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## 対人裁判管轄権に関する判例法（連邦最高裁）の推移

### ペノイヤー事件(Pennoyer v. Neff, 95 U.S. 714 (1877))

未開地入植促進のための連邦法"Donation Law of Oregon, 1866" により公有地譲渡を得ていると主張するネフと、競売により所有権を取得したと主張するペノイヤーとの間で起きたオレゴン州内の広大な土地の所有権を巡る争いから、競売の前提となった判決（訴外ミッチェルがネフに対して起こした金銭請求訴訟）の当否が新たな問題として浮上した。ネフの主張によれば、オレゴン州非居住者であるネフに対して召喚状の交付送達が無く、ネフは出廷していないため、州裁判所のネフに対する判決は無効であり、また問題の土地は、対物訴訟手続きによる場合を除いて、居住債権者による金銭支払い請求の対象とならない。連邦最高裁はこの主張を認めた。即ち、対人裁判管轄の根拠が被告としての人間に対する裁判所の権限であるため、被告が裁判所の領域的裁判管轄内に所在すること(presence)が、被告個人に対し拘束力ある判決言渡しの必要条件とされた。

"[I]t was ... contended in th[e] court [below], and is insisted upon here, that the judgment in the State court against the plaintiff was void for want of personal service of process on him, or of his appearance in the action in which it was rendered and that the premises in controversy could not be subjected to the payment of the demand [95 U.S. 714, 722] of a resident creditor except by a proceeding in rem; that is, by a direct proceeding against the property for that purpose. If these positions are sound, the ruling of the Circuit Court as to the invalidity of that judgment must be sustained, notwithstanding our dissent from the reasons upon which it was made. And that they are sound would seem to follow from two well-established principles of public law respecting the jurisdiction of an independent State over persons and property. The several States of the Union are not, it is true, in every respect independent, many of the right and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants;

to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also the regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned: that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. .... The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down .... as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. Any exertion of authority of this sort beyond this limit, .... is a mere nullity, and incapable of binding [95 U.S. 714, 723] such persons or property in any other tribunals."

#### **インターナショナル・シュー事件(International Shoe Co., v. Washington, 326 U.S. 310 (1945))**

ワシントン州では、失業者補償法によって、雇用者に失業者補償基金への分担を義務づけていた。分担金は州内で働く従業員の年間給与に一定率を掛けて算出された。デラウェア州法人のインターナショナル・シュー社はミズーリ州セント・ルイスに主たる事務所を置き、ワシントン州以外の数州に、製靴工場を持ち州際販売拠点を維持していた。同社はワシントン州に事務所が無く、商品の販促活動を行わず、商品在庫も置いていなかった。しかし、同社はワシントン州内に居住する十数名のセールスマンを抱え、報酬として売上高に対する一定率の口銭を支払っていた。セールスマンの活動範囲はワシントン州内に限定されていたが、セント・ルイスの管理者から直接の監督指示を受けていた。そして実際の活動は、見本商品の説明と注文勧誘に限られ、実際の受注処理と商品発送は全てセント・ルイスの本部が行っていた。ワシントン州から過去数年にわたる未納分担金の請求を受けたインターナショナル・シュー社は、同社がワシントン州内に存在しない(not present)のに税金や納付金を課されるのはデュー・プロセスの否定であると主張した。連邦最高裁は、「所在」(presence)を必須要件としていた従前の判例法を離れ、新に「最小限度の接触」(minimum contacts) 法理を確立した。これにより、焦点は各州相互の排他的主権から被告、法廷地、及び訴訟間の関係に移転した。これは対人管轄に関する画期的な判決である。

"Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction

of court was prerequisite to its rendition of a judgment personally binding him. .... But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due 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.'" [326 U.S. 310, 316]

Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, .... it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far 'present' there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. .... Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. [326 U.S. 310, 316-317]

"Whether due process is satisfied must depend .... upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.

