THE LONG ARMS OF AMERICAN LAW AND EDUCATION

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I. Introduction: International Legal Services and the Globalization of Legal Work

The impact of globalization has not been limited to the economy. Indeed, even fields considered traditionally professional, such as the practice of law, have become increasingly international in nature. Today, international legal services exist not only in commercial practice but in other sectors of legal work, including cross-border elements in civil litigation, criminal law prosecutions, and family law. The effects of globalization have taken no exception in the United States. In 1997, the value of international mergers and acquisitions totaled $410 billion. The total cost of crossborder United States legal services reached roughly $5 billion in 2006.[2] With only $1 billion of legal services imported, the United States was left with a "positive" trade balance of $4 billion in exported legal services.

The outsourcing of United States legal work has become more common while some areas in the practice of law have become virtually borderless. American law firms generally charge between $250 to $580 per hour for basic legal tasks such as the drafting of contracts, business and estate planning, legal research, litigation support, and paralegal services. These fields of legal work are particularly vulnerable to globalization and have been outsourced to countries such as India, South Korea, Australia, Israel, and Romania. Three million American legal assignments were outsourced between 2001 and 2006. Moreover, the number of outsourced legal assignments is expected to grow to 13 million in the next 10 years.

In the case of India, for example, General Electric established a subsidiary in India that housed 50 local lawyers to handle routine American corporate legal work. In another case, one company requested a United States law firm to pre-

1 I would like to thank Anthony P. Hernandez for his contributions to the article.

2 Harvard Law School Program on the Legal Profession. *Analysis of the Legal Profession and Law Firms*, http://www.law.harvard.edu/programs/plp/pages/statistics.php (last visited Jun. 19, 2009).

pare standard form lease agreements for use throughout the United States. The American firm estimated the cost of the completed project would be in the range of $400,000. The corporation ultimately outsourced the work to a legal team in India for a price of only $45,000. The legal services industry in India, totaling $150 million in 2006, is expected to rise to $650 million by 2010 and reach a projected total of more than $1 billion by 2015.

II. The American Legal Culture

Americans are often regarded as litigious. The truth of this cultural stereotype is only supported by the fact that there are more than 1 million American lawyers, amounting to approximately one lawyer for every 300 Americans. There is a saying that Americans do not like lawyers, but Americans do like to sue. The pervasiveness of the legal system is not limited to commercial matters. The United States has a prison population of roughly 2.2 million, including 3,300 inmates on death row. In addition to the approximately 1.2 million criminal complaints filed each year, American courts deal with approximately 12 million civil actions annually.

1. Legal Environment

Why do Americans sue? Why do foreign plaintiffs attempt to file suit in the United States, while foreign defendants try to avoid litigation in the United States? It may be possible to respond to each of these questions with the same answer.

One reason law suits may be common in the United States is because nearly every prospective party has access to an attorney. According to what has become known as the "American rule," the losing party is not responsible for the opposing attorney fees. It also is possible in the United States for lawyers to accept cases based on a contingency fee. Contingency fees make it possible for lawyers to accept cases with little or no initial cost to the client during the pre-litigation and litigation stages. The attorney simply collects the fees at the end of the litigation process and, sometimes, if the claim fails, may not collect at all.

Another reason law suits are common in the United States is because of low barriers to suit. The liberal pleading requirements, established by the Federal Rules of Civil Procedure, make it easy for plaintiffs to receive a day in court.[3]

[3] Fed. R. Civ. P. 8(a)(2) establishes a liberal system of notice pleading. *See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993). Fed. R. Civ. P. 8 might more accurately be described as a minimalist rule because complaints in federal court need only contain three short a plain sentences: (a) a statement of the grounds

The liberal pleading requirements make it more likely that parties will be subjected to discovery, which is often vexatious and costly in the United States, resulting in pressure for the parties to settle. Some attorneys have become notorious for filling "strike suits," suits filed merely with the intention of obtaining a payoff settlement when the discovery process is initiated.

