

## KULKO v. SUPERIOR COURT

Supreme Court of the United States, 1978.  
436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132.

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue before us is whether, in this action for child support, the California state courts may exercise *in personam* jurisdiction over a nonresident, nondomiciliary parent of minor children domiciled within the State. For reasons set forth below, we hold that the exercise of such jurisdiction would violate the Due Process Clause of the Fourteenth Amendment.

### I

Appellant Ezra Kulko married appellee Sharon Kulko Horn in 1959, during appellant's three-day stopover in California en route from a military base in Texas to a tour of duty in Korea. At the time of this marriage, both parties were domiciled in and residents of New York State. Immediately following the marriage, Sharon Kulko returned to New York, as did appellant after his tour of duty. Their first child, Darwin, was born to the Kulkos in New York in 1961, and a year later their second child, Ilsa, was born, also in New York. The Kulkos and their two children resided together as a family in New York City continuously until March 1972, when the Kulkos separated.

Following the separation, Sharon Kulko moved to San Francisco. A written separation agreement was drawn up in New York; in September 1972, Sharon Kulko flew to New York City in order to sign this agreement. The agreement provided, *inter alia*, that the children would remain with their father during the school year but would spend their Christmas, Easter, and summer vacations with their mother. While Sharon Kulko waived any claim for her own support or maintenance, Ezra Kulko agreed to pay his wife \$3,000 per year in child support for the periods when the children were in her care, custody, and control. Immediately after execution of the separation agreement, Sharon Kulko flew to Haiti and procured a divorce there; the divorce decree incorporated the terms of the agreement. She then returned to California, where she remarried \* \* \* .

The children resided with appellant during the school year and with their mother on vacations, as provided by the separation agreement, until December 1973. At this time, just before Ilsa was to leave New York to spend Christmas vacation with her mother, she told her father that she wanted to remain in California after her vacation. Appellant bought his daughter a one-way plane ticket, and Ilsa left, taking her clothing with her. Ilsa then commenced living in California with her mother during the school year and spending vacations with her father. In January 1976, appellant's other child, Darwin, called his mother from New York and advised her that he wanted to live with her in California. Unbeknownst to appellant, [Sharon] sent a plane ticket to her son, which he used to fly to California where he took up residence with his mother and sister.

Less than one month after Darwin's arrival in California, [Sharon] commenced this action against appellant in the California Superior Court. She sought to establish the Haitian divorce decree as a California judgment; to modify the judgment so as to award her full custody of the children; and to increase appellant's child-support obligations. Appellant appeared specially and moved to quash service of the summons on the ground that he was not a resident of California and lacked sufficient "minimum contacts" with the State under *International Shoe* to warrant the State's assertion of personal jurisdiction over him.

The trial court summarily denied the motion to quash, and appellant sought review in the California Court of Appeal by petition for a writ of mandate. Appellant did not contest the court's jurisdiction for purposes of the custody determination, but, with respect to the claim for increased support, he renewed his argument that the California courts lacked personal jurisdiction over him. The appellate court affirmed the denial of appellant's motion to

quash, reasoning that, by consenting to his children's living in California, appellant had "caused an effect in th[e] state" warranting the exercise of jurisdiction over him.

The California Supreme Court granted appellant's petition for review, and in a 4-2 decision sustained the rulings of the lower state courts. It noted first that the California Code of Civil Procedure demonstrated an intent that the courts of California utilize all bases of *in personam* jurisdiction "not inconsistent with the Constitution." Agreeing with the court below, the Supreme Court stated that, where a nonresident defendant has caused an effect in the State by an act or omission outside the State, personal jurisdiction over the defendant in causes arising from that effect may be exercised whenever "reasonable." It went on to hold that such an exercise was "reasonable" in this case because appellant had "purposely availed himself of the benefits and protections of the laws of California" by sending Ilsa to live with her mother in California. While noting that appellant had not, "with respect to his other child, Darwin, caused an effect in [California]"—since it was [Sharon] who had arranged for Darwin to fly to California in January 1976—the court concluded that it was "fair and reasonable for defendant to be subject to personal jurisdiction for the support of both children, where he has committed acts with respect to one child which confers [*sic*] personal jurisdiction and has consented to the permanent residence of the other child in California."

In the view of the two dissenting justices, permitting a minor child to move to California could not be regarded as a purposeful act by which appellant had invoked the benefits and protection of state law. Since appellant had been in the State of California on only two brief occasions many years before on military stopovers, and lacked any other contact with the State, the dissenting opinion argued that appellant could not reasonably be subjected to the *in personam* jurisdiction of the California state courts.

[T]reating the papers as a petition for a writ of certiorari, we hereby grant the petition and reverse the judgment below.

## II

The Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of state courts to enter judgments affecting rights or interests of nonresident defendants. It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant. The existence of personal jurisdiction, in turn, depends upon the presence of reasonable notice to the defendant that an action has been brought, and a sufficient connection between the defendant and the forum State to make it fair to require defense of the action in the forum. In this case, appellant does not dispute the adequacy of the notice that he received, but contends that his connection with the State of California is too attenuated, under the standards implicit in the Due Process Clause of the Constitution, to justify imposing upon him the burden and inconvenience of defense in California.

