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ABSTRACT

Personal jurisdiction—the doctrine that determines where a plaintiff can sue—is a mess. Everyone agrees that a court can exercise personal jurisdiction over a defendant with sufficient in-state contacts related to a plaintiff's claim. This Article reveals, however, that courts diverge radically in their understanding of what a claim is. Without stating so outright, some courts limit the claim to a cause of action or its elements, while others understand it to encompass the controversy underlying the litigation. What is worse, few have noticed that these discrepancies even exist, much less explained why. This Article does just that. We show that how a court chooses to define claim, while usually left implicit, controls the scope of jurisdiction. That choice can force parties to litigate piecemeal and effectively foreclose restitution for underresourced plaintiffs by shutting them out their home courts. This chaos harms litigants, disrupts the judicial system, and undermines civil procedure values. As of this year, it also flies in the face of Supreme Court precedent. We show how the recent decision in Ford v. Montana *settles the matter and helps cohere personal jurisdiction with its underlying due process commitments.*

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INTRODUCTION

A man dies in Mississippi when a helicopter platform collapses. His grieving mother, seeking justice, sues the platform designer in Mississippi. After all, that is where the platform fell. That is where the designer delivered and inspected the platform. And that is where the witnesses remain. Too bad, the court says. The designer sketched the design in Florida. He no longer lives in Florida. Nothing having to do with the accident took place in Florida. And neither the helicopter company nor the deceased man have a connection to Florida. But since the mother claims a design defect, she has to go to Florida to sue.[1]

A Colorado rancher negotiates with two companies to promote his new calf valuation method, but the deal falls through. The two companies—one from Colorado and one from Montana—meet up with each other. Soon after, they start marketing a tool that looks an awful lot like the rancher's invention. He sues in Colorado, bringing state and federal claims about the theft of his intellectual property. Too bad, the court says. Both companies negotiated with you, and with each other, in Colorado. The cases involve overlapping facts and witnesses and come out of the same failed deal. But the rancher cannot show which of the Montana company's state contacts relate to which of his claims. So he cannot sue it for any claims in Colorado.

1. *See* Seiferth v. Helicopteros Atuneros, Inc., 472 F.3d 266, 270, 275 (5th Cir. 2006).

Instead, the rancher must bring two separate lawsuits in two separate states to recover for the theft.[2]

Such unjust and inefficient results may seem counterintuitive and even absurd. As this Article shows, however, they are also commonplace. They result from surprisingly widespread judicial misconceptions about personal jurisdiction.[3] As every first-year law student learns, a court can exercise specific personal jurisdiction over a defendant that has sufficient state contacts with a nexus to a plaintiff's claim.[4] These three factors—a defendant's *contacts*, a plaintiff's *claim*, and the *nexus* between the two—determine whether a plaintiff can sue a defendant in a given state, or if the plaintiff must go elsewhere to seek relief.[5]

Everyone agrees on the basic contacts-nexus-claim formula, and courts across the country repeat it consistently. But this seeming consensus obscures an underlying controversy over what, exactly, constitutes a claim. It turns out that different circuits—and even different courts within circuits—have different answers. Some produce the very results we just described—the grieving mother shut out of her chosen court, or the harmed inventor with piecemeal cases in different states. Others would allow these plaintiffs to bring a single suit in their chosen forum.

This Article is the first to comprehensively analyze the varying approaches federal courts adopt toward a claim.[6] It develops a typology that elucidates hidden inconsistencies plaguing personal jurisdiction determinations. Some courts restrict a claim to a particular cause of action,[7] or even a cause of action's elements.[8] In these courts, only contacts that have

2. *See* Leachman Cattle, L.L.C. v. Am. Simmental Ass'n, 66 F. Supp. 3d 1327, 1331–34, 1340 (D. Colo. 2014).

3. *See, e.g.*, Walden v. Fiore, 571 U.S. 277, 285 (2014) ("[Courts] have upheld the assertion of jurisdiction over defendants who have purposefully 'reach[ed] out beyond' their State and into another . . . ." (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479–80 (1985))).

4. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) ("[D]ue process requires . . . a defendant . . . have certain minimum contacts with [a state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." (internal quotation marks omitted) (citation omitted)).