Generally, plaintiffs also favor American courts because American juries, even when applying foreign law, are more likely to award higher damages for injuries compared to those awarded by foreign judges or courts. Attorneys are aware of the "Mid-Atlantic formula," establishing that claims of foreign plaintiffs are settled in amounts above what could have been obtained where the injury actually occurred.[4]

Easy access to the American courts, coupled with the possibility of large damage awards, including punitive damages, makes litigation in the United States more attractive. It is in fact however, these very factors which make litigation in the United States attractive for plaintiffs, such as low barriers to suit and expanded liability which yield high returns, that make foreign defendants apprehensive of litigation in the United States.

2. Two Major Characteristics: Adversarial System and Trial by Jury

For most European and Civil Law layers, the most striking features of the American Common Law tradition are the adversarial system and the ability to have a trial by jury. These unique features are essential to the American Common law legal system.

2.1. The Adversarial System

The philosophy of the adversarial system is essentially that, if each side is prepared to meet the opposing claims on the merits, the case will be resolved in litigation and the end result will be just. Under the American adversarial system, unlike the Civil Law tradition where the judge generally leads the preparation of the case, each party, through the respective legal counsel, independently prepares for litigation. Independent party preparation and easy court ac-

upon which the court's jurisdiction depends, (b) a statement of the claim showing the pleader is entitled to relief, and (c) a demand for relief. On the other hand, some specific cause of actions, such as fraud and mistake, require allegations of particularity. *See* Fed. R. Civ. P. 9(b) *and Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007), imposing a "plausibility" requirement in anti-trust cases, requiring the complaint to contain enough facts to show that the pleader's claim is plausible.

4 Russell J. WEINTRAUB, *The United States As a Magnet Forum and What, If Anything To Do About It* (1997), *reprinted in* International Civil Dispute Resolution, at 54 (Charles S. Baldwin, IV Et. Al., Thomson West) (2004).

cess, provides the parties an incentive to reach private settlements. This arguably promotes judicial efficiency because judges do not have to hear cases that are privately resolved.[5]

The adversarial system, however, is not without its criticisms. There is a greater chance of abuse of party control and witness preparation. It also is difficult to argue that two or more parties independently preparing for litigation is efficient. The costs associated with preparing for litigation alone can be draining and the cost of actual litigation, if necessary, can be crippling. The high costs associated with suit, may ultimately lead to an inadequate emphasis on finding the truth because the parties may be more persuaded to resolve the issues based on a cost-benefit analysis opposed to legal moral.

2.2. Trial by Jury

Article III of the United States Constitution provides for the right to trial by jury for all felony criminal cases. Although the right to trial by jury is constitutionally provided, most criminal defendants forgo the right to trial by jury and accept a bench trial, a trial by judge. It also is possible to have a trial by jury in civil action where the plaintiff is seeking primarily monetary relief and a jury is demanded by one of the parties involved in the suit. Moreover, according to the Federal Rules of Civil Procedure, the judge may appoint a jury at his discretion. The jury system is arguably the most significant aspect of United States adversarial litigation and, although it is one of the most costly features of the court's infrastructure, trial by jury may not be among the most efficient.

The jury system is often criticized because of its expense and inefficiency. The members of the jury often have inadequate expertise. In fact, lawyers commonly search for potential jury members who have no legal knowledge. The lawyers control the jury selection process and exercise this procedure with particular care because the selection, not always the facts or the law, often is the key to winning a trial by jury. Jury members are selected by the lawyers from a random pool of lay citizens. The lawyers often hire a legal team consisting of jury consultants, investigators, psychologists, and profilers to assist in the selection of the jury.[6] Lawyers often strike, or remove, potential jury members simply because the lawyer believes the candidate juror is more likely to be persuaded in favor of the adverse party. Each party lawyer, typically, has the ability to strike up to three members of the selection pool without reason.[7]

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5 Not all disputes can be settled autonomously by the parties themselves. Fed. R. Civ. P. 23(b)(3), for example, requires judicial approval for any settlement in class action cases.

