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# American Conflicts Law

## Cases and Materials

**Seventh Edition**

## 2021–2022 Supplement

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# Introduction to 2021 Supplement

This supplement covers the period from July 2019, when the course book went to press, through July 15, 2021. In addition to including citations or short descriptions of significant new judicial decisions and scholarly commentary, the supplement updates developments of the RESTATEMENT (THIRD) OF CONFLICTS OF LAW and, in the material on personal jurisdiction in Chapter 10, contains an excerpt of Ford Motor Co. v. Montana Eighth Judicial District Court, ___ U.S. ___, 141 S. Ct. 1017 (2021).

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Chapter 2

# Choice of Law: Some General Problems

## A. Selecting a Choice-of-Law Theory

### 2. Currie's Governmental Interest Analysis

[Add at the end of Note 3(f) on page 37.]

In *Hairu Chen v. Los Angeles Truck Centers*, LLC, 444 P.3d 727 (Cal. 2019), injured Chinese passengers and surviving relatives of deceased passengers sued an Indiana manufacturer and a California tour bus distributor for damages caused by a bus rollover accident occurring in Arizona. The trial court ruled that Indiana law applied under interest analysis. After the Indiana defendant settled, leaving the California distributor the sole defendant, the court refused to reconsider the choice-of-law decision at the behest of the plaintiffs, and entered judgment on a special jury verdict in favor of the distributor. The California Court of Appeals reversed and remanded, but the California Supreme Court reversed the Court of Appeals, holding that the trial court was not required to reconsider the choice-of-law analysis after the Indiana party's settlement. The court did not hold that a trial court could never revisit a choice-of-law decision after a settlement with one defendant, nor that there are no circumstances in which it would be required to do so. It only held that in the present case, the plaintiffs had failed to demonstrate that their acceptance of a settlement with one defendant constituted an exceptional circumstance requiring a reconsideration of the choice-of-law decision. Should a post-event pre-judgment settlement ever be allowed to change interest analysis? Does this depend on what form interest analysis takes in a state? (See Note 4 in the casebook on pages 37–38.) For example, if the analysis shows that California has no interest, how could dismissal of an out-of-state defendant create one? On the other hand, if California's interest is just not as strong as that of another state, dismissal of a party from the other state might mean California's interest is the strongest one left in the case, might it not?

[Add at the end of Note 4 on page 38.]

California follows a version of interest analysis called "comparative impairment" analysis. Under that version of interest analysis, a court must first determine whether there is a true or false conflict, and if there is a true conflict, apply comparative impairment analysis to determine which state's interest would be more impaired if its law is not applied. *Rustico v. Intuitive Surgical, Inc*., 993 F.3d 1085 (9th Cir. 2021), was a products liability action in California federal court based on an injury that occurred from a product in Connecticut. The California two-year statute of limitations barred the action, but the Connecticut three-year limitations statute did not. The district court held the case to be a false conflict, because California

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had the only interest in having its statute of limitations apply because the only defendant was from California and the action was in California. However, the court did not consider whether Connecticut had an interest in having its three-year statute applied. The Ninth Circuit Court of Appeals affirmed. The court of appeals held it was error for the district court not to consider whether Connecticut had an interest, but held that the district court was ultimately correct that California had the only legitimate interest in having its statute applied. Both the California and Connecticut statutes had the purpose of protecting parties and courts from the assertion of stale claims. However, the plaintiffs did not demonstrate that Connecticut's longer limitations period was supported by a particularly strong interest in protecting its citizens from defective products. Alternatively, the court of appeals held that even if Connecticut had an interest, California's interest was stronger and thus would be the most impaired if its law were not applied. This last conclusion was seemingly based on the fact that all the defendant's relevant activities in manufacturing and identifying the dangers of the product occurred in California, thus implicating California's defendant-protection interest in applying its shorter statute. *See* 993 F.3d at 1095, n. 5. After examining the Conflicts problems with statutes of limitation in Chapter 2.B.4 of the casebook, including the court-protection and party-protection policies that support such statutes, reevaluate the district court and court of appeals approaches to the California methodology. When a forum's shorter statute of limitations is supported both by court-protection and party-protection policies and the defendant is also from the forum, won't the forum always have the strongest policies in having its statute applied? If a plaintiff can still sue in the state with the longer statute (the plaintiff in Rustico probably could not), and if the forum's limitations dismissal is not "with prejudice" and would preclude a suit on the claim there, why shouldn't dismissal be automatic in cases like this?

## 4. Leflar's Choice-Influencing Considerations

[Add at the end of Note 5 on page 49.]

Philippe Matthew Roy, *Recovering Art Looted by the Nazis: A Comparative View of Two Cases*, UIC JOHN MARSHALL L. REV. 547, 562 (2021) (describing Rhode Island as applying Leflar's approach and the Second Restatement's "most significant relationship approach for tort claims").

## 8. The Restatement of the Law Third

[Add after the second paragraph on page 68.]

On June 7, 2021, the RESTATEMENT OF THE LAW (THIRD) CONFLICT OF LAWS (Tentative Draft No. 2, March 25, 2021) was presented to the membership of the American Law Institute for consideration. Tentative Draft No. 2 contains Chapter 1 (Introduction) §§ 1.01 – 1.04 (containing definitions and limitations), Chapter 2 (Domicile) §§ 2.01 – 2.09 (containing definitions and rules pertaining to the domicile of natural and juridical persons), and Chapter 5 (Choice of Law) Topic 2 (Foreign Law), §§ 5.06 – 5.08 (dealing with proof of foreign law). At the June 7 meeting, the membership approved the tentative draft, subject to such editorial modifications as the reporters deem necessary based on the comments and questions

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posed at the meeting. This means that some provisions of the tentative draft will change, as least in minor ways. Any changes will be described in later editions of this supplement. Further examination of the provisions of Tentative Draft No. 2 will be examined in this supplement below in Chapter 1G (Ascertaining a Person's Domicile) and H (Proving Foreign Law).

# B. Classifying Rules as Substantive or Procedural

## 2. Burden of Proof

[Add at the end of Note 1 on page 80.]

*But see* Dale A. Nance, *Choice of Law for Burdens of Proof*, 46 N.C. J. INT'L L. 235 (2021) (examining the functions of the burden of production and the burden of persuasion and arguing that in choice of law, the burden of production should be governed by forum law in both its allocation and the severity of the burden and the burden of persuasion should be governed by the substantive law chosen by the forum to govern whenever that burden regulates the fact-finder's inferences about an ultimate material fact).

[Add at the end of Note 3 on page 81.]

*Hisert v. Haschen*, 980 F.3d 6 (1st Cir. 2020) (diversity action in which court describes Massachusetts' approach as a "functional approach to choice-of-law analysis"; court employs general significant contacts analysis rather than the particular provisions of the Second Restatement §§ 133–34 to select Massachusetts law of fraud over Maryland's even though the two states had significantly different burdens of proof).

## 4. Statutes of Limitation

[Add at the end of Note 1 on page 90.]

*See also Auld v. Forbes*, 848 S.E.2d 876 (Ga. 2020) (wrongful death action arising out of drowning in Belize; court holds Belize law applicable under lex loci rule; court also holds that Georgia public policy does not forbid application of that law, including its shorter statute of limitations; Georgia did not provide an action for wrongful death for out-of-state injuries).

[Add at the end of Note 2 on page 90.]

*Grosshart v. Kansas City Power & Light Co*., 623 S.W.3d 160 (Mo. Ct. App. 2021) (statutes of repose are substantive for choice-of-law purposes; statutes of repose run from some legislatively selected point in time that is unrelated to the accrual of any cause of action and reflect a legislative policy that a time

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should come beyond which a potential defendant will be immune from liability for past acts and omissions).

[Add the following case reference at the end of Note 3 on page 97.]

*See also Reclaimant v. Deutsch*, 211 A.3d 976 (Conn. 2019) (action for unjust enrichment in Connecticut, which is a Second Restatement jurisdiction; court held that Delaware substantive law was applicable because of a choice-of-law clause in the contract selecting that law; however, the court also held that Connecticut's limitations law applied to the case rather than Delaware's because the choice-of-law clause did not select procedural law; the limitations period here was procedural because the plaintiff's claim was created by the common law and was not newly created by statute; period was governed by the doctrine of latches).

[Add at the end of Note 4(b) on page 99.]

*See also Portfolio Recovery Assocs., LLC v. Sanders*, 462 P.3d 263 (Ore. 2020) (Oregon Act provides for the application of another state's limitation period if the action is based on the substantive law of the other state; if the laws of Oregon and the other state do not conflict, the common law of conflict of laws provided that Oregon's law would apply, and that common law rule has not been repealed; thus, because there is no conflict between the "account-stated law" of Virginia and that of Oregon, Oregon's substantive law and its statute of limitations applied and the action is not time barred).

