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The Home-State Test for General Personal Jurisdiction

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The Home-State Test for General Personal Jurisdiction

*Howard M. Erichson**

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I. INTRODUCTION

What, if anything, gives a state sufficiently plenary power over a person that the state may adjudicate claims against the person even if the claims arose elsewhere? Particularly with regard to corporations, this basic question has lacked a clear answer. The standard for general jurisdiction remains unsatisfactorily vague, with ambiguous Supreme Court guidance on doctrine and even less

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explanation of *why* such jurisdiction exists. The coming Supreme Court term offers the Court an opportunity to clarify.

The case before the Supreme Court—*DaimlerChrysler AG v. Bauman*¹—presents an easy jurisdictional question on its facts. Argentine plaintiffs sued a German corporation based on events that occurred in Argentina. They filed their lawsuit in California,² although the claims did not arise out of California and the defendant had no physical presence in California. Unless the Supreme Court takes an expansive view of imputed contacts through corporate subsidiaries, which would be surprising, the Court likely will reverse the Ninth Circuit’s ruling that California had general jurisdiction over DaimlerChrysler AG. Nevertheless, the case offers the Court an opportunity to clarify the general jurisdiction standard it announced two years ago in *Goodyear Dunlop Tires, S.A. v. Brown*.³

Goodyear, too, was an easy case.⁴ The Supreme Court unanimously rejected the state court ruling that North Carolina had general jurisdiction over three foreign Goodyear subsidiaries.⁵ But despite the ease of the *Goodyear* case, Justice Ginsburg’s opinion for the Court offered a revised formulation of the standard for general jurisdiction over corporations. Rather than rely solely on earlier language about “continuous and systematic” contacts,⁶ Justice Ginsburg drew an analogy to an individual’s domicile and described

1. 644 F.3d 909, 921–24 (9th Cir. 2011), *cert. granted*, 133 S. Ct. 1995 (2013).

2. The case was brought in the U.S. District Court for the Northern District of California. Because Federal Rule of Civil Procedure 4(k) permits a federal court to exercise personal jurisdiction if a state court could do so, the case raises the issue of the territorial limits of California courts. See FED. R. CIV. P. 4(k)(1)(A).

3. 131 S. Ct. 2846 (2011). Before 2011, the Supreme Court had addressed general jurisdiction over corporations only twice, in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), and *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

4. For commentaries noting the one-sidedness of *Goodyear* in light of prior decisions, see Michael H. Hoffheimer, *General Personal Jurisdiction After Goodyear Dunlop Tires Operations, S.A. v. Brown*, 60 KAN. L. REV. 549, 573 (2012); Linda J. Silberman, *Goodyear and Nicastro: Observations from a Transnational and Comparative Perspective*, 63 S.C. L. REV. 591, 612 (2012); Allan R. Stein, *The Meaning of “Essentially at Home” in Goodyear Dunlop*, 63 S.C. L. REV. 527, 527 (2012).

5. *Goodyear*, 131 S. Ct. at 2857.

6. See *Helicopteros*, 466 U.S. at 416 (finding that defendant lacked “the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*”); *Perkins*, 342 U.S. at 445 (noting that defendant had been carrying on “continuous and systematic” business in Ohio, where it had established temporary headquarters while its foreign operations were halted). When the Supreme Court introduced the “continuous and systematic” language, it was in the context of specific jurisdiction, not general jurisdiction. See *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945) (“‘Presence’ in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on”); *id.* at 320 (noting that International Shoe’s activities in Washington “were systematic and continuous throughout the years in question”).

the general jurisdiction standard in terms of whether the corporation was “essentially at home in the forum State.”⁷ The Court concluded that North Carolina could not assert general jurisdiction because the defendants were “in no sense at home in North Carolina.”⁸

The home-state test for general jurisdiction makes sense but remains both under-theorized and ambiguously expressed. In *DaimlerChrysler*, the Court has a chance not only to express the home-state test with greater clarity, but also to explain *why* the home-state test makes sense for general jurisdiction.⁹ In addition, the *DaimlerChrysler* case raises questions about imputation of corporate contacts. Explicit adoption of a home-state test would allow the Court to explain why the contacts of an agent do not establish general jurisdiction over a principal.