5. *See* William S. Dodge & Scott Dodson, *Personal Jurisdiction and Aliens*, 116 MICH. L. REV. 1205, 1212–14 (2018); Linda Sandstrom Simard, *Exploring the Limits of Specific Personal Jurisdiction*, 62 OHIO ST. L.J. 1619, 1620 (2001).

6. While personal jurisdiction constrains both state and federal courts, this Article focuses solely on federal procedure.

7. *See, e.g.*, Figawi, Inc. v. Horan, 16 F. Supp. 2d 74, 79 (D. Mass. 1998) ("Plaintiff has the burden to show that each asserted cause of action 'arises from' transacting business in [the forum state]."); Anderson v. Century Prods. Co., 943 F. Supp. 137, 141 (D.N.H. 1996) ("Personal jurisdiction over the defendant must be proper for each and every cause of action in the complaint."); *see infra* Section II.B.

8. *See, e.g.*, Morris v. Barkbuster, Inc., 923 F.2d 1277, 1281 (8th Cir. 1991) (evaluating the elements of the contract to decide personal jurisdiction); *see infra* Section II.C.

specific legal consequences matter—such as where a product is designed or a contract is signed. Other courts understand the plaintiff's claim to encompass the whole controversy underlying the litigation.[9] These courts look beyond the operative facts to consider the transaction, occurrence, or event underlying the plaintiff's asserted harms.

Our typology reveals that a court's choice of approach shapes the scope of personal jurisdiction. In other words, personal jurisdiction turns on the way a court defines a claim. After all, the claim determines which of a defendant's contacts are relevant to the personal jurisdiction analysis in the first place.[10]

This past Term's Supreme Court decision in *Ford v. Montana* resolves this hidden debate.[11] *Ford*, which reiterates the familiar contacts-nexus-claim formula,[12] focuses its discussion primarily on the nexus requirement.[13] Most scholarship so far has followed suit.[14] This Article explains how *Ford*'s primary contribution has gone unrecognized: the case provides clear legal authority defining a claim as the entire underlying controversy from which litigation arises.[15] The Supreme Court has left no doubt that it considers real-world transactions, occurrences, and events—not causes of action or their elements—as the basis for personal jurisdiction. And so, after *Ford*, should lower courts.

The Article unfolds as follows. Part I situates the reader in personal jurisdiction doctrine by articulating its underlying rationales and succinctly reviewing how the contact, nexus, and claim requirements developed. Part

9. *See, e.g.*, Def. Training Sys. v. Int'l Charter Inc., 30 F. Supp. 3d 867, 877–79 (D. Alaska 2014) (considering the entire controversy and its relation to the defendant's contacts in the forum state); Am. Builders & Contractors Supply Co. v. Lyle, No. 05-2461-CM, 2006 WL 3533090, at *3 (D. Kan. Dec. 7, 2006) (focusing on the relationship between defendant's conduct in the forum and the litigation as a whole); *see also infra* Section II.A.

10. *See, e.g.*, Menard, Inc. v. Textron Aviation, Inc., No. 18-cv-844-wmc, 2019 WL 11637219, at *3 (W.D. Wis. Oct. 24, 2019) ("[A] specific jurisdiction analysis may only consider those contacts out of which the claim arises or relates."); Surgical Laser Techs., Inc. v. C.R. Bard, Inc., 921 F. Supp. 281, 284 (E.D. Pa. 1996) ("Only those forum state contacts related to plaintiff's cause of action are relevant to this analysis."); *cf.* Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 414 (1984) ("When a controversy is related to or 'arises out of' a defendant's contacts with the forum, the Court has said that a relationship among the defendant, the forum, and the litigation is the essential foundation of *in personam* jurisdiction." (internal quotation marks omitted)).

11. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021).

12. *See id.* at 1025.

13. *See id.* at 1026 ("In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum.").

14. *See, e.g.*, Charles W. "Rocky" Rhodes, Cassandra Burke Robertson & Linda Sandstrom Simard, Ford*'s Jurisdictional Crossroads*, 109 GEO. L.J. ONLINE 102, 105 (2020); Scott Dodson, *Personal Jurisdiction, Comparativism, and* Ford, STETSON L. REV. (forthcoming Apr. 2021), https://ssrn.com/abstract=3823508 [https://perma.cc/W2HA-TQCW].