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

Like any standard that requires a determination of "reasonableness," the "minimum contacts" test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. We recognize that this determination is one in which few answers will be writ-

ten “in black and white. The greys are dominant and even among them the shades are innumerable.” But we believe that the California Supreme Court’s application of the minimum-contacts test in this case represents an unwarranted extension of *International Shoe* and would, if sustained, sanction a result that is neither fair, just, nor reasonable.

A

In reaching its result, the California Supreme Court did not rely on appellant’s glancing presence in the State some 13 years before the events that led to this controversy, nor could it have. Appellant has been in California on only two occasions, once in 1959 for a three-day military stopover on his way to Korea, and again in 1960 for a 24-hour stopover on his return from Korean service. To hold such temporary visits to a State a basis for the assertion of *in personam* jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment. Nor did the California court rely on the fact that appellant was actually married in California on one of his two brief visits. We agree that where two New York domiciliaries, for reasons of convenience, marry in the State of California and thereafter spend their entire married life in New York, the fact of their California marriage by itself cannot support a California court’s exercise of jurisdiction over a spouse who remains a New York resident in an action relating to child support.

Finally, in holding that personal jurisdiction existed, the court below carefully disclaimed reliance on the fact that appellant had agreed at the time of separation to allow his children to live with their mother three months a year and that he had sent them to California each year pursuant to this agreement. As was noted below, to find personal jurisdiction in a State on this basis, merely because the mother was residing there, would discourage parents from entering into reasonable visitation agreements. Moreover, it could arbitrarily subject one parent to suit in any State of the Union where the other parent chose to spend time while having custody of their offspring pursuant to a separation agreement. As we have emphasized:

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State \* \* \*. [I]t is essential in each case that there be some act by which the defendant purposefully avails [him]self of the privilege of conducting activities within the forum State \* \* \*.

The “purposeful act” that the California Supreme Court believed did warrant the exercise of personal jurisdiction over appellant in California was his “actively and fully consent[ing] to Ilsa living in California for the school year \* \* \* and \* \* \* sen[din]g her to California for that purpose.” We cannot accept the proposition that appellant’s acquiescence in Ilsa’s desire to live with her mother conferred jurisdiction over appellant in the California courts in this action. A father who agrees, in the interests of family harmony and his children’s preferences, to allow them to spend more time in California than was required under a separation agreement can hardly be said to have “purposefully availed himself” of the “benefits and protections” of California’s laws.<sup>7</sup>

Nor can we agree with the assertion of the court below that the exercise of *in personam* jurisdiction here was warranted by the financial benefit appellant derived from his daughter’s presence in California for nine months of the year. This argument rests on the premise that, while appellant’s liability for support payments remained unchanged, his yearly expenses for supporting the child in New York decreased. But this circumstance, even if true,

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<sup>7</sup> The court below stated that the presence in California of appellant’s daughter gave appellant the benefit of California’s “police and fire protection, its school system, its hospital services, its recreational facilities, its libraries and museums \* \* \*.” But, in the circumstances presented here, these services provided by the State were essentially benefits to the child, not the father, and in any event were not benefits that appellant purposefully sought for himself.

does not support California's assertion of jurisdiction here. Any diminution in appellant's household costs resulted, not from the child's presence in California, but rather from her absence from appellant's home. Moreover, an action by [Sharon] to increase support payments could now be brought, and could have been brought when Ilsa first moved to California, in the State of New York; a New York court would clearly have personal jurisdiction over appellant and, if a judgment were entered by a New York court increasing appellant's child-support obligations, it could properly be enforced against him in both New York and California. Any ultimate financial advantage to appellant thus results not from the child's presence in California, but from appellee's failure earlier to seek an increase in payments under the separation agreement. The argument below to the contrary, in our view, confuses the question of appellant's liability with that of the proper forum in which to determine that liability.

## B

In light of our conclusion that appellant did not purposefully derive benefit from any activities relating to the State of California, it is apparent that the California Supreme Court's reliance on appellant's having caused an "effect" in California was misplaced. This "effects" test is derived from the American Law Institute's RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971), which provides:

A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable.<sup>11</sup>

While this provision is not binding on this Court, it does not in any event support the decision below. As is apparent from the examples accompanying § 37 in the Restatement, this section was intended to reach wrongful activity outside of the State causing injury within the State. Even in such situations, moreover, the Restatement recognizes that there might be circumstances that would render "unreasonable" the assertion of jurisdiction over the non-resident defendant.