6 The process of jury selection is known as *Voir dire*.

7 The lawyers are generally prohibited from striking a member of the panel simply because of race or gender. *See Batson v. Kentucky*, 476 U.S. 79 (1986).

III. The Four American Long Arms: How American Law Touches the World

Although the United States may no longer occupy the position of the world's sole superpower, America nevertheless retains the world's largest economy. It is unlikely that the United States will lose its position as a dominant economic force in the near future. This economic status influences the behavior of United States business, which in turn influences the legal market. The international legal market is affected, both domestically within the United States and abroad with those who do business with the United States, by American "muscle," jurisdiction, the Bar, and legal education.

1. Muscle

The United States retains the world's largest economy. In 2007, the European Union's (EU) Gross Domestic Product (GDP) surpassed the United States and in 2008 the EU's estimated GDP was $14.8 trillion, compared to $14.2 trillion for the United States. In 2008, Germany claimed the largest economy of any single EU member, ranking fifth in the world, behind the United States, China, Japan, and India, respectively.

Businesses are risk averse and tend to deal in areas in which they have a competitive advantage or market advantage. Likewise, businesses prefer to maintain advantages and familiarity and choose to operate and transact under familiar laws. Therefore, the American business partner always wants a United States choice of law clause, a United States choice of forum clause, and/or a United States arbitration venue, all included in an agreement written in English and in an American-style structure. Sometimes, there is little or no alternative for foreign companies that want to engage in business with a United States partner other than to accept the legal demands of the American party.

2. The Bar

In order to practice law in the United States, one must be admitted to the Bar. Bar membership generally requires the successful completion of an examination as well as payment for subsequent member fees. Each state in the United States is responsible for controlling bar examinations and admissions.[8] In Schware v. Board of Bar Examiners of New Mexico, the Supreme Court determined that state control over bar admissions is permissible, provided the standards are not arbitrary or discriminatory.[9]

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[8] The state of Wisconsin does not require a Bar examination for graduates of the University of Wisconsin.

[9] 353 U.S. 232, 239 (1957).

Prior to 1973, United States citizenship was required in all states in order to take the bar examination. The United States Supreme Court ended this requirement in the case of In Re Griffiths and held that a "lawfully admitted resident alien is a 'person' within the meaning of the Fourteenth Amendment's directive that a state may not deny to any person within its jurisdiction the equal protection of the laws."[10] Moreover, the Supreme Court held, in New Hampshire v. Piper, that the right to practice law is protected by the United States Constitution, Article IV, Section 2, privileges and immunities clause and determined that residence is not a sufficient criteria for admission or denial to a state bar.[11]

The World Trade Organization (WTO) and General Agreement on Trade in Services (GATS), including legal services, obliges the United States to allow foreign legal practitioners to enter the American market. The American Bar Association (ABA) and the United States Trade Representative have been pressuring all states to allow foreign legal consultants, expressing the concern that the United States failure to show that it will allow foreign legal consultants in all states could result in retaliation by restricting activities of American lawyers abroad or by filing a formal trade complaint with the WTO.

The American Bar Association Model Rule provides that foreign legal consultants may be licensed to provide certain legal services in United States jurisdictions without examination, provided they are members of the recognized legal profession in a foreign country. Foreign legal consultants are allowed to provide advice on the laws of the home country, but they are not admitted as members of the Bar in the United States host jurisdiction and are prohibited from providing certain services, such as giving advice on federal or state law or appearing in court on behalf of the client.

Existing state laws continue to impede Bar admission of lawyers who are admitted to practice in a foreign jurisdiction or who are foreign nationals, and they obstruct the capacity of foreign legal consultants and foreign firms to provide legal services in the United States. For example, in Dent v. West Virginia, the Supreme Court determined that a state statute requiring that medical practitioners hold a diploma from "a reputable medical school" is constitutional.[12] The implications of this case, permitting the individual states to establish rules for the protection of society, is evidenced in the state rules of Georgia, New

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10 413 U.S. 717, 719 (1973).