15. *Ford*, 141 S. Ct. at 1029 (discussing the required affiliation between the forum and the underlying controversy).

II focuses squarely on courts' varying definitions of claim, which we characterize as *element*, *cause-of-action*, and *underlying controversy*. This Part explains how each approach functions in practice. It also provides the legal community with a shared language for discussing claims.

Part III shows how, without ever saying so outright, *Ford* mandates the underlying controversy approach to claims. *Ford*'s personal jurisdiction analysis extensively considers the events, transactions, and occurrences that prompt litigation.[16] Under a cause-of-action or element approach, *Ford* could not have reached the result it did.

Part IV evaluates the implications of the underlying controversy standard. We explain why it is the only one that supports the motivating principles of personal jurisdiction doctrine. It tethers jurisdiction to a defendant's purposeful availment of a state's benefits, not to the plaintiff's theory of recovery. It upholds the legal system's commitment to treating like cases alike, rather than leaving people uncertain about where litigation is possible—or blindsided by the results.[17] And it allows states a say in regulating activities that affect their territory and their residents, in line with the doctrine's concern with state sovereignty.[18] The Article thus illuminates a crucial but underrecognized problem in how courts exercise their power, explains how a Supreme Court decision subtly but conclusively settles the issue, and evaluates the implications of this new legal standard.

I. A VERY SHORT HISTORY OF PERSONAL JURISDICTION

This Part offers a brief refresher on personal jurisdiction, the doctrine that defines a court's power over defendants. Personal jurisdiction determines where a plaintiff may bring suit: it determines which courts, located in which places, can force a given defendant to litigate. Given the complexity of this field and the high volume of excellent scholarship it has

16. *See id.* at 1032 (finding personal jurisdiction exists based on the strong relationship between the defendant, forum, and events giving rise to the litigation).

17. *Cf.* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) ("[There must be] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."); *see also* Jonathan Stephenson, *Mass Inaction: An Analysis of Personal Jurisdiction in Mass Actions in Federal Court*, 59 SANTA CLARA L. REV. 453, 454 (2019) ("One of the most basic elements of personal jurisdiction . . . is fairness.").

18. *See* Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1780 (2017) (explaining that restrictions on personal jurisdiction "are a consequence of territorial limitations on the power of the respective States" (quoting Hanson v. Denckla, 357 U.S. 235, 251 (1958))); *see also* Danielle Keats Citron, *Minimum Contacts in a Borderless World: Voice over Internet Protocol and the Coming Implosion of Personal Jurisdiction Theory*, 39 U.C. DAVIS L. REV. 1481, 1483 (2006) ("[A] state's ability to subject nonresidents to its courts' jurisdiction rests on the state's sovereignty over the nonresidents' litigation-related activities within its territory.").

generated, we do not aim to provide an exhaustive explanation. Our point here is simply to trace the arc of personal jurisdiction developments and the values they invoke. This context sets the stage for explaining the central role a claim plays in a state's power over nonresidents.

A. Principles: Sovereignty, Fairness, Efficiency

We start with underlying principles. What values motivate or justify personal jurisdiction doctrine? As the doctrine has developed, explanations have changed. Early on, the Court rooted personal jurisdiction in concerns about states' "encroachment" on one another's territorial power: the possibility that a court in one state could exert power over someone in another challenged the principle of state sovereignty.[19] And the Court continues to make glancing allusions to sovereignty as a concern for personal jurisdiction,[20] focusing on a state's interest in hearing claims if underlying events occurred within the state or the parties are residents.[21]

Increasingly, though, the Court's concern has shifted away from territorial concerns and toward the Constitution's guarantee of due process, expressed in the notion of fairness.[22] Rather than an abstract or everyday conceptualization of fairness, in the context of due process jurisprudence, fairness is a term of art. It focuses on preserving individual liberty and preventing arbitrary uses of governmental power.[23] Strictures about where parties can litigate should balance a plaintiff's choice of forum against a

19. Pennoyer v. Neff, 95 U.S. 714, 723 (1877).

20. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980) (explaining that the concept of minimum contacts "acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system"); Hanson v. Denckla, 357 U.S. 235, 251 (1958) (characterizing personal jurisdiction as necessary given territorial limitations on state power).