But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." [326 U.S. 310, 319]

## パーキンス事件(Perkins v. Benguet Mining Co., 342 U.S. 437 (1952))

フィリピンに金鉱と銀鉱を所有する鉱山会社ベンゲットは、第二次世界大戦中フィリピンが日本軍の占領下にあったため、掘削業務は完全に中断していた。その間、会社の社長（大株主でもある）は故郷のオハイオ州に戻り、私的事務所を構えていた。私的事務所とは言え、鉱山会社の帳簿を備え、取締役会を開き、文書の受発信を行い、銀行口座を管理し、株主名簿の書換えを行い、従業員給与を支払い、会社再建準備を指揮するなど、制限的ではあるが「継続的且つ組織的な」一般的業務を行っていた。このよう

な時期に、社長はオハイオ州非居住者がオハイオ州裁判所に提起したベンゲットに対する対人訴訟の召喚状送達を受けた。訴訟原因はオハイオ州内で発生したものではない。連邦最高裁は、オハイオ州裁判所がベンゲットに対して人的裁判管轄を行使しても第14条修正のデュー・プロセス条項に違反しないと判断した。

"[If a foreign] corporation carries on, in [the state of forum], continuous and systematic corporate activities as it did here - consisting of directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of machinery, etc. - those activities are enough to make it fair and reasonable to subject that corporation to proceedings in personam in that state, at least insofar as the proceedings in personam seek to enforce causes of action relating to those very activities or to other activities of the corporation within the state.

"The instant case takes us one step further to a proceeding in personam to enforce a cause of action not arising out of the corporation's activities in the state of the forum. .... [W]e find no requirement of federal due process that either prohibits Ohio from opening its courts to the cause of action here presented or compels Ohio to do so. This conforms to the realistic reasoning in *International Shoe Co. v. Washington*." [342 U.S. 437, 445-446]

"Without reaching th[e] issue of state policy, we conclude that, under the circumstances above recited, it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding." [342 U.S. 437, 448]

### マッギー事件(McGee International Life Ins. Co., 355 U.S. 220 (1957))

カリフォルニア州民がアリゾナ州法人の保険会社と母親を保険金受取人とする生命保険契約を結んだ後、テキサス州法人の保険会社がアリゾナ州法人から保険契約を引継ぐ旨の文書通知を行ったため、被保険者は同意し、爾後保険料をカリフォルニア州の自宅からテキサス州法人の事務所に宛て文書送金した。被保険者（保険契約者）が死亡し、母親が保険金支払い求めたところテキサス州法人は拒絶した。テキサス州法人はカリフォルニア州内に事務所も代理人も置いたことが無く、本件保険証券を除けば保険の勧誘も契約もしたことがない。母親はカリフォルニア州裁判所に提訴し、勝訴判決を得た。州裁判所はその裁判管轄の根拠として、州外法人は訴訟手続きの送達を州域内で受け得ない場合でも、州民との保険契約に関するカリフォルニア州訴訟に服する旨を規定した州法に従った。カリフォルニア州内では判決の執行を得られない母親は、判決の承認と執行を求めてテキサス州裁判所に提訴した。しかしながらテキサス州裁判所は、カリフォルニア州外への送達はカリフォルニア州裁判所に裁判管轄を与えないため、カリフォルニア州判決は第14 修正の下で無効であると判断してカリフォルニア州判決に承認を与えなかった。

連邦最高裁は、訴訟がカリフォルニア州と実質的連結を持つ契約に基づくときは、

デュー・プロセスの目的に合致するため、カリフォルニア州裁判所はテキサス州法人を拘束する判決を下し得ると判断した。

"Since Pennoyer v. Neff, 95 U.S. 714, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned 'consent,' 'doing business,' and 'presence' as the standard for measuring the extent of state judicial power over such corporations. .... More recently in International Shoe Co. v. Washington, 326 U.S. 310, the Court decided that "due 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.'" Id., at 316.

"Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

"[T]he due Process Clause did not preclude the [State] court from entering a judgment binding on respondent. It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State." [355 U.S. 220, 223]

### ハンソン事件(Hanson v. Denckla, 357 U.S. 235 (1958))

ペンシルヴァニア州居住の婦人がデラウェア州において州内信託会社を受託者とする取消可能信託証書を作成し、自己の生活費を除く全財産を生前贈与証書または遺贈証書によって指定する受益者に支払うべきことを定めた。その後、婦人はフロリダ州に移住して、生前贈与証書を作成する一方、残余遺産処分文言の入った遺言証書を作成した。フロリダ州裁判所が、信託証書と生前贈与証書はフロリダ州法の下では無効であり、未執行の生前贈与分は残余遺産処分文言に従うべきものと判断した。

連邦最高裁は、フロリダ州裁判所には信託財産に対する対物裁判管轄が無く、またデラウェア州信託会社に対する対人裁判管轄も無いものと判断して、フロリダ州判決を

破棄した。本判決が意図的受益法理の嚆矢である。

"As technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff*, 95 U.S. 714 , to the flexible standard of *International Shoe Co. v. Washington*, 326 U.S. 310. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. .... Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with that State that are a prerequisite to its exercise of power over him. ...." [357 U.S. 235, 250-251]

"[F]or purposes of determining the question of personal jurisdiction over a nonresident defendant, [t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." [357 U.S. 235, 253]

#### シャッフアー事件(Shaffer v. Heitner, 433 U.S. 186 (1977))

グレイハウンド社（デラウェア州法人、主たる事務所はアリゾナ州フェニックス）の一株株主（非居住者）が、会社、子会社（カリフォルニア州法人、主たる事務所はアリゾナ州フェニックス）、及び現在・過去の取締役・役員28名（皆デラウェア州非居住者）を被告としてデラウェア州エクウィティー裁判所に訴えた派生訴訟である。オレゴン州内の独禁法違反行為によって会社と子会社が莫大な損害賠償金（私訴に対して）と罰金（法廷侮辱罪として）の支払いを余儀なくされたのは、取締役・役員の義務違反が原因であると主張する原告は、同時に取締役等が個々に保有する普通株、ストック・オプション等の仮差押えを申立てた。仮差押え命令の結果、会社台帳に「譲渡禁止」文句が記入された。（株券やオプション証書は現実にはデラウェア州内に存在しないが、州法によれば、デラウェア州法人全株式の所有権は州内に所在するものとみなされる。）

本訴訟の争点は、裁判管轄確立のための株式等の差押え（準対物訴訟）が第14 修正のデュー・プロセス条項に違反するか否かである。判決はペノイヤー事件からインターナショナル・シュー事件に至る法理論の変遷を詳しく分析した上で、「公正且つ実質



的正義」の基準は対人訴訟に留まらず対物訴訟（準対物訴訟も含め）にも適用されるべきであり、デラウェア州内に法律上所在する財産（訴訟の対象ではなく、訴訟原因とも関連しない）だけを根拠に被告への対人裁判管轄を確立することは、「最小限度の接触」原則から外れるものと判断した。インターナショナル・シュー判決の効果を対物訴訟乃至準対物訴訟に拡張した判決である。

[The relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of Pennoyer rest, became the central concern of the inquiry into personal jurisdiction. The immediate effect of this departure from Pennoyer's conceptual apparatus was to increase the ability of the state courts to obtain personal jurisdiction over nonresident defendants. [433 U.S. 186, 204]

We think that the time is ripe to consider whether the standard of fairness and substantial justice set forth in International Shoe should be held to govern actions in rem as well as in personam. [433 U.S. 186, 206]

We .... conclude that all assertions of state-court jurisdiction [in rem as well as in personam] must be evaluated according to the standards set forth in International Shoe and its progeny. [433 U.S. 186, 212]

The Due Process Clause affords protection against "judgment without notice." .... Throughout our history the acceptable exercise of in rem and quasi in rem jurisdiction has included a procedure giving reasonable assurance that actual notice of the particular claim will be conveyed to the defendant. Thus, publication, notice by registered mail, or extraterritorial personal service has been an essential ingredient of any procedure that serves as a substitute for personal service within the jurisdiction. The requirement of fair notice also, .... includes fair warning that a particular activity may subject a person to the jurisdiction of a foreign sovereign. [433 U.S. 186, 217-218]

