Not at Home with “At-Home” Jurisdiction

Kate Bonacorsi*
NOTE

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CONCLUSION

INTRODUCTION

A US citizen is an executive at Ford Motor Company in Argentina.1 While out sailing with his Argentine wife, and their four children, they are abducted by pirates.2 When the husband is unable to provide enough money for ransom, the pirates torture the family, killing the wife and children.3 As it so happens, the pirates were secretly funded by a Mercedes Benz executive, an Argentine national, in Argentina.4 Can the husband, the sole survivor, bring a claim under the Torture Victim Protection Act (the “TVPA”) on his own behalf, and a claim under the Alien Tort Statute (the “ATS”) on behalf of his family against Mercedes (the German parent corporation) in a United States court?5

The US Supreme Court’s January 2014 decision in Daimler AG v. Bauman suggests that the answer is no, for lack of personal jurisdiction.6 In the United States, personal jurisdiction, or the power to subject an individual to the judgment of the court, must comply with the Due Process Clause of the Fourteenth Amendment of the Constitution.7 Personal jurisdiction is one half of what is known as adjudicative jurisdiction—the government’s power to “subject a person or thing to the process of its courts or administrative

2. See id. (plaintiffs’ children were on a soccer trip to France).
3. See id. (children were killed in a bus accident outside of Paris resulting from a blown tire).
4. See id. (tire that caused the accident was manufactured by Goodyear).
5. See id. (parents of the children brought wrongful death claims against Goodyear in North Carolina state court); Torture Victims Protection Act, 28 U.S.C. § 1350 (1991) (allows filing of civil claims against individuals, who acting in an official capacity for any foreign nation, committed torture or extrajudicial killing); Alien Tort Statute, 28 U.S.C. § 1350 (1948) (permits filing of civil claims against an alien for torts only).
6. Daimler AG v. Bauman, 134 S. Ct. 746, 762 (2014) (holding general jurisdiction typically only proper when defendant is domiciled in the forum); see also Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659 (2013) (asserting that the ATS does not apply extraterritorially).
7. See Pennoyer v. Neff, 95 U.S. 714, 733-35 (1877) (establishing the Fourteenth Amendment Due Process Clause as the limit on in personam jurisdiction); see also International Shoe v. Washington, 326 U.S. 310, 316 (1945) (delineating the “minimum contacts” test for personal jurisdiction under the Fourteenth Amendment).
Adjudicatory jurisdiction, as a concept of international law, also encompasses subject matter jurisdiction—namely, the power of a court to entertain the subject matter of the claim—and is only proper when both are present.9

In Daimler, the Supreme Court addressed the scope of general personal jurisdiction, one of two forms of personal jurisdiction recognized by US courts.10 Looking to the EU’s jurisdictional rules for guidance, the Court clarified its standard for general jurisdiction, holding it is only proper when the defendant is domiciled in the forum state.11 Yet, in trying to harmonize US personal jurisdiction doctrine with international law, the Court went too far and placed US plaintiffs, like the husband from the example above, at a disadvantage.12

Before Daimler, such plaintiffs could bring their claims under theories of general jurisdiction.13 The plaintiffs argued that the
defendant’s pervasive business activities in the forum justified general jurisdiction.\textsuperscript{14} No longer an option, these plaintiffs now have to bring their claims abroad, sacrificing all of the benefits of the US court system.\textsuperscript{15} Due to the increased cost of litigating abroad, however, such plaintiffs likely will drop their claims altogether, a particularly unfair result because the Mercedes of the world have liability insurance.\textsuperscript{16} As Justice Sotomayor stated in \textit{Daimler}, this reinforces the proposition that some corporations are simply “too big to fail.”\textsuperscript{17}

Looking to the international rules for personal jurisdiction, just as the Court did in \textit{Daimler}, there are situations where defendants may be sued in a court even when they are not domiciled in the country.\textsuperscript{18} That is the case even outside of what is known in the United States as specific personal jurisdiction.\textsuperscript{19} For instance, many countries, particularly civil law countries, have provisions specifically designed to provide their citizens relief.\textsuperscript{20} In France, jurisdiction is proper when the plaintiff is a French national, regardless of where the


15. \textit{See, e.g.,} \textit{Nicastro}, 131 S. Ct. at 2791 (where US plaintiff was forced to litigate his claims abroad or forfeit them entirely); \textit{see also} Peter F. Schlosser, \textit{Lectures on Civil-Law Litigation Systems an American Cooperation with Those Systems}, \textit{45 U. Kan. L. Rev.} 9, 37 (1996) (articulating that US plaintiffs are particularly disadvantaged because they lose out US courts, known as “plaintiffs’ heaven” because of contingency fee arrangements and jury trials).


18. \textit{See, e.g.,} \textit{Code civil [C. civ.]} art. 14 (Fr.) (jurisdiction proper when plaintiff is French national); \textit{Zivilprozessordnung [ZPO] [Code of Civil Procedure]}, § 23 (Ger.) (jurisdiction proper when defendant has property in Germany).


parties are domiciled. Germany takes a slightly different approach, allowing jurisdiction on the basis of property within the country (quasi in rem).

This Note will explore and compare personal jurisdiction in the United States and the European Union. Part I will explain personal jurisdiction doctrine in the United States as it evolved through the Supreme Court's interpretation of the US Constitution. Part I will also survey the jurisdictional rules in the European Union, focusing specifically on Germany, France, and the United Kingdom. Part II will compare the differences between US personal jurisdiction and rules of other nations. Finally, in arguing that US plaintiffs are at a disadvantage as compared to their EU counterparts, Part III will endorse a more expansive approach to US personal jurisdiction, incorporating internationally accepted bases of personal jurisdiction.

I. WHAT IS PERSONAL JURISDICTION?

Part I of this Note explores the framework for personal jurisdiction in the United States and the European Union. Part I.A will describe the US approach to personal jurisdiction, derived from the Due Process Clause of the Fourteenth Amendment, and the “minimum contacts” test, as delineated by the Supreme Court in International Shoe Co. v. Washington. Part I.B will explore personal jurisdiction in the European Union, highlighting its statutory foundation. Since EU law only regulates litigation as between Member States, a foray into the specific jurisdictional rules of Member States is necessary in order to explain how courts treat non-EU defendants. This Note will focus on the jurisdictional rules of Germany and France, civil law countries, as well as England, a common law country.

21. See CODE CIVIL [C. CIV.] art. 14 (Fr.) (permitting jurisdiction based on nationality); see also C. CIV. art. 14 (Luxembourg) (jurisdiction is proper when the plaintiff is a citizen of Luxembourg); [BW] CIVIL CODE, art. 3 (Neth.) (providing general jurisdiction when applicant is Dutch).

22. See ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 23 (Ger.); but see Shaffer v. Heitner, 433 U.S. 186, 212 (1976) (concluding property in the forum does not displace minimum contacts requirement).

23. U.S. Const. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without the due process of law . . . “); International Shoe v. State of Washington, 326 U.S. 310, 316 (1945) (holding personal jurisdiction is proper only when a defendant has sufficient “minimum contacts” with the forum state).
A. Personal Jurisdiction Analysis in the United States

This Section of the Note begins with a description of the International Shoe test for personal jurisdiction. It will then discuss its application in cases of specific jurisdiction and general jurisdiction. Finally, this Section explains the role reasonableness has come to play in US personal jurisdiction doctrine.

1. The International Shoe Test

The modern test for personal jurisdiction in the United States is the “minimum contacts” test, whereby a defendant must have “certain minimum contacts” with the forum such that asserting jurisdiction does not offend due process.24 In International Shoe, the Supreme Court held that a nonresident corporation met the minimum contacts standard through its business contacts with Washington; thus personal jurisdiction over the corporation was proper.25 The Court has held that the minimum contacts test is satisfied when defendants “purposefully avail” themselves of the forum state.26 The Court reasoned that such defendants—those who seek out the privileges of a forum state’s laws by doing business there—should “reasonably anticipate” being forced to litigate there as well.27

2. Specific vs. General Jurisdiction

In International Shoe, the Court contemplated two forms of personal jurisdiction, specific and general jurisdiction, based on the nature of contacts a defendant had with the forum.28 Specific jurisdiction exists when the cause of action arises from the

25. Id. at 320 (noting that the business contacts were systematic and continuous).
26. Hanson v. Denckla, 357 U.S. 235, 253 (1958) (“[I]t is essential in each case that there by some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and privileges of its laws.”). But see Drobak, Personal Jurisdiction in a Global World, supra note 11, at 1730 (noting that the purposeful availment requirement does not replace the minimum contacts test for personal jurisdiction).
27. Burger King v. Rudzewicz, 471 U.S. 462, 487 (1985) (finding the nature their contractual relationship with Burger King meant defendants should have expected that litigation would take place there).
28. Int'l Shoe, 326 U.S. at 317 (describing what are now known as specific and general personal jurisdiction).
defendant’s conduct within the forum, whereas general jurisdiction is present when the defendant’s activities are so pervasive in the forum state that jurisdiction is distinct from any specific activities which give rise to the suit.\textsuperscript{29}

In 2011, recognizing a lack of clarity in its personal jurisdiction jurisprudence, the Supreme Court attempted to define both specific and general personal jurisdiction.\textsuperscript{30} In \textit{J. McIntyre Machinery Ltd. v. Nicastro}, a specific jurisdiction case, Robert Nicastro, a scrapyard employee in New Jersey, injured his hand with a metal shearing machine manufactured by J. McIntyre, a UK company.\textsuperscript{31} Nicastro’s employer purchased the machine from an independent distributor that sold McIntyre’s products in the United States.\textsuperscript{32}