II. WHY THE HOME-STATE TEST MAKES SENSE FOR GENERAL JURISDICTION

A. Specific Jurisdiction versus General Jurisdiction

In both *Goodyear* and *DaimlerChrysler*, judges failed to appreciate fully the difference between specific and general jurisdiction. In *Goodyear*, this failure led to the North Carolina courts’ misapplication of the stream-of-commerce theory. In *DaimlerChrysler*, it led to the Ninth Circuit’s misapplication of agency principles. In each case, the courts seemed to treat general jurisdiction as merely a variation on specific jurisdiction with a higher level of contacts.¹⁰

The crucial difference between specific jurisdiction and general jurisdiction is not a quantitative difference in the level of required contacts; it is a qualitative difference in the basis of the state’s

7. *Goodyear*, 131 S. Ct. at 2851.

8. *Id.* at 2857.

9. The Supreme Court could decline to address the jurisdictional questions in *DaimlerChrysler* because the plaintiffs’ primary substantive claims may have been undermined by *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013) (addressing the Alien Tort Statute) and *Mohamad v. Palestinian Authority*, 132 S. Ct. 1702 (2012) (addressing the Torture Victims Protection Act). This article proceeds on the assumption that the Supreme Court will take the opportunity to address the important question on which it granted certiorari.

10. Perhaps the problem can be traced to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). In that case, which was one of specific jurisdiction, the Supreme Court introduced the concept of general jurisdiction by mentioning that “there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.” *Id.* at 318. Notably, *Pennoyer v. Neff*, 95 U.S. 714 (1878) made no distinctions based on whether claims were related or unrelated to the forum state. As Allan Stein points out, “the distinction between general and specific jurisdiction is an artifact of the post-*International Shoe* model.” Stein, *supra* note 4, at 534.

adjudicatory power. Specific jurisdiction is justified by a state's regulatory interest in the conduct at issue. General jurisdiction is justified by the relationship between a state and those who make the state their home. Although both specific jurisdiction and general jurisdiction concern a defendant's due process right not to be subject to the coercive power of an unrelated sovereign, the two types of jurisdiction involve different ways that a sovereign may relate to the controversy.

Specific jurisdiction begins with the connection between the controversy and the forum state. By acting purposefully toward the state, the defendant subjects itself to the state's adjudicatory power with regard to claims that arise out of that conduct. The Supreme Court explained in *International Shoe* that in-state conduct "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 that requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."¹¹

General jurisdiction, by contrast, does not begin with a relationship between the controversy and the forum state. Rather, the logic of general jurisdiction begins and ends with the relationship between the defendant and the forum state. By definition, the controversy need not have any connection to the forum state other than through the state's relationship with the defendant. General jurisdiction asks whether the defendant's relationship with the forum state is such that the relationship alone gives the state power to adjudicate any controversy with regard to that defendant.

B. General Jurisdiction and the Citizen-State Relationship

General jurisdiction is premised on the idea that a connection between a person and a sovereign may be significant enough that it gives the sovereign a kind of plenary power over the person, a power that extends beyond state boundaries. The logic of general jurisdiction is that a state has power over its citizens that is not entirely confined to in-state activities. A state may tax its citizens' out-of-state income,¹²

11. *International Shoe*, 326 U.S. at 319 (emphasis added); see also *J. McIntyre Machinery v. Nicastro*, 131 S. Ct. 2780, 2789 (2011) (Kennedy, J., plurality) ("The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct.").

12. See *Lawrence v. State Tax Comm'n of Miss.*, 286 U.S. 276, 279 (1932) (holding that a state has power to tax its citizens "on income derived wholly from activities carried on outside the state," because "domicile, in itself, establishes a basis for taxation."); Meir Feder, *Goodyear, "Home," and the Uncertain Future of Doing Business Jurisdiction*, 63 S.C. L. REV. 671, 691 (2012).

summon its citizens to return for jury duty,¹³ and in other ways regulate its citizens' out-of-state activities.¹⁴

In *Milliken v. Meyer*, the Supreme Court explained jurisdiction in terms of each state's power over its citizens. Drawing a connection to "the authority of the United States over its absent citizens," the Court explained that "the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state."¹⁵ The incidents of domicile include amenability to suit, and "[t]he responsibilities of [state] citizenship arise out of the relationship to the state which domicile creates."¹⁶ The *Milliken* opinion does not draw clear distinctions among *residence*, *domicile*, and *citizenship*, but the mix of terminology does not obscure the Court's straightforward reasoning: when a person establishes a home-state relationship with a state, the relationship gives the state certain powers over the person, including power to subject the person to judgments of the state's courts.

