

# INTERNATIONAL LITIGATION

FROM THE U.S. PERSPECTIVE

# SOURCES OF INTERNATIONAL LAW

- Treaties & Conventions
- Customary International Law (General & Consistent Practice of Concerned States)
- General Principles of International Law (Common Domestic Law)
- Judicial Decisions & Writings of Experts

# PACTA SUNT SEVANDA

“EVERY TREATY IN FORCE IS BINDING  
UPON THE PARTIES TO IT AND  
MUST BE PERFORMED BY THEM IN  
GOOD FAITH.”

Art 26 of 1969 Vienna Convention on the Law of  
Treaties.

# DOCTRINES OF JUDICIAL RESTRAINT

- **ACT OF STATE:** Courts will not determine the validity of the actions of a foreign government which it takes within its own territory.
- **FOREIGN SOVERIEGN IMMUNITY:** Foreign states have some limited immunity from liability for their activities.
- **COMITY:** Reciprocal courtesy between nations. Courts should not act to demean the jurisdiction, law & judicial decisions of another nation.

# DOCTRINES OF JUDICIAL RESTRAINT (Continued)

- **POLITICAL QUESTION:** Some issues are better off left to the executive and legislature. Not appropriate for courts to decide.
- **PERSONAL JURISDICTION:** Limitations on who can be brought before the courts of the U.S., limits international cases heard by courts.
- **FORUM NON CONVENIENS:** Even if court has subject matter and personal jurisdiction, it weighs private & public factors and declines jurisdiction.

# IMPORTANT PERSONAL JURISDICTION CONCEPTS

- LONG-ARM STATUTES
- TERRITORIALITY
- DUE PROCESS OF LAW
- MINIMUM CONTACTS
- STREAM OF COMMERCE
- FORESEEABILITY
- PURPOSEFUL AVAILMENT
- GENERAL & SPECIFIC PERSONAL JURISD.

# U.S. COURTS ARE ATTRACTIVE TO INTERNATIONAL PLAINTIFFS

- “As a moth is drawn to the light, so is a litigant drawn to the United States. If he can only get his case into their courts, he stands to win a fortune. At no cost to himself; and at no risk of having to pay anything to the other side.... There is also in the United States a right to trial by jury. These are prone to award fabulous damages. They are notoriously sympathetic.... The plaintiff holds all the cards.” English Lord Denning (1899-1999)

# ALL 50 STATES HAVE ENACTED LONG-ARM STATUTES

- Long-arm statutes fall into two categories:
  1. The first enumerates factual situations likely to satisfy the “minimum-contacts” test of *International Shoe*.
  2. The second type provides jurisdiction over an individual or corporation as long as that jurisdiction is not inconsistent with constitutional restrictions.



# FEDERAL RULE OF CIVIL PROCEDURE (FRCP 4)

- 1) Borrow state long-arm statute in diversity.
- 2) Some special federal statutes contain their own long-arm statute, e.g., antitrust, securities.
- 3) If #1 and #2 do not apply, court may, in federal question, assert personal jurisdiction to the limits of due process.

# 5<sup>th</sup> and 14<sup>th</sup> AMENDMENTS TO THE U.S. CONSTITUTION

FIFTH - "... nor shall any person . . . be deprived of life, liberty, or property without due process of law . . . ." (Added in 1791)

FOURTEENTH – "... Nor shall any state deprive any person of life, liberty, or property without due process of law . . . ." (Added in 1868)

MAGNA CARTA - "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law." (1354)

# PENNOYER v. NEFF (1877) "TERRITORIALITY"

- Every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory.
- No state can exercise direct jurisdiction and authority over persons and property without its territory.
- Process from the tribunals of one state cannot run into another state.

INTERNATIONAL SHOE v.  
WASHINGTON (1945)  
"DUE PROCESS"

- Due Process Requires "Certain Minimum Contacts with [the Forum] Such That the Maintenance of the Suit Does Not Offend Traditional Notions of Fair Play and Substantial Justice."

# WORLD-WIDE VW v. WOODSEN (1980)

- MERE "FORESEEABILITY" OF CONTACT IS NOT ENOUGH.
- DEFENDANT'S MINIMUM CONTACTS AND PURPOSEFUL AVAILMENT MUST BE SUCH THAT IT SHOULD "REASONABLY ANTICIPATE BEING HAILED INTO COURT."

# ASAHI METAL v. SUPERIOR COURT OF CALIFORNIA (1987)

Asahi Argues No Personal Jurisdiction Because:

- 1) It sold valves only from Japan to Taiwan.
- 2) It did no business in California.
- 3) It did not import products from California.
- 4) Only 1.2% of its income came from sale of valves to Cheng Shin.
- 5) Only 20% of Cheng Shin' sales in U.S. were in California.

# GENERAL v. SPECIFIC JURISDICTION

“SPECIFIC” BASED ON MINIMUM CONTACTS

Due Process permits the forum tribunal to assert personal jurisdiction for claims related to or arising out of defendant's minimum contacts.

So if you only have minimum contacts, claim must be related to or arise out of contacts.

# GENERAL v. SPECIFIC JURISDICTION (Continued)

## “GENERAL” BASED ON TERRITORIALITY

1. Continuous & Systematic Activities in Forum
2. Nationality, Domicile & Residence of Defendant
3. Incorporation or Registration of Business Entity
4. Consent or Waiver
5. Tag Service (Temporary Presence in Forum)

So if you have any of these, claim need not be related to or arise out of contacts.