[Add at the end of Note 3 on page 108.]

*See also De Prins v. Michaeles*, 942 F.3d 521 (1st Cir. 2019) (diversity case transferred from Arizona to Massachusetts; court applies Arizona law to govern statute of limitations, using a general significant contact analysis under what it perceives to be Arizona law rather than the particularized *DeLoach* analysis under § 142.)

## C. Characterizing The Issues

[Add at the end of Note 2 on page 130.]

*Hale v. Emerson Electric Co*., 942 F.3d 401 (8th Cir. 2019) (Missouri choice-of-law rules apply the most significant relationship test, but that test applies different factors for claims sounding in tort, contract, and unjust enrichment; because district court did not conduct an individualized choice-of-law analysis, case must be remanded for that analysis so meaningful appellate review can be conducted).

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# D. Protecting the Forum's Public Policy

[Add at the end of Note 2 on page 137.]

For further discussion of Coon see Joanna B. Apolinsky & Jeffrey A. Van Detta, *The Antebellum Iron of Georgia's Lex Fori Doctrine: O Where Have You Gone, Brainerd Currie?*, 50 CUMBERLAND L. REV. 407 (2019-2020); Gary J. Simson, *An Essay on Illusion and Reality in the Conflict of Laws*, 70 MERCER L. REV. 819 (2019).

# G. Ascertaining a Person's Domicile

[Add at the end of the last paragraph on page 171 before Problem 2.20.]

Tentative Draft No. 2 of the ALI Third Conflicts project, discussed in section 2.A.8 of this supplement above, was presented to the ALI membership on May 7, 2021 and approved by the membership, subject to such editorial modifications as the reporters deem necessary based on the comments and questions posed at the meeting. The draft contains nine sections pertaining to domicile, as opposed to the ten sections in Preliminary Draft No. 2. Section 2.01 contains general rules about the domicile of natural and juridical persons for purposes of resolving conflict-of-laws issues. Section 2.02 contains general rules on presumptions about the place where a natural person is domiciled, while § 2.03 contains the definition of the domicile for a natural person. Section 203(1) states that a natural person's domicile is the place where the person's life is centered "and the person is physically present." The "physical presence" language is perhaps misplaced here, and does not mean that a person loses their domicile in a particular place if they are temporarily absent from the place. Rather, as Comment b makes clear, this reference is simply designed to refer to the requirement that a person simultaneously be physically present in a place when the objective evidence shows that their life is centered there. Nevertheless, this language is awkward and may be altered or moved to another section, such as § 2.06, which directly deals with change of domicile. Of particular importance is § 2.03(2), which states that where a person's life is centered (their domicile) is determined by objective evidence of the person's "domestic, familial, social, religious, economic, professional, and civic activities." This is designed to ensure that a person's intent to make a place the center of their life is made on the basis of that objective evidence of where the party has the closest relationship rather than the place that the party wishes to be their domicile. See Tentative Draft No. 2, cmt. d. Section 2.04 defines domicile of origin, while § 2.05 defines domicile of minors. Section 2.06 states that a natural person with capacity may change their domicile, while § 2.06 states that a natural person's domicile does not change because that person is compelled to be present in a place. Section 2.08 sets out the rules that govern the domicile of juridical persons, such as corporations. Section 2.09 states that, except for purposes of judgment-recognition and enforcement actions, the forum determines the domicile of natural and juridical persons according to the law of that forum.

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# H. Proving Foreign Law

[Add at the end of Note 1 on page 175.]

*See also Germaninvestments AG v. Allomet Corp*., 225 A.3d 316 (Del. 2020) (defendant did not meet its burden of proof on Austrian law to govern a forum selection clause; therefore, Delaware law applied and the clause was held permissive rather than mandatory).

[Add after Note 8(b) on page 181.]

Tentative Draft No. 2 of the ALI Third Conflicts project, discussed in Section 2.A.8 and 2.G of this supplement was presented to the ALI membership on June 7, 2021 and approved by the membership, subject to such editorial modifications as the reporters deem necessary based on the comments and questions posed at the meeting. Tentative Draft No. 2 contains Chapter 5 (Choice of Law), Topic 2 (Foreign Law), §§ 5.06 (Notice of Foreign Law). 5.07 (Information About Foreign Law), and 5.08 (Determination of Foreign Law). These provisions are substantially the same as those of Preliminary Draft No. 1 described in the principal text at pages 180 – 81.

# I. Dealing with Extraterritorial Conduct in Criminal Cases

[Add the following reference to the end of Note 5 on page 190.]

*See also Commonwealth of Pennsylvania v. Peck*, 242 A.3d 1274 (Pa. 2020) (Pennsylvania statute provided jurisdiction to prosecute a crime that occurred partly outside Pennsylvania; however, the substantive criminal statute under which the accused was prosecuted required proof that a drug delivery took place in Pennsylvania; under the latter statute the evidence was insufficient to support a conviction).

[Add at the end of Note 2 on page 199.]

For an extensive discussion of the choice of law and exclusionary rule approaches, see *Commonwealth of Pennsylvania v. Britton*, 229 A.3d 590 (Pa. 2020).

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Chapter 3

# Choice of Law: Some Constitutional Problems

[Add after Note 3 on page 233.]

4. *See also* William Baude, *Constitutionalizing Interstate Relations: The Temptation of the Dark Side*, 44 HARV. J. L. & PUB. POL'Y 57 (2021) (contrasting Court's willingness to find constitutional limits on interstate relations in sovereign immunity context in Hyatt III with its repeated reluctance to find such limits in choice of law domain).

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Chapter 4

# Choice of Law: Torts

## A. The Traditional Rules Method

[Add at the end of Note 2 on page 292, following the citation to Dowis.]

*See also Harvey v. Merchan*, ___ S.E. 2d ___, 2021 WL 2518868 (Ga. 2021) (applying traditional approach to conclude that Quebec law and Georgia law applied to tortious conduct that respectively occurred in those jurisdictions). More recently, the North Carolina Supreme Court refused to abandon the traditional system for tort claims asserting misappropriation of trade secrets. *SciGrip, Inc. v. Osae*, 838 S.E.2d 334 (N.C. 2020).

## B. The New York Experience and Approach

[Add at the end of Note 4 on page 335.]

*See also Kinsey v. N.Y. Times Co*., 991 F.3d 171 (2nd Cir. 2021) (defamation case in which court applied New York law on defendant's fair reporting privilege defense, holding that New York had the "most significant interest" partly because it "has strong policy interests in regulating the conduct of its citizens and its media," though this resulted in application of New York's "absolute" privilege instead of the "qualified" privilege of the District of Columbia, where plaintiff worked and where allegedly defamatory statement quoted in newspaper was made).

## C. Second Restatement: The Most Significant Relationship

[Add at the end of Note 7 on page 359.]

*See also Buckles v. BH Flowtest, Inc*., 476 P.3d 422 (Mont. 2020) (wrongful death case in which court applied forum law, rather than law of place of injury (North Dakota), where decedent and all but one corporate defendant were residents of forum); *First Bank of Lincoln v. Land Title of Nez Perce Cty*., 452 P.3d 835 (Idaho 2019) (court applied most significant relationship test to conclude that Idaho tort law governed claim that Idaho bank negligently disbursed proceeds of sale of Washington bowling alley).

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Chapter 5

# Choice of Law: Contracts

## A. The Traditional Approaches

[Add at the end of Note 2 on page 406.]

*See also Nationwide Prop. & Cas. Ins. Co. v. Renaissance Bliss*, LLC, 823 Fed. Appx. 815 (5th Cir. 2020) (court observes that although Georgia generally follows lex loci approach, Georgia courts do not follow common law of other states, even when otherwise required by that approach; court therefore holds that, while California was the place of performance, issue related to condition precedent for performance was not governed by California common law rule).

## B. Some Modern Approaches

### 1. When the Contract Does Not Contain a Choice-of-Law Clause

[Add to Note 1 on page 425, after sentence citing Ballard and before citation to *Tidyman's*.]

For a Fifth Circuit decision applying Texas's conflict law with more attention to § 6 principles, see *Eastern Concrete Materials, Inc. v. ACE American Insurance Co.*, 948 F.3d 289 (5th Cir. 2020) (holding that Texas—which was where insurance policy was negotiated, brokered, and delivered—had most significant relationship to issue of whether insurance policy's pollution exclusion clause applied to discharge occurring in New Jersey).

[Add at the end of Note 6 on page 428.]