C. Corporations and the Home-State Test for General Jurisdiction

A similar logic extends to corporations. Although some rights and duties of citizenship, such as voting and jury service, do not extend to corporations, the home-state idea at the heart of *Milliken* makes sense in the corporate context. When a corporation establishes a home-state relationship with a state, the relationship comes with responsibilities including amenability to suit. In contrast to specific jurisdiction, where the state has an interest in the conduct at issue in the dispute, general jurisdiction concerns the state's interest in the defendant itself by virtue of the defendant's relationship with the forum state.

13. See, e.g., THE MASSACHUSETTS JURY SYSTEM, <http://www.mass.gov/courts/sjc/jury-system-b.html> (last visited July 18, 2013) (noting jury eligibility of temporarily absent residents and college students).

14. See *Skiriotes v. Florida*, 313 U.S. 69, 77 (1941) ("If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress."); Stein, *supra* note 4, at 538; see also I. Glenn Cohen, *Circumvention Tourism*, 97 CORNELL L. REV. 1309, 1328–35 (2012) (analyzing, in the context of medical tourism, the extent to which a home country may prohibit conduct by its citizens abroad).

15. *Milliken v. Meyer*, 311 U.S. 457, 463–64 (1940).

16. *Id.* at 464; see also *Feder*, *supra* note 12, at 691 ("The only basis our law has traditionally recognized for state authority over conduct unrelated to the state is the unique relationship between a state and its citizens or residents."); Stein, *supra* note 4, at 539 ("[G]iving the home state plenary *judicial* authority over its citizens comports with a broader, universal authority that states normally possess over their citizens.").

Although *home-state* may not offer perfect precision, it aptly captures the idea of general jurisdiction. Particularly in contrast to the *continuous and systematic* language that has befuddled courts for too long, the home-state test provides better grounding.

What is a corporation's home state? The soundest answer, although less neat than other possible formulations, is that a corporation is at home in its state of incorporation as well as its principal place of business, and that in exceptional cases a corporation may have more than one principal place of business for this purpose. The state of incorporation should be considered a home state for general jurisdiction. When an entity exists because it was created under the laws of a particular state, the state's assertion of judicial power over it does not constitute territorial overreaching.¹⁷ Principal place of business, too, should be considered a corporation's home state for purposes of general personal jurisdiction. The relationship of a corporation to its primary home is one that gives the state a generalized interest in the conduct and liability of the corporation. In this sense, General Motors Company is at home in Michigan and the Walt Disney Company is at home in California, even though each of these companies was incorporated in Delaware and thus also could be subject to general jurisdiction there.

In exceptional circumstances, a corporation might have more than one home state even in addition to its state(s) of incorporation. A company may have dual headquarters, each of which could reasonably be considered home.¹⁸ Or the company may have executive control in one state but primary operations in another. Unlike the definition of principal place of business under the diversity jurisdiction statute,¹⁹ there is no reason why general jurisdiction cannot encompass multiple home states in special cases.

When thinking about the possibility of multiple home states, the analogy to citizenship is helpful. While the citizen-state relationship need not be perfectly exclusive, neither can it be diffuse.

17. See Stein, *supra* note 4, at 547 (explaining such jurisdiction in terms of voluntary submission to the state's authority).

18. See Phred Dvorak, *Why Multiple Headquarters Multiply*, WALL ST. J., Nov. 19, 2007 (discussing the growth of internationally dual-headquartered companies). The Halliburton Company, for example, maintains headquarters in both Houston and Dubai. See Clifford Krauss, *Halliburton to Move Headquarters to Dubai*, N.Y. TIMES, Mar. 11, 2007. One could reasonably name Texas, the United Arab Emirates, and Delaware (its state of incorporation) as Halliburton's homes, because the company has affirmatively established a home-state relationship with each of these sovereigns. But it would stretch the concept beyond recognition to say that Halliburton's home state is each of the dozens of states and nations where it maintains substantial offices or operations.

19. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) (interpreting "principal place of business" in 28 U.S.C. § 1332(c)(1) to mean the corporation's nerve center).

Individuals often maintain subnational or supranational citizenship alongside their national citizenship.²⁰ Moreover, the United States and many other nations recognize the possibility of dual-national citizenship.²¹ To the extent these versions of multiple citizenship permit allegiance to more than one sovereign, they presume at most a small number of states with which the citizen forms such a relationship.

In sum, just as *Milliken* justified general jurisdiction over individuals in terms of the relationship between a person and the person's home state, a home-state test makes sense when applied to corporations.²² As far as due process is concerned, a state court may assert power over a person (whether individual or corporate) in the person's home state. A corporation should be considered at home in its state of incorporation as well as its principal place of business. In exceptional cases, a corporation might have more than one principal place of business for purposes of general jurisdiction, but a home state should be where the corporation maintains its headquarters or its principal operations, not merely someplace where a corporation does business or maintains a physical presence.

III. GOODYEAR'S HESITANT ARTICULATION OF THE HOME-STATE TEST

In *Goodyear*, the Supreme Court stopped short of articulating what I am calling the home-state test. Three times, the Court used the phrase *at home*, but never did the Court explicitly state that this was the test courts should apply to determine whether the exercise of

20. See, e.g., U.S. CONST., amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."); Treaty on the Functioning of the European Union, art. 20(1) ("Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.").

21. See *Talbot v. Janson*, 3 U.S. 133, 169 (1795) (opinion of Rutledge, C.J.) ("[A] man may, at the same time, enjoy the rights of citizenship under two governments."); U.S. STATE DEPT SERVS., *Dual Nationality*, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html (visited July 18, 2013) ("The concept of dual nationality means that a person is a citizen of two countries at the same time. . . . The U.S. Government recognizes that dual nationality exists but does not encourage it as a matter of policy because of the problems it may cause.").

22. Michael Hoffheimer writes that "[t]he restriction of general jurisdiction over a corporation to a place where it is 'at home' is troubling." Hoffheimer, *supra* note 4, at 583. Calling the "at home" language a "neologism lacking any fixed legal meaning," *id.* at 583, he argues that "the law recognizes that a corporation may have significant legal relationships with more than one state." *Id.* at 584. While Hoffheimer is correct that "at home" lacks a fixed legal meaning, the phrase offers more precision than the notion of continuous and systematic contacts, which has held a disturbingly wide range of meanings in the cases. Hoffheimer is also correct that corporations have significant legal relationships with multiple states. But the question is not what justifies power in connection with conduct related to the forum state; the question is what sort of relationship justifies *plenary* judicial power.

general jurisdiction complies with due process.²³ Moreover, the Court qualified its language in ways that could call into question whether it meant to adopt a home-state test.

The closest the Court came in *Goodyear* to announcing a home-state test was in the fourth paragraph of the opinion. Having set up the connection between the state's coercive power and defendants' due process rights, and having drawn the distinction between specific and general jurisdiction, Justice Ginsburg wrote:

A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State.²⁴

There are four problems with treating this sentence as a home-state test for corporate general jurisdiction. First, by stating that a court may assert jurisdiction "when" rather than "*only* when," the sentence arguably states a sufficient condition rather than a necessary one. Second, Justice Ginsburg used the qualifier "*essentially* at home." Third, by invoking "continuous and systematic," she seemed to embrace the old standard. And fourth, by framing the statement as one about jurisdiction over "foreign (sister-state or foreign country) corporations," she implied that general jurisdiction extends beyond in-state corporations.

Nonetheless, it makes sense to derive a home-state test from *Goodyear*. The phrase *essentially at home* can be understood as accommodating *Perkins v. Benguet Consolidated Mining Co.*,²⁵ the only case in which the Supreme Court approved general jurisdiction over a corporation. In *Perkins*, the defendant was a foreign corporation that temporarily ran its business from Ohio, where the company president was located, while operations in the Philippines were shut down during wartime. The Benguet mining company was "essentially at home" in Ohio while headquartered there, despite its permanent home abroad. The *Goodyear* language about general jurisdiction over foreign corporations similarly can be explained by *Perkins*, but also may simply refer to any defendant incorporated out-of-state but with its principal place of business in the forum state.