21. Keeton v. Hustler Mag., Inc., 465 U.S. 770, 775–76 (1984).

22. *See, e.g.*, Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703 (1982) (questioning territorial and federalism rationales); *Burger King*, 471 U.S. at 471–72 (noting that personal jurisdiction "protects an individual's liberty interest"). *But see* James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine*, 90 VA. L. REV. 169, 209–13 (2004) (tracing personal jurisdiction's common law origins). Constitutional due process comes in two flavors: procedural due process guarantees fair procedures and an opportunity to be heard, while substantive due process guards against overweening government power. *See, e.g.*, Daniels v. Williams, 474 U.S. 327, 331 (1986) (explaining that substantive due process protects against the arbitrary and oppressive exercise of government power). Some scholars argue that personal jurisdiction should be rooted in substantive, rather than procedural, due process. *See* Max Rheinstein, *The Constitutional Bases of Jurisdiction*, 22 U. CHI. L. REV. 775, 779 (1955). Taking no position on that question, we evaluate the doctrine with respect to the underlying principles the leading cases invoke.

23. *See* Alan M. Trammell & Derek E. Bambauer, *Personal Jurisdiction and the "Interwebs,"* 100 CORNELL L. REV. 1129, 1153 (2015) ("The hallmark of procedural due process is protecting parties against the arbitrary exercise of governmental power."); *see also Ins. Corp. of Ir.*, 456 U.S. at 702 n.10 ("The restriction on state sovereign power . . . [is] a function of the individual liberty interest preserved by the Due Process Clause.").

defendant's burdens in being haled into court. And they should promote efficiency to avoid wasting the resources of either the parties or the judiciary.

Fairness to plaintiffs includes deference to their choice of forum,[24] which should "rarely be disturbed."[25] The Supreme Court has instructed courts to respect a plaintiff's choice of where to file,[26] particularly when plaintiffs sue in their home jurisdiction or in a state connected to the litigation.[27] This deference shields plaintiffs from litigating in multiple or inconvenient forums.[28] Overly stringent personal jurisdiction requirements, in contrast, compromise access to justice. If the available forum is too remote or too inconvenient, a plaintiff may have no realistic option but to forego litigation.[29]

As for defendants, whether it is fair to drag them into a state to face suit depends on their own conduct, evaluated through the standard of "purposeful availment."[30] As a defendant's claim-related contacts with a state increase—and the defendant purposefully avails itself of the state's benefits—so does the fairness of that state exercising specific personal jurisdiction.

Further, in personal jurisdiction, fairness requires change over time rather than "mechanical" determinations that try to quantify or fix fairness

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24. Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970) ("It is black letter law that a plaintiff's choice of a proper forum is a paramount consideration . . . and that choice . . . should not be lightly disturbed.") (internal quotation marks omitted).

25. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947), *superseded by statute*, Pub. L. No. 80-773, 62 Stat. 869, 937 (1948) (codified at 28 U.S.C. § 1404(a)).

26. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255–56 (1981).

27. Koster v. (Am.) Lumbermens Mut. Cas. Co., 330 U.S. 518, 524 (1947) ("Where there are only two parties to a dispute, there is good reason why [the case] should be tried in the plaintiff's home forum if that has been his choice. He should not be deprived of the presumed advantages of his home jurisdiction except upon a clear showing of facts which either (1) establish such oppressiveness and vexation to a defendant as to be out of all proportion to plaintiff's convenience, which may be shown to be slight or nonexistent, or (2) make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative and legal problems.").