*See also RSUI Indem. Co. v. Murdock*, 248 A.3d 887 (Del. 2021) (insurance coverage dispute in which court canvasses its choice-of-law precedent applying Second Restatement and emphasizes that analysis under it varies depending on "subject matter and animating purpose" of insurance policies at issue; risk insured by policies at issue there was "directors' and officer's honesty and fidelity" to corporation and its stockholders and investors," which implicated specific policies embodied in Delaware substantive law).

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[Add at the end of Note 7 on page 428.]

*See also Melmark, Inc. v. Schutt*, 206 A.3d 714 (Pa. 2019) (action by private residential facility in Pennsylvania against parents, residents of New Jersey, for costs of caring for their adult son; court held that in case before it true conflict existed between Pennsylvania and New Jersey filial support statutes; court concluded that Pennsylvania had stronger interest in applying its law).

## 2. When the Contract Contains a Choice-of-Law Clause

[Add at the end of Note 1 on page 454.]

*See also Fishback Nursery, Inc. v. PNC Bank, Inc*., 902 F.3d 932 (5th Cir. 2019) (case concerned priority of liens held by nurseries that sold trees and shrubs to bankrupt farm vis-à-vis lien held by bank that loaned money to the farm and operated it as debtor in possession; sales contract between nurseries and bankrupt farm contained choice-of-law clause; court held that clause did not govern dispute over lien priority involving bank, which was not party to the contract).

[Add at the end of Note 6 on page 459.]

*See also Pitzer Coll. v. Indian Harbor Ins. Co.*, 447 P.3d 669 (Cal. 2019) (insurance coverage dispute in which policy's choice-of-law clause chose New York law; New York law precluded coverage if insured failed to notify insurer of accident for which coverage sought, whereas California's "notice-prejudice rule" precluded coverage only if failure to give notice caused prejudice to insurer; court holds that, as applied in the case before it, choice-of-law clause violated California's fundamental public policy in enforcing its notice-prejudice rule).

[Add at the end of Note 10 on page 460.]

*See also* John F, Coyle, *A Short History of the Choice-of-Law Clause*, 91 U. COLO. L. REV. 1147 (2020); Patricia Youngblood Reyhan, *Choice of What? The New York Court of Appeals Defines the Parameters of Choice-of-Law Clauses in Multijurisdictional Cases*, 82 ALB. L. REV. 1241 (2018-2019).

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# C. Some Special Problems

## 2. The Uniform Commercial Code

[Add at the end of Note 5 on page 476.]

*See also* Ulrich G. Schroeder, *Simplification of the Commercial Process for the International Sale of Goods through the 1980 Vienna Sales Convention (CISG)*, 50 NO. 1 UCC L.J. ART. 3 (2021).

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Chapter 6

# Choice of Law: Property, Trusts, and Estates

## C. Trusts

[Add at the end of Note 3 on page 527.]

*See also Foster v. Foster*, 304 So. 3d 211 (Ala. 2020) (language in trust providing that trust would be "construed according to California law" did not mean that issues of administration of the trust had to be governed by California law; therefore, trial court was not required to consult California law to determine the propriety of a request for an accounting).

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Chapter 7

# Family Law

## A. Marriage and Its Termination

### 1. Marriage

[Add at the end of Notes 1 & 2 on page 547.]

With *Wilkins* and *In re May's Estate*, compare *In Re Marriage of Medina*, 2019 WL 7212282 (Cmw. N. Mariana Isl. 2019). H married S-1 before the Philippine Consul in Saipan, which is in the Commonwealth of the Northern Mariana Islands (CNMI). Thereafter, S-1 returned to the Philippines, where she had the first child of H. H remained in Saipan. Subsequently, H married S-2 in Chuuk, Federated States of Micronesia, H declaring in the marriage certificate that he had no previous marriages. H and S-2 returned to Saipan, where they lived continuously. H visited the Philippines twice after his marriage to S-2, where on his first visit he and S-1 conceived their second child. When H committed suicide in 2017, S-1 sought a declaration that she was the lawful wife of H in order to repatriate his remains to the Philippines. The trial court declared that CNMI law governed the validity of the marriage performed by the Philippine Consul and that the marriage was invalid under that law for failure to comply with several statutory requirements. The Supreme Court of the CNMI affirmed. The court held that the first marriage between H and S-1 did not meet several requirements of CNMI law. In the alternative, it held that if it were to perform a conflict analysis (as urged by S-1), CNMI law would apply under a Second Restatement analysis. Although S-1 had spent her life in the Philippines with S-1 and H's children, H-1 had spent his life in the CNMI and had a substantial relationship with the CNMI, not the Philippines. If the issue had concerned the validity of the marriage for purposes of determining the legitimacy of the children, say for inheritance purposes, would the result have been the same?

### 2. Divorce

[Add at the end of Note 1(a) on page 557.]

*See also Melki v. Melki*, 2020 WL 5797869 (Md. Ct. Spec. App. 2020) (unreported) (parties married in Lebanon at an Orthodox Christian church; domiciled in Maryland; in 2017, wife sought and obtained an absolute divorce from husband; husband appealed, arguing inter alia that the court had no subject-matter jurisdiction because Lebanon, where the marriage was contracted, did not permit divorce under the circumstances; the appellate court rejected this argument, holding that under the Second Restatement the divorce law of the forum applied because the parties were domiciled in Maryland).

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# C. Custody

## 1. The Uniform Child Custody Jurisdiction Enforcement Act

[Add at the end of the carryover paragraph on page 591.]

*See Roman v. Karren*, 461 P.3d 1252 (Alaska 2020) (jurisdiction attached under UCCJEA if child had lived in Alaska at least six consecutive months before dissolution proceeding commenced; original dissolution proceeding was never closed, but simply was converted into a divorce proceeding, with the same parties, case number, judge, and trial record; trial court's discretionary decision that Alaska was not an inconvenient forum was not an abuse of discretion); *Mouritsen v. Mouritsen*, 459 P.3d 476 (Alaska 2020) (expression "presently resides" in Alaska's UCCJEA provision governing exclusive continuing jurisdiction should not be interpreted as meaning physical presence, but as consistent with a "holistic" definition of domicile—a permanent home with an intention to remain; under this definition, father's transfer to an air force base in South Carolina did not destroy the court's continuing exclusive jurisdiction where father intended to retire in Alaska, Alaska was his state of residency on his pay stubs, income tax returns, voter's registration, car registrations, driver's license, and receipt of Alaska Permanent Fund Dividend); *In re Teagan K.-O.*, 242 A.3d 59 (Conn. 2020) (UCCJEA did not eliminate the territorial limitation of Connecticut court's jurisdiction to adjudicate a neglect petition involving a child "in this state"; Florida rule governing transfer of proceeding to another state as a more convenient forum did not authorize transfer of proceeding to Connecticut, which did not have jurisdiction over neglect case; and Connecticut did not have "significant connection jurisdiction" under UCCJEA).

## 3. International Child Abduction

[Add at the end of Note 6 on page 611.]

*See also* Sonja van Wichelen, *Moving Children Through Private International Law: Institutions and the Enactment of Ethics*, 53 LAW & SOC'Y REV. 671 (2019) (examining how the Hague Adoption Convention plays a central role in justifying the institution of legal adoption).

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# D. Marital Property

## 2. Party Autonomy in Marital Property Arrangements

### *b. Bilateral Party Choice*

[Add at the end of Note 3 on page 633.]

*See also Blondeau v. Baltierra*, 252 A.3d 317 (Conn. 2020) (parties' premarital agreement provided that French law would be applicable to their matrimonial regime; arbitrator disregarded this provision and distributed the parties' matrimonial home equity in accord with Connecticut law, concluding that the choice-of-law clause did not designate French law to govern the distribution of joint property; deference owed to the arbitrator's decision is not defeated simply by showing that the arbitrator misinterpreted the choice-of-law clause in the agreement; while choice-of-law clause declared that French law governed the parties' "matrimonial regime," it left this critical term undefined; therefore, under the standard for reviewing the award, the decision did not amount to an egregious or patently irrational misperformance of duty).

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Chapter 8

# Vertical Choice of Law

## B. The Erie Doctrine

[Add at the end of Note 3 on page 667.]

A more recent case involving the interaction between a federal statute and state law is *Franco v. Mabe Trucking Co., Inc.*, 3 F.4th 788 (5th Cir. 2021). Franco filed his diversity case against Mabe Trucking in a federal district court in Texas that lacked personal jurisdiction over Mabe Trucking. Rather than dismiss, the Texas district court transferred the case to a district court in Louisiana that could exercise personal jurisdiction. The question was whether the case should be dismissed as untimely. The case was indeed untimely if judged solely under Louisiana law. The Fifth Circuit, however, held that the action was timely in light of 28 U.S.C. § 1631. Section 1631 states in relevant part that after a case is transferred for "a want of jurisdiction," the case "shall proceed as if it had been filed in . . . the court to which it was transferred . . . on the date it was actually filed in . . . the court from which it was transferred." The Fifth Circuit held that Section 1631 controlled the date upon which, and the venue in which, it was filed for purposes of applying Louisiana's one-year prescriptive period; dissent argued, by analogy to *Walker v. Armco Steel Corp*. (supra Note 2(a)), that "Section 1631 is not so broad as to countermand" Louisiana law. *Franco*, 3 F.4th at 802 (Jones, J., dissenting).