23. The Court also signaled a home-state test by citing Lea Brilmayer's work on the significance of unique affiliations. *Goodyear*, 131 S. Ct. at 2851 (citing Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721 (1988)).

24. *Id.* (quoting *Int'l Shoe v. Washington*, 326 U.S. 310, 317 (1945)).

25. 342 U.S. 437 (1952).

The *Goodyear* Court's next reference to "at home" omitted the word "essentially" and the language about foreign corporations. Significantly, the Court framed the concept by drawing an analogy to individual domicile: "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home."²⁶ But even this language invites questions, because the *paradigm* forum for general jurisdiction is not necessarily the *only* forum.

When the *Goodyear* Court came around to stating that North Carolina could not exercise general jurisdiction over the defendants, it stated the holding in terms that first seemed to embrace a home-state test. But the very next sentence recalled the "continuous and systematic" language, leaving some doubt about which test the Court was applying.²⁷ Although the *Goodyear* Court's multiple references to whether the defendants were "at home" in North Carolina leave a strong impression of a home-state test for corporate general jurisdiction, each reference falls short of an outright adoption of such a test. If the Court means to adopt such a test, then in *DaimlerChrysler* it should embrace the home-state test unequivocally.

Notwithstanding the complicating language in *Goodyear*, it seems clear the Court meant to embrace at least some version of a home-state test. In *J. McIntyre Machinery v. Nicastro*,²⁸ a specific jurisdiction case decided the same day, the Justices' references to general jurisdiction support the view that *Goodyear* endorsed a home-state test. Justice Kennedy's plurality opinion, citing *Goodyear*, stated, "Citizenship or domicile—or, by analogy, incorporation or principal place of business for corporations—also indicates general submission to a State's powers. . . . By contrast, those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter."²⁹ Justice Ginsburg's dissent, also citing *Goodyear*, likewise assumed a home-state test: "McIntyre UK surely is not subject to general (all-purpose) jurisdiction in New Jersey courts, for that foreign-country corporation is hardly 'at home' in New Jersey."³⁰

26. *Goodyear*, 131 S. Ct. at 2853–54.

27. *See id.* at 2857 ("Unlike the defendant in *Perkins*, whose sole wartime business activity was conducted in Ohio, petitioners are in no sense at home in North Carolina. Their attenuated connections to the State fall far short of the "continuous and systematic general business contacts" necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State.") (citations omitted).

28. 131 S. Ct. 2780 (2011).

29. *Id.* at 2787 (Kennedy, J., plurality).

30. *Id.* at 2798 (Ginsburg, J., dissenting).

IV. IMPLICATIONS OF THE HOME-STATE TEST

The home-state test should resolve several questions about general jurisdiction. First, it suggests that corporations are not subject to general jurisdiction in states other than their states of incorporation and principal places of business, even if they conduct regular and substantial business in the forum state. Second, it informs how courts should consider the contacts of related corporate entities, particularly suggesting the inapplicability of agency principles to general jurisdiction. Finally, the home-state test should lead courts to abandon the so-called “reasonableness prong” for general jurisdiction.

A. Out-of-State Corporations with Substantial In-State Presence

It should be clear by now that the Due Process Clause prohibits general jurisdiction in cases like *Goodyear* and *DaimlerChrysler* where defendants lack any substantial presence in the forum state. But the more interesting question is the extent to which courts constitutionally may exercise general jurisdiction over defendants who *do* have a substantial presence in the forum state.

Starbucks Corporation, for example, has over four hundred company-owned stores in the State of New York,³¹ among its many thousands of locations around the world. If a customer were to sue Starbucks based on an injury at one of its New York shops, or if a New York employee were to sue Starbucks for wrongful termination, no one would dispute that a New York court may render a binding judgment against Starbucks. This would be a straightforward application of specific jurisdiction. But if an *Alabama* customer were to sue Starbucks in New York based on an injury in Alabama, or if an Alabama employee were to sue in New York for wrongful termination, would the New York court have jurisdiction over Starbucks?