11 470 U.S. 274, 283 (1985).

12 129 U.S. 114 (1988). The court held the State statute was constitutional in part because there is no arbitrary deprivation of the right to practice medicine "where its exercise is not permitted because of a failure to comply with conditions imposed by the state for the protection of society." *Id*. at 122.

Jersey, and Florida which require J.D. or LL.B. degrees from ABA schools in order to take the bar examination.[13]

In spite of these legal impediments, there were 71 foreign legal consultants licensed in 16 states in 2007. In addition, 40 states allow limited practice by foreign lawyers, and five states allow limited transient practice. However, taking and passing the bar as a foreign lawyer is not impossible, although success is not as statistically promising as for those who graduate from ABA law schools. In 2008, the Bar passage rate for ABA graduates was 76 per cent compared to only 27 per cent for non-ABA graduates. In that same year, only 42 per cent of graduates of law schools outside of the United States taking the bar examination in New York passed, while only 19 per cent passed in California.

3. Jurisdiction

The United States does not have a federal common law system; thus, federal courts must apply the substantive state law of which the court is located.[14] Federal courts are courts of limited jurisdiction and must receive jurisdiction from either the United States Constitution or from Congress in order to try a case. A number of elements must be satisfied in order for federal courts to have jurisdiction. Some of the most significant aspects include those that the case must be properly filed, the venue must be adequate, and there must be personal and subject matter jurisdiction.

3.1. Subject Matter Jurisdiction and Personal Jurisdiction

Subject matter jurisdiction can be satisfied in two ways. One way subject matter jurisdiction may be satisfied is if the legal issue is one that arises under federal law, meaning the plaintiff's cause of action is created by federal law or necessarily depends on a substantial federal question. In the alternative, a case may be heard in federal court if there is "diversity jurisdiction." Diversity jurisdiction is satisfied when the parties are domiciled in different states and the amount in controversy exceeds $75,000.[15]

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13 For comprehensive Bar Admissions Requirements s*ee* National Conference of Bar Examiners, Bar Admission Requirements 2009, *available at* http://www.ncbex.org/fileadmin/mediafiles/downloads/Comp_Guide/CompGui de.pdf (last visited on Jun. 19, 2009).

14 *See Erie R. R. v. Tompkins*, 304 U.S. 64 (1938).

15 While persons generally only have one domicile, it is not uncommon for businesses to have 2 domiciles, the place of incorporation and the place of business activity. Determining the boundaries and definition of domicile is a state issue.

3.2. Personal Jurisdiction and Long Arm Statues

The requirements for personal jurisdiction are more complex than the requirements for subject matter jurisdiction. Personal jurisdiction can be satisfied by consent, by presence within the jurisdiction, or by reach of the jurisdiction's "long-arm" statute.[16] Many states have codified long-arm statutes, and federal courts utilize the long-arm statute of the state where they sit. Some states specifically enumerate activities that will subject a defendant to the territory's jurisdiction, while other states simply call for jurisdiction to the maximum extent under the law.

Most applicable to foreign business owners is the ability for long-arm statutes to subject business to jurisdiction based merely on the "transaction of business." Jurisdiction based on long-arm statutes is more attenuated than jurisdiction based on consent or presence. The transaction-of-business element under state long-arm statutes makes it possible for defendants to be subjected to jurisdiction based on a single, isolated incident, so long as the suit derives from the disputed contact or transaction.

3.2.1. Due Process and International Shoe

In order for a defendant to be summoned into court, the defendant must be afforded Due Process rights. The fundamental requisite of the United States constitutionally based Due Process rule is the right to be heard.[17] At a minimum, Due Process requires that the defendant be given adequate notice of the suit and that he is subject to the personal jurisdiction of the court.[18]

In International Shoe Co. v. Washington, the Supreme Court held that Due Process requires that a defendant have certain minimum contacts within the territory of the forum, "such that the maintenance of the suit does not offend the traditional notions of fair play and substantial justice."[19] This case sparked a line of confusing and complex cases to determine what actions constitute "minimum contacts" with the forum's jurisdiction and how "traditional notions of fair play and substantial justice" are satisfied.