[Add at the end of Note 5 on page 668.]

*See also Gallivan v. United States*, 943 F.3d 291 (6th Cir. 2019) (holding that Ohio affidavit of merit rule did not apply in claim under the Federal Tort Claims Act, in which government can be held liable under substantive law of state in which negligence occurred, because Ohio rule conflicted with FED. R. CIV. P. 8(a)).

[Add at the end of Note 6 on page 722.]

*See also Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019) (holding that Texas anti-SLAPP statute did not apply to state-law defamation claim within supplemental jurisdiction because statute conflicted with FED. R. CIV. P. 12 and 56).

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## C. Horizontal Choice of Law under Erie

[Add at the end of Note 8 on page 723.]

(e) *See also Showan v. Pressdee*, 922 F.3d 1211 (11th Cir. 2019) (holding that FED. R. CIV. P. 11 did not conflict with Georgia statute authorizing prevailing party to recover compensatory damages for assertion of frivolous claims or defenses, and that under second part of *Hanna* the Georgia statute should apply in case removed to federal court on diversity grounds).

[Add to the end of Note 4 on 727.]

For an argument that a federal court is generally better than a state court at applying the forum state's choice-of-law rules, when those rules require analyzing the relevant states' interests, see Lee Farnsworth, *Conflicts of Law, Federalism, and Institutional Competence*, 68 KAN. L. REV. 495 (2020).

## D. Ascertaining State Law

[Add at the end of carryover paragraph on page 750.]

*See also McKesson v. Doe*, 141 S. Ct. 48 (2020) (per curiam) (stating that "in exceptional circumstances" federal courts should certify questions of state law to state courts before deciding whether state law violates federal constitution); *Pitzer Coll. v. Indian Harbor Ins. Co*., 447 P.3d 669 (Cal. 2019) (answering questions certified by U.S. Court of Appeals for Ninth Circuit in decision cited supra this paragraph).

## E. Federal Common Law After Erie

[Add at end of carryover paragraph on page 751.]

*See also Smith v. RecordQuest, LLC*, 989 F.3d 513 (7th Cir. 2021) (federal court of appeals follows state intermediate court of appeals decision on state law that disagreed with federal district court's decision in that very case).

[Add at the end of Note 3(d) on page 755.]

*See also* David M. Howard, *A Revised Revisionist Position in the Law of Nations Debate*, 15 DUKE J. CONST. L. & PUB. POL'Y 53 (2020).

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Chapter 9

# Judgments

## B. Enforcement of State Judgments

### 2. Basic Rules and Exceptions

#### *a. Basic Rules*

[Add at the end of Note 1 on page 770.]

*See also In the Matter of the Cleopatra Cameron Gift Trust, Dated May 26, 1998*, 931 N.W.2d 244 (S.D. 2019) (upon divorce judgment, trust ordered in California to make support payments directly to former husband; situs of trust later changed to South Dakota; trial court determined that under spendthrift provisions of trust, direct payments to husband were not permissible; Supreme Court of South Dakota affirmed, holding that full faith and credit did not require enforcing state to follow the mechanisms for enforcement of the judgment-rendering state, and the determination by the trial court about how the payments were to be made was an enforcement procedure).

#### *b. Exceptions and Potential Exceptions to the Basic Rules*

(5) Statutes of Limitation

[Add at the end of Note 3 on page 835.]

In *Boudette v. Boudette*, 453 P.3d 893 (Mont. 2019), a former wife registered in Montana an Arizona divorce decree that required the former husband to pay her a sum certain for her share of the parties' community property. Several years later the former husband moved to extinguish the judgment because the Arizona statute of limitations for enforcing judgments had expired. The Montana trial court agreed with the husband, but the Montana Supreme Court reversed, holding that Montana's ten-year statute of limitations on enforcement of judgments applied rather than the five-year Arizona statute. This result was produced by the language of the Uniform Enforcement of Foreign Judgments Act, which provided that registered foreign judgments may be enforced or satisfied in the same manner as a judgment of a Montana district court, and the limitations period for enforcement of judgments "of any court of record . . . of any state" in Montana is ten years. Apart from the interpretive meshing of the Montana statutes in the case, does it make sense in the abstract for a court to enforce a judgment that

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could not be enforced in the judgment-rendering state? Should the party seeking enforcement have to seek to extend or revive the judgment where it was rendered before seeking enforcement in another state?

(7) Administrative Adjudications

[Add at the end of Note 5 on page 853.]

*See Bahra v. County of San Bernardino*, 945 F.3d 1231 (9th Cir. 2019) (state administrative proceedings receive the same preclusive effect in federal court that they would receive in state court; under California law, decisions by administrative agencies have preclusive effect if they have a sufficiently judicial character and the elements of claim and issue preclusion are satisfied; former county employee had a full and fair opportunity to litigate his termination before the county's civil service commission and thus the judgment precluded his § 1983 First Amendment retaliation claim against the county).

(8) Nonfinal and Modifiable Judgments

[Add after Note 2(f) on page 860.]

(g) A final judgment is res judicata and enforceable, even if it is being appealed. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 13, cmt. f (1982). See also Id. § 16. However, if the judgment is actually reversed in the judgment-rendering state, it is no longer enforceable elsewhere. *See Lewis v. Brim*, 473 P.3d 694 (Alaska 2020) (Oregon judgments reversed on appeal were not entitled to recognition and enforcement in Alaska).

## C. Enforcement of Federal Judgments

[Add at the end of Note 1 on page 868.]

*See also Woo v. Spackman*, 988 F.3d 47 (1st Cir. 2021) (42 U.S.C. § 1963 does not allow registration of state judgments in federal court).

[Add the following Notes after Note 4 on page 869.]

5. *In Re: Bair Hugger Forced Air Warming Devices Products Liab. Litig*., 999 F.3d 534 (8th Cir. 2021), was a products liability action in which the plaintiff commenced an action in a multidistrict litigation (MDL) in federal court in Minnesota. The action was based on diversity jurisdiction. Four days later, the plaintiff commenced a duplicative action in a Texas state court through different attorneys. After

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negotiations between the plaintiff and the defendant in the MDL litigation, the parties entered an agreement to dismiss the MDL action "with prejudice." Several years later, after the Texas state action had progressed, the defendant filed an amended answer asserting the affirmative defense of claim preclusion based on the MDL dismissal. The defendant also moved before the MDL court for an injunction to prohibit the plaintiff from litigating the dismissed claims in the Texas action. The MDL court granted this injunction under the "relitigation exception" to the federal Anti-Injunction Act, 28 U.S.C. § 2283, which prohibits federal courts from enjoining state-court proceedings unless the injunction falls within one of three exceptions to the Act. (The Anti-Injunction Act is briefly discussed in Note 4 on page 1075 of the casebook.) The Eighth Circuit Court of Appeals held that the Anti-Injunction Act exception was not applicable to state claims that were not previously presented to and decided by a federal court. In this case, the court reasoned that the preclusion issue would be decided by federal common law which adopted state law, as in the *Semtek* case discussed in the casebook on pages 679-81 & 867. This presented the additional question of which state law, Minnesota or Texas, governed the preclusion question. On this issue, the court reasoned that the plaintiff had only brought his initial action in the Minnesota federal court because the MDL court had issued an order requiring that all actions that would otherwise be brought in other federal courts against Bair Hugger (3M) be brought there. If this order had not existed, the court reasoned, the plaintiff would have sued in Texas federal court. (How did the court know the plaintiff would have sued in Texas federal rather than Texas state court?). The Eighth Circuit then held (i) that Texas choice-of-law rules would govern the preclusion question, (ii) that Texas applied the most significant contacts analysis of the Second Restatement, (iii) that Texas would choose Texas "substantive law" to govern preclusion, and (iv) that Texas law would not provide for claim preclusion under the circumstances. Note that this applied the *Semtek* principle to adopt as federal common law the state law of a state (Texas) in which no federal or state court had ever rendered a judgment. Note also the oddity that the court applied a Texas choice-of-law analysis to determine whether Texas would apply Texas law or Minnesota law to govern the effect of a dismissal by a Minnesota federal court. (Ordinarily, a court simply applies the preclusion law of the court that rendered the judgment, or at least guesses at what that law would be.) Would it be permissible for the Texas state court to reach a different conclusion on the claim preclusion question, or is that now impossible due to the issue preclusive effect of the Eighth Circuit's decision?

