) Fire service
      c) Emergency medical
      d) Roads
      e) Forum's economy

b) Intentionally direct wrongful conduct at the forum. (*Calder*); example:
   i) Intentional tort (libel). (*Calder*).

4. Reasonableness. (*Kulko* and *Asahi*).
   a) Inconvenience to Defendant resulting from a trial away from the defendant's home or principal place of business (*International Shoe* and *Asahi*).
      i) Great distance to travel. (*Asahi*).
      ii) Foreign legal system. (*Asahi*).
      iii) If burden on defendant is not high, may have lesser showing of minimum contacts. (*Burger King*).

b) Family harmony. (*Kulko*).
2. Factors Unrelated to Defendant. *(Burger King).*
   a) Plaintiff
      1) Conveniences to the plaintiff. *(McGee, World-Wide Volkswagen, and Burger King).*
         i) May be economically unfeasible to travel to another state. *(McGee).*
      2) Effective relief. *(World-Wide Volkswagen).*
   b) Forum state. *(McGee).*
      1) Interest in hearing the case helps to create jurisdiction *(McGee and Burger King).*
         i) Provide forum for residents. *(McGee).*
      2) Interest in hearing the case if jurisdiction already exists. *(Perkins).*
         i) May wish to hear only claims arising in forum *(Perkins).*
   c) Interest of the Several States
      1) Efficient resolution of controversies *(World-Wide Volkswagen)*; example:
         i) Nationwide libel. *(Keeton).*
      2) State interest in the furtherance of substantive social policies. *(World-Wide Volkswagen).*
   d) Foreign relations. *(Asahi).*
   e) If factors unrelated to defendant are strong, may reduce minimum contacts of defendant needed for personal jurisdiction. *(Burger King).*

C. Personal Jurisdiction Over Plaintiffs *(Shutts).*
1. Plaintiffs' Class Action. *(Shutts).*
   a) Plaintiffs can opt out
   b) Little for plaintiffs to do; examples:
      i) Do not participate in discovery
      ii) Have little or no attorney contact
      iii) No claims filed against them
      iv) Will not pay judgment
   c) Adequate representation essential
2. Valid State Purpose. *(Mullane).*
   a) Reasonable notice essential
   b) Opportunity to participate
   c) Beneficiaries who participate can protect interests of non-participants.

IS THE LAW ON PERSONAL JURISDICTION CLEAR?

As with other areas of law, the law of personal jurisdiction is not completely clear. However, as the charts show, the United States
Supreme Court has identified many factors to be considered, so that attorneys have some guidance in deciding whether personal jurisdiction exists. The lack of clarity no doubt arises because the Supreme Court has not decided all possible questions, so doubt may still exist as to these undecided questions. The areas of uncertainty will be discussed in this section of this Article.

**The Precise Meaning of “Arising Out Of,” “Connected With,” or “Related To” Is Unclear.**

The assertion of specific jurisdiction requires that the suit arise out of or relate to the defendant's forum contacts. Not surprisingly, because the United States Supreme Court has not had many cases to develop more concrete guidelines, there are situations where doubt may exist as to whether the arising out of or related to element is satisfied.

In *Cornelison v. Chaney*, a case decided by the California Supreme Court, a California resident was killed in a collision with the defendant's truck on a Nevada highway near the California border. The decedent's widow, also a California resident, sued the defendant in California, alleging that the accident resulted from the defendant's negligence. The defendant, a resident of Nebraska, drove trucks for a living. In the course of his trucking operation, the defendant averaged twenty trips to California each year, with each cargo worth approximately $20,000. The defendant was on his way to California to deliver dry milk when the accident occurred. The defendant, an independent trucker, was licensed to engage in interstate trucking in California. The California Supreme Court found that the defendant's California activities were not so pervasive as to result in general jurisdiction. However, the California Supreme Court found that:

- The accident occurred not far from the California border, while defendant was bound for this state. He was not only