The circumstances in this case clearly render "unreasonable" California's assertion of personal jurisdiction. There is no claim that appellant has visited physical injury on either property or persons within the State of California. The cause of action herein asserted arises, not from the defendant's commercial transactions in interstate commerce, but rather from his personal, domestic relations. It thus cannot be said that appellant has sought a commercial benefit from solicitation of business from a resident of California that could reasonably render him liable to suit in state court; appellant's activities cannot fairly be analogized to an insurer's sending an insurance contract and premium notices into the State to an insured resident of the State. Furthermore, the controversy between the parties arises from a separation that occurred in the State of New York; [Sharon] seeks modification of a contract that was negotiated in New York and that she flew to New York to sign. As in *Hanson*, the instant action involves an agreement that was entered into with virtually no connection with the forum State.

Finally, basic considerations of fairness point decisively in favor of appellant's State of domicile as the proper forum for adjudication of this case, whatever the merits of appellee's underlying claim. It is appellant who has remained in the State of the marital domicile, whereas it is appellee who has moved across the continent. Appellant has at all times resided in New York State, and, until the separation and appellee's move to California, his entire family resided there as well. As noted above, appellant did no more than acquiesce in the stated preference of one of his children to live with her mother in California. This single act is surely not one that a reasonable parent would expect to result in the substantial finan-

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<sup>11</sup> Section 37 of the Restatement has effectively been incorporated into California law.

cial burden and personal strain of litigating a child-support suit in a forum 3,000 miles away, and we therefore see no basis on which it can be said that appellant could reasonably have anticipated being “haled before a [California] court.” To make jurisdiction in a case such as this turn on whether appellant bought his daughter her ticket or instead unsuccessfully sought to prevent her departure would impose an unreasonable burden on family relations, and one wholly unjustified by the “quality and nature” of appellant’s activities in or relating to the State of California.

### III

In seeking to justify the burden that would be imposed on appellant were the exercise of *in personam* jurisdiction in California sustained, appellee argues that California has substantial interests in protecting the welfare of its minor residents and in promoting to the fullest extent possible a healthy and supportive family environment in which the children of the State are to be raised. These interests are unquestionably important. But while the presence of the children and one parent in California arguably might favor application of California law in a lawsuit in New York, the fact that California may be the “‘center of gravity’” for choice-of-law purposes does not mean that California has personal jurisdiction over the defendant. And California has not attempted to assert any particularized interest in trying such cases in its courts by, *e.g.*, enacting a special jurisdictional statute.

California’s legitimate interest in ensuring the support of children resident in California without unduly disrupting the children’s lives, moreover, is already being served by the State’s participation in the Revised Uniform Reciprocal Enforcement of Support Act of 1968. This statute provides a mechanism for communication between court systems in different States, in order to facilitate the procurement and enforcement of child-support decrees where the dependent children reside in a State that cannot obtain personal jurisdiction over the defendant. California’s version of the Act essentially permits a California resident claiming support from a nonresident to file a petition in California and have its merits adjudicated in the State of the alleged obligor’s residence, without either party’s having to leave his or her own State. New York State is a signatory to a similar Act. Thus, not only may plaintiff-appellee here vindicate her claimed right to additional child support from her former husband in a New York court, but also the Uniform Acts will facilitate both her prosecution of a claim for additional support and collection of any support payments found to be owed by appellant.<sup>15</sup>

It cannot be disputed that California has substantial interests in protecting resident children and in facilitating child-support actions on behalf of those children. But these interests simply do not make California a “fair forum,” in which to require appellant, who derives no personal or commercial benefit from his child’s presence in California and who lacks any other relevant contact with the State, either to defend a child-support suit or to suffer liability by default.

### IV

We therefore believe that the state courts in the instant case failed to heed our admonition that “the flexible standard of *International Shoe*” does not “herald[d] the eventual demise of all restrictions on the personal jurisdiction of state courts.” \* \* \*

Accordingly, we conclude that the appellant’s motion to quash service, on the ground of lack of personal jurisdiction, was erroneously denied by the California courts. The judgment of the California Supreme Court is, therefore,

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<sup>15</sup> Thus, it cannot here be concluded, as it was in *McGee* with respect to actions on insurance contracts, that resident plaintiffs would be at a “severe disadvantage” if *in personam* jurisdiction over out-of-state defendants were sometimes unavailable.

*Reversed.*

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE and MR. JUSTICE POWELL join, dissenting.

The Court properly treats this case as presenting a single narrow question. That question is whether the California Supreme Court correctly “weighed” “the facts,” of this particular case in applying the settled “constitutional standard,” that before state courts may exercise *in personam* jurisdiction over a nonresident, nondomiciliary parent of minor children domiciled in the State, it must appear that the nonresident has “certain minimum contacts [with the forum State] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” The Court recognizes that “this determination is one in which few answers will be written ‘in black and white.’” I cannot say that the Court’s determination against state-court *in personam* jurisdiction is implausible, but, though the issue is close, my independent weighing of the facts leads me to conclude, in agreement with the analysis and determination of the California Supreme Court, that appellant’s connection with the State of California was not too attenuated, under the standards of reasonableness and fairness implicit in the Due Process Clause, to require him to conduct his defense in the California courts. I therefore dissent.