

the states came together in a weak confederation without any national executive or judicial authority. The states existed before the federal government, first as colonies and then as states, and they were reluctant to give the federal courts, or the federal government, any more power than was necessary to have effective national government. Even after they granted powers to the federal government, the states quickly limited those powers and took back some of their rights via the first ten amendments to the Constitution known as the "Bill of Rights."

This original federal structure remains in place, even as it has undergone major adjustments, especially those surrounding the Civil War and related amendments to the Constitution in the 1860s, and the expansion of federal power that accelerated dramatically in the 1930s. The latter occurred largely through the Supreme Court's interpretation of the Constitution rather than any new amendments, as the government and the Court attempted to respond to changes in economy and society.

2. Geography. The United States is a vast country of many climates and various cultures. Even after the Civil War, it might have taken six months for law books and case reports to travel from Washington, D.C. to San Francisco. It was not practical for frontier courts to wait for direction from the national capital before deciding routine disputes. Americans did not think laws relating to water rights in, for example, New Jersey (a state with a large and concentrated population, agriculture based on small farms, ample rain, and an ocean coastline) should be the same as laws relating to water rights in Wyoming (a state with a small and scattered population, agriculture based on large cattle ranches, little rain, and no ocean coastline). Americans did not think laws relating to inheritance should be the same in Connecticut (settled by the British, who allowed the eldest son to inherit everything), Louisiana (settled by the French, who since 1793 divided inheritances among children), and California (settled by the Spanish, who allowed wives to manage and pass on their own separate property) should be the same.

3. Culture. Many Americans still prefer laws that differ among states because that system allows policies and laws that respond to local issues. Citizens of the United States are concerned about education, health care, family relations, local government services, and many other social and economic issues. Each state has, to some extent, different laws regarding these issues, depending on the legislature of that state. As Supreme Court Justice Louis Brandeis pointed out in 1932, one of the strengths of the federal system is that "a single courageous state may, if its citizens choose, serve as a laboratory, and try new social and economic experiments without risk to the country as a whole."

## Personal Jurisdiction

Under the U.S. Constitution every person in the United States is guaranteed "due process" of law. One aspect of due process is that state or federal courts must have jurisdiction in order to issue a valid judgment against a party. Courts are considered

to have automatic jurisdiction to judge a dispute about any property in their jurisdiction (called *in rem* jurisdiction) and to judge a debt dispute where the security for the debt is property within their jurisdiction (called *quasi in rem* jurisdiction). At one time, for a court to have “personal jurisdiction” over a party to a lawsuit, that party had to be located in the court’s territory so that a court official could take hold of the person if necessary. With the growth of interstate commerce in the 20th century, cases against parties not present in the territory became common, leading state courts to try to force parties to appear using the “long arm” of the law. In examining a state “long arm statute” allowing jurisdiction over a party outside the state, the Supreme Court concluded, in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), that “due process requires only that in order to subject a defendant to a judgment, if he is not present within the territory of the forum, he have certain minimum contacts with the forum that the lawsuit does not offend ‘traditional notions of fair play and substantial justice.’”

In the United States, questions of personal jurisdiction are often analyzed based upon theories of either specific or general jurisdiction. Specific jurisdiction is based upon relationships between the forum and the underlying controversy, and is said to support only the power to adjudicate issues deriving from, or connected with, that controversy. General jurisdiction is based upon ongoing relationships between the forum and the defendant, and will support adjudication of claims that do not involve the forum. These rules will apply whether the defendant is located in another state or a foreign country.

It is not always clear what “fair play” and “justice” are in an era of global commerce and information, even in the English-speaking world, as illustrated by the cases below. In the *Asahi Metal* case, Asahi Metal, a Japanese company, manufactured tire valve parts in Japan and sold them to several tire manufacturers, including a Taiwanese company. The sales to the Taiwanese company, which amounted to at least 100,000 units annually from 1978 to 1982, took place in Taiwan. The Taiwanese company put the parts into its finished tires, which it sold throughout the world, including the United States. Twenty percent of the Taiwanese company’s sales were in California. In 1978, in Solano County, California, the driver of a motorcycle lost control of his vehicle and collided with a tractor, as a result of which he was severely injured and his wife was killed. He filed a product liability action in California against the Taiwanese company, among others, claiming that the accident was caused by an explosion in the rear tire of the motorcycle, and that the motorcycle tire, tube, and sealant were defective. The Taiwanese company in turn sued the Japanese valve supplier. The motorcycle driver settled his claims against the Taiwanese company and the other defendants, leaving only the Taiwanese company’s lawsuit against the Japanese company. The Japanese company moved to stop the Taiwanese company’s service of summons, claiming that California could not exert jurisdiction over it consistent with the due process clause of the Fourteenth Amendment of the Federal Constitution. The Supreme Court granted *certiorari* and, in a plurality decision, agreed with Asahi Metal.

given Ford's substantial activities in these states, that the plaintiffs were residents of the forum states, used the allegedly defective products in the forum states, and suffered injuries when those products malfunctioned in the forum states. The plaintiffs' residence in-state distinguished the case from *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773 (2017), an otherwise similar fact pattern where the Court held there was no specific personal jurisdiction.