In a plurality opinion, the Supreme Court rejected the stream of commerce theory elucidated by the Supreme Court in \textit{World-Wide Volkswagen Corp. v. Woodson}, and embraced by the New Jersey court below.\textsuperscript{33} Instead, the Court focused on purposeful availment, or rather, the lack thereof.\textsuperscript{34} While a defendant’s knowledge that its products may be purchased within the forum state occasionally indicates purposeful availment, the Court explained, it does not displace the main inquiry: “whether the defendant’s activities manifest an intention to submit to the power of a sovereign.”\textsuperscript{35}

\begin{itemize}
  \item \textsuperscript{29} Id.; see also \textit{J. McIntyre Mach. Ltd. v. Nicastro}, 131 S. Ct. 2780, 2789 (2010) (distinguishing general jurisdiction from specific personal jurisdiction); see, \textit{e.g.}, Drobak, \textit{Personal Jurisdiction in a Global World}, supra note 11, at 1725 (“When the cause of action does not ‘arise out of or relate to’ the forum activities, the connections between the defendant and the forum have to be at their highest—hence the ‘at home’ requirement of \textit{Goodyear Dunlop Tires}. Likewise, when the cause of action is somehow related to the forum, the defendant’s connection to the forum can be something less than having its ‘home’ there.”).
  \item \textsuperscript{31} \textit{Nicastro}, 131 S. Ct. at 2786 (noting it was just one of four J. McIntyre machines in New Jersey).
  \item \textsuperscript{32} \textit{Id.} (describing the company’s distribution chain).
  \item \textsuperscript{33} \textit{World-Wide Volkswagen Corp. v. Woodson}, 444 U.S. 286, 297-98 (1980) (“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 commerce with the expectation that they will be purchased by consumers in the forum State.”).
  \item \textsuperscript{34} \textit{Nicastro}, 131 S. Ct. at 2786 (pointing out intentional conduct on the part of the defendant was necessary); see \textit{World-Wide Volkswagen}, 444 U.S. at 297-98 (same).
  \item \textsuperscript{35} \textit{Nicastro}, 131 S. Ct. at 2788; see also \textit{Walden v. Fiore}, 134 S. Ct. 1115, 1123 (2014) (emphasizing that the strength of defendant’s intentional affiliation with the forum state is to be the central inquiry in specific jurisdiction cases).
\end{itemize}
Without showing McIntyre specifically targeted the New Jersey market, personal jurisdiction was not proper.\footnote{Nicastro, 131 S. Ct. at 2788 (explaining that a prediction of where its goods may end up was not enough).}

The same day it handed down its decision in \textit{Nicastro}, the Court decided \textit{Goodyear Dunlop Tires v. Brown}, where it attempted to clarify the standard for general personal jurisdiction.\footnote{Id. (holding a corporation must be “at home” in the forum state for general jurisdiction to be proper).} In \textit{Goodyear}, two thirteen-year-old US citizens were killed in a bus accident that occurred outside of Paris, France, the result of a blown-out tire.\footnote{Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 U.S. 2846, 2857 (2011) (mentioning the boys were in France for a soccer trip).} The parents of the children, also US citizens, filed a wrongful death suit in North Carolina state court against Goodyear USA, Goodyear Turkey, Goodyear France, and Goodyear Luxembourg.\footnote{Id. at 2852 (noting the tires designed by the European defendants were specifically designed for European market).}

Aside from Goodyear USA, which never contested personal jurisdiction, the remaining defendants did not conduct any business in North Carolina.\footnote{Id. at 2857.} The Supreme Court determined Goodyear’s tire sales made in North Carolina through intermediaries were too “sporadic” to justify general jurisdiction.\footnote{Id. at 2857 (further explaining that the flow of a defendant’s goods “may bolster an affiliation germane to specific jurisdiction,” but not general jurisdiction); see also Erichson, supra note 11, at 81-83 (arguing for the “home state” standard); Silberman, Jurisdictional Imputation, supra note 11, at 130-31 (same).} According to Justice Ginsburg, announcing the new test for general jurisdiction, Goodyear was “in no sense at home” in the forum state.\footnote{Id. at 2857 (further explaining that the flow of a defendant’s goods “may bolster an affiliation germane to specific jurisdiction,” but not general jurisdiction); see also Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 115-16 (1987) (analyzing these factors in the international context).}

3. Reasonableness

While the minimum contacts approach focuses on the strength of the defendant’s affiliation to the forum, a court may look to other factors to determine whether assertion of personal jurisdiction would be reasonable.\footnote{See World-Wide Volkswagen, 444 U.S. at 292-95 (describing the factors); see also Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 115-16 (1987) (analyzing these factors in the international context).} As outlined by the Supreme Court in \textit{World-Wide Volkswagen}, these factors include: 1) the burden on the defendant, 2) the forum State's interest in adjudicating the dispute, 3) the plaintiff's interest in obtaining convenient and effective relief, 4) the interstate

\footnote{See World-Wide Volkswagen, 444 U.S. at 292-95 (describing the factors); see also Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102, 115-16 (1987) (analyzing these factors in the international context).}
judicial system's interest in obtaining the most efficient resolution of controversies, and 5) the shared interest of the several States in furthering fundamental substantive social policies.\footnote{44} While the World-Wide Volkswagen factors have been used in a variety of cases, they are particularly important when alien defendants are brought to court in the United States.\footnote{45}

In Asahi Metal Industrial Corp. v. Superior Court of California, a specific jurisdiction case, the Court analyzed the World-Wide Volkswagen reasonableness factors in the international context.\footnote{46} After a motorcycle accident in California, the plaintiff sued the Taiwanese manufacturer of the motorcycle’s tire tube, Cheng Shin Rubber Industrial Company.\footnote{47} The company then filed a cross-complaint for indemnification against Asahi Metal, which manufactured the tube’s valve assembly.\footnote{48}

In its plurality opinion, the Court explained that even if personal jurisdiction of Asahi was proper under the stream of commerce theory, it was nonetheless unreasonable.\footnote{49} The Court cited several of the World-Wide Volkswagen factors, including the serious burden on Asahi if forced to litigate in California and California’s limited interests in adjudicating the claim, especially considering the only claim left was one for indemnification.\footnote{50} Finally, regarding the

\footnote{44. See World-Wide Volkswagen, 444 U.S. at 292-95 (suggesting California’s interest in adjudicating the claim would have been greater if the original claim of products liability remained).}

\footnote{45. See Asahi, 480 U.S. at 115-16 (analyzing reasonableness of jurisdiction over a foreign corporation using the factors set out in World-Wide Volkswagen); United States v. First Nat’l City Bank, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting) (“Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field . . .”); see also Gary B. Born, Reflections on Judicial Jurisdiction in International Cases, 17 GA. J. INT’L L. & COMP. L. 1, 30 (1987) (“When state courts assert jurisdiction over foreign nationals residing abroad, the possibility of state interference with the nation’s foreign affairs arises; when state courts make, or are perceived abroad to make, exorbitant jurisdictional assertions, the possibility of interference becomes a very real risk.”).}

\footnote{46. Asahi, 480 U.S. at 105-06 (claim involved Japanese and Taiwanese parties).}

\footnote{47. Id. at 106 (headquartered in Taiwan).}

\footnote{48. Id. (headquartered in Japan).}

\footnote{49. Id. at 114 (assessing the World-Wide Volkswagen factors); see generally Silberman, supra note 11, at 128 (“An injury in the forum state allegedly caused by the foreign manufacturer justifies jurisdiction there for several reasons: the state has a strong regulatory interest in accidents that occur within its jurisdiction, litigation convenience is best served in an action at the place of injury, and a foreign defendant in these circumstances can expect to defend a suit in forum where it has been in a chain of activity that causes an injury there.”).}

\footnote{50. Asahi, 480 U.S. at 114-15 (analyzing each factor with respect to the facts of the case and determining it was still unclear whether California law would even govern the claim). But see Silberman, supra note 11, at 132 (suggesting burden on an alien defendant may be better
scope of a court’s adjudicatory power in the international context, the plurality cautioned that broad assertions of personal jurisdiction implicate “the interests of other nations.” The Court concluded that a reasonableness analysis appropriately balances such interests, as well as any interests the US government may have, managing foreign relations being just one them.

4. Daimler AG v. Bauman

In 2013, two years after Goodyear was decided, the Supreme Court granted certiorari in Daimler AG v. Bauman to clarify the elusive “at home” standard. The plaintiffs, twenty-two Argentine citizens, brought claims against the German corporation Daimler for human rights abuses that took place during Argentina’s “Dirty War” in the 1970s. The claims were filed over thirty years later in the Northern District of California under the ATS. The claims were swiftly dismissed by the district court for lack of personal jurisdiction.

On appeal, the Ninth Circuit reversed, finding the assertion of general personal jurisdiction proper because Daimler’s subsidiary, Delaware corporation Mercedes-Benz USA, had sufficient contacts with California. As predicted by many, the Supreme Court reversed the Ninth Circuit, deciding Daimler was not amenable to suit in


52. Id. at 115; see also Born, supra note 45, at 35 (“Before asserting jurisdiction over foreign persons, US courts should give careful scrutiny to the defendant's relationship to the forum, paying especial attention to jurisdictional claims likely to offend foreign sovereigns.”).
53. Daimler AG v. Bauman, 134 S. Ct. 746, 760 (2014) (mentioning that the Ninth Circuit’s decision embraced an even broader view of general jurisdiction than rejected by the Court in Goodyear); see, e.g., Hess v. Bumbo Intern. Trust, 954 F. Supp. 2d 590, 593-94 (finding general jurisdiction over out of state defendant proper even though not at home there). See generally Borchers, supra note 13 (characterizing general jurisdiction as “doing business jurisdiction”).
54. Daimler, 134 S. Ct. at 751 (describing the history of the violence).
55. Id. (noting claims were also brought under the Torture Victims Protection Act, as well as California and international law claims).
56. Id. at 752 (finding Daimler’s contacts with California did not support assertion of general jurisdiction).
57. Id. (applying a modified agency test which allowed the subsidiary’s contacts to be imputed to the principal).
Even considering Daimler’s US subsidiary’s contacts, Daimler was not at home in California.58 The Court also eliminated any ambiguity left by the Goodyear holding: general jurisdiction is only proper where contacts are systematic and continuous such that the corporation is at home in the forum, i.e., domiciled.59 The Court asserted that systematic and continuous business activities alone were not sufficient for general jurisdiction.60 Justice Ginsburg concluded, “[a] corporation that operates in many places can scarcely be deemed at home in all of them.”61