6. Note that class members who do not properly opt out of class actions under Rule 23 can be precluded from bringing individual actions. *See Matter of Navistar MaxxForce Engines Mktg., Sales Practices, and Products Liab. Litig*., 990 F.3d 1048 (7th Cir. 2021) (class member's failure to opt out of class action in a timely fashion barred ability to litigate in state court; continued litigation in state court did not excuse failure to follow proper opt out procedure).

## D. Enforcement of Foreign Nation Judgments

[Add at the end of Note 1 on page 874.]

*The State of the Netherlands v. MD Helicopters, Inc*., 478 P.3d 230 (Ariz. 2020) (the term "law" in the Uniform Foreign-Country Money Judgments Recognition Act provision excluding from the Act

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judgments originating in a country that has not "adopted or enacted a reciprocal law" is a broad term that includes a foreign country's jurisprudence and is not limited to legislative enactments).

[Add at the end of Note 4(a) on page 875.]

*See also Akhmedova v. Akhmedov*, 139 N.Y.S.3d 33 (N.Y. App. Div. 2020) (alleged due process violation by British court did not preclude New York's recognition and enforcement of that court's money judgment in a matrimonial proceeding; New York's statute on recognition of foreign country judgments could not be relied on to challenge the legal processes employed in a particular litigation on due process grounds—here British court compelling husband's attorney to respond to wife's subpoena and testify in the British proceedings).

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Chapter 10

# Personal Jurisdiction

## A. Service of Process and Notice

### 2. Long-Arm Process

[Add at the end of carryover paragraph on page 889.]

*See also Rockefeller Tech. Invs. (Asia) VII v. Changzhou SinoType Tech. Co*., 460 P.3d 764 (Cal. 2020) (Hague Convention applies only when forum state law requires formal service sent abroad, and parties' agreement constituted waiver of formal service under California law, so Convention does not apply).

## B. Fourteenth Amendment Restrictions on State-Court Jurisdiction

### 2. Development of Modern Restrictions on State-Court Jurisdiction

#### *b. General and Specific Jurisdiction*

[Add at the end of Note 9 on page 942.]

*See also Chufen Chen v. Dunkin' Brands, Inc*., 954 F.3d 492 (2d Cir. 2020) (revising past interpretation of state registration statute, which had interpreted registration as consent to general jurisdiction, in light of Daimler).

[Add at the end of Note 3 on page 983.]

*See also* Jesse M. Cross, *Rethinking the Conflicts Revolution in Personal Jurisdiction*, 105 MINN. L. REV. 679 (2020) (arguing that minimum contacts test is grounded in sovereignty considerations, not fairness considerations, but with sovereignty understood as power to protect state's community).

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[Add at the end of Note 4(a) on page 984.]

As of 2021, however, it no longer is true that the Court has not addressed this question of what it means for a claim to "relate to" the defendant's contacts with the state. *See Ford Motor Company v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), as addressed later in this Supplement.

[Add at the end of Note 6 on page 986.]

*See also Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A*., 972 F.3d 1101 (9th Cir. 2020) (discussing relationship of tort and contract tests, and defending tests that look to "the parties' entire course of dealing, not solely the particular contract or tortious conduct giving rise to the claim").

[Add at the end of Note 3 on page 995.]

*See also Curry v. Revolution Lab'ys, LLC*, 949 F.3d 385 (7th Cir. 2020) (sales of product via interactive website, including in Illinois, that allegedly infringe trademark sufficient for jurisdiction); *XMission, L.C. v. Fluent LLC*, 955 F.3d 833 (10th Cir. 2020) (emails sent to over one thousand Utah residents did not create personal jurisdiction in Utah over sending company).

[Add at the end of Note 4(b) on page 1022.]

On the complex relationship between notice and personal jurisdiction in the Court's jurisprudence since *Pennoyer*, see Robin J. Effron, *The Lost Story of Notice and Personal Jurisdiction*, 74 N.Y.U. ANN. SURV. AM. L. 23 (2018).

[Add after Note 5 on page 1022.]

6. In *Walden*, the Court emphasizes that the relationship among the defendant, the forum, and the litigation must be grounded in "contacts that the defendant himself" has with the forum. Under this standard, if one participant in a conspiracy has such contacts with the forum, is that sufficient for an assertion of jurisdiction over the participant's co-conspirators as well? For state supreme courts concluding that it is, see, *e.g*., *Raser Techs., Inc. by & through Houston Phoenix Grp., LLC v. Morgan Stanley & Co., LLC*, 2019 UT 44, 449 P.3d 150 (2019); *Tricarichi v. Coop. Rabobank, U.A*., 440 P.3d 645 (Nev. 2019).

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[Add after Problem 10.12 on page 1023.]

**Ford Motor Company v. Montana Eighth Judicial District Court**

Supreme Court of the United States

141 S. Ct. 1017 (2021)

JUSTICE KAGAN delivered the opinion of the Court.

In each of these two cases, a state court held that it had jurisdiction over Ford Motor Company in a products-liability suit stemming from a car accident. The accident happened in the State where suit was brought. The victim was one of the State's residents. And Ford did substantial business in the State—among other things, advertising, selling, and servicing the model of vehicle the suit claims is defective. Still, Ford contends that jurisdiction is improper because the particular car involved in the crash was not first sold in the forum State, nor was it designed or manufactured there. We reject that argument. When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit.

I

Ford is a global auto company. It is incorporated in Delaware and headquartered in Michigan. But its business is everywhere. Ford markets, sells, and services its products across the United States and overseas. In this country alone, the company annually distributes over 2.5 million new cars, trucks, and SUVs to over 3,200 licensed dealerships. . . . Ford also encourages a resale market for its products: Almost all its dealerships buy and sell used Fords, as well as selling new ones. To enhance its brand and increase its sales, Ford engages in wide-ranging promotional activities, including television, print, online, and direct-mail advertisements. No matter where you live, you've seen them: "Have you driven a Ford lately?" or "Built Ford Tough." Ford also ensures that consumers can keep their vehicles running long past the date of sale. The company provides original parts to auto supply stores and repair shops across the country. (Goes another slogan: "Keep your Ford a Ford.") And Ford's own network of dealers offers an array of maintenance and repair services, thus fostering an ongoing relationship between Ford and its customers.

Accidents involving two of Ford's vehicles—a 1996 Explorer and a 1994 Crown Victoria—are at the heart of the suits before us. One case comes from Montana. Markkaya Gullett was driving her Explorer near her home in the State when the tread separated from a rear tire. The vehicle spun out, rolled into a ditch, and came to rest upside down. Gullett died at the scene of the crash. The representative of her estate sued Ford in Montana state court, bringing claims for a design defect, failure to warn, and negligence. The second case comes from Minnesota. Adam Bandemer was a passenger in his friend's Crown Victoria, traveling on a rural road in the State to a favorite ice-fishing spot. When his friend rear-ended a snowplow, this car too landed in a ditch. Bandemer's air bag failed to deploy, and he suffered serious brain damage. He sued Ford in Minnesota state court, asserting products-liability, negligence, and breach-of-warranty claims.

Ford moved to dismiss the two suits for lack of personal jurisdiction, on basically identical grounds. According to Ford, the state court (whether in Montana or Minnesota) had jurisdiction only if the

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company's conduct in the State had given rise to the plaintiff's claims. And that causal link existed, Ford continued, only if the company had designed, manufactured, or—most likely—sold in the State the particular vehicle involved in the accident. In neither suit could the plaintiff make that showing. Ford had designed the Explorer and Crown Victoria in Michigan, and it had manufactured the cars in (respectively) Kentucky and Canada. Still more, the company had originally sold the cars at issue outside the forum States—the Explorer in Washington, the Crown Victoria in North Dakota. Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota. That meant, in Ford's view, that the courts of those States could not decide the suits.

Both the Montana and the Minnesota Supreme Courts (affirming lower court decisions) rejected Ford's argument . . . .

We granted certiorari to consider if Ford is subject to jurisdiction in these cases. We hold that it is.

II

A

The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant. The canonical decision in this area remains *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). There, the Court held that a tribunal's authority depends on the defendant's having such "contacts" with the forum State that "the maintenance of the suit" is "reasonable, in the context of our federal system of government," and "does not offend traditional notions of fair play and substantial justice." Id., at 316–317 (internal quotation marks omitted). In giving content to that formulation, the Court has long focused on the nature and extent of "the defendant's relationship to the forum State." *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty*., 137 S.Ct. 1773, 1779 (2017) (citing cases). That focus led to our recognizing two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction. See *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915, 919 (2011).