### クルコ事件(Kulko v. California Superior Court, 436 U.S. 84 (1978))

夫婦関係が破綻し、妻はカリフォルニア州に、夫はニュー・ヨーク州に別居していた。（妻は一方的にハイチで離婚判決を得ている。）別居協定により、子供二人は学期中は父親と、休暇中は母親と暮らし、夫から休暇中の子供養育費として一定額が妻に支払われることになっていた。その後、子供達の意味で学期中もカリフォルニア州で暮らすことになったため、妻が養育費の増額を求めてカリフォルニア州裁判所に訴えた事件である。両者が結婚したのは、夫が軍務で外国に向かう途中、僅か三日間カリフォルニア州に滞在したときである。

その他には、夫はカリフォルニア州に住んだことがない。争点はカリフォルニア州裁判所が非居住者である夫に対して対人裁判管轄を行使できるか否かであった。

連邦最高裁は、上記裁判管轄の行使は第14 修正のデュー・プロセス・クローズに反するものと判断した。「最小限度の接触」を具体的事案に適用するときは、硬直的に黒白を付け難いことを示した判決である。

"The Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants. .... It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant. .... The existence of personal jurisdiction, in turn, depends upon the presence of reasonable notice to the defendant that an action has been brought, .... and a sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum. ....

"The parties are in agreement that the constitutional standard for determining whether the State may enter a binding judgment against appellant here is .... that a defendant "have certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend `traditional notions of fair play and substantial justice.'" .... While the interests of the forum State and of the plaintiff in proceeding with the cause in the plaintiff's forum of choice are, of course, to be considered, .... an essential criterion in all cases is whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State. ....

"Like any standard that requires a determination of "reasonableness," the "minimum contacts" test of International Shoe is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. .... We recognize that this determination is one in which few answers will be written "in black and white. The greys are dominant and even among them the shades are innumerable." ....  
[436 U.S. 84, 91-92]

### **フォルクスワーゲン事件(World-wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980))**

ニューヨーク州民の夫婦が州内で購入した新車のアウディを運転してアリゾナ州に転居する途中、オクラホマ州内で交通事故に遭遇して負傷した。夫婦はニュー・ヨーク州法人である自動車販売業者(オクラホマ州内では営業していない)に対してオクラホマ州裁判所で製造物責任訴訟を開始した。自動車販売業者は限定的に出廷し、合衆国憲法第14 修正デュー・プロセス・クローズに制限されたオクラホマ州ロング・アーム法に違反すると主張して、裁判管轄を争った。連邦裁判所は、デュー・プロセス・クローズに従い、オクラホマ州裁判所は自動車販売業者に対して対人裁判管轄を行使できな



いと判断した。

本判決以後、「ストリーム・オヴ・コマー」が対人管轄確立のための十分条件であるか否かについて、下級審判決の意見が分かれた。

This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. .... The Due Process Clause, by ensuring the "orderly administration of the laws," .... gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable.

When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," .... it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor .... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. [444 U.S. 286, 297-298]

#### ヘリコプテロス事件(Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984))

コロンビア法人のヘリコプテロスは、ペルーのコンソーシアム（ヒューストンを本拠とするジョイント・ベンチャーの分身）と契約を結び、ペルー国内の石油パイプライン敷設現場へ送る人員・資材のヘリコプター空輸を請負った。ヘリコプターがペルー国内で墜落し、複数のアメリカ国民が死亡した後、近親遺族らがコンソーシアム、テキサスのヘリコプター製造者、及びヘリコプテロスに対して、不法死亡訴訟をテキサス州裁判所で起こした。テキサス州裁判所にヘリコプテロスに対する裁判管轄があるか否かが争われた事件である。連邦最高裁は、ヘリコプテロスとテキサス州の接触は「系統的かつ組織的」業務接触を構成しないため、一般裁判管轄の要件を満たさない（合衆国憲法第14 修正デュー・プロセス・クローズの要件を満たさない）と判断した。（特定裁判管轄を行使できないのは当然のこと。）