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16 It is possible for Business organizations to qualify for jurisdiction under the "presence" category if the business has a "regular, systematic, continuous, ongoing business activity in the forum state." This article however, will continue to focus on jurisdiction based on the "transaction of business" element under state long-arm statutes. The difference between jurisdiction based on the "presence" element versus the "long-arm statute" is that a business may be subject to jurisdiction based on a single isolated incident under the "transaction of business" theory.

17 *See Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

18 *See World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 291 (1980).

19 326 U.S. 310, 316 (1945).

3.2.2. Minimum Contacts and World-Wide Volkswagen

The minimum contacts requirement is "intended to protect the defendant against the burdens of litigating in a distant or inconvenient forum and acts to ensure that states, through the courts, do not reach beyond the limits imposed on them by their status as coequal sovereigns in a federal system."[20] Indeed, the burden on the defendant is the primary concern of the application of the minimum contacts rule. The Supreme Court attempted to clarify the meaning of minimum contacts from International Shoe Co. in the case of World-Wide Volkswagen v. Woodson.[21] In World-Wide Volkswagen, the plaintiffs sued a New York auto dealer in a products liability action, after receiving injuries in an automobile accident in Oklahoma.[22] The defendant retail business was incorporated in New York and operated business exclusively within the state.[23]

In World-Wide Volkswagen, the court determined that the requisite minimum contacts were not satisfied because the petitioners did not have "connections, ties, or relations" with the chosen forum.[24] In determining that personal jurisdiction was not present, the court looked at the quantity and quality of contacts, whether the activities were purposely directed in the territory, and the stream of commerce.[25] Courts will look, however, at other balancing factors to determine whether personal jurisdiction exists. The court will consider the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies.[26]

In this case, World-Wide Volkswagen did not carry on activity in Oklahoma; nor did it solicit business in the territory, either by salespersons or through advertising reasonably calculated to reach the state, or attempt to sell to customers in that territory's market either directly or indirectly.[27] The Court further noted that mere "foreseeability," although relevant to the personal jurisdiction analysis, is not by itself enough to satisfy personal jurisdiction.[28]

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20 *World-Wide Volkswagen*, 444 U.S. at 292 (1980).
21 *Id*. at 286.
22 *Id*. at 287.
23 *Id.*
24 *Id.* at 299.
25 The "Forum State does not exceed its powers under the Due Process Clause if it asserts jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Id*. at 298. *But see Asahi Metal Co. v. Superior Court of California*, 480 U.S. 102 (1987).
26 *World-Wide Volkswagen*, 444 U.S. at 292.
27 *World-Wide Volkswagen*, 444 U.S. at 295.
28 *Id*.

3.2.3. Minimum Contacts and Fairness: Asahi Metal

In Asahi Metal Industry Co., v. Superior Court of California, the Supreme Court again revisited the minimum contacts requirements and further clarified the element of fairness under the Due Process Clause.[29] In Asahi Metal, the Court did not find personal jurisdiction over a Japanese defendant who merely manufactured tire valves that were sold to various tire manufacturers because doing so under the circumstances would have "offended traditional notions of fair play and substantial justice."[30] The Court looked at several factors in determining that there was no substantial connection between Asahi and California which would make exercise of personal jurisdiction reasonable and fair.[31] Asahi did not solicit business, make direct sales in the State of California, or exercise control over the distribution system.[32] Moreover, Asahi did not have offices, property, or agents located within the state.[33]