Justice Ginsburg did not stop there, however.62 In response to Justice Sotomayor’s concurring opinion, which argued for dismissal of the claims on reasonableness grounds alone, Justice Ginsburg specifically rejected Asahi as applicable in general jurisdiction cases, albeit in a footnote.63 She explained that it was only appropriate in specific jurisdiction cases where contacts with the forum were typically more attenuated.64 As for general jurisdiction cases, Justice Ginsburg asserted, “When a corporation is genuinely ‘at home’ in the forum state, however, any second-step inquiry would be superfluous.”65

58. Id. (holding Daimler was not at home in California); see also Erichson, supra note 11, at 82 (arguing the case was an “easy jurisdictional question on its facts”); Silberman, supra note 11, at 129-30 (same).
59. Daimler, 134 S. Ct. at 760.
60. Id. at 761-63 (reasoning that place of incorporation and principal place of business are “paradigmatic” bases for domicile); Drobak, Personal Jurisdiction in a Global World, supra note 11, at 1719 (noting that requiring “systematic and continuous” contacts alone leads to “too much uncertainty”).
61. Daimler, 134 S. Ct. at 761.
62. Id. at 762 n.20; see also von Mehren, Jurisdiction to Adjudicate, supra note 8, at 1141-42 (“General adjudicatory jurisdiction over corporations and other legal persons could be exercised by the community with which the legal person had its closest and most continuing legal and factual connections. The community that chartered the corporation and in which it has its head office occupies a position somewhat analogous to that of the community of a natural person’s domicile and habitual residence. If a corporation’s managerial and administrative center is in a state other than its state of incorporation, presumably general jurisdiction should exist in either community.”).
63. See Daimler, 134 S. Ct. at 762 n.20 (addressing reasonableness).
64. Id. (explaining why reasonableness was not appropriate in general jurisdiction cases); id. at 764-65 (Sotomayor, J., concurring) (cautioning that it would be “imprudent” for the Court to decide such an issue, especially when neither party briefed the issue).
65. Id. at 762 n.20 (noting that the fewer the contacts the heavier the burden on the defendant being forced to litigate in the United States).
66. Id.
Through application of the minimum contacts approach, courts have distinguished between two categories of cases—those of general personal jurisdiction and those of specific personal jurisdiction.\(^{67}\) If a defendant is domiciled in the forum state, personal jurisdiction is proper for any type of claim.\(^{68}\) US courts have specific jurisdiction over a defendant when the dispute arises from the defendant’s in-state contacts.\(^{69}\) In such cases, courts may look to whether defendants purposefully avail themselves of “privileges and benefits” of the forum state’s laws.\(^{70}\) Finally, a court hearing a specific jurisdiction case may look to whether the assertion of jurisdiction is nonetheless unreasonable.\(^{71}\)

B. Personal Jurisdiction in the European Union

This Section will begin with an outline of the development of jurisdictional rules in the European Union. When non-EU defendants are involved in the litigation, however, Member States are free to craft their own jurisdictional rules. So, the second part of this Section will be further divided into three subsections to examine the jurisdictional rules of Germany, France, and England.

1. The Brussels Convention

Unlike the US approach to personal jurisdiction, which evolved through the US Supreme Court’s interpretation of the US Constitution, the European Union takes a statutory approach.\(^{72}\) The Brussels I Regulation (the “EU Regulation”) now governs all Member States, excluding Denmark, for all commercial and civil matters.\(^{73}\) The EU Regulation not only defines the scope of jurisdiction for

\[^{67}\text{See Int’l Shoe Co.}, 326 U.S. at 319-20 (delineating two categories of personal jurisdiction).\]

\[^{68}\text{See, e.g., Daimler}, 134 S. Ct. at 762 (holding general jurisdiction only proper when defendant is domiciled in the forum).\]

\[^{69}\text{See, e.g., Nicastro}, 131 S. Ct. at 2788 (finding in-state contacts not sufficient for assertion of specific jurisdiction).\]

\[^{70}\text{See id.}\]

\[^{71}\text{See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292-95 (describing each of the reasonableness factors).}\]

\[^{72}\text{See, e.g., Council Regulation 44/2001 on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters, 2001 O.J. (L 012) art. 60 [hereinafter EU Regulation] (laying out the bases for personal jurisdiction in the European Union).}\]

\[^{73}\text{EU Regulation, supra note 72, art. 1(3) (establishing jurisdictional standards for the European Union); but see 2012 O.J. (L 351) 1 (EU) (taking effect in 2015).}\]
Member States but it also establishes the enforcement of those judgments.\textsuperscript{74}

Article Two of the EU Regulation provides that EU defendants may be sued, “whatever their nationality,” wherever they are domiciled.\textsuperscript{75} For persons, domicile constitutes their residence; for corporations, domicile is defined as its statutory seat, central administration, or principal place of business.\textsuperscript{76} A plaintiff of one Member State may only sue a defendant of another Member State pursuant to the EU Regulation, without consideration of the forum’s own personal jurisdiction laws.\textsuperscript{77}

Section Six of the EU Regulation describes when a Member State’s court has “exclusive jurisdiction,” regardless of where a party is domiciled.\textsuperscript{78} When the claim involves immovable property, courts of that state have exclusive jurisdiction.\textsuperscript{79} If the claim involves patents, trademarks, or designs, exclusive jurisdiction lies wherever registration took place.\textsuperscript{80}

The EU Regulation also provides “special jurisdiction” for specific types of claims.\textsuperscript{81} For example, special jurisdiction for contract claims is proper in the state where the performance is due.\textsuperscript{82} For tort claims, special jurisdiction allows claims to be brought where the harm occurred.\textsuperscript{83} For disputes arising out of a specific business establishment, claims may be brought in the state of that establishment.\textsuperscript{84}

When a suit has multiple defendants, special jurisdiction

\begin{footnotes}
\item[74] EU Regulation, \textit{supra} note 72, at art. 1(1) (explaining the purpose of the EU regulation).
\item[75] Id. at art. 2(1).
\item[76] Id. at art. 60(1) (permitting jurisdiction when defendant is domiciled in the forum state).
\item[77] Id. at art. 3(1) (requiring that the EU Regulation govern any intra-EU disputes).
\item[78] Id. at art. 22.
\item[79] Id. at art. 22(1) (delineating exclusive jurisdiction and when it is proper).
\item[80] Id. at art. 22(4) (describing the basis for exclusive jurisdiction).
\item[81] Id.
\item[82] Id. at art. 5(1)(a) (regulating jurisdiction for contract claims).
\item[83] Id. at art. 5(3) (providing jurisdiction over tort claims); \textit{see also} Case 21/76, Reinwater Foundation v. Mines de Potasse d’Alsace S.A., 1976 E.C.R. 1735, 1 C.M.L.R. 284 (1977) (holding that jurisdiction was proper either where the tort occurred or where its effects were felt).
\item[84] EU Regulation, \textit{supra} note 72, at art. 5(5) (describing proper jurisdiction for specific transactions); \textit{see also} EU Regulation, \textit{supra} note 72, at art. 15(2) (setting forth when jurisdiction over consumer contracts is proper).
\end{footnotes}
jurisdiction allows the claim to be brought in any state a defendant is domiciled. 85

As demonstrated above, jurisdiction is straightforward when the claims involve only EU parties. 86 Pursuant to Article 4 of the EU Regulation, however, “[i]f the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 and 23, be determined by the law of that Member State.” 87 Thus, if a claim involves a US defendant, the Regulation’s rules for jurisdiction do not apply, and the Member State who seeks jurisdiction over the defendant must apply its national laws. 88

2. Personal Jurisdiction in Germany

As a civil law country, statutory law also governs personal jurisdiction in Germany. 89 Under the German Code of Civil Procedure, the Zivilprozessordnung (the “ZPO”), there are two bases for jurisdiction: general and specific. 90 If general jurisdiction is proper over a defendant, any type of claim may be brought against them in that court. 91 When defendants are domiciled in Germany, general jurisdiction is proper. 92 For corporations and similar legal entities (i.e., partnerships), general jurisdiction exists when their statutory seat is in Germany. 93

85. Id. at art. 6(1) (requiring the claims to be closely connected).
86. See, e.g., id. (codifying each of the jurisdictional rules).
87. Id. at art. 4(1).
88. Id.
90. Zivilprozessordnung [ZPO] [Code of Civil Procedure], §§ 12-19, 20-34 (Ger.) (delineating bases of general jurisdiction).
92. Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 12 (Ger.) (subject to exceptions §§ 15-16).
93. Id. at § 17 (defining domicile for corporations).
The broadest basis for general jurisdiction in Germany is Section Twenty-Three of the ZPO, which grants general jurisdiction over any defendant alien or domestic, natural person, or legal entity owning property in Germany. The burden is on the plaintiff to make out each element of Section Twenty-Three, including the specific location of the property. Since the property may be tangible or intangible, debts and legal claims are included. For proper Section Twenty-Three jurisdiction, the property does not need to be connected to the claim in question. As explained by Gary Born, a noted scholar in the area, “a Russian may leave his galoshes in a hotel in Berlin and may be sued in Berlin for a debt of 100,000 Marks because of presence of assets within the jurisdiction.

While Section Twenty-Three may not be used against other EU defendants, it may be asserted against foreign defendants such as US citizens. Acknowledging the breadth of Section Twenty-Three, Germany’s highest court, the Bundesgerichtshof (the “BGH”), has imposed one limitation: the suit must have a “sufficient national connection.” In that case, the British plaintiff sued a Turkish bank

94. ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 23 (Ger.) (permitting quasi in rem jurisdiction); see von Dryander, supra note 89, at 678 (illustrating the broad effects of Section Twenty-Three).

95. ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 23 (Ger.); see also Kuner, supra note 89, at 697 n.39 (citing Judgment of July 13, 1987, BGH, 9 IPRax 166 (1989)).

96. See von Dryander, supra note 89, at 680 (citing Judgment of April 7, 1902, Reichsgericht, 51 RGZ 163) (holding account book provides sufficient basis for assertion of Section Twenty-Three jurisdiction).


98. Kuner, supra note 89, at 698 n.50 (citing Reinhold Geimer, INTERNATIONALES ZIVILPROZEBRECHT 259 (1987)) (outlining courts application of Section Twenty-Three jurisdiction) (citing Reinhold Geimer, INTERNATIONALES ZIVILPROZEBRECHT 259 (1987)).


100. See Silberman, supra note 13, at 322 (demonstrating Section Twenty-Three’s impact on non-EU defendants); von Dryander, supra note 89, at 682 (EU Regulation limits scope of Section Twenty-Three).

for a claim relating to a construction project in Libya. The plaintiff alleged jurisdiction was proper since the defendant owned property in Germany worth DEM 150,000. The defendant argued its property was worth at most one tenth of that amount, and that the claim should nonetheless be dismissed because there was no connection to Germany.

While jurisdiction was initially found proper, the German appeals court, the Oberlandesgericht, reversed, finding the plaintiff, the applicable law, and the evidence lacked any relation to Germany. The court posited four situations where the relation requirement would be met: 1) plaintiff resides in Germany, 2) facts of the claim are most closely connected to Germany, 3) German law will apply, or 4) plaintiff has a “worthy” interest in German judgment.

The BGH affirmed the judgment, holding Section Twenty-Three jurisdiction is proper only when there is a “sufficient connection” to Germany, aside from defendant’s property. The Court determined such a limit was necessary to effectuate the rule’s original purpose: providing German creditors with a means to sue defendants who moved frequently so as not to establish domicile. Section Twenty-Three’s current formulation, the Court reasoned, allowed forum-shopping, which could create friction with other nations.

Examining the ZPO’s rules for specific jurisdiction, it must first be noted that only property-based claims may be brought. Specific jurisdiction exists when the cause of action arises out of a

103. Id. (holding the property was not sufficient for jurisdiction); The Currency Converter, CoinMill.com http://coinmill.com/DEM_EUR.html#DEM=150000 (last visited Oct. 10, 2014) (converts to roughly EU€76,700).
105. Id. (determining jurisdiction was not proper since the claim was wholly unrelated to Germany).
106. Id. (suggesting situations where a claim would have the necessary connection to Germany).
108. Id. (affirming judgment of appeals court).
109. Id. (addressing concerns by statute’s over usage).
110. See id.; Henry P. de Vries & Andreas F. Lowenfeld, Jurisdiction in Personal Actions—A Comparison of Civil Law Views, 44 Iowa L. Rev. 306, 331 (1959) (explaining how these claims usually arise from specific transactions).
residence,\textsuperscript{111} a branch location,\textsuperscript{112} location of property,\textsuperscript{113} location of contractual performance,\textsuperscript{114} or the place where a tort was committed.\textsuperscript{115} Branch location, as a basis for special jurisdiction, expands the scope of jurisdiction over non-EU corporations because formal “domicile” is not required.\textsuperscript{116} Specific jurisdiction is proper, however, only when the cause of action arises from the business of that particular branch.\textsuperscript{117} As defined by the ZPO,

\begin{quote}
[A] place of business serving the operation of a factory, a trade enterprise, or any other commercial establishment, and from which transactions are directly concluded, all actions that relate to the operation of the place of business may be brought against that person at the court of the location at which the place of business is situate [sic].\textsuperscript{118}
\end{quote}

The BGH has addressed this form of jurisdiction as well, shedding light on its scope.\textsuperscript{119} In that case, a German shipping company brought a claim against a Dutch cooperative at its German branch.\textsuperscript{120} The defendant’s business was to obtain rebates from the German Federal Railway and give them to the cooperative’s members.\textsuperscript{121} The German company claimed rebates that were past due.\textsuperscript{122} The court of appeals dismissed the claim, noting that although the claims arose from the Dutch company’s branch in Germany, the German branch did not independently and directly enter into the agreements for rebates with its members.\textsuperscript{123} The BGH reversed the

\textsuperscript{111} Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 20 (Ger.) (explaining that presence alone not sufficient for proper jurisdiction).
\textsuperscript{112} Id. at § 21 (pointing out that branch location is a basis for special jurisdiction).
\textsuperscript{113} Id. at § 23 (permitting jurisdiction in Germany when defendant owns property there).
\textsuperscript{114} Id. at § 29 (contract jurisdiction); see, e.g., von Dryander, supra note 89, at 685 (discussing how jurisdiction is determined in contract disputes).
\textsuperscript{115} Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 32 (Ger.) (defining tort jurisdiction); von Dryander, supra note 89, at 690 (including forum where effects from tort are felt).
\textsuperscript{116} Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 21 (Ger.); von Dryander, supra note 89, at 677 (explaining the effects of this basis for jurisdiction).
\textsuperscript{117} Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 21 (Ger.) (outlining jurisdiction pertaining to a specific branch location).
\textsuperscript{118} Id.
\textsuperscript{119} Judgment of July 10, 1975, Bundesgerichtshof, 1977 NJW 2142 (holding jurisdiction is proper where the branch independently and directly enters into contracts).
\textsuperscript{120} Id. (describing the origins of the claim which involved breach of contract).
\textsuperscript{121} Id. (identifying scope of defendant’s business operations).
\textsuperscript{122} Id. (explaining the background of the claim).
\textsuperscript{123} Id. (conceding the branch did help calculate rebates for its members).
court of appeals, holding that so long as a branch independently and directly entered into *any* contracts, jurisdiction was proper.\textsuperscript{124}

3. Personal Jurisdiction in France

In France, the rules for personal jurisdiction are codified in the Civil Code as well as the New Code of Civil Procedure, which was adopted in 1975.\textsuperscript{125} The statutory rules permit general, “all-purpose” jurisdiction over defendants who are domiciled in France.\textsuperscript{126} French law defines “domicile” as the place where the defendant has its principal establishment.\textsuperscript{127} General jurisdiction is also proper if the defendant appears to be domiciled in France and leads the plaintiff to believe it was his real domicile.\textsuperscript{128}

As for specific jurisdiction, Article Forty-Six of the New Code defines the proper bases for jurisdiction depending on the type of claim.\textsuperscript{129} For contract claims, the plaintiff may bring suit in a court where the defendant is domiciled, as explained above, or where performance of the contract is due.\textsuperscript{130} Courts have emphasized jurisdiction is proper in the forum where performance actually took

\begin{itemize}
\item \textsuperscript{124} Id.
\item \textsuperscript{126} NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 42 (Fr.) (providing that defendant’s domicile in France makes jurisdiction in a French court proper over any claim).
\item \textsuperscript{127} See id. at art. 102; see also Cass. Civ. 2ème, Jan. 23, 1958, JCP G 1958, IV, 30 (explaining domicile for corporations at its registered, or statutory, seat).
\item \textsuperscript{128} See Cass. Civ. 1ère, Jan. 31, 1968, Bull. civ. I, no. 41 (describing how jurisdiction may be proper even if defendant is not actually domiciled).
\item \textsuperscript{129} NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.).
\end{itemize}
place or was intended to take place, not simply where the parties contracted.  

Jurisdiction for tort claims is also outlined in Article Forty-Six. A plaintiff may bring a tort claim in one of three places: where the defendant is domiciled, where the tort occurred, or where the damage was suffered. In situations where the damage is suffered in several states, French courts may opt to split the proceedings accordingly. Specific jurisdiction can also be asserted over a corporation’s local branch when two conditions are met. First, the branch must be truly autonomous. Secondly, the dispute must arise from the operations of that specific branch.

Articles Fourteen and Fifteen of the Civil Code are the “privileged” rules of jurisdiction, since they only apply to French nationals. Article Fourteen provides, “[a]n alien, even if not residing in France, may be cited before French courts for the performance of obligations contracted by him in France with a French person; he may be called before the courts of France for obligations contracted by him in a foreign country towards French persons.” While this basis for jurisdiction may not be used against other EU defendants, by virtue of the EU Regulation, it may still be asserted

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131. Duval & Nouel, supra note 130, at 7 (noting that courts often take practical considerations into account).

132. NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.) (defining when tort jurisdiction is proper).

133. See id. (outlining the three sources for tort jurisdiction).

134. Duval & Nouel, supra note 130, at 8-9 (citing Court of Appeal, June 30, 1984, HRM Duchess of Windsor v. Sanchez Gomez, Rev. crit. DIP 1985) (noting that courts prefer to split these claims then resolve them together).

135. Id. (citing Cass. Civ. 1ère, June 18, 1958, Rev. crit. DIP, 1958, 754) (explaining requirement for specific jurisdiction).


137. Id. (citing Cass. Civ. 1ère, Nov. 15, 1983, pourvoi no. 82-12.626).


139. NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 14 (Fr.). See generally Clermont & Palmer, supra note 20 (discussing the historical basis of Article 14 basis and its current application in French courts).
against US defendants.\textsuperscript{140} Article Fifteen likewise provides jurisdiction when the defendant is a French national.\textsuperscript{141}

4. Personal Jurisdiction in the United Kingdom

The United Kingdom follows the common law approach, where legal rules are largely developed through case law.\textsuperscript{142} Following the adoption of the EU Regulation, the United Kingdom passed the Civil Jurisdiction and Judgments Act 1982 (the “1982 Act”), which incorporated much of the EU law, and applies to England, Scotland, Wales, and Northern Ireland.\textsuperscript{143} For jurisdictional rules, specifically, they are codified in the Civil Procedure Rules (the “CPR”).