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322. See infra notes 324-35 and accompanying text.
324. See supra notes 147-55 and accompanying text.
325. 545 P.2d 264 (Cal. 1976).
327. *Cornelison*, 545 P.2d at 267. The California Supreme Court compared the case to *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952). In *Perkins*, the defendant established nearly all of its administrative functions in the forum and thus was susceptible to suit for claims even unrelated to those functions. *Perkins*, 342 U.S. at 267.
bringing goods into California for a local manufacturer, but he intended to receive merchandise here for delivery elsewhere. The accident arose out of the driving of the truck, the very activity which was the essential basis of defendant's contacts with this state. These factors demonstrate, in our view, a substantial nexus between plaintiff's cause of action and defendant's activities in California.\textsuperscript{328}

Justice William P. Clark, Jr. argued in his dissenting opinion that:

\textit{[t]he only conceivable connection between plaintiff's cause of action and defendant's activity inside California is that defendant was rolling toward (and plaintiff away from) its border. In this slight sense, the accident arguably "arose" from defendant's business in the state. However, the majority cites — and research has revealed — no authority supporting the conclusion that such a tenuous connection is sufficient to justify assertion of personal jurisdiction. In fact, the very decisions upon which the majority relies suggest the opposite. Every decision cited by the majority in which an exercise of limited jurisdiction was upheld is one in which the cause of action arose from or was substantially related to defendant's activity within the forum state itself. In the case at issue, every event relevant to plaintiff's cause of action occurred in Nevada. To the extent decisions cited by the majority suggest a single rule, it is one that requires the cause of action relate in some manner to activity defendant has taken within the forum. The application of this rule to the facts at issue requires denial of California jurisdiction.}\textsuperscript{329}

Both the majority's position and Justice Clark's position in \textit{Cornelison} are sensible. The majority, in essence, suggested that, because the defendant was driving into California as the defendant had done many times before, the claim related to the California contacts.\textsuperscript{330} Justice Clark argued that the claim must relate to an activity done by the defendant in the forum and that the driving leading to the accident did not occur in the forum.\textsuperscript{331}

The United States Supreme Court has not settled this dispute.\textsuperscript{332} This Article suggests that personal jurisdiction should attach if it is reasonable, and this Article also argues that the claim need not relate to forum contacts.\textsuperscript{333} Although, if the claim does relate, it may be reasonable to assert jurisdiction.\textsuperscript{334}

\textsuperscript{328} Cornelison, 545 P.2d at 268.
\textsuperscript{329} Id. at 270 (Clark, J., dissenting).
\textsuperscript{330} Id. at 268.
\textsuperscript{331} Id. at 270 (Clark, J., dissenting).
\textsuperscript{332} See supra notes 147-55 and accompanying text.
\textsuperscript{333} See infra notes 336-83 and accompanying text.
\textsuperscript{334} See infra note 377 and accompanying text.
WHEN ARE THE QUALITY AND QUANTITY OF CONTACTS SUFFICIENT FOR GENERAL JURISDICTION?

The United States Supreme Court has decided two cases dealing with the contacts necessary for general jurisdiction to attach.335

Perkins v. Benguet Consolidated Mining Co.336

This case was discussed earlier in this Article.337 In summary, the defendant corporation in Benguet operated from Ohio, conducting substantial activities there.338 The plaintiff, a shareholder, sought money for dividends and failure to issue stock to her.339 The plaintiff's suit, filed in Ohio, was unrelated to the defendant's activities there.340 The United States Supreme Court held that the defendant's Ohio activities were so substantial that Ohio could entertain a lawsuit unrelated to the defendant's Ohio activities.341