Writing the opinion of the Court, Justice Sandra Day O'Connor declared that personal jurisdiction requires minimum contacts that have a basis in some "act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws."[34] The Court held that a defendant's awareness that the stream of commerce will sweep the product into the forum state does not amount to an act purposely directed toward the forum state to satisfy personal jurisdiction.[35] In sum, O'Connor has established a purposeful-direction standard for personal jurisdiction which requires the placement of a product into the stream of commerce plus "additional conduct of the defendant" indicating an "intent or purpose to serve the market in the forum state."[36] Accordingly, the Court will look for an intent or purpose to serve the market in the forum state which may be evidenced by "designing the product for the market in the forum state, advertising in the forum state, establishing channels for providing regular advice to

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29 480 U.S. 102 (1987).

30 *Id*. at 133. Prior History: In *Asahi Metal*, the plaintiff at the District Court level, filed a complaint against various defendants, including Cheng Shin Rubber Industrial Co. (Cheng Shin) a Taiwanese tire manufacturing company, that the plaintiff alleged were at fault for injuries sustained during a motor cycle accident allegedly caused by a defective tire tube, and sealant, causing an explosion in the rear tire. *Id.* at 106. Cheng Shin, then filed a cross-complaint, seeking indemnification from Asahi Metal Co., the tube manufacturer of Cheng Shin's tires. *Id.*

31 California's long-arm statute provides for the exercise of jurisdiction "on any basis not inconsistent" with the Constitution of California or the United States. *Id*. at 106. *See* Cal. Civ. Proc. Code Ann. § 410.10 (West 1973).

32 *Asahi Metal Co.*, 480 U.S. at 108.

33 *Id*.

34 *Id*. at 109.

35 *Asahi Metal Co.*, 480 U.S. at 112.

36 *Id*.

customers in the forum state, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum state.[37]

Although the legal holding in Asahi Metal that Asahi cannot be subjected to personal jurisdiction under the Due Process Clause was clear as to the specific facts of the case, the Court's decision has failed to clarify the exact actions that will satisfy minimum contacts. In sum, it appears the Supreme Court's legal reasoning in Asahi Metal has only further clouted the issue of minimum contacts and fairness based on the stream of commerce theory. As a result of the Supreme Court's lack of consensus, District Courts have retreated to deciding these issues on a case-by-case basis and are ultimately uncertain as to whether merely entering a product into the stream of commerce is enough to satisfy the requisite minimum contacts and fairness elements of Due Process or if more is required.

3.2.4. Anderson v. Dassault Aviation

The broad test often liberally applied post-Asahi Metal in determining whether jurisdiction exists over foreign defendants is exemplified in Anderson v. Dassault Aviation Corp.[38] In Anderson, the plaintiff, a flight attendant and Michigan resident, sued Dassault Aviation (Dassault), a French Corporation, in the Eastern District of Arkansas.[39] Anderson was injured over Michigan and filed a strict products liability claim against Dassault, and the manufacturer of the plane that was assembled by a Dassault subsidiary corporation, Dassault Falcon Jet Corporation (Falcon).[40]

The federal District Court determined that there was no personal jurisdiction over Dassault because the subsidiary's activities for the parent in Arkansas were relevant for jurisdictional purposes only if the plaintiff could pierce the corporate veil and show that the Arkansas subsidiary was merely an "alter ego" of the French parent.[41] The District Court noted that a corporation is not doing business in a state merely by the presence of a wholly owned subsidiary.[42] In determining that Dassault was not an alter ego of Falcon, the court noted Dassault was a corporation of France and did not hold a business license in the state of Arkansas. Nor did Dassault own real or personal property, have a telephone or a bank account, or maintain an agent for service of process; it was neither present nor doing business in Arkansas.

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37 *Id*.
38 361 F.3d 449 (8th Cir. 2004).
39 *Id*. at 451.
40 *Id.*
41 *Anderson,* 361 F.3d at 452.
42 *See Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925).