Prior to 2011, many courts and commentators would have said yes. Based on Starbucks’s continuous and systematic contacts, many would have said that New York courts could assert general jurisdiction even though the company is headquartered and incorporated in the State of Washington. Indeed, courts have permitted general jurisdiction over companies with much, much less presence in a state than Starbucks in New York.³² But such “doing

31. *NY Court: Starbucks Baristas Must Share Tips*, USA TODAY (June 26, 2013), available at <http://www.usatoday.com/story/money/business/2013/06/26/ny-court-starbucks-baristas-must-share-tips/2459851/> (reporting that Starbucks had 413 company-owned stores in New York at the end of its last fiscal year, and that the company has nearly 18,000 stores in 60 countries).

32. See, e.g., *Lakin v. Prudential Sec's, Inc.*, 348 F.3d 704, 706 (8th Cir. 2003); *Michigan Nat'l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 465–67 (6th Cir. 1989). From a comparative

business” jurisdiction should not survive *Goodyear*. As discussed above, the best reading of *Goodyear*—a reading that the Court should adopt in *DaimlerChrysler*—permits general jurisdiction over corporations only in their home states. Despite the fact that one need only walk a block or two in many Manhattan neighborhoods to feel the presence of Starbucks, the company’s home state is undeniably Washington. In contrast to Washington’s general judicial power over its home-state corporation, nothing justifies New York’s assertion of power over Starbucks for claims unrelated to New York.

B. The Home-State Test and Imputed Corporate Contacts

Persons—whether individual or corporate—often act through agents. For a corporation, it is the *only* way to act. Long-arm statutes extend jurisdiction to persons who, either directly or through an agent, transact business in a state or engage in certain other conduct directed at the state.³³ This is the stuff of specific jurisdiction. One who transacts business in a state through an agent, or commits a tort within a state through an agent, and so on, may be subject to the power of that state’s courts to adjudicate claims that arise out of those contacts. Such assertions of judicial power over out-of-state defendants do not violate the Due Process Clause.

The Ninth Circuit in *Bauman v. DaimlerChrysler*, however, used the agency concept much more troublingly. That court held that DaimlerChrysler was subject to the *general* jurisdiction of California through the imputed contacts of its indirect subsidiary Mercedes-Benz USA (“MBUSA”) because MBUSA was DaimlerChrysler’s agent.³⁴ According to the Ninth Circuit, general jurisdiction over a parent company may be established by the in-state operations of a subsidiary as long as the parent-subsidiary relationship meets either the “alter ego test” or the “agency test.”³⁵

If general jurisdiction depends upon a home-state relationship between the defendant and the forum state, then the Ninth Circuit’s application of agency principles makes no sense. One cannot be *at home* through an agent. One cannot be a *citizen* through an agent.

perspective, broad “doing business” general jurisdiction is a distinctly U.S. doctrine. See Silberman, *supra* note 4, at 611.

33. See, e.g., DEL. CODE ANN. tit. 10 § 3104 (2013) (“As to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident, or a personal representative, *who in person or through an agent . . .*”) (emphasis added).

34. *Bauman v. DaimlerChrysler*, 644 F.3d 909, 921–24 (9th Cir. 2011), *cert. granted*, 133 S. Ct. 1995 (2013).

35. *Id.* at 920.

When a principal acts through an agent who is a citizen of a state, the principal does not thereby become a citizen. The principal's conduct through the agent may subject the principal to specific jurisdiction for claims arising out of the conduct, but it does not alter the principal's *home state*. While an alter ego theory might provide a basis for treating related corporations as a single entity for purposes of determining home state, it is hard to see how agency principles can do the same. The Ninth Circuit in *DaimlerChrysler* relied entirely on an agency theory,³⁶ but the home-state logic of general jurisdiction does not support this approach.³⁷

C. The Home-State Test and the Reasonableness Prong

In the *DaimlerChrysler* case, the Ninth Circuit conducted a lengthy analysis of whether it would be "reasonable" for California to assert personal jurisdiction over DaimlerChrysler. As some other courts have done, the Ninth Circuit treated the reasonableness prong as a necessary step in its general jurisdiction analysis.³⁸

The Supreme Court has made it clear that due process requires an analysis of whether the exercise of jurisdiction would be reasonable, at least for specific jurisdiction.³⁹ Thus, specific jurisdiction requires a two-prong analysis. Not only must the case arise out of defendant's purposeful contact with the forum state, but also the assertion of jurisdiction must be reasonable, taking into account the burden on the defendant, the interest of the plaintiff, and the interest of the forum state. Although uncommon, cases such as

36. *Bauman*, 644 F.3d at 620.