The Due Process Clause of the Fourteenth Amendment operates to limit the power of a State to assert in personam jurisdiction over a nonresident defendant. .... Due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." .... When a controversy is related to or "arises out of" a defendant's contacts with the forum, the Court has said that a "relationship among the defendant, the forum, and the litigation" is the essential foundation of in personam jurisdiction. ([Footnote 8] It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, The State is exercising "specific jurisdiction" over the defendant. ....)

Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the State and the foreign corporation. ([Footnote 9] When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's conduct with the forum, the State has been said to be exercising "general jurisdiction" over the defendant.) [466 U.S. 408, 413-414]

We .... must explore the nature of [the defendants'] contact with [the forum State] to determine whether they constitute the kind of continuous and systematic general business contacts. .... [466 U.S. 408, 416]

[U]nilateral activity of another party or a third party person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction. [466 U.S., 417]

### **バーガー・キング事件(Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985))**

ファスト・フード・レストラン・チェーンをフランチャイズ方式で展開するフロリダ州法人がミシガン州の傘下店舗経営者を州籍相違を以てフロリダ州内の連邦地裁に訴えた事件である。連邦地裁の裁判管轄有無が争われた。連邦最高裁は、フロリダ州ロング・アーム法(州内に於ける契約違反者は、何人たりとも、州内裁判所の管轄に服する。)に基づく連邦地裁の裁判管轄行使は合衆国憲法第14 修正デュー・プロセス・クローズに違反しないと判断した。本判決は、多くの要件を比較考量する必要性を示している。

"Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, th[e] 'fair warning' requirement [that a particular activity may subject him to the jurisdiction of a foreign sovereign] is satisfied if the defendant has "purposefully

directed" his activities at residents of the forum, .... and the litigation results from alleged injuries that 'arise out of or relate to' those activities" [471 U.S. 462, 471-472]

"[W]here the defendant 'deliberately' has engaged in significant activities within a [forum] State, .... or has created 'continuing obligations' between himself and residents of the forum, .... he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State." [471 U.S. 462, 475-476]

"If the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests, .... or on "conceptualistic . . . theories of the place of contracting or of performance," .... Instead, we have emphasized the need for a 'highly realistic' approach that recognizes that a 'contract' is 'ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.' It is these factors - prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing – that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum." [471 U.S. 462, 478-479]

#### **アサヒ・メタル事件(Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987))**

ホンダ製オートバイで州間高速道路を走行中にトラクターと衝突して重傷を負い同乗者の妻を失った運転者が、事故原因は後部タイヤの欠陥にあったと主張して台湾のタイヤ・メーカーその他に対して、事故発生地のカリフォルニア州裁判所に提起した製造物責任訴訟である。台湾のタイヤ・メーカーは、損害賠償責任の填補を求めて、日本法人のタイヤ・ヴァルヴ・メーカーに対し同一訴訟内で交差請求を行った。ヴァルヴ・メーカーのアサヒ・メタルは、アメリカ市場に直接製品を流通させたことはない。主たる訴訟（製造物責任）は、和解乃至棄却で決着し、交差請求だけが残った。カリフォルニア州ロング・アーム法によれば、「州憲法または合衆国憲法に違反しない限り如何なる根拠を以てしても」、州裁判所は裁判管轄を行使できる。アサヒ・メタルは第14 修正のデュー・プロセス・クローズに違反すると主張して州裁判所の裁判管轄を争った。裁判管轄の行使を容認した州最高裁の判断を連邦最高裁が覆したのが本判決である。

判決はオコンナー判決4 部、ブレナン判決、及びスティーヴンス判決の全6 部から成る。オコンナー判決第1 部の事実関係については全9 判事合意、判決理由に関する第

第2部Aは4判事による相対多数意見、同じく判決理由に関する第2部Bは8判事合意による法廷意見、原判決破棄差し戻しに関する第3部は4判事による相対多数意見であり、第2部Aに反対するブレナン判決には3判事が同意し、同じく第2部Aに反対するスティーヴンス判決には2判事が同意している。