28. *See, e.g.*, Gerlinde Berger-Walliser, *Reconciling Transnational Jurisdiction: A Comparative Approach to Personal Jurisdiction over Foreign Corporate Defendants in US Courts*, 51 VAND. J. TRANSNAT'L L. 1243, 1276–77 (2018) (raising concerns regarding how the majority opinion in *Daimler* deprives rights of individuals harmed by defendant's actions); David W. Ichel, *A New Guard at the Courthouse Door: Corporate Personal Jurisdiction in Complex Litigation After the Supreme Court's Decision Quartet*, 71 RUTGERS U. L. REV. 1, 53–56 (2018). In some cases, dismissal for lack of personal jurisdiction may preclude any realistic forum for relief. *See* Alex Wilson Albright, *In Personam Jurisdiction: A Confused and Inappropriate Substitute for Forum Non Conveniens*, 71 TEX. L. REV. 351, 396 (1992).

29. *See* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1561 (2017) (Sotomayor, J., concurring) ("It is individual plaintiffs, harmed by the actions of a farflung foreign corporation, who will bear the brunt of the majority's approach and be forced to sue in distant jurisdictions with which they have no contacts or connection.").

30. Hanson v. Denckla, 357 U.S. 235, 253 (1958) (requireing purposeful availment). Some debate the efficacy of purposeful availment as a proxy for fairness. *See, e.g.*, David L. Noll, *The New Conflicts Law*, 2 STAN. J. COMPLEX LITIG. 41, 90 (2014).

in absolute terms.[31] Personal jurisdiction requirements "should be determined and adjusted according to the customs of the age,"[32] yielding a flexible standard that evolves with "modern commercial life."[33]

Finally, a fair personal jurisdiction requirement must be predictable,[34] so parties can "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."[35] Thus, the Court has reiterated the importance of generating consistent, simple guidelines,[36] though its own doctrine in the area has not always lived up to these ideals.

Concepts of fairness, though, are but one consideration. Congress authorized the Federal Rules of Civil Procedure to advance efficiency and to infuse new values—accessibility, convenience, ease of use—into what had been a burdensome and arcane litigation system.[37] The very first Federal Rule of Civil Procedure mandates that procedural rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."[38] While we list this value separately, efficiency actually has a place in due process itself, which requires the "orderly administration of the

31. *See, e.g.*, Amsden v. Moran, 904 F.2d 748, 753 (1st Cir. 1990) ("There is no mechanical formula by which the adequacy of state procedures can be determined. To the contrary, 'due process is flexible and calls for such procedural protections as the particular situation demands.'" (quoting Morrissey v. Brewer*,* 408 U.S. 471, 481 (1972))); Cruz v. P.R. Power Auth., 878 F. Supp. 2d 316, 329 (D.P.R. 2012).

32. E. THOMAS SULLIVAN & TONI M. MASSARO, THE ARC OF DUE PROCESS IN AMERICAN CONSTITUTIONAL LAW 22 (2013).

33. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985); *see also* Matthew J. Steilen, *Due Process as Choice of Law: A Study in the History of a Judicial Doctrine*, 24 WM. & MARY BILL RTS. J. 1047, 1051 (2016) (discussing the development of procedural due process requirements "toward a flexible and open-ended test centered around due process values").

34. *See, e.g.*, Daimler AG v. Bauman, 571 U.S. 117, 139 n.20 (2014) (stating personal jurisdictional rules are meant to promote greater predictability); Burnham v. Super. Ct., 495 U.S. 604, 637 (1990) (Brennan, J., concurring) (supporting tag personal jurisdiction because it gives rise to predictable risks).

35. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); *see also* Harold S. Lewis, Jr., *A Brave New World for Personal Jurisdiction: Flexible Tests Under Uniform Standards*, 37 VAND. L. REV. 1, 20 (1984) ("Thus expectation—the capacity of a reasonable person in the defendant's position to foresee that a particular claim may be brought against him in the forum—is not only critical to due process but also should be sufficient to satisfy it, regardless of the nature or level of the defendant's forum contacts.").

36. *See Daimler*, 571 U.S. at 137 (touting the importance of "simple jurisdiction rules") (internal citation omitted).

37. *See, e.g.*, Richard Zorza, *Courts in the 21st Century: The Access to Justice Transformation*, 49 JUDGES' J. 14, 36 n.2 (2010) ("The major changes of the twentieth century, the merger of law and equity, the establishment of the Federal Rules of Procedure and Evidence, and their ultimate extension to the states, were designed to ensure efficiency and to enable the courts to respond to new types of cases as well as new types of problems.").