Helicopteros Nacionales de Colombia, S.A v. Hall342

This case also has been discussed earlier in the text of this Article.343 In short, the case involved a helicopter crash in Peru.344 The defendant had contacts with Texas; however, these contacts were insufficient to create general jurisdiction in that forum.345 The contacts in question regarded the purchase of helicopters, spare parts, and accessories; sending personnel to Texas for training, plant familiarization, and technical consultation; and transportation of the aircraft back to South America.346 The United States Supreme Court found these contacts insufficient to allow Texas to assert personal jurisdiction over the defendant for a claim unrelated to the Texas contacts.347

335. See Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447-49 (1952) (holding that Ohio may assert jurisdiction over the defendant even though the suit is unrelated to the defendant's contacts with the forum); Helicopteros Nacionales de Colombia, S.A v. Hall, 466 U.S. 408, 416 (1984) (holding that the defendant's contacts with the forum were not continuous and systematic to such a degree as to permit the assertion of general jurisdiction).
337. See supra notes 206-16 and accompanying text.
340. Id.
341. Id. at 448-49.
343. See supra notes 147-55 and accompanying text.
346. Id. at 410-11.
347. Id. at 415-16.
Thus, *Perkins* represents a case in which general jurisdiction was allowed whereas *Helicopteros* represents a case where general jurisdiction was disallowed. Thus, the Supreme Court has not indicated how to determine when the dividing line is reached.

**What Weight Do the Factors Have?**

The United States Supreme Court has identified numerous factors to be used in deciding whether personal jurisdiction exists. For example, conveniences to defendant and plaintiff litigating in the forum, the forum state's interest in hearing the litigation, and effect on foreign relations are all factors that may be considered. However, the Court has not assigned weights to any of the factors. Obviously, as a factor grows in strength, its weight should increase. For example, if forum litigation does not generate inconvenience, other than general litigation inconvenience to the defendant, this factor would be weighted more heavily in the direction of an assertion of personal jurisdiction. But how much more heavily? And how heavy must the weight be in order to tip the scale in favor of personal jurisdiction? Assigning weight to the factors seems to be an impossible task. The Court appears to be saying that all of the factors should be discussed, and if there is a visceral sense that it would not be unfair, then personal jurisdiction may attach. Whatever test is used, it would seem to be difficult to assign exact weight to all variables and know precisely what sum of the weights translates into personal jurisdiction.

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349. See supra notes 203-04 and accompanying text.
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352. See supra notes 203-04 and accompanying text.
353. See supra notes 203-04 and accompanying text.
354. See *Burger King Corp.* v. Rudzwicz, 471 U.S. 462, 476-77 (1985) (discussing the several factors but not assigning weights to any of them).
355. See *International Shoe Co.* v. Washington, 326 U.S. 310, 317 (1945) (stating that there is a correlation between the inconvenience placed on the defendant to litigate in the forum state and the state's assertion of personal jurisdiction).
356. See *Burger King Corp.*, 471 U.S. at 476-77 (stating that the factors must be discussed "to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice'") (internal citations omitted).
This question was raised in *Asahi Metal Industry Co., Ltd. v. Superior Court of California,* but the United States Supreme Court divided evenly on the issue. In summary, *Asahi* involved a motorcycle accident in California, and the foreign manufacturer of the tire tube was subsequently sued. The tube manufacturer sought indemnification from the valve's manufacturer, *Asahi.*

Justice Sandra Day O'Connor stated that something more was needed to assert jurisdiction than the mere insertion of a product into the stream of commerce. Justice O'Connor stated that the additional conduct on the part of the defendant might involve designing the product for the forum, providing customer assistance in the forum, or selling the product to a distributorship that agrees to market the product in the forum.

Justice William Brennan, however, stated that, if the defendant has knowledge its product is being sold in the forum, a lawsuit in that forum should not come as a surprise. Justice John Paul Stevens stated that it would have been unreasonable and unfair to require the Japanese defendant, Asahi, to travel to California to participate in this litigation. Justice Stevens therefore took no concrete position on the question of whether more than mere knowledge that the product would be sold in the forum was necessary for an assertion of personal jurisdiction.