このように、第2部Aが法廷意見でなかったため、本判決以降の下級審判決はストリーム・オヴ・コマーズに関して（つまり、プラス要件の要否について）意見が分かれる（サーキット・ディヴァイド）こととなった。

**Part II-A** (Justice O'Connor, joined by The Chief Justice Rehnquist, Justice Powell and Justice Scalia)

"Since World-Wide Volkswagen, lower courts have been confronted with cases in which the defendant acted by placing a product in the stream of commerce, and the stream eventually swept defendant's product into the forum State, but the defendant did nothing else to purposefully avail itself of the market in the forum State. Some courts have understood the Due Process Clause, as interpreted in World-Wide Volkswagen, to allow an exercise of personal jurisdiction to be based on no more than the defendant's act of placing the product in the stream of commerce. Other courts have understood the Due Process Clause .... to require the action of the defendant to be more purposefully directed at the forum State than the mere act of placing a product in the stream of commerce." [480 U.S. 102, 110]

"We now find this latter position to be consonant with the requirements of due process. The "substantial connection, .... between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State. .... The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." [480 U.S. 102, 112]

**Part II-B (The Opinion of the Court,** Justice O'Connor, joined by The Chief Justice Rehnquist, Justice Brennan, Justice White, Justice Marshall, Justice Placmun Justice Powell, and Justice Powell)

"The strictures of the Due Process Clause forbid a state court to exercise personal jurisdiction over [the defendant] under circumstances that would offend 'traditional notions of fair play and substantial justice.'

"We have previously explained that the determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.'

"A consideration of these factors in the present case clearly reveals the unreasonableness of the assertion of jurisdiction over [the defendant], even apart from the question of the placement of goods in the stream of commerce." [480 U.S. 102, 113-114]

"Considering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction by a [State] court over [the defendant] in this instance would be unreasonable and unfair. " [480 U.S. 102, 116]

**JUSTICE BRENNAN** (with whom Justice White, Justice Marshall, and Justice Blackmun join, concurring in part and concurring in the judgment)

I do not agree with the interpretation in Part II-A of the stream-of-commerce theory, nor with the conclusion that Asahi did not "purposely avail itself of the California market." .... I do agree, however, with the Court's conclusion in Part II-B that the exercise of personal jurisdiction over Asahi in this case would not comport with "fair play and substantial justice," .... This is one of those rare cases in which "minimum requirements inherent in the concept of 'fair play and substantial justice' . . . defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged in forum activities." ..... I therefore join Parts I and II-B of the Court's opinion, and write separately to explain my disagreement with Part II-A. .... [480 U.S. 102, 116]

The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State. Accordingly, most courts and commentators have found that jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and have not required a showing of additional conduct. [480 U.S. 102, 118]

**JUSTICE STEVENS** (with whom Justice White and Justice Blackmun join, concurring in

part and concurring in the judgment.)

The judgment of the Supreme Court of California should be reversed for the reasons stated in Part II-B of the Court's opinion. While I join Parts I and II-B, I do not join Part II-A for two reasons. First, it is not necessary to the Court's decision. An examination of minimum contacts is not always necessary to determine whether a state court's assertion of personal jurisdiction is constitutional. .... Part II-B establishes, after considering the factors set forth in World-Wide Volkswagen Corp. v. Woodson, .... that California's exercise of jurisdiction over Asahi in this case would be "unreasonable and unfair." .... This finding alone requires reversal; this case fits within the rule that "minimum requirements inherent in the concept of 'fair play and substantial justice' may defeat .... the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities." .... Accordingly, I see no reason in this case for the plurality to articulate "purposeful direction" or any other test as the nexus between an act of a defendant and the forum State that is necessary to establish minimum contacts. [480 U.S. 102, 121-122]