The Eighth Circuit Court of Appeals reversed the District Court's decision and found that asserting personal jurisdiction over Dassault under the "doing business" extension of Arkansas's long-arm statute is consistent with Due Process.[43] The Court of Appeals stated that the District Court placed undue reliance on piercing the corporate veil and the court stated that neither physical presence nor piercing the parent corporation's veil is required to establish the necessary minimum contacts under Arkansas's long-arm jurisdiction.[44] In determining that minimum contacts were established by the foreign defendant Dassault, the Court analyzed several factors, including the fact that Falcon was Dassault's exclusive distributor in the western hemisphere and that the majority of Dassault's jets sold throughout the world were fully assembled to customer's specifications by Falcon in Arkansas.[45] Moreover, the court determined that Dassault and Falcon operated a "unified market strategy," evidenced in part by jointly publishing and disseminating publications regarding customer service, service guides, and newsletter updates in addition to sharing a common logo and operating a joint web site.[46]

The Court of Appeals ultimately concluded that Dassault and Falcon had a "close synergistic relationship that is not an abuse of corporate organizational form, but is clearly relevant to the jurisdictional question."[47] Thus, the Court determined that asserting personal jurisdiction over Dassault would not offend traditional notions of fair play and substantial justice in Arkansas because it purposefully directed its products into the United States, most specifically Arkansas, and "clearly intended to reap the benefits of Falcon's substantial presence in Arkansas."[48]

The Court of Appeals further noted that the fairness considerations lend support to exercising jurisdiction over Dassault. Though the court recognized that there is substantial distance between France and Arkansas, the burden on Dassault would nevertheless be minimal because Falcon is one of the Dassault central hubs and is often frequented by Dassault employees.[49] The Court also stated that the State of Arkansas has a substantial interest in the suit because of the safety concerns of potential Dassault customers in Arkansas.[50] Moreover, the plaintiff's interest also was substantial in this case because it was likely the

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43 *Anderson,* 361 F.3d at 451.

44 *Id*. at 452 Arkansas's long-arm statute provides the State with personal jurisdiction over a person and claims "to the maximum extent permitted by the due process of law clause of the fourteenth Amendment of the United States Constitution." Ark. Code Ann. § 16-4-101.

45 *Anderson,* 361 F.3d at 453.

46 *Id*. at 454.

47 *Id.* at 453.

48 *Anderson,* 361 F.3d at 455.

49 *Id*.

50 *Id*.

only forum in the United States where redress might be received because the case had already been dismissed for lack of personal jurisdiction in Michigan.[51]

3.3. The Future and Direction of Personal Jurisdiction?

The United States Supreme Court denied Dassault's certiorari appeal.[52] As a result, Anderson is only binding precedent in courts subject to the Eighth District's jurisdiction and is merely persuasive precedent in other federal districts. The fact that the Supreme Court denied certiorari does not guarantee that the Court of Appeals determined the case correctly. The denial of certiorari in this case, however, may lend support to the notion that, post-Asahi Metal, it is permissible for courts to engage in a case-by-case balancing of non-exclusive factors, such as those in Asahi Metal, to determine whether foreign plaintiffs satisfy the requisite minimum contacts and fairness test under the Due Process Clause.

The Anderson case serves as a reminder to potential foreign defendants that Asahi Metal cannot be understood as providing guaranteed immunity for foreign manufacturers. If the plaintiff in Asahi Metal had named Asahi as a defendant in the products liability claim, the plaintiffs' interest in having the dispute resolved in California would have been significantly greater. If this happened to be the procedural scenario, the court may have been "hard-pressed to declare the exercise of in personam jurisdiction over the Japanese company being unreasonable and unfair."[53]

4. Legal Education

4.1. American Legal Education and International Exposure

American law schools also have been impacted by globalization and international integration. Currently, 114 American law schools offer summer study abroad programs, including venues in Europe, Brazil, China, and Australia. Thirty American law schools have established formal exchange programs abroad in such locations as Hamburg, Buenos Aires, and Oslo, and 16 offer semesters abroad in places as varied as London, Tokyo, and Christchurch.