The Court seems to present a more unified front today on questions of general jurisdiction. In *Goodyear Dunlop Tires v. Brown*, 564 U.S. 915 (2011), and again in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the Court considered general jurisdiction over defendants for claims that did not involve the relevant forum. Each case involved foreign defendants and injuries suffered in foreign countries. In *Daimler*, the plaintiffs were 22 Argentine citizens who claimed that Daimler's Argentine subsidiary had collaborated with state security forces during 1976-1983 to kidnap, detain, torture and kill workers. The plaintiffs sued in California under the Alien Tort Statute and the Torture Victims Protection Act of 1991, as well as California and Argentine law. Daimler AG, of course, is a global enterprise. Through its subsidiary, Mercedes-Benz USA, LLC (MBUSA), selling via independent dealers, Daimler generates a large volume of commerce in California. Justice Ginsburg, writing for the Court in both *Goodyear Dunlop* and *Daimler*, declared that general jurisdiction requires that a corporation's affiliations with a forum be so continuous and systematic as to render it essentially "at home." Typical examples would be the place of incorporation and the principal place of business of a corporation. Simply doing business in the jurisdiction, or some kind of presence, is not sufficient to assert general jurisdiction.

*Asahi Metal, Nicastro, Goodyear Dunlop, Daimler, Bristol-Myers Squibb, and Ford Motor* all involve traditional manufacturing businesses. The issues can get even more complex when we consider how Internet technology makes possible inexpensive worldwide distribution of ideas. Courts are still struggling with the limits of personal jurisdiction in the Internet age, as the *Pebble Beach* and *Revell v. Lidov* cases illustrate.

### **Pebble Beach Co. v. Caddy**

453 F.3d 1151 (9th Cir. 2006)

Trott, J.

Pebble Beach Company ("Pebble Beach"), a golf course resort in California, appeals the dismissal for lack of jurisdiction of its complaint against Michael Caddy ("Caddy"), a small-business owner located in southern England. Because Caddy did not expressly aim his conduct at California or the United States, we hold that the district court determined correctly that it lacked personal jurisdiction.

Pebble Beach is a well-known golf course and resort located in Monterey County, California. Pebble Beach operates a website located at [www.pebblebeach.com](http://www.pebblebeach.com).

Caddy occupies and runs a three-room bed and breakfast, restaurant, and bar located in southern England on a cliff overlooking the pebbly beaches of England's south shore. The name of Caddy's operation is "Pebble Beach." Caddy advertises his services, which do not include a golf course, at his website, *www.pebblebeach-uk.com*. The website is not interactive. Visitors to the website who have questions about Caddy's services may fill out an on-line inquiry form. The website does not have a reservation system, nor does it allow potential guests to book rooms or pay for services on-line.

Except for a brief time when Caddy worked at a restaurant in Carmel, California, his domicile has been in the United Kingdom.

On October 8, 2003, Pebble Beach sued Caddy for intentional infringement and dilution of its "Pebble Beach" mark. Caddy moved to dismiss the complaint for lack of personal jurisdiction and insufficiency of service of process.

When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that the court has jurisdiction over the defendant. However, this demonstration requires that the plaintiff "make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss." Moreover, for the purpose of this demonstration, the court resolves all disputed facts in favor of the plaintiff, here, Pebble Beach.

For due process to be satisfied, a defendant, if not present in the forum, must have "minimum contacts" with the forum state such that the assertion of jurisdiction "does not offend traditional notions of fair play and substantial justice."

In this circuit, we employ the following three-part test to analyze whether a party's "minimum contacts" meet the Supreme Court's directive. This "minimum contacts" test is satisfied when, (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim arises out of or results from the defendant's forum-related activities, and (3) the exercise of jurisdiction is reasonable. "If any of the three requirements is not satisfied, jurisdiction in the forum would deprive the defendant of due process of law."

Thus, Pebble Beach must establish either that Caddy (1) purposefully availed himself of the privilege of conducting activities in California, or the United States as a whole, or (2) that he purposefully directed its activities toward one of those two forums.