**IS THE SUPREME COURT CONSIDERING THE CORRECT FACTORS?**

In *International Shoe Co. v. Washington,* the United States Supreme Court asked whether the Due Process Clause of the Fourteenth Amendment permitted the State of Washington to assert personal jurisdiction over International Shoe. In *Asahi Metal Industry Co., Ltd v. Superior Court of California,* the Supreme Court asked

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358. See supra note 184 and accompanying text.
361. Id. at 112.
362. Id. at 116-17 (Brennan, J., concurring).
363. Id. at 121-22 (Stevens, J., concurring).
364. Id. (Stevens, J., concurring).
whether the contacts of a foreign defendant with the forum were sufficient for the forum to exercise personal jurisdiction over that defendant.\textsuperscript{368}

Thus, the question the Court seems to be asking is whether the Due Process Clause allows the state to assert personal jurisdiction over the defendant.\textsuperscript{369} It stands to reason then that factors relating to the defendant should be considered in deciding if personal jurisdiction exists. Nevertheless, the Court has stated that other factors, unrelated to the defendant, may be used in determining whether personal jurisdiction exists.\textsuperscript{370} The Court noted:

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. . . ." Thus 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. . . ." These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.\textsuperscript{371}

If we are concerned with the defendant's due process rights, how can factors unrelated to the defendant allow a state to assert personal jurisdiction upon a lesser showing of contacts than due process would otherwise require? Factors unrelated to the defendant cannot alter the due process provided to the defendant. By way of example, failure to consider conveniences to the plaintiff in determining if a state has personal jurisdiction over a defendant may cause inconvenience to the plaintiff.\textsuperscript{372} That, however, has nothing to do with the defendant's due process. This is not to say that factors unrelated to the defendant should be irrelevant, only that these unrelated factors should not be used to create personal jurisdiction. Rather, once personal jurisdiction has been established, factors unrelated to the defendant can be used to help a court decide if it wishes to retain jurisdiction. For example, a state may have little interest or expertise in hearing a claim

\textsuperscript{368} Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 105 (1987).

\textsuperscript{369} See supra notes 19-20 and accompanying text.

\textsuperscript{370} Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-77 (1985).

\textsuperscript{371} Burger King Corp., 471 U.S. at 476-77 (citations omitted).

\textsuperscript{372} Id.
that arose elsewhere that relies on another state's law. In such a case, a court may decide that, even though due process would permit it to hear the case, it might choose not to do so.

**SHOULD DEFENDANT'S CONTACTS WITH THE FORUM BE A PREREQUISITE TO PERSONAL JURISDICTION?**

Contacts of a defendant with the forum presently are a prerequisite to an assertion of personal jurisdiction. However, the United States Supreme Court has never provided a valid explanation of this prerequisite. The Supreme Court has stated that due process requires fair warning that a particular activity may subject a defendant to personal jurisdiction, thus allowing a defendant to structure conduct in order to have some assurance that the conduct will render the defendant subject to personal jurisdiction.

The overriding factor in determining whether personal jurisdiction attaches should be fairness to the defendant. If a defendant has structured conduct to avoid contacts with a state, thereby trying to avoid being subjected to personal jurisdiction, fairness to the defendant may result in the court's refusal to assert personal jurisdiction over the defendant. If a defendant would suffer little inconvenience by litigation in the forum, the defendant's attempt to avoid contacts with the forum may not be weighed heavily by the court. Or, perhaps a defendant has not tried to avoid the forum but rather has had no reason to have contacts with the forum. It seems that even if a defendant has no contacts with the forum, personal jurisdiction over the defendant may be fair if there is little inconvenience to the defendant. For example, if a defendant lives only a few feet from the forum but has no contacts with the forum, and would suffer little inconvenience by participating in forum litigation, personal jurisdiction might conceivably attach.