Just like the European Union, domicile provides a basis for general jurisdiction in the United Kingdom.\textsuperscript{145} General jurisdiction is also proper in UK courts when a defendant, even an alien, is served process in the United Kingdom.\textsuperscript{146} Because this “tag” jurisdiction is prohibited under the EU Regulation, it may only be asserted against non-EU defendants.\textsuperscript{147}

\textsuperscript{140}See EU Regulation art. 4 (permitting EU member states to craft their own jurisdictional rules in cases not involving EU defendants); see also Born, supra note 45, at 14 (surveying the jurisdictional rules of other nations).

\textsuperscript{141}Nouveau Code de Procédure Civile [C.P.C.] art. 15 (Fr.) (providing jurisdiction when the defendant is a French national).


\textsuperscript{143}Woodruff & Reed, supra note 142, at 2 (explaining the basis for jurisdiction in England); Civil Jurisdiction and Judgments Act of 1982 (codifying the rules of jurisdiction).

\textsuperscript{144}Woodruff & Reed, supra note 142, at 2 (describing the codification of the civil procedure rules). See generally Civil Procedure Rules (“CPR”).

\textsuperscript{145}CPR Part 6(B) para 3.1 (permitting jurisdiction over any claim when the defendant is domiciled in the UK).

\textsuperscript{146}H.R.H Maharaneve Seethadevi Gaekwar of Baroda v. Wildenstein [1972] 2 W.L.R 1077 (describing so-called “tag” jurisdiction); see also Colt Industries Inc v Sarl.

For jurisdiction over a defendant served outside of the United Kingdom, the claimant must provide a proper basis for the suit under the CPR.\(^{148}\) For contract claims against non-UK defendants, jurisdiction is proper when the contract was made in the United Kingdom, was made through an agent in the United Kingdom, is governed by UK law or a UK court is stipulated, or when the contractual breach occurs in the United Kingdom.\(^{149}\) For tort claims, jurisdiction is proper when damage was suffered within the United Kingdom or the act occurred in the United Kingdom.\(^{150}\) Additionally, the CPR provides that when a plaintiff is seeking an injunction against a defendant whose conduct is taking place in the United Kingdom, jurisdiction is proper.\(^{151}\) Jurisdiction is also proper when the defendant is a required party to a claim already served on a defendant in the United Kingdom.\(^{152}\)

Finally, UK courts permit a form of “doing business” jurisdiction, codified in both the Companies Act of 2006 and the CPR.\(^{153}\) Under the Companies Act, service is proper on an “overseas company”—registered in the United Kingdom, if it is left, or sent by mail, to “any place of business of the company.”\(^{154}\) The CPR adds a little clarity, providing that jurisdiction over a non-UK company is proper when it is served at “any place within the jurisdiction where the corporation carries on its activities or any place of business of the company within the jurisdiction.”\(^{155}\) Though courts generally have agreed a sufficient connection to the UK forum is required, precisely what is required is unclear.\(^{156}\)

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148. CPR Part 6(B) (applies when service occurs outside of the jurisdiction).
149. CPR Part 6(B) para. 3.6(b) (noting that jurisdiction is also proper when the contract is made by an agent living in the United Kingdom).
150. CPR Part 6(B) para. 3.9(a)-(b) (providing basis for tort jurisdiction).
151. CPR Part 6(B) para. 3.2 (explaining when jurisdiction is proper over a claim for injunction).
152. CPR Part 6(B) para. 3.4 (delineating when jurisdiction is proper over required parties).
153. Companies Act 2006, § 1139(2)(b); CPR Part 6.9 (allowing service on a corporate defendant).
155. CPR Part 6.9 (allowing service on a corporate defendant).
156. See, e.g., South India Shipping Corp. v. Export-Import Bank of Korea [1985] 1 W.L.R. 585 (allowing service on an office where only incidental activities were carried out under an earlier version of the Company Act). But see Rakusens Ltd v. Baser Ambalaj Plastik Sanayi Ticaret AS, [2001] E.W.C.A. Civ. 1820 (Court of Appeal) (holding that agent of the company is not enough).
In fact, the Civil Division of the Royal Courts of Justice has addressed the dueling authorities on proper jurisdiction over non-English companies.\textsuperscript{157} In \textit{Lakah Group v. Al Jazeera Satellite Chanel}, the appeals court set out to determine whether the corporate defendant had been properly served under either the CPR or the Companies Act.\textsuperscript{158} Noting that the lower court determined the Companies Act presented a higher standard than the CPR, the court found that the determination ultimately did not matter because the CPR—the lower standard—had not even been met.\textsuperscript{159} In affirming the lower court’s judgment that service was not proper, the appeals court agreed that a corporation’s “transient or irregular connection” to the forum would not suffice.\textsuperscript{160}

\section*{II. A COMPARISON OF APPROACHES}

Part II of this Note will compare personal jurisdiction doctrine in the United States to personal jurisdiction in the European Union, focusing on Germany, France, and England. Part II.A will focus on the differences in the sources of personal jurisdiction rules, and the rationale underlying their creation. Part II.B will discuss the differences in general jurisdiction. Part II.C explores how specific jurisdiction cases are handled differently in the United States and the European Union. Finally, Part II.D will discuss the role reasonableness plays in US courts and EU courts. As will be demonstrated below, the US minimum contacts approach is more restrictive than the European statutory approach.

\subsection*{A. Source and Rationale}

The differences between personal jurisdiction in the United States and the European Union largely are accounted for by fundamental differences in the source of the rules and the reasons behind them.\textsuperscript{161} In the European Union, jurisdictional rules often are


\textsuperscript{158} See id.

\textsuperscript{159} See id.

\textsuperscript{160} See id.

\textsuperscript{161} See von Dryander, \textit{supra} note 89, at 673 (jurisdiction is a product of statutory interpretation, not constitutionality); see, e.g., Silberman, \textit{Observations}, \textit{supra} note 20, at 607-09 (noting the differences in rationale between the US and the EU).
geared toward providing a forum for EU plaintiffs to obtain relief.\footnote{162 See Silberman, *Observations*, supra note 20, at 607 (noting French Article 14 does this explicitly); Luxembourg Civil Code art. 14 (permitting jurisdiction based on nationality of the plaintiff); Dutch Code of Civil Procedure art. 126(3) (same).} In France, Article Fourteen clearly does this.\footnote{163 See CODE CIVIL [C. CIV.] art. 14 (Fr.) (“French National . . . .”); see also Clermont & Palmer, *supra* note 20, at 3 (noting that French article merely does it on the basis of “Frenchness”).} Germany’s Section Twenty-Three does not.\footnote{164 See ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], Dec. 5, 2005, BUNDESGESETZBLATT [BGBl.] 3202, as amended, § 23 (general jurisdiction attaches when defendant has property in Germany).} Section Twenty-Three specifically was enacted to ensure German creditors, not just any German plaintiff, had a forum to obtain relief against non-German debtors.\footnote{165 Kuner, *supra* note 89, at 696 (explaining purpose of section Twenty-Three jurisdiction); von Dryander, *supra* note 89, at 680 (same).}

As for the source of jurisdictional rules in the European Union, these rules are codified by national legislatures in official civil code, like the New Code of Civil Procedure in France, and Germany’s ZPO.\footnote{166 See generally EU Regulation; ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], (Ger.); CODE CIVIL [C. CIV.] (Fr.); CPR (England).} These rules provide clarity for plaintiffs trying to decide where to bring a suit, and notice to defendants as to where they may be sued.\footnote{167 See Silberman, *Observations, supra* note 20, at 609-10 (discussing the clarity of EU rules given their statutory nature, and the lack of “residual” constitutional constraints”). See generally EU Regulation; ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], (Ger.); CODE CIVIL [C. CIV.] (Fr.); CPR (England).} The court’s role is simple: determine whether or not a statutory basis for jurisdiction applies.\footnote{168 See generally EU Regulation; ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], (Ger.); CODE CIVIL [C. CIV.] (Fr.) and CPR (England).}

On the other hand, US personal jurisdiction doctrine is derived from the Constitution—to be more specific, the Due Process Clause of the Fourteenth Amendment.\footnote{169 See Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (“[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.’”).} To satisfy due process, the relationship between the defendant and the forum must be sufficiently

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\footnote{162 See Silberman, *Observations, supra* note 20, at 607 (noting French Article 14 does this explicitly); Luxembourg Civil Code art. 14 (permitting jurisdiction based on nationality of the plaintiff); Dutch Code of Civil Procedure art. 126(3) (same).}

\footnote{163 See CODE CIVIL [C. CIV.] art. 14 (Fr.) (“French National . . . .”); see also Clermont & Palmer, *supra* note 20, at 3 (noting that French article merely does it on the basis of “Frenchness”).}

\footnote{164 See ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], Dec. 5, 2005, BUNDESGESETZBLATT [BGBl.] 3202, as amended, § 23 (general jurisdiction attaches when defendant has property in Germany).}

\footnote{165 Kuner, *supra* note 89, at 696 (explaining purpose of section Twenty-Three jurisdiction); von Dryander, *supra* note 89, at 680 (same).}

\footnote{166 See Silberman, *Observations, supra* note 20, at 609-10 (discussing the clarity of EU rules given their statutory nature, and the lack of “residual” constitutional constraints”). See generally EU Regulation; ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], (Ger.); CODE CIVIL [C. CIV.] (Fr.); CPR (England).}

\footnote{167 See Silberman, *Observations, supra* note 20, at 609-10 (discussing the clarity of EU rules given their statutory nature, and the lack of “residual” constitutional constraints”). See generally EU Regulation; ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], (Ger.); CODE CIVIL [C. CIV.] (Fr.); CPR (England).}

\footnote{168 See CODE CIVIL [C. CIV.] art. 14 (Fr.) (court determines whether the plaintiff is French); see also Silberman, *Observations, supra* note 20, at 609-10 (describing the ease of this process).}

\footnote{169 See Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (“[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.’”).}
strong. In contrast to the European Union, the focus is on fairness to defendants, not providing plaintiffs access to local courts.