37. Moreover, although in the *Bauman* case (litigated prior to the Supreme Court's *Goodyear* decision) the parties did not dispute that MBUSA itself was subject to general jurisdiction in California, *id.* at 914, this assumption is questionable after *Goodyear*. MBUSA was a Delaware limited liability company with its principal place of business in New Jersey. Although it had offices and operations in California and conducted significant business there, no one would describe California as MBUSA's home state. Similarly, in *Goodyear*, the parties did not contest North Carolina's general jurisdiction over Goodyear USA, an Ohio corporation. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2850 (2011) ("Goodyear USA, which had plants in North Carolina and regularly engaged in commercial activity there, did not contest the North Carolina court's jurisdiction over it."). In light of the Supreme Court's opinion in that case, the assumption may have been misguided.

38. *Bauman*, 644 F.3d at 924 ("Because we hold that there is ample evidence of an agency relationship between DCAG and MBUSA, and, thus, that MBUSA's contacts with California may be imputed to DCAG, we now must turn to the second part of our test: whether the assertion of jurisdiction is 'reasonable.'").

39. See *Asahi Metal Industry Co. v. Sup. Ct. of Cal.*, 480 U.S. 102, 113 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985). The Supreme Court has not addressed whether the reasonableness prong applies to general jurisdiction. See Hoffheimer, *supra* note 4, at 589 n.229.

*Asahi Metal Industry v. Superior Court*⁴⁰ arise, in which the defendant's burden is so significant and the plaintiff's and forum's interests so slight, that the assertion of jurisdiction would be unreasonable even if the claim arose out of a purposeful contact with the state.

If general jurisdiction is sensibly confined to home-state defendants, there should be no need for a reasonableness prong. The very idea of general jurisdiction is that a state's adjudicatory power over its own citizens is reasonable, without regard to the particularities of the case. Whether the defendant is an individual domiciliary, an entity incorporated by the forum state, or a corporation that makes the forum its principal place of business, the state can reasonably assert territorial jurisdiction over that defendant. Application of the reasonableness prong to general jurisdiction is an artifact of an overenthusiastic embrace of "doing business" jurisdiction. The home-state test should eliminate the need for this prong by eliminating the problematic assertions of power that it was meant to address.

V. CONCLUSION

In *Goodyear*, the Supreme Court applied a home-state test for general personal jurisdiction over corporations, but did so with enough ambiguity that clarification is needed. *DaimlerChrysler* provides the opportunity. The home-state test aptly captures the idea behind general jurisdiction. The relationship between a person (individual or corporate) and the person's home state gives the state a sufficiently plenary interest to warrant exercising adjudicatory power over the person with regard to any dispute.

Like citizenship, the home-state relationship need not be perfectly exclusive, but neither can it be diffuse. An individual's home state is her state of domicile. A corporation's home state is its state of incorporation as well as its principal place of business, which in exceptional cases may be multiple (such as companies with dual headquarters or whose nerve center and primary operations are in different states). Outside of defendant's home state(s), jurisdiction must be premised on the state's regulatory interest in the conduct at issue, not a plenary power over the defendant's person. Thus, while individuals and corporations may be subject to *specific* personal jurisdiction wherever they direct their conduct, they should be subject to *general* personal jurisdiction only in their home states.

40. 480 U.S. 102 (1987).

The home-state rationale for general jurisdiction reveals the illogic of imputing a subsidiary's contacts to a parent corporation based on agency principles. While specific jurisdiction often is premised on contacts through agents, it makes no sense to apply the same concept to general jurisdiction. One can direct conduct toward a state through an agent, but one cannot be *at home* through an agent. Finally, the home-state test provides a basis to jettison the reasonableness prong that some courts have applied to general jurisdiction.