**What Factors Should Be Considered in Deciding if Due Process Permits Personal Jurisdiction to Attach?**

**Convenience/Inconvenience to the Defendant**

The relative convenience to the defendant should be significant in determining if the defendant would be afforded due process by being forced to litigate in the forum. If the defendant is provided with a fair opportunity to present its case, it would seem that due process would

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373. *Id.* at 471-76.
374. *Id.* at 472.
375. *See* International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (stating that "fair play and substantial justice" are factors to consider in deciding whether to assert personal jurisdiction).
be satisfied even if the defendant had no forum contacts. If the defendant and its witnesses can get to the forum with little difficulty, due process may be satisfied although the defendant had no forum contacts. On the other hand, if the defendant would be hindered in litigating because, for example, its witnesses would be unavailable because of needing to travel great distances to trial, this would weigh against personal jurisdiction.

Defendant's Contacts with the Forum

While the defendant's contacts with the forum should not be a prerequisite to personal jurisdiction, the presence of contacts should be a factor. For example, if a claim arises out of the defendant's forum contacts, it would seem fair that the defendant litigate the claim in the forum. One of the risks growing from forum contacts should be that the defendant must answer for those claims relating to these contacts. Otherwise we allow the possibility of the defendant not being required to answer for harmful conduct if the plaintiff is unable to pursue the defendant in the defendant's home forum. Even if the plaintiff could afford to pursue the claim in the defendant's home forum, it still seems fair that the defendant litigate where the defendant chose to have contacts that resulted in harm. Of course, this does not change the law because personal jurisdiction already exists if the claim relates to the forum contacts.\(^\text{376}\)

Defendant's Directing Activities at the Forum

The more control and knowledge a defendant has that its product, service, or effects of its activities will reach the forum, the greater the argument that personal jurisdiction should attach in the forum. If a defendant sends a product into the forum, it is fair to require the defendant to defend in the forum if something supposedly goes wrong with the product.\(^\text{377}\) The alternatives are to require the plaintiff to come to the defendant's home or to find some other place to litigate or for the plaintiff not to pursue litigation. Fairness seems to demand that the defendant back the product by participating in litigation in the place the defendant sends the product.

\(^{376}\) See supra note 20 and accompanying text.

\(^{377}\) See Asahi Metal Indus. Co. Ltd., 480 U.S. at 116-17 (Brennan, J., concurring) (stating that if the defendant knows the product is being sold in the forum, the defendant should be subject to personal jurisdiction there).
Defendant's Awareness That the Defendant's Product Is Being Distributed in the Forum

If the defendant produces a product that is being distributed by others into various locations, it would seem fair that the defendant answer in a location where the product supposedly caused harm.\(^{378}\) Otherwise, the defendant may escape liability while potentially profiting from the distribution. Even if the plaintiff could afford to pursue the defendant at the defendant's home, it seems fair that the defendant should answer in the forum where the defendant knows the product might be sent. One of the risks of doing business should be the defense of a product where the producer of the product knows the product may be distributed.

Defendant's Awareness that the Consumer Might Bring the Product into the Forum

In *World-Wide Volkswagen Corp. v. Woodson*,\(^ {379}\) the plaintiff consumer purchased an automobile in New York and drove it to Oklahoma where the plaintiff was involved in a personal injury accident.\(^ {380}\) The United States Supreme Court held that Oklahoma could not assert jurisdiction over the defendants because the defendants had no connection with Oklahoma.\(^ {381}\) Should the Due Process Clause permit the assertion of personal jurisdiction when the defendant is aware that its product may travel to the forum? Of course, nearly all products can be moved, and so in most situations a defendant will be aware that its product can be taken elsewhere. Should it matter if the product is designed for movement, such an automobile; or a product not designed for movement yet movable, such as a pencil? Should it matter how much profit was made on the sale inasmuch as a larger profit provides a greater amount of money to litigate in the distant forum? Should it matter if the product is somewhat likely to cause harm?