38. FED. R. CIV. P. 1.

laws."[39] Personal jurisdiction requirements should thus harmonize with procedural doctrines generally.

Of particular relevance to our discussion here, the Federal Rules promote just, speedy, and inexpensive judicial resolutions in part through the aggregation of claims and parties.[40] The rules allow—and sometimes coerce—parties to join together to litigate,[41] to pull multiple others into the litigation,[42] and to combine as many claims as they have against one another.[43] Congress, too, has encouraged parties to group claims, even when some fall outside the normal subject matter jurisdiction of federal courts.[44]

Personal jurisdiction standards directly affect parties' ability to aggregate.[45] Restrictive personal jurisdiction requirements limit the parties over which a court has authority, increasing the likelihood of piecemeal litigation about the same controversy and undermining the efficiency goals of the Rules and statutes.[46]

In sum, personal jurisdiction standards must balance several overarching interests: due process-based fairness to the parties,[47] promotion of efficiency,[48] and respect for state interests.[49]

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39. Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945).

40. *See, e.g.*, Richard D. Freer, *Avoiding Duplicative Litigation: Rethinking Plaintiff Autonomy and the Court's Role in Defining the Litigative Unit*, 50 U. PITT. L. REV. 809, 815–16 (1989). *See infra* Section IV.B.

41. *See* FED. R. CIV. P. 19–20.

42. *See id.*; FED. R. CIV. P. 14.

43. *See* FED. R. CIV. P. 8, 13, 23.

44. 28 U.S.C. § 1367 (allowing federal courts to exert supplemental subject matter jurisdiction over related claims).

45. *See* Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 NW. U. L. REV. 1, 28–34 (2018) (discussing how personal jurisdiction can undermine aggregation).

46. *Cf.* D. Theodore Rave, *Governing the Anticommons in Aggregate Litigation*, 66 VAND. L. REV. 1183, 1192–93 (2013) (discussing the benefits of aggregation); *see also* Christine P. Bartholomew, *Redefining Prey and Predator in Class Actions*, 80 BROOK. L. REV. 743, 787 (2015) (evaluating the benefits of class action aggregation).

47. *See, e.g.*, Lewis, *supra* note 35, at 26 ("[T]he plaintiff's and defendant's interests in the jurisdiction question are essentially the same: each seeks an effective opportunity to secure a judicial determination of the issues.").

48. *See, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980) (noting the forum state's interest in adjudicating the dispute and "the plaintiff's interest in obtaining convenient and effective relief").

49. *Id.* This is not to suggest the Court always succeeds in achieving this balance. *See, e.g.*, *Dodson*, *supra* note 45, at 29 (discussing how personal jurisdiction requirements in *Bristol-Myers* undermined liberal joinder); *see also* Andrew D. Bradt & D. Theodore Rave, *Aggregation on Defendants' Terms: Bristol-Myers Squibb and the Federalization of Mass-Tort Litigation*, 59 B.C. L. REV. 1251, 1299 (2018) (same).

B. Analysis: From State Borders to Purposeful Availment

The Supreme Court's jurisprudence on the topic begins with *Pennoyer v. Neff*, which tied court power over a defendant to that defendant's presence within state boundaries.[50] Although the Court continues to invoke state sovereignty as an underlying concern,[51] *Pennoyer* was the apex of its reliance on territory to shape personal jurisdiction.[52] Under *Pennoyer*, a court could exert power if a defendant or its property was physically located in the state where the court sat,[53] but could generally not reach past state borders. Doing so "would be deemed an encroachment upon the independence of the [other] State in which the persons are domiciled or the property is situated, and be resisted as usurpation."[54] However, even *Pennoyer* hinted that physical presence might not be all there is to it: a person who had agreed to be sued in a particular state, for instance, might be haled into court there.[55]

The idea that a defendant's conduct—rather than its physical location—might give rise to personal jurisdiction lay latent in the doctrine for decades until mid-twentieth century cases put conduct at the heart of the analysis. Most importantly, *International Shoe v. Washington* declared that a defendant need not be physically present in a state to be subject to the power of that state's courts.[56] Instead, a court could exercise jurisdiction over a defendant for claims related to its conduct in the forum state[57] if the defendant had "certain minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."[58] Later cases explained that the contact necessary to find personal jurisdiction is created when the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus

50. Pennoyer v. Neff, 95 U.S. 714, 733 (1877).

51. *See infra* Section IV.C.

