

Personal Jurisdiction and the Internet

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I. Personal Jurisdiction – pre-Internet

- a. Pennoyer v. Neff (S. Ct. 1877)
 - i. required physical presence of the defendant.
- b. International Shoe v. Washington (S. Ct. 1945)
 - i. seminal case.
 - ii. Supreme Court, introducing two-step test, held that
 1. there were sufficient minimum contacts – the activities were "systematic and continuous" and resulted in a large volume of interstate business, and
 2. there was no due process violation – the exercise of jurisdiction was "reasonable and just, according to our traditional conception of fair play and substantial justice."
 - iii. Delaware corporation with principal place of business in Missouri was sued in Washington state court for nonpayment of unemployment compensation tax. It had no sales offices in Washington, but did employ about a dozen commissioned salesmen who lived in Washington. The commissions paid for sales made in Washington over a four-year period exceeded \$31,000 a year.
- c. Long Arm Statutes
 - i. enacted by every state after International Shoe.
 - ii. basis for a state's exercise of personal jurisdiction over a non-resident defendant.
 - iii. some have specific statutory requirements e.g. if the defendant transacts business in the state, commits a tortious act in the state, or owns real property in the state.
 - iv. some allow jurisdiction to the extent permissible by due process.
- d. World-Wide Volkswagen v. Woodson (S. Ct. 1980)
 - i. merely placing a product into interstate commerce is not sufficient to support an assertion of personal jurisdiction.
 - ii. jurisdiction requires more than a "fortuitous" event like a car accident.
 - iii. two Arizona residents, who had bought an Audi from defendant car retailer in New York while they were New York residents, were injured in a car accident in Oklahoma. They brought a products liability action in Oklahoma against the manufacturer, the importer, the regional distributor, the New York distributor and the New York retailer. The Supreme Court held that the New York distributor and retailer had no contacts whatsoever with Oklahoma, and that jurisdiction against them was not proper.
- e. Helicopteros Nacionales de Columbia v. Hall (S. Ct. 1984)
 - i. clarified distinction between "general jurisdiction" and "specific jurisdiction"
 1. "general jurisdiction" (i.e. jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the state) can be exercised over a non-resident defendant only if the

defendant's contacts with the state are of a "continuous and systematic" nature.

2. "specific jurisdiction" (i.e. jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the state) can be exercised over a non-resident defendant if the alleged activity falls within the long arm statute and its application does not offend due process.
- ii. a wrongful death action was instituted against a Columbian corporation in Texas arising out of a helicopter crash in Peru. The CEO of the Columbian corporation visited Texas once to discuss a joint venture to provide helicopter transportation. The contract was signed in Peru and to be governed by Peruvian law. The Columbian corporation also bought helicopters and parts, and flight training from a Texas company. However, it was never authorized to do business in Texas, had no agents or employees in Texas, never performed any helicopter operations, nor sold any product, nor solicited any business in Texas, and never signed any contract in Texas. The Supreme Court rejected Texas' assertion of general personal jurisdiction, holding that there was not sufficient "continuous and systematic" contact with the state.
- f. Burger King v. Rudzewicz (S. Ct. 1985)
 - i. a person may be subject to personal jurisdiction in a state if he "purposefully directs" his activities towards residents of that state, or if he "purposefully avails" himself of the privilege of conducting business in that state, thus invoking the benefits and protections of its laws.
 - ii. Burger King, a Florida corporation, sued two Michigan residents in Florida over breaches of a franchise agreement and trademark violations. The franchise agreement specified that Florida law would govern it. The two Michigan residents negotiated with both a local office and the Miami headquarters. They purchased equipment from Miami and one of them went to training sessions in Florida. The Supreme Court held that the Michigan residents had purposefully availed themselves of business opportunities in Florida and the exercise of personal jurisdiction did not offend due process. The Court stated that the franchise dispute grew directly out of a contract that had substantial connection to Florida.

II. Internet Cases

- a. CompuServe v. Patterson (6th Cir. Ct. of App. 1996)
 - i. used "purposeful availment" requirement to find personal jurisdiction.
 - ii. Texas resident subscribed to Ohio corporation CompuServe's computer service, and entered into a shareware distribution contract, which stated that it was to be governed by Ohio law. After a trademark dispute arose between the parties, CompuServe sued Patterson in federal district court in Ohio. The district court dismissed for lack of personal jurisdiction. The Sixth Circuit Court of Appeals reversed, holding that Patterson had "purposefully availed" himself of the privilege of doing business in Ohio by entering into the contract and by uploading files to CompuServe's computers in Ohio, and that the cause of action arises from that activity.

- b. Bensusan Restaurant Corp. v. King (2nd Cir. Ct. of App. 1997)
 - i. refused to find personal jurisdiction over a Missouri defendant whose Web site was alleged to have infringed the trademark of a New York corporation.
 - ii. a Missouri cabaret called "The Blue Note" maintained a Web site with the same name. A New York jazz club, also called "The Blue Note," sued in New York federal district court alleging a variety of trademark claims, and sought removal of the Missouri Web site. The New York long arm statute provides jurisdiction over a non-resident who, in person or through an agent, commits a tortious act. The Second Circuit Court of Appeals held the statute inapplicable since the Missouri defendant had never been physically present in New York. New York law requires that someone who is physically present in the state commit the alleged tortious act.
- c. Zippo Manufacturing Co. v. Zippo Dot Com, Inc. (W.D. Pa. 1997)
 - i. adopted a "sliding scale" with three points along the continuum.
 - 1. "At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. E.g. CompuServe."
 - 2. "At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. E.g. Bensusan."
 - 3. "The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site."
 - ii. the defendant was sued for a variety of trademark claims. It had no offices or employees in Pennsylvania, provided information and advertising solely through its Web site, but had 3,000 paying subscribers (2% of its 140,000 total paying subscribers) in Pennsylvania. The court applied the analysis for the middle ground, finding that there was more than a "passive" Web site, but less than "purposeful availment" of doing business in Pennsylvania. Because the claims arose out of the forum-related activity, and because "a significant amount of the infringement and dilution" occurred in Pennsylvania, the court exercised personal jurisdiction over the defendant.