### 1. Purposeful Availment

Pebble Beach fails to identify any conduct by Caddy that took place in California or in the United States that adequately supports the availment concept. Evidence of availment is typically action taking place in the forum that invokes the benefits and protections of the laws in the forum. All of Caddy's action identified by Pebble Beach is action taking place outside the forum.

## 2. Purposeful Direction: California

We conclude that Caddy's actions were not expressly aimed at California. The only acts identified by Pebble Beach as being directed at California are the website and the use of the name "Pebble Beach" in the domain name. These acts were not aimed at California and, regardless of foreseeable effect, are insufficient to establish jurisdiction.

The circumstances here are more analogous to *Schwarzenegger v. Fred Martin Motor Co.* 374 F.3d 797 (9th Cir. 2004). In *Schwarzenegger*, the former movie star and current California governor, brought an action in California alleging that an Ohio car dealership used impermissibly his "Terminator" image in a newspaper advertisement in Akron, Ohio. The federal district court in California dismissed the complaint for lack of personal jurisdiction. We affirmed, concluding that even though the advertisement might lead to eventual harm in California this "foreseeable effect" was not enough because the advertisement was expressly aimed at Ohio rather than California. We held that Schwarzenegger had not established jurisdiction over the car dealership.

## 3. Purposeful Direction: United States

Even if Pebble Beach is unable to show purposeful direction as to California, Pebble Beach can still establish jurisdiction if Caddy purposefully directed his action at the United States. This ability to look to the aggregate contacts of a defendant with the United States as a whole instead of a particular state forum is a product of [FRCP] *Rule 4(k)(2)*. Thus, *Rule 4(k)(2)* is commonly referred to as the federal long-arm statute.

The exercise of *Rule 4(k)(2)* as a federal long-arm statute requires the plaintiff to prove three factors. First, the claim against the defendant must arise under federal law. Second, the defendant must not be subject to the personal jurisdiction of any state court of general jurisdiction. Third, the federal court's exercise of personal jurisdiction must comport with due process. Here, the first factor is satisfied because Pebble Beach's claim arises under the Lanham Act [federal trademark law]. And, as established above, the second factor is satisfied as Caddy is not subject to personal jurisdiction of California, or any state court.

That leaves the third factor — due process. The due process analysis is identical to the one discussed above when the forum was California, except here the relevant forum is the entire United States.

We conclude that the selection of a particular domain name is insufficient by itself to confer jurisdiction over a non-resident defendant, even under *Rule 4(k)(2)*, where the forum is the United States. The fact that the name "Pebble Beach" is a famous mark known world-wide is of little practical consequence when deciding whether action is directed at a particular forum via the world-wide web. Also of minimal importance is Caddy's selection of a ".com" domain name instead of a more specific United Kingdom or European Union domain. Neither provides much more than a

slight indication of where a website may be located and does not establish to whom the website is directed.

Accordingly, we find no action on the part of Caddy expressly directed at the United States and conclude that an exercise of personal jurisdiction over Caddy would offend due process.

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### *Topics for Further Discussion*

1. Your Asia-based client comes to you and says "Of course we want to have as many international customers as possible, but how do we avoid being sued in the United States?" What is your advice?

### **Revell v. Lidov**

317 F.3d 467 (5th Cir. 2002)

Higginbotham, J.

Oliver Revell sued Hart Lidov and Columbia University [in the Northern District of Texas] for defamation arising out of Lidov's authorship of an article that he posted on an Internet bulletin board hosted by Columbia. The district court dismissed Revell's claims for lack of personal jurisdiction over both Lidov and Columbia. We agree.

Lidov wrote a lengthy article on the subject of the Libyan terrorist bombing of Pan Am Flight 103, which exploded over Lockerbie, Scotland, in 1988. The article singles out Oliver Revell, then Associate Deputy Director of the FBI, for severe criticism, accusing him of conspiracy and cover-up. The article further charges that Revell, knowing about the terrorist attack, made certain his son, previously booked on Pan Am 103, took a different flight. At the time he wrote the article, Lidov had never been to Texas and was apparently unaware that Revell then lived in Texas. Lidov has also never been a student or faculty member of Columbia University, but he posted his article on a website maintained by its School of Journalism. In a bulletin board section of the website, users could post their own works and read the works of others. As a result, the article could be viewed by members of the public over the Internet.

Revell, a resident of Texas, sued Columbia University, whose principal offices are in New York City, and Lidov, who is a Massachusetts resident, in the Northern District of Texas. Revell claimed damage to his professional reputation in Texas and emotional distress arising out of the alleged defamation of the defendants, and sought several million dollars in damages.

Our question is whether the district court could properly exercise personal jurisdiction over Hart Lidov and Columbia University, an issue of law we review for the first time.