A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the State. *Ibid*. General jurisdiction, as its name implies, extends to "any and all claims" brought against a defendant. *Ibid*. Those claims need not relate to the forum State or the defendant's activity there; they may concern events and conduct anywhere in the world. But that breadth imposes a correlative limit: Only a select "set of affiliations with a forum" will expose a defendant to such sweeping jurisdiction. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). In what we have called the "paradigm" case, an individual is subject to general jurisdiction in her place of domicile. *Ibid*. (internal quotation marks omitted). And the "equivalent" forums for a corporation are its place of incorporation and principal place of business. *Ibid*. (internal quotation marks omitted) . . . . So general jurisdiction over Ford (as all parties agree) attaches in Delaware and Michigan—not in Montana and Minnesota. . . .

Specific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to a narrower class of claims. The contacts needed for this kind of jurisdiction often go by the name "purposeful availment." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). The defendant, we have said, must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The contacts must be the

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defendant's own choice and not "random, isolated, or fortuitous." *Keeton v. Hustler Magazine, Inc*., 465 U.S. 770, 774 (1984). They must show that the defendant deliberately "reached out beyond" its home—by, for example, "exploi[ting] a market" in the forum State or entering a contractual relationship centered there. *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (internal quotation marks and alterations omitted). Yet even then—because the defendant is not "at home"—the forum State may exercise jurisdiction in only certain cases. The plaintiff's claims, we have often stated, "must arise out of or relate to the defendant's contacts" with the forum. *Bristol-Myers*, 137 S.Ct., 1780 (quoting *Daimler*, 571 U.S., at 127, 134 S.Ct. 746; alterations omitted) . . . . Or put just a bit differently, "there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *Bristol-Myers*, 137 S.Ct., at 1780 (quoting *Goodyear*, 564 U.S., at 919).

These rules derive from and reflect two sets of values—treating defendants fairly and protecting "interstate federalism." *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 293 (1980) . . . . Our decision in *International Shoe* founded specific jurisdiction on an idea of reciprocity between a defendant and a State: When (but only when) a company "exercises the privilege of conducting activities within a state"—thus "enjoy[ing] the benefits and protection of [its] laws"—the State may hold the company to account for related misconduct. 326 U.S., at 319 . . . . Later decisions have added that our doctrine similarly provides defendants with "fair warning"—knowledge that "a particular activity may subject [it] to the jurisdiction of a foreign sovereign." Id. at 472 (internal quotation marks omitted); *World-Wide Volkswagen*, 444 U.S., at 297 (likewise referring to "clear notice"). A defendant can thus "structure [its] primary conduct" to lessen or avoid exposure to a given State's courts. *Id*., at 297. And this Court has considered alongside defendants' interests those of the States in relation to each other. One State's "sovereign power to try" a suit, we have recognized, may prevent "sister States" from exercising their like authority. *Id*., at 293. The law of specific jurisdiction thus seeks to ensure that States with "little legitimate interest" in a suit do not encroach on States more affected by the controversy. *Bristol-Myers*, 137 S.Ct., at 1780.

B

Ford contends that our jurisdictional rules prevent Montana's and Minnesota's courts from deciding these two suits. In making that argument, Ford does not contest that it does substantial business in Montana and Minnesota—that it actively seeks to serve the market for automobiles and related products in those States. . . . Or to put that concession in more doctrinal terms, Ford agrees that it has "purposefully avail[ed] itself of the privilege of conducting activities" in both places. *Hanson*, 357 U.S., at 253 . . . . Ford's claim is instead that those activities do not sufficiently connect to the suits, even though the resident-plaintiffs allege that Ford cars malfunctioned in the forum States. In Ford's view, the needed link must be causal in nature: Jurisdiction attaches "only if the defendant's forum conduct gave rise to the plaintiff 's claims." . . . . And that rule reduces, Ford thinks, to locating specific jurisdiction in the State where Ford sold the car in question, or else the States where Ford designed and manufactured the vehicle. . . . . On that view, the place of accident and injury is immaterial. So (Ford says) Montana's and Minnesota's courts have no power over these cases.

But Ford's causation-only approach finds no support in this Court's requirement of a "connection" between a plaintiff's suit and a defendant's activities. *Bristol-Myers*, 137 S.Ct., at 1776. That rule indeed serves to narrow the class of claims over which a state court may exercise specific jurisdiction. But not

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quite so far as Ford wants. None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do. As just noted, our most common formulation of the rule demands that the suit "arise out of or relate to the defendant's contacts with the forum." *Id*., 137 S.Ct., at 1780 (quoting *Daimler*, 571 U.S., at 127; emphasis added; alterations omitted). . . . The first half of that standard asks about causation; but the back half, after the "or," contemplates that some relationships will support jurisdiction without a causal showing. That does not mean anything goes. In the sphere of specific jurisdiction, the phrase "relate to" incorporates real limits, as it must to adequately protect defendants foreign to a forum. But again, we have never framed the specific jurisdiction inquiry as always requiring proof of causation—i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct. See also *Bristol-Myers*, 137 S.Ct., at 1779–1780, 1780–1781 (quoting *Goodyear*, 564 U.S., at 919) . . . . So the case is not over even if, as Ford argues, a causal test would put jurisdiction in only the States of first sale, manufacture, and design. A different State's courts may yet have jurisdiction, because of another "activity [or] occurrence" involving the defendant that takes place in the State. *Bristol-Myers*, 137 S.Ct., 1780, 1780–1781 (quoting Goodyear, 564 U.S., at 919).

And indeed, this Court has stated that specific jurisdiction attaches in cases identical to the ones here—when a company like Ford serves a market for a product in the forum State and the product malfunctions there. In *World-Wide Volkswagen*, the Court held that an Oklahoma court could not assert jurisdiction over a New York car dealer just because a car it sold later caught fire in Oklahoma. 444 U.S., at 295. But in so doing, we contrasted the dealer's position to that of two other defendants—Audi, the car's manufacturer, and Volkswagen, the car's nationwide importer (neither of which contested jurisdiction):

> "[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen 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 [several or all] 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." Id. at 297.

Or said another way, if Audi and Volkswagen's business deliberately extended into Oklahoma (among other States), then Oklahoma's courts could hold the companies accountable for a car's catching fire there—even though the vehicle had been designed and made overseas and sold in New York. For, the Court explained, a company thus "purposefully avail[ing] itself" of the Oklahoma auto market "has clear notice" of its exposure in that State to suits arising from local accidents involving its cars. *Ibid*. And the company could do something about that exposure: It could "act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are [still] too great, severing its connection with the State." *Ibid*.

Our conclusion in *World-Wide Volkswagen*—though, as Ford notes, technically "dicta," . . . —has appeared and reappeared in many cases since . . . .

To see why Ford is subject to jurisdiction in these cases (as Audi, Volkswagen, and Daimler were in their analogues), consider first the business that the company regularly conducts in Montana and Minnesota. . . . Small wonder that Ford has here conceded "purposeful availment" of the two States' markets. . . . By every means imaginable—among them, billboards, TV and radio spots, print ads, and direct mail—Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias. Ford cars—again including those two models—are available for sale,

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whether new or used, throughout the States, at 36 dealerships in Montana and 84 in Minnesota. And apart from sales, Ford works hard to foster ongoing connections to its cars' owners. The company's dealers in Montana and Minnesota (as elsewhere) regularly maintain and repair Ford cars, including those whose warranties have long since expired. And the company distributes replacement parts both to its own dealers and to independent auto shops in the two States. Those activities, too, make Ford money. And by making it easier to own a Ford, they encourage Montanans and Minnesotans to become lifelong Ford drivers.

Now turn to how all this Montana- and Minnesota-based conduct relates to the claims in these cases, brought by state residents in Montana's and Minnesota's courts. Each plaintiff's suit, of course, arises from a car accident in one of those States. In each complaint, the resident-plaintiff alleges that a defective Ford vehicle—an Explorer in one, a Crown Victoria in the other—caused the crash and resulting harm. And as just described, Ford had advertised, sold, and serviced those two car models in both States for many years. (Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong "relationship among the defendant, the forum, and the litigation"—the "essential foundation" of specific jurisdiction. *Helicopteros*, 466 U.S., at 414 (internal quotation marks omitted). That is why this Court has used this exact fact pattern (a resident-plaintiff sues a global car company, extensively serving the state market in a vehicle, for an in-state accident) as an illustration—even a paradigm example—of how specific jurisdiction works. See *Daimler*, 571 U.S., at 127, n. 5.