4.2. Foreign Lawyers in the United States

There is already a significant number of foreign lawyers working in the United States. New York City alone hosts more than 300 foreign lawyers with LLMs.

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51 *Id*.

52 *Dassault Aviation v. Anderson*, 543 U.S. 1015 (2004). Cert. Denied.

53 Douglas Ulene, *Jurisdiction: Personal Jurisdiction Over Alien Corporations –Asahi Metal Industry Co., v. Superior Court of California*. 29 Harv. J. Int'l L. 207, 213 (1988).

This number is sure to experience a steep increase because foreign students make up nearly half of all students enrolled in more than 100 LLM programs in the United States. Indeed, 50 law schools offer LLM or MCL programs for non-American lawyers at a tuition typically from $30,000 to $40,000, plus living costs.

4.3. New Approach to Legal Education

In efforts to further bridge the gap between United States and foreign lawyers, a new concept has been developed against the backdrop of increased legal outsourcing and globalization. On the initiative of the Center for International Legal Studies (CILS), Suffolk University Law School in Boston, Massachusetts, has partnered with Eötvös Loránd University in Budapest, Hungary, to offer foreign lawyers an exported version of the American LLM. The LLM in United States and Global Business Law, although not to the exclusion of American lawyers, is intended to provide foreign lawyers with the flexible ability to obtain an American LLM at a reasonable cost without having to take a year or more from their practices or having to travel to the United States.

In addition to such courses as transnational commercial transactions, corporate litigation, and securities regulation, taught the law faculty in Budapest, the program offers degree candidates the ability to personalize the degree experience through various research projects in order to maximize the desired transnational, comparative, or personal perspective. The degree program is practitioner-friendly because of its schedule flexibility and focus on specific areas of American law and business.

In 2008, the program attracted degree candidates from 30 countries. The majority of degree candidates were over the age of 35 and the majority possessed more than 10 years experience in the legal field. The fist LLM degrees in United States and Global Business Law were conferred in Boston in May 2009.[54]

[54] For more information on the United States and Global Business Law program, *see* http://www.ncbex.org/file admin/mediafiles/downloads/Bar_Admissions/2008_Stats.pdf (last visited on Jun. 19, 2009).

SUMMARY

The Long Arms of American Law and Education

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There is no doubt that the American legal system has an impact – not always welcome – well beyond its borders. The manner in which law is taught, the way lawyers are trained, the drafting of agreements, the extraterritorial reach of American laws, the exportation of the judgments of American courts, and the reference to American statutes as models for legislation are examples of the reach of Lex America. This article explores the role of the American legal system in the globalization of legal practice, the characteristics and internationalization of legal education in the United States, the function of lawyers in the American business community, the opportunities for foreign lawyers to practice in the United States, and the response of the international community to the American model.

RESÜMEE

Der lange Arm des Amerikanischen Rechts- und Bildungssystems

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Es gibt keinen Zweifel daran, dass das amerikanische Rechtssystem einen – nicht immer erwünschten – Einfluss hat, weit über seine Grenzen hinaus. Die Art wie Jura unterrichtet wird, wie Anwälte ausgebildet werden, das Schreiben von Verträgen, die extraterritoriale Reichweite der amerikanischen Rechtsvorschriften, der Export amerikanischer Gerichtsentscheidungen, sowie die Zuhilfenahme amerikanischer Statuten als Modelle für Gesetzgebungen sind Beispiele der Tragweite des Lex Amerika. Diese Abhandlung untersucht die Rolle des amerikanischen Rechtssystems innerhalb einer globalisierten Rechtsprechung, die Charakteristika und Internationalisierung juristischer Ausbildung in den Vereinigten Staaten, die Tätigkeit der Anwälte innerhalb der amerikanischen Wirtschaft, die Möglichkeiten ausländischer Anwälte in den USA zu praktizieren, und die Reaktion der internationalen Gemeinschaft auf das amerikanische Modell.