It would appear that, if a defendant is aware that its product may travel even by being moved by the consumer, the defendant should assume the responsibility of defending the product in the foreign forum. And the more mobile a product is, the more the defendant knows it may be moved, thus leading to greater likelihood that personal ju-
risdiction will be asserted. This does not necessarily lead to the conclusion that personal jurisdiction will be found. Rather, absent other factors, it is fair to require a defendant to litigate at the place where the product was taken by the consumer because the defendant knew this movement might occur.

Other factors may lead to no personal jurisdiction, such as extreme inconvenience to the defendant. For economic policy reasons, a court might hold that, if producers or sellers of products had to follow their products and litigate wherever their products went, economic growth might be stifled. One public policy argument is that even though the assertion of personal jurisdiction might be consistent with due process, there may be adverse societal consequences from exercising personal jurisdiction.

Combining Defendant's Directing Activities and Awareness That Others Are Distributing Defendant's Product and That the Consumer Is Bringing the Product into the Forum

In all of these situations, the defendant is aware that the defendant's product will or may enter the forum. A stronger likelihood of personal jurisdiction attaches the more active the defendant is in causing the product to enter the forum. For example, if the defendant is at the head of a distribution network that brought the product into the forum, there would be greater reason to uphold personal jurisdiction than if the defendant merely knew that it was possible that the consumer might purchase the defendant's product and take it into the forum. Additionally, the more likely it is that the product will cause harm, the more likely personal jurisdiction should attach.

Forum Effect Caused by the Defendant's Activities Outside of the Forum

If a defendant directs activities at the forum, it seems fair that the defendant should go to the forum to defend a claim arising out of those activities. It hardly seems unfair to tell someone who has directed a product at the forum to litigate in the forum if the product causes injury there.

Additionally, if the defendant is aware that a forum effect can occur from the defendant's activities, the defendant should go to the forum to settle the controversy. For example, a fruit vendor at an airport knows that bad fruit may cause illness in a distant forum. It seems fair that the fruit vendor should go to the forum to settle the claim. The less likely it is that the defendant knows or should know that an effect can be caused in a distant forum, the less likely that vendor should be required to defend in a distant forum. For example,
a vendor of a handkerchief may not easily foresee that the locally sold product easily can cause harm in distant forum. Or, a defendant who yells at someone may not easily foresee that the person lives in another state, will return home, become ill, and sue for emotional distress. However, if a defendant threatens to stalk and harm another, knowing the other is from a distant forum, jurisdiction in that forum should attach if the other sues for emotional distress.

GENERAL JURISDICTION

It seems appropriate that a defendant having many contacts with a forum may be called upon to litigate because it probably is not particularly inconvenient for the defendant to litigate any claim in the forum. However, inconvenience to the defendant may be reason not to allow personal jurisdiction. In addition, general jurisdiction may attach even when the defendant has no forum contacts if, for example, the defendant is close to the forum and would suffer no inconvenience by litigating all potential claims in the forum.

SERVICE OF PROCESS IN THE FORUM

Service of process is not related to the conveniences to the defendant. Nor does Service tell us whether the defendant has purposefully or knowingly caused a product, service, or effect to take place in the forum. Service of process in the forum should count nothing toward the forum’s obtaining personal jurisdiction. The defendant may be served in a forum where the defendant seldom goes and where the defendant has caused no effect. Service of process on a defendant without contacts with that forum should never be the sole basis for the assertion of personal jurisdiction.

Factors unrelated to the defendant, because they are unrelated to the defendant, should not be used to determine if due process would permit personal jurisdiction. Rather, these factors could be used to determine if personal jurisdiction should be retained after it has been established. Factors already identified by the United States Supreme Court include convenience to the plaintiff, interest of the forum and other states, and foreign relations.382

CONCLUSION

This Article has attempted to show what factors the United States Supreme Court has used in its decisions on state court personal jurisdiction and what factors courts should use.