The only complication here, pressed by Ford, is that the company sold the specific cars involved in these crashes outside the forum States, with consumers later selling them to the States' residents. Because that is so, Ford argues, the plaintiffs' claims "would be precisely the same if Ford had never done anything in Montana and Minnesota." . . . Of course, that argument merely restates Ford's demand for an exclusively causal test of connection—which we have already shown is inconsistent with our caselaw. . . . And indeed, a similar assertion could have been made in *World-Wide Volkswagen*—yet the Court made clear that systematic contacts in Oklahoma rendered Audi accountable there for an in-state accident, even though it involved a car sold in New York. . . . So too here, and for the same reasons, . . . —even supposing (as Ford does) that without the company's Montana or Minnesota contacts the plaintiffs' claims would be just the same.

But in any event, that assumption is far from clear. For the owners of these cars might never have bought them, and so these suits might never have arisen, except for Ford's contacts with their home States. Those contacts might turn any resident of Montana or Minnesota into a Ford owner—even when he buys his car from out of state. He may make that purchase because he saw ads for the car in local media. And he may take into account a raft of Ford's in-state activities designed to make driving a Ford convenient there: that Ford dealers stand ready to service the car; that other auto shops have ample supplies of Ford parts; and that Ford fosters an active resale market for its old models. The plaintiffs here did not in fact establish, or even allege, such causal links. But cf. post, at 1033–1034 (ALITO, J., concurring in judgment) (nonetheless finding some kind of causation). Nor should jurisdiction in cases like these ride on the exact reasons for an individual plaintiff's purchase, or on his ability to present persuasive evidence about them. But the possibilities listed above—created by the reach of Ford's Montana and Minnesota contacts—underscore the aptness of finding jurisdiction here, even though the cars at issue were first sold out of state.

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For related reasons, allowing jurisdiction in these cases treats Ford fairly, as this Court's precedents explain. In conducting so much business in Montana and Minnesota, Ford "enjoys the benefits and protection of [their] laws"—the enforcement of contracts, the defense of property, the resulting formation of effective markets. *International Shoe*, 326 U.S., at 319. All that assistance to Ford's in-state business creates reciprocal obligations—most relevant here, that the car models Ford so extensively markets in Montana and Minnesota be safe for their citizens to use there. Thus our repeated conclusion: A state court's enforcement of that commitment, enmeshed as it is with Ford's government-protected in-state business, can "hardly be said to be undue." *Ibid*. . . . And as *World-Wide Volkswagen* described, it cannot be thought surprising either. An automaker regularly marketing a vehicle in a State, the Court said, has "clear notice" that it will be subject to jurisdiction in the State's courts when the product malfunctions there (regardless where it was first sold). 444 U.S., at 297 . . . . Precisely because that exercise of jurisdiction is so reasonable, it is also predictable—and thus allows Ford to "structure [its] primary conduct" to lessen or even avoid the costs of state-court litigation. *World-Wide Volkswagen*, 444 U.S., at 297.

Finally, principles of "interstate federalism" support jurisdiction over these suits in Montana and Minnesota. *Id*., at 293. Those States have significant interests at stake—"providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors," as well as enforcing their own safety regulations. *Burger King*, 471 U.S., at 473; see *Keeton*, 465 U.S., at 776. Consider, next to those, the interests of the States of first sale (Washington and North Dakota)—which Ford's proposed rule would make the most likely forums. For each of those States, the suit involves all out-of-state parties, an out-of-state accident, and out-of-state injuries; the suit's only connection with the State is that a former owner once (many years earlier) bought the car there. In other words, there is a less significant "relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S., at 284 (internal quotation marks omitted). So by channeling these suits to Washington and North Dakota, Ford's regime would undermine, rather than promote, what the company calls the Due Process Clause's "jurisdiction-allocating function." . . .

C

[In this portion of the opinion, the Court explained why its decision was consistent with those in *Bristol-Myers* and *Walden*.]

. . . .

Here, resident-plaintiffs allege that they suffered in-state injury because of defective products that Ford extensively promoted, sold, and serviced in Montana and Minnesota. For all the reasons we have given, the connection between the plaintiffs' claims and Ford's activities in those States—or otherwise said, the "relationship among the defendant, the forum[s], and the litigation"—is close enough to support specific jurisdiction. *Walden*, 571 U.S., at 284 (internal quotation marks omitted). The judgments of the Montana and Minnesota Supreme Courts are therefore affirmed.

It is so ordered.

JUSTICE ALITO, concurring in the judgment.

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. . . .

. . . . The Court properly rejects [Ford's] argument, and I agree with the main thrust of the Court's opinion. My only quibble is with the new gloss that the Court puts on our case law. Several of our opinions have said that a plaintiff's claims "'must arise out of or relate to the defendant's contacts'" with the forum . . . . The Court parses this phrase "as though we were dealing with language of a statute," *Reiter v. Sonotone Corp*., 442 U.S. 330, 341 (1979), and because this phrase is cast in the disjunctive, the Court recognizes a new category of cases in which personal jurisdiction is permitted: those in which the claims do not "arise out of " (*i.e*., are not caused by) the defendant's contacts but nevertheless sufficiently "relate to" those contacts in some undefined way . . . .

This innovation is unnecessary and, in my view, unwise. To say that the Constitution does not require the kind of proof of causation that Ford would demand—what the majority describes as a "strict causal relationship," . . . —is not to say that no causal link of any kind is needed. And here, there is a sufficient link. It is reasonable to infer that the vehicles in question here would never have been on the roads in Minnesota and Montana if they were some totally unknown brand that had never been advertised in those States, was not sold in those States, would not be familiar to mechanics in those States, and could not have been easily repaired with parts available in those States. . . . The whole point of those activities was to put more Fords (including those in question here) on Minnesota and Montana roads. The common-sense relationship between Ford's activities and these suits, in other words, is causal in a broad sense of the concept, and personal jurisdiction can rest on this type of link without strict proof of the type Ford would require. When "arise out of" is understood in this way, it is apparent that "arise out of" and "relate to" overlap and are not really two discrete grounds for jurisdiction. The phrase "arise out of or relate to" is simply a way of restating the basic "minimum contacts" standard adopted in *International Shoe*.

[Then he argues that recognizing "relate to" as an independent basis for specific jurisdiction provides little guidance to lower courts about the limits the phrase imposes on jurisdiction, beyond "just the sort of rough causal connection" described above.]

I would leave the law exactly where it stood before we took these cases, and for that reason, I concur in the judgment.

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, concurring in the judgment.

Since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), this Court's cases have sought to divide the world of personal jurisdiction in two. [He here outlines general and specific jurisdiction.]

While our cases have long admonished lower courts to keep these concepts distinct, some of the old guardrails have begun to look a little battered. Take general jurisdiction. If it made sense to speak of a corporation having one or two "homes" in 1945, it seems almost quaint in 2021 when corporations with global reach often have massive operations spread across multiple States. To cope with these changing economic realities, this Court has begun cautiously expanding the old rule in "'exceptional case[s].'" *BNSF R. Co. v. Tyrrell*, 137 S.Ct. 1549, 1558 (2017).

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Today's case tests the old boundaries from another direction. Until now, many lower courts have proceeded on the premise that specific jurisdiction requires two things. First, the defendant must "purposefully avail" itself of the chance to do business in a State. Second, the plaintiff's suit must "arise out of or relate to" the defendant's in-state activities. Typically, courts have read this second phrase as a unit requiring at least a but-for causal link between the defendant's local activities and the plaintiff's injuries. . . .

Now, though, the Court pivots away from this understanding. . . . The majority admits that "arise out of" may connote causation. But, it argues, "relate to" is an independent clause that does not.

Where this leaves us is far from clear. For a case to "relate to" the defendant's forum contacts, the majority says, it is enough if an "affiliation" or "relationship" or "connection" exists between them. . . . But what does this assortment of nouns mean? Loosed from any causation standard, we are left to guess. The majority promises that its new test "does not mean anything goes," but that hardly tells us what does. . . . In some cases, the new test may prove more forgiving than the old causation rule. But it's hard not to wonder whether it may also sometimes turn out to be more demanding. Unclear too is whether, in cases like that, the majority would treat causation and "affiliation" as alternative routes to specific jurisdiction, or whether it would deny jurisdiction outright.

. . . .

With the old *International Shoe* dichotomy looking increasingly uncertain, it's hard not to ask how we got here and where we might be headed.

Before *International Shoe*, it seems due process was usually understood to guarantee that only a court of competent jurisdiction could deprive a defendant of his life, liberty, or property. In turn, a court's competency normally depended on the defendant's presence in, or consent to, the sovereign's jurisdiction. . . .

*International Shoe*'s emergence may be attributable to many influences, but at least part of the story seems to involve the rise of corporations and interstate trade . . . .

In many ways, *International Shoe* sought to start over. . . . In place of nearly everything that had come before, the Court sought to build a new test focused on "'traditional notions of fair play and substantial justice.'" *International Shoe*, 326 U.S., at 316.