Under the US system, courts are required to make a factual determination each and every time in determining whether jurisdiction comports with due process. Courts must review the scope of a defendant’s activities in the forum, and decide if they have the necessary minimum contacts. Even if the contacts are sufficient, a defendant may then argue that the assertion of jurisdiction is nonetheless unreasonable, providing them with yet another safeguard.

Calling the minimum contacts approach “amorphous” and “imprecise,” scholars have recognized its negative impact on jurisdictional certainty. At the very least, the approach stands in stark contrast to the EU approach, where codified rules allow courts to quickly determine whether jurisdiction is proper. Outside of the judicial process, the EU Rules streamline the process for both plaintiffs and defendants.

170. See id. at 320 (measuring the strength of defendant’s contacts to the forum state); Walden v. Fiore 134 S. Ct. 1115, 1123 (2014) (reiterating the importance of the defendant’s affiliation with the forum state); Silberman, Observations, supra note 20, at 607 (noting this difference).


172. Int’l Shoe, 326 U.S. at 316 (finding that jurisdiction must comport with “traditional notions of fair play and substantial justice”).

173. Id.; see also Burger King v. Rudzewicz, 471 U.S. 462, 471-72 (1985) (“The Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful “contacts, ties, or relations.”); Nicastro, 131 S. Ct. at 2794 (Breyer, J., concurring) (noting the difficulty in this approach)

174. Asahi Metal Indus. Co. v. Superior Court of California, 480 U.S. 102, 115-16 (1987) (explaining how the factors are to be considered).


176. See, e.g., NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.); Zivilprozessordnung [ZPO] [CODE OF CIVIL PROCEDURE], §§ 12-34 (Ger.). But see Silberman, Judicial Jurisdiction, supra note 147, at 397-98 (noting discretion occasionally plays a role in English Courts).

177. See CODE CIVIL [C. CIV.] art. 14 (Fr.) (court determines whether the plaintiff is French); see also Silberman, Observations, supra note 20, at 609-10 (describing the ease of this process).
B. General Jurisdiction

General jurisdiction operates, for the most part, the same way in the United States as it does in the European Union. Domicile is the accepted basis for such jurisdiction. When a defendant is domiciled in the forum state, jurisdiction is proper over any type of claim.

Given the freedom to craft their own jurisdictional rules when it comes to non-EU defendants, Member States have embraced sources of general jurisdiction beyond domicile. Examples of this can be found in German Section Twenty-Three, French Article Fourteen, and English “doing-business” jurisdiction. Since each one is classified as exorbitant under the EU Regulation, they may not be asserted against EU defendants. Where non-EU defendants are concerned, however, these bases of jurisdiction make it easier for German, French, and English nationals to sue at home. The impact of this becomes apparent after revisiting Goodyear with the European rules in mind.

In Goodyear, the US Supreme Court dismissed the wrongful death claims of the US plaintiffs, holding personal jurisdiction over the non-US defendants was improper because they were not at home in the forum state. What if the case concerned German plaintiffs and non-EU defendants, such as Goodyear USA (so that Section Twenty-Three would apply)? So long as the defendant had property

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178. See, e.g., Daimler AG v. Bauman, 134 S. Ct. 746, 760 (holding that domicile is required for general jurisdiction); EU Regulation at art. 2(1) (same).
179. See, e.g., Daimler, 134 S. Ct. at 760 (holding that domicile is required for general jurisdiction); EU Regulation at art. 2(1) (same).
180. Compare Daimler, 134 S. Ct. at 760 (explaining domicile provides jurisdiction over any type of claim), with EU Regulation at art. 2(1) (same).
181. See, e.g., CODE CIVIL [C. CIV.] art. 14 (Fr.) (jurisdiction based on nationality); ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 23 (Ger.) (jurisdiction based on property in Germany).
182. See Code Civil [C. CIV.] art. 14 (Fr.); ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 23 (Ger.).
183. See EU Regulation Annex 1 (bases of jurisdiction not permitted against other EU domiciliaries); EU Regulation art. 4(1) (noting these bases for jurisdiction may be asserted against non-EU defendants).
184. See EU Regulation art. 4(2) (Member States own jurisdictional rules apply when defendants are non-EU); see, e.g., Clermont & Palmer, supra note 20, at 17 ("Each country’s exorbitant jurisdiction constitutes a way to allow its own people to sue at home when they can recover at home, which is usually so much easier than suing abroad.").
185. Nicastro, 131 S. Ct. at 2857 (dismissing the claims).
186. ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 23 (Ger.) (jurisdiction proper when defendant owns property in Germany).
in Germany, for example, an office worth US$150,000, personal jurisdiction would be proper. The same would satisfy a court of England under “doing business” jurisdiction. In France, the office could burn down and jurisdiction still would be proper. A French plaintiff is all that is required.

Article Fourteen goes even further than that, occasionally permitting general jurisdiction based solely on the domicile of the plaintiff, a practice explicitly endorsed by several other Member States. In Guggenheim v. Helion, the French trial court combined EU Regulation Article 4(2) with French Article Fourteen to reach this very result. Since Article 4(2) grants EU-domiciled plaintiffs access to the jurisdictional rules of their forum State, US plaintiffs residing in France successfully asserted Article Fourteen jurisdiction over a non-EU defendant. Keeping this proposition in mind, a French court would find jurisdiction proper in Goodyear, regardless of nationality, so long as the plaintiffs lived in France. In the United States, jurisdiction is not proper solely based on nationality of the plaintiff, much less their domicile.

187. See id.
188. See CPR Part 6.9 (requiring any fixed place of business). But see Companies Act of 1985 (U.K.) (requiring place of business and sufficient connection).
189. CODE CIVIL [C. CIV.] art. 14 (Fr.) (requiring French plaintiff); see also Luxembourg Civil Code art. 14 (same); [Rv] CODE OF CIVIL PROCEDURE, art. 126(3) (Neth.) (same).
190. See CODE CIVIL [C. CIV.] art. 14 (Fr.) (requiring French plaintiff).
191. See [Rv] CODE OF CIVIL PROCEDURE, art. 126(3) (Neth.) (permitting jurisdiction based on plaintiff’s domicile); Drobak, Personal Jurisdiction in a Global World, supra note 11, at 1746 (citing EU Regulation) (noting countries outside of the United States allow jurisdiction based on domicile of the plaintiff); Fond. Solomon R. Guggenheim v. Helion, Cass. Civ. 1e, July 3, 1996, 124 Journal Du Droit International 1016 (1997) (holding jurisdiction on basis of plaintiff’s domicile was proper).
193. Id. (applying the EU Regulation in conjunction with Article 14).
194. See id.
C. Specific Jurisdiction

Rules for specific jurisdiction—those granting jurisdiction over certain causes of action—can be found in both the United States and the European Union. Within their national rules for civil procedure, Germany, France, and England also provide for specific jurisdiction. In those countries, certain events trigger jurisdiction by statute. Under the US minimum contacts approach, however, there is no triggering event for specific jurisdiction.

Section C is divided into two subsections, each discussing a unique feature of US specific jurisdiction analysis. The first will discuss the role discretion plays in determining whether contacts are sufficient to justify personal jurisdiction. The second will discuss the unique requirement of purposeful availment.

1. US Courts Retain Discretion

As explained above, in the European Union, specific jurisdiction is statutorily granted. Codified rules dictate when certain types of claims may be brought within the forum. In the United States, the assertion of specific personal jurisdiction must still satisfy the constitutional standard of due process through a showing of minimum contacts. As set forth by the Supreme Court in International Shoe, specific jurisdiction exists when the cause of action arises from the defendant’s in-state contacts.

As Nicastro makes evident, specific jurisdiction may not be easy to establish, even for plaintiffs domiciled in the United States.

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197. NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.) (describing proper basis for tort jurisdiction).
198. Id. (describing proper basis for tort jurisdiction).
199. See J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2788 (2011) (examining factors which may be relevant to the assertion of personal jurisdiction).
200. See NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.) (describing proper basis for tort jurisdiction); see, e.g., EU Regulation art. 5(3) (harm and effects).
201. See NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.) (describing proper basis for tort jurisdiction); see, e.g., EU Regulation art. 5(3) (harm and effects).
203. See id. at 317 (describing specific jurisdiction).
204. See Nicastro, 131 S. Ct. at 2788 (holding personal jurisdiction over UK defendant was improper); Drobak, Personal Jurisdiction in a Global World, supra note 11, at 1729 (explaining the negative effects Nicastro has had on personal jurisdiction analysis from a plaintiff’s perspective).
Using its discretion in deciding the jurisdictional question, the Court in *Nicastro* held personal jurisdiction over the UK defendant was not proper absent a showing of specific intent. The Court considered other factors in the record as well, including the fact that other machines were sold across the United States, a few even in New Jersey, but nonetheless found intent dispositive. The outcome was considered by commentators to be unfair, wrongly decided, and to one scholar to be “viscerally upsetting.”

Sometimes, however, the Court’s multi-step review of the record comes out the other way, demonstrating the unpredictability inherent in the minimum contacts approach. For example, in *Burger King v. Rudzewicz*, where two franchise owners of a Burger King in Michigan defaulted on payments, the Court found specific jurisdiction proper in Florida because Florida law governed their franchise agreement. The Court further explained that the franchise owners’ continuing relationship with the brand’s Miami headquarters over a twenty-year period reinforced their “deliberate affiliation” with the forum.

As demonstrated above, the European Union does not concern itself with the strength of an “affiliation” to the forum. The bases for specific jurisdiction are explicitly set out in the European rules with respect to any type of claim, and a court must simply determine if one applies. To illustrate the effect of this difference, it is helpful to revisit a US case with European jurisdictional rules in mind.

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205. See *Nicastro*, 131 S. Ct. at 2788 (requiring plaintiff to show defendant intended its products enter the New Jersey market specifically).