It was a heady promise. But it is unclear how far it has really taken us. Even today, this Court usually considers corporations "at home" and thus subject to general jurisdiction in only one or two States. All in a world where global conglomerates boast of their many "headquarters." The Court has issued these restrictive rulings, too, even though *individual* defendants remain subject to the old "tag" rule, allowing them to be sued on any claim anywhere they can be found. Burnham, 495 U.S., at 610–611. Nearly 80 years removed from *International Shoe*, it seems corporations continue to receive special jurisdictional protections in the name of the Constitution. Less clear is why.

Maybe, too, *International Shoe* just doesn't work quite as well as it once did. For a period, its specific jurisdiction test might have seemed a reasonable new substitute for assessing corporate "presence," a way to identify those out-of-state corporations that were simply pretending to be absent from jurisdictions where they were really transacting business. When a company "purposefully availed"

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itself of the benefits of another State's market in the 1940s, it often involved sending in agents, advertising in local media, or developing a network of on-the-ground dealers, much as Ford did in these cases. *E.g.*, *International Shoe*, 326 U.S., at 313–314. But, today, even an individual retiree carving wooden decoys in Maine can "purposefully avail" himself of the chance to do business across the continent after drawing online orders to his e-Bay "store" thanks to Internet advertising with global reach. . . . A test once aimed at keeping corporations honest about their out-of-state operations now seemingly risks hauling individuals to jurisdictions where they have never set foot.

Perhaps this is the real reason why the majority introduces us to the hypothetical decoy salesman. . . . [M]aybe the majority resists that conclusion because the old test no longer seems as reliable a proxy for determining corporate presence as it once did. Maybe *that's* the intuition lying behind the majority's introduction of its new "affiliation" rule. . . .

If that is the logic at play here, I cannot help but wonder if we are destined to return where we began. Perhaps all of this Court's efforts since *International Shoe*, including those of today's majority, might be understood as seeking to recreate in new terms a jurisprudence about corporate jurisdiction that was developing before this Court's muscular interventions in the early 20th century. Perhaps it was, is, and in the end always will be about trying to assess fairly a corporate defendant's presence or consent. International Shoe may have sought to move past those questions. But maybe all we have done since is struggle for new words to express the old ideas . . . .

None of this is to cast doubt on the outcome of these cases. The parties have not pointed to anything in the Constitution's original meaning or its history that might allow Ford to evade answering the plaintiffs' claims in Montana or Minnesota courts. No one seriously questions that the company, seeking to do business, entered those jurisdictions through the front door. And I cannot see why, when faced with the process server, it should be allowed to escape out the back. Jackson, 5 N. Y. L. Rev., at 439. The real struggle here isn't with settling on the right outcome in these cases, but with making sense of our personal jurisdiction jurisprudence and *International Shoe*'s increasingly doubtful dichotomy. On those scores, I readily admit that I finish these cases with even more questions than I had at the start. Hopefully, future litigants and lower courts will help us face these tangles and sort out a responsible way to address the challenges posed by our changing economy in light of the Constitution's text and the lessons of history.

**Notes and Questions**

1. *Ford Motor Company* defies what otherwise had been a steady trend in the Court's Fourteenth Amendment jurisprudence of narrowing the instances in which a state court may assert personal jurisdiction over corporate defendants. Why do you think this is so? Do you think the Court's prior cases limiting general jurisdiction heightened the need for the Court to revisit the limits on specific jurisdiction?

2. Both concurrences in *Ford Motor Company* suggest that the Court's jurisdictional test (of whether claims "relate to" a defendant's contacts with a forum) is vague and therefore likely to generate uncertainty and inconsistency in the lower courts. Do you agree? Or do you think that this formulation, by itself or in conjunction with the example application furnished by *Ford Motor Company*, "incorporates real limits" as the Court suggests? If the latter, how would you describe those limits? If the former, do you

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believe that is a problem, or do you think it is an appropriate way for the Court to allow new standards to percolate up and gradually emerge through the judicial system?

3. In Note 1 to *Walden*, above, it was noted that the case was decided unanimously, in contrast with an earlier era of personal jurisdiction cases in which the Court repeatedly splintered into pluralities. *Ford Motor Company* joins this recent trend of the Court coalescing around a clear majority opinion and unanimously or near-unanimously backing a particular result. Do you think this shift has been intentional? What are the benefits and downsides of the Court aligning on jurisdictional issues in this way?

4. In *Walden*, the Court underscored that the minimum contacts test focuses on the contacts that the defendant, not the plaintiff, has with the forum. By and large, the Court continues this defendant-focused approach to personal jurisdiction in *Ford Motor Company*. Yet do you notice any instances in *Ford Motor Company* where the Court or the concurrences also place some jurisdictional weight on the plaintiff's forum contacts? If so, how do we square that with cases such as *Walden*?

### *c. Amenability to Process in Federal Court*

[Add at the end of passage, after "56 HOUS. L. REV. 565 (2019)" on page 1026.]

*But see Compañía de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269 (10th Cir. 2020) (noting trend since *Swiss Am. Bank* of circuit courts placing initial burden on the defendant under Rule 4(k)(2) to identify a state in which the lawsuit could proceed, and joining that trend).

## C. Grounds for Declining Jurisdiction

## 1. Forum Selection Clauses

[Add at the end of Note 1 on page 1034.]

*See also Karon v. Elliott Aviation*, 937 N.W.2d 334 (Iowa 2020) (same).

[Add at the end of Note 2 on page 1035.]

And what does the Model Act mean by "abuse of economic power"? *See*, *e.g.*, *Castleberry v. Angie's List, Inc.*, 291 So. 3d 37 (Ala. 2019) (declining to find that Angie's List had "overweening bargaining power" in insertion of forum selection clause in membership agreement with father and son).

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[Add at the end of Note 5 on page 1037.]

*See also Germaninvestments AG v. Allomet Corp*., 225 A.3d 316 (Del. 2020) (court must interpret forum selection clause in accordance with law selected by choice-of-law provision if such selection bears material relationship to transaction, but party did not meet burden of establishing content of foreign law); *DeSage v. AW Fin. Grp., LLC*, 461 P.3d 162 (Nev. 2020) (following "imperialistic" rule that forum law governs interpretation regardless of an expressed choice of law); Kevin M. Clermont, *Reconciling Forum-Selection and Choice-of-Law Clauses*, 69 AM. U.L. REV. F. 171 (2020); Tanya J. Monestier, *When Forum Selection Clauses Meet Choice of Law Clauses*, 69 AM. U. L. REV. 325 (2019).

## 2. Forum Non Conveniens

[Add at the end of Note 4(a) on page 1045.]

*See also In re Air Crash over the S. Indian Ocean on Mar. 8, 2014*, 946 F.3d 607 (D.C. Cir. 2020) (alternative forum is adequate if would provide at least some remedy).

[Add at the end of Note 4(b) on page 1046.]

*See also Imamura v. Gen. Elec. Co*., 957 F.3d 98, 107 (1st Cir. 2020) (in class action against General Electric for nuclear reactor design leading to disaster in tsunami at Fukushima power plant, adequate alternative forum exists in Japan even though remedy in Japanese law is administrative compensation scheme, and one that places liability solely on third party).

[Add at the end of Note 5 on page 1047.]

*See also In re Air Crash over the S. Indian Ocean on Mar. 8, 2014*, 946 F.3d 607 (D.C. Cir. 2020) ("precise degree of deference afforded a plaintiff's forum choice varies depending on the plaintiff's connection to the forum," with home receiving strongest presumption); *Otto Candies, LLC v. Citigroup, Inc.*, 963 F.3d 1331 (11th Cir. 2020) (concluding home-state deference applies in case with two American plaintiffs and thirty-seven foreign plaintiffs, though noting need to police "blatant gamesmanship" and fact that some courts split two groups for separate deference level analysis).

## 6. Comity

[Add after second sentence of Note 5 on page 1067.]

*See also State v. Great Lakes Mins., LLC*, 597 S.W.3d 169 (Ky. 2019) (42 U.S.C. § 1983 claim for alleged forced collection of taxes not owed would ultimately turn on Ohio law, and Ohio better suited to

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settle claim while determination by Kentucky court would be intrusive and could disrupt Ohio state tax administration, so dismissed on comity grounds).

## D. Injunctions Against Extrastate Actions

[Add at the end of Note 4 on page 1077.]

*See also In Re: Bair Hugger Forced Air Warming Devices Products Liab. Litig*., 999 F.3d 534 (8th Cir. 2021) (applying relitigation exception of Anti-Injunction Act, which allows injunctions to prevent state litigation of a claim or issue previously decided by federal court).

**End of Supplement**