206. See id.


209. Id. at 482 (noting that their franchise agreement outlined this).

210. See id.

211. See, e.g., EU Regulation (laying out the bases for personal jurisdiction in EU courts).

212. See EU Regulation art. 5 (explaining when specific jurisdiction is proper).

For example, had *Burger King* been adjudicated in a European court, the court would have come to the same conclusion, albeit in a one-step analysis.\(^{214}\) The court would merely look at the franchise agreement signed by the defendants, and easily determine that franchise payments were due to the franchise headquarters in Florida.\(^{215}\) That fact alone would satisfy the jurisdictional rules of Germany, France, and England, without any further findings.\(^{216}\)

2. Purposeful Availment

In specific jurisdiction cases, it is common for US courts to ask whether the defendant has purposefully availed itself of the forum state.\(^{217}\) This requirement is noticeably absent from the European rules for jurisdiction.\(^{218}\) To demonstrate this fact, pretend *Nicastro* occurred in France, and a French national was injured by an English product.\(^{219}\) Jurisdiction would have been proper since the tort occurred in France.\(^{220}\) Furthermore, had the tort occurred outside of France, and the defendant was not an EU domiciliary, Article Fourteen would have provided the French plaintiff access to French courts.\(^{221}\)

Purposeful availment particularly impacts specific jurisdiction cases that are based on products liability claims, given the sometimes-broad application of the stream of commerce theory.\(^{222}\) To illustrate this point, revisiting *World-Wide Volkswagen* is instructive, where the

\(^{214}\) Zivilprozessordnung [ZPO] [Code of Civil Procedure], § 29 (Ger.); NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.); CPR Part 6(B) para. 3.6(b) (England).

\(^{215}\) See *Burger King*, 471 U.S. at 482 (explaining factual background).

\(^{216}\) ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 29 (Ger.) (jurisdiction proper where performance of contract is due); NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.) (same); CPR part 6(20) (same).

\(^{217}\) J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2784 (2011) (finding this point dispositive to plaintiff’s claims).

\(^{218}\) Wendy Perdue, *Purposeful Availment*, 98 NW. U. L. REV. at 461-62 (describing this practice); see also Drobak, *Personal Jurisdiction in a Global World*, supra note 11, at 1731 n.108 (noting this does not displace the minimum contacts test).

\(^{219}\) See *Nicastro*, 131 S. Ct. at 2795 (explaining how the defendant was injured).

\(^{220}\) NOUVEAU CODE DE PROCÉDURE CIVILE [C.P.C.] art. 46 (Fr.) (jurisdiction proper where tort occurred); see also ZIVILPROZESSORDNUNG [ZPO] [CODE OF CIVIL PROCEDURE], § 32 (Ger.) (same); CPR Part 6(B) 3.9(a)-(b) (same).

\(^{221}\) French Article 14 (jurisdiction proper when plaintiff is a French national); Clermont & Palmer, supra note 20, at 14 (noting one reason for such jurisdiction is to provide French citizens access to French courts).

\(^{222}\) See Drobak, *Personal Jurisdiction in a Global World*, supra note 11, at 1730-32 (explaining this); Perdue, supra note 218, at 462 (same).
plaintiffs filed a products liability action against defendants for injuries sustained in an automobile accident in Oklahoma. The Supreme Court accepted the alien defendants’ argument that its product, an Audi, ended up in Oklahoma through the plaintiff’s actions alone. Finding the defendants never purposefully availed themselves of the “privileges and benefits” of Oklahoma law, the Court held the assertion of personal jurisdiction was improper.

In the European Union, as explained above, specific jurisdiction does not consider purposeful availment. Specific jurisdiction is permitted where statute provides, without requiring courts to measure contacts. If the accident in World-Wide Volkswagen occurred in Germany, France, or England, jurisdiction would have been proper, on the basis that the tort, more specifically the harm, occurred within the forum.

D. Reasonableness

Though it is now clear that reasonableness only plays a role in specific jurisdiction cases in the United States, there is debate among scholars about the role reasonableness plays in jurisdictional analysis outside of the United States. Again, focusing on Germany, France, and England, it is clear that reasonableness, insofar as it balances various interests, is not considered in determining whether personal

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224. World-Wide Volkswagen, 444 U.S. at 299 (holding personal jurisdiction over defendant improper).
225. See id. at 295, 299.
226. NOUVEAU CODE DE PROCEDURE CIVILE [C.P.C.] art. 46 (Fr.) (jurisdiction proper where tort occurred); see also Zivilprozessordnung [ZPO] [CODE OF CIVIL PROCEDURE], § 32 (Ger.) (same); CPR 6(20) (same).
227. NOUVEAU CODE DE PROCEDURE CIVILE [C.P.C.] art. 46 (Fr.) (jurisdiction proper where tort occurred); see also Zivilprozessordnung [ZPO] [CODE OF CIVIL PROCEDURE], § 32 (Ger.) (same); CPR 6(20) (same).
228. NOUVEAU CODE DE PROCEDURE CIVILE [C.P.C.] art. 46 (Fr.) (jurisdiction proper where tort occurred); see also Zivilprozessordnung [ZPO] [CODE OF CIVIL PROCEDURE], § 32 (Ger.) (same); CPR 6(20) (same).
229. See Silberman, supra note 11, at 130 (arguing reasonableness is not a factor); Born, supra note 45, at 19 (noting that a reasonableness analysis is a growing trend in transnational litigation).
jurisdiction is proper. The closest any of these countries come is the limitation placed on Section Twenty-Three of the ZPO.

While requiring a “sufficient connection” to Germany does not require any balancing of interests, as in the United States, the BGH acknowledged that the requirement was necessary to avoid creating “friction” with other countries. This was a concern noted by the Court in Asahi, and other cases since. Following Daimler, reasonableness analysis in the United States is now limited to specific jurisdiction cases, a non-exorbitant basis for jurisdiction. In Germany, the “sufficient connection” requirement is reserved for the exorbitant Section Twenty-Three jurisdiction.

As demonstrated in Part II, the US minimum contacts approach to personal jurisdiction is fundamentally more pro-defendant, and thus restrictive for plaintiffs than the European approach. Germany, France, and England each allow bases of general jurisdiction beyond domicile, the US plaintiff’s only option following Daimler. With respect to specific jurisdiction, the US minimum contacts approach is not only more restrictive, with its requirement of purposeful availment, but the reliance on judicial discretion stands in stark contrast to the statutory approach embraced in Europe.

III. A NEW APPROACH TO US PERSONAL JURISDICTION

Defendant-oriented, the US minimum contacts approach to personal jurisdiction is more restrictive than the approach taken by the European Union, Germany, France, or England. This places US

232. Id.
234. See Daimler, 134 S. Ct. at 762 n.20 (asserting that reasonableness is not appropriate in general jurisdiction cases).
235. Judgment of July 2, 1991, BGH, 1991 NJW 3092; see also Silberman, supra note 11, at 131 (noting reasonableness analysis is more appropriate in general jurisdiction cases).
236. See supra Part II (demonstrating that under EU jurisdictional rules US cases would have come out in favor of EU plaintiffs).
237. See supra Part II.B (comparing general jurisdiction in the U.S. and the European Union).
238. See supra Part II.C (describing differences in specific jurisdiction).
239. See supra notes 186-94 (demonstrating how the US approach is more restrictive).
plaintiffs at a disadvantage in obtaining relief as compared to their EU counterparts, who have access to codified rules, which are applied predictably and consistently. Following the Supreme Court’s decision in Daimler AG v. Bauman, US plaintiffs are worse off now than ever before.

Part III.A will address the far-reaching and negative impact the Court’s decision in Daimler will have on the ability of US plaintiffs to sue at home. Part III.B will argue for a new approach to personal jurisdiction, one that incorporates international law norms, called “the national contacts approach.” Part III.C will discuss the positive impact the proposed national contacts approach will have on personal jurisdiction in the United States.

A. Daimler: A Step Too Far

Now, more than ever, US plaintiffs lack the jurisdictional means to hale alien defendants into US courts. Prior to Goodyear and Daimler, courts were asserting general personal jurisdiction over defendants who had systematic and continuous contacts with the forum state—commonly known as US “doing business” jurisdiction. In Goodyear, the Court explained that general jurisdiction is proper only when a defendant is “at home” in the forum. With lower courts still unsure about the proper scope of general jurisdiction, the Court tried once again in Daimler AG v. Bauman.

Justice Ginsburg, writing for the Court, looked to jurisdictional rules of the European Union and asserted that “at home” meant the defendant was domiciled in the forum state. Justice Ginsburg’s analysis continued by attacking Justice Sotomayor’s concurrence,

240. See supra note 166 and accompanying text (outlining the codified rules in the European Union).

241. See supra notes 15-17 and accompanying text (explaining that without courts’ uneven application of general jurisdiction plaintiffs will be forced to take these claims abroad losing benefits of US legal system).

242. See supra note 60-61 and accompanying text (explaining general jurisdiction only proper where defendant is domiciled in the forum state).

243. See supra note 53 (explaining how some courts applied loose standard for general jurisdiction).

244. See supra note 42 and accompanying text (delineating the at home standard).

245. See supra note 53 and accompanying text (attempting to clarify the unclear standard).

246. See supra note 60 and accompanying text (holding domicile required for general jurisdiction).
which would have dismissed the case on reasonableness grounds alone.247 She asserted that reasonableness is not a proper consideration in general jurisdiction cases.248

The Supreme Court’s opinion in Daimler will have serious consequences for US plaintiffs.249 As explained above, general jurisdiction occasionally served as a jurisdictional basis of last resort.250 When US plaintiffs could not make showings sufficient for specific jurisdiction, especially in cases against non-US corporations, courts allowed plaintiffs to make a showing of the defendant’s “continuous and systematic” business activities in the forum state.251 Reasonableness then acted as a safety valve for the defendants.252 If jurisdiction was truly unreasonable, courts could decline it on that basis alone, just as Justice Sotomayor urged the Court to do in Daimler.253

General jurisdiction, the sole door to relief for US plaintiffs when the minimum contacts approach was otherwise too narrow, is now officially closed.254 Losing the benefits of the US judicial system, with its contingency fees and jury trials, US plaintiffs will be forced to litigate such claims abroad.255 This is in stark contrast to similarly situated EU plaintiffs, who often have no trouble finding a forum for redress at home.256

B. The National Contacts Test

In light of Daimler and the prevailing international rules for personal jurisdiction, it is time for the United States to reconsider

247. See supra note 64 and accompanying text (cautioning that the Court’s decision will have unforeseen impact).
248. See supra note 64 and accompanying text (explaining when reasonableness is appropriate).
249. See supra note 64 and accompanying text (closing the door on general jurisdiction).
250. See supra note 14 and accompanying text (explaining how general jurisdiction was used when plaintiffs could not make the requisite showing of contacts for specific jurisdiction).
251. See supra note 14 and accompanying text (demonstrating that systematic and continuous activities was essentially used as a test for general jurisdiction).
252. See supra note 43 and accompanying text (describing the role reasonableness played).
254. See supra note 60 and accompanying text (holding domicile required for general jurisdiction).
255. See supra note 15 and accompanying text (describing benefits of US legal system).
256. See supra note 20 and accompanying text (explaining jurisdictional rules in Europe which allow plaintiffs to sue at home).
personal jurisdiction. Free from the constitutional underlay embodied in the minimum contacts approach, “the proposed national contacts test” shifts the focus away from the defendant, focusing instead on providing forums for US plaintiffs to obtain relief. Based in part on the Asahi factors and in part on internationally accepted principles of jurisdiction, the national contacts approach provides predictability on one hand and the discretionary ability to limit exorbitant assertions of jurisdiction on the other.

The first prong of the national contacts approach asks the court to address the “accepted” bases of jurisdiction. The Supreme Court has already shown a willingness to align itself with international jurisdictional norms in adopting domicile as a basis for general jurisdiction. As it currently stands, US-style specific jurisdiction remains an outlier in the international field, especially with regards to purposeful availment. Following the predictable and straightforward EU rules, tort jurisdiction is proper under the national contacts approach when the act occurs in the forum, or if its effects are felt in that forum. For a contract claim, the court determines if the breach occurred in the forum or whether the contract was made in the forum.

This approach seeks to resolve the unfairness felt by US plaintiffs as demonstrated in cases like Nicastro. Through the national contacts approach, a US citizen injured on US soil will always have a forum for relief, no matter who, or what, the defendant is. The fact the injury occurred in the United States would be

257. See supra Part I.B (outlining jurisdictional rules of other nations).
258. See supra note 20 and accompanying text (discussing Asahi reasonableness).
259. See supra notes 50-52 and accompanying text (discussing Asahi reasonableness).
260. See supra notes 81-84 and accompanying text (discussing accepted bases of jurisdiction in the European Union).
261. See supra note 75 and accompanying text (adopting paradigmatic examples of domicile in the European Union).
262. See supra Part II.C.2 (describing unique features of US specific jurisdiction).
263. See supra note 83 and accompanying text (describing tort jurisdiction in the European Union).
264. See supra note 82 and accompanying text (describing contract jurisdiction in the European Union).
265. See supra note 220 (demonstrating unfairness in Nicastro).
266. See supra note 83 and accompanying text (describing the place of harm as always sufficient for jurisdiction).
enough to establish proper jurisdiction, without concern for minimum contacts or purposeful availment.\textsuperscript{267}

When the first prong of the national contacts approach does not apply, that is when there is no accepted basis for jurisdiction, courts will move to the second prong of the national contacts approach, which incorporates \textit{Asahi} reasonableness and the balancing of interests.\textsuperscript{268} The court would first determine what the US interests are in adjudicating the dispute.\textsuperscript{269} This could be a state’s interesting in regulating motor vehicles.\textsuperscript{270} There may even be some instances where enforcing human rights abroad is a salient US interest.\textsuperscript{271} Yet, as the name suggests, the national contacts approach gives considerable weight when the plaintiff is a US national, an approach taken by other countries.\textsuperscript{272}

While this resembles French Article Fourteen jurisdiction in that US nationals are given preference by virtue of their “American-ness,” there is a critical difference: a built-in safety valve to limit the effects of exorbitant jurisdiction.\textsuperscript{273} To borrow from Justice O’Connor in \textit{Asahi}, courts next will consider the “interests of other nations” to make sure adjudication in a US court does not cause tension with other nations.\textsuperscript{274} This is where the court’s discretion comes into play, a traditional feature of the US judiciary\textsuperscript{275}

When US interests are high, which will always be the case with a US plaintiff, and interests of other nations are low, jurisdiction is proper.\textsuperscript{276} If something like \textit{Goodyear} were to happen again, where US plaintiffs bring a claim in US court for a tort that occurred in a different country, the national contacts approach would permit personal jurisdiction.\textsuperscript{277}

\begin{footnotesize}
\textsuperscript{267} See supra note 220 and accompanying text (describing tort jurisdiction in the European Union).
\textsuperscript{268} See supra notes 50-52 (discussing \textit{Asahi} reasonableness).
\textsuperscript{269} See supra note 50 and accompanying text (discussing US interests).
\textsuperscript{270} See supra note 50 and accompanying text (discussing US interests).
\textsuperscript{271} See supra note 52 and accompanying text (discussing federal interests).
\textsuperscript{272} See supra note 164 and accompanying text (discussing Section Twenty-Three jurisdiction).
\textsuperscript{273} See supra note 235 and accompanying text (explaining how reasonableness operates as a safety valve for defendants).
\textsuperscript{274} See supra note 51 and accompanying text (explaining the interests of other nations come into play when their nationals are hailed into US courts).
\textsuperscript{275} See supra note 205 and accompanying text (describing the discretionery role of US courts).
\textsuperscript{276} See supra note 233 and accompanying text (discussing \textit{Asahi} reasonableness).
\textsuperscript{277} See supra notes 189-90 and accompanying text (discussing \textit{Goodyear}).
\end{footnotesize}
In a situation where US interests are low, for example in the case of an indemnity claim involving only alien parties, a court will decline jurisdiction without even considering the interests of other nations.\textsuperscript{278} Under the proposed national contacts approach, \textit{Asahi} would be decided the same way.\textsuperscript{279} Without a US party, or a state regulatory interest, there is simply no reason for a US court to adjudicate the dispute.\textsuperscript{280}

Though scholars have debated about the applicability of a reasonableness analysis in courts outside of the United States, it is important to emphasize its role under the national contacts approach.\textsuperscript{281} It is purely used as a way to limit exorbitant jurisdiction when US interests are lacking a safety valve for defendants.\textsuperscript{282} Thus, while the national contacts approach embraces the spirit of Article Fourteen, for example, it does not adopt it entirely.\textsuperscript{283}

\textbf{C. Impact of the National Contacts Approach}

If adopted, the national contacts approach will put US plaintiffs on equal footing with plaintiffs around the world.\textsuperscript{284} At the most fundamental level, the national contacts approach decouples jurisdictional analysis from constitutional due process.\textsuperscript{285} Courts will no longer be burdened by measuring a defendant’s contacts with the forum state.\textsuperscript{286} In the vast majority of cases, the courts will not use their discretion at all.\textsuperscript{287} Determining jurisdiction under the first prong of the national contacts approach is as simple as EU courts

\textsuperscript{278} See supra notes 50-51 and accompanying text (explaining the Court’s decision in \textit{Asahi} was partly based on lack of US parties).

\textsuperscript{279} See supra notes 50-52 and accompanying text (declining jurisdiction over the defendant because it was unreasonable).

\textsuperscript{280} See supra notes 50-51 and accompanying text (discussing the reasonableness factors in \textit{Asahi}).

\textsuperscript{281} See supra note 229 and accompanying text (debating the role reasonableness plays in jurisdictional analysis).

\textsuperscript{282} See supra note 43 and accompanying text (describing the role reasonableness played).

\textsuperscript{283} See supra note 139 and accompanying text (discussing French Article 14).

\textsuperscript{284} See supra Part III.B (discussing the national contacts approach).

\textsuperscript{285} See supra note 24 and accompanying text (explaining the minimum contacts approach foundation in due process).

\textsuperscript{286} See supra note 24 and accompanying text (describing the minimum contacts approach).

\textsuperscript{287} See supra note 166 and accompanying text (explaining statutory foundation of jurisdictional rules in the European Union).
determining whether there is a statutory basis for jurisdiction.288 A judge is merely asked to determine the type of claim and where the harm or breach occurred.289 As for the second prong, the existence of a US plaintiff makes the assertion of jurisdiction an easy one since the US interests in adjudicating the dispute are quite high.290 Outside of that, US courts will retain a small amount of the discretion they once had to determine whether jurisdiction is nonetheless unreasonable.291

CONCLUSION

Embracing the concept of international harmonization, the United States Supreme Court limited the scope of general jurisdiction in *Daimler AG v. Bauman*. However, in doing so, the Court closed off one of the few remaining avenues for US plaintiffs to obtain relief in US courts. By asserting that reasonableness plays no role in general jurisdiction, and alien defendants are only “at home” where they are domiciled, the Court once again favored defendants to the detriment of US plaintiffs.

One way to fix the unfairness to US plaintiffs is to create a new test for personal jurisdiction, one decoupled from Constitutional Due Process, focused instead on alignment with international law norms. The national contacts approach, detailed above, accomplishes these goals in a straightforward and predictable manner.

For example, a US citizen, his Argentine wife, and their four children are kidnapped by pirates while sailing off the coast of Argentina. Secretly funding these pirates was the large, multi-national corporation, Mercedes, headquartered in Germany. The pirates kill everyone but the husband. May he bring his claims against Mercedes in the United States? The answer, under the national contacts approach, is undoubtedly, yes.

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288. See *supra* note 212 and accompanying text (noting EU courts typically lack discretion in jurisdictional decisions).

289. See *supra* note 212 and accompanying text (noting EU courts typically lack discretion in jurisdictional decisions).

290. See *supra* notes 50-51 and accompanying text (discussing what happens when federal interests are involved).

291. See *supra* notes 50-51 and accompanying text (discussing what happens when federal interests are involved).