52. *See, e.g.*, *Pennoyer*, 95 U.S. at 722 ("The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others.").

53. *See id.* at 720 ("The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.").

54. *Id.* at 723, *overruled in part by* Shaffer v. Heitner, 433 U.S. 186 (1977).

55. *See Pennoyer*, 95 U.S. at 723 ("[T]he exercise of [] jurisdiction which every [s]tate is admitted to possess over persons and property within its own territory will often affect persons and property without it.").

56. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945) (explaining that "continuous and systematic" "activities" in a forum that "also give rise to the liabilities being sued on" constitute the presence necessary for personal jurisdiction).

57. *See id.* at 316.

58. *Id.* (internal quotation marks omitted) (citation omitted).

invoking the benefits and protections of its laws."[59] This basic formula—a contact with nexus to a claim—holds to this day.[60]

Although *International Shoe* suggested that all personal jurisdiction followed a contact-nexus-claim analysis, the Supreme Court later distinguished two forms of personal jurisdiction: general and specific.[61] General personal jurisdiction allows a court to exercise power over a defendant for *any* claims—even those unrelated to the defendant's conduct in the forum.[62] In recent cases, the Court has confined general personal jurisdiction to a forum where a defendant is "at home," which usually leaves just one or two states.[63] Given how dramatically the Court has limited general jurisdiction, most important personal jurisdiction doctrine focuses on specific jurisdiction instead.[64] We, too, address specific jurisdiction—used for defendants who are neither physically present nor "at home" in the forum state—which still requires courts to analyze whether the defendant's state contacts have a nexus with the plaintiff's claim.[65]

The Court's trajectory in this area has several features pertinent to our discussion. One, personal jurisdiction standards must be flexible and responsive to the "transformation of our national economy over the years."[66] Two, doctrinal development has undulated, with periods of growth and

59. Hanson v. Denckla, 357 U.S. 235, 253 (1958).

60. *See, e.g.*, Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1780 (2017) ("[T]he *suit*" must "aris[e] out of or relat[e] to the defendant's contacts with the *forum*.") (alterations in original) (emphasis added) (internal citation omitted); *see also* John V. Feliccia, Bristol-Myers Squibb Co. v. Superior Court*: Reproaching the Sliding Scale Approach for the Fixable Fault of Sliding Too Far*, 77 MD. L. REV. 862, 870–71 (2018). A court should further ascertain that exerting power over the defendant would not violate "traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316.

61. *See, e.g.*, Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 414 nn.8–9 (1984); s*ee also* Cody J. Jacobs, *If Corporations Are People, Why Can't They Play Tag?*, 46 N.M. L. REV. 1, 15 (2016) (differentiating constructive presence and actual physical presence).

62. *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011) ("A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State.").

63. *See* Daimler AG v. Bauman, 571 U.S. 117, 137 (2014) ("For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.") (internal citation omitted); *see also* Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. DAVIS L. REV. 207, 214 (2014) (discussing how the Court has limited general jurisdiction); Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 WAKE FOREST L. REV. 999, 1001 (2012).

64. *See* Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 628 (1988).

65. *See, e.g.*, Walden v. Fiore, 571 U.S. 277, 284 (2014); *Goodyear*, 564 U.S. at 919 (2011).

66. McGee v. Int'l Life Ins. Co., 355 U.S. 220, 222 (1957); *see also* Kulko v. Super. Ct., 436 U.S. 84, 101 (1978) (discussing the evolving, flexible standard of *International Shoe*).

expansion[67] followed by retraction and limitation.[68] Despite this unsteady and often unclear progression, the overall trendline from *Pennoyer* to today has expanded the reach of court power.[69] Finally, much of the Court's jurisprudence has considered what kind and extent of contact with a state justifies jurisdiction.[70] The other factors—nexus and claim—have been comparatively neglected.

These characteristics make sense of one another. Unlike in the horse-and-buggy days of *Pennoyer*, commerce and other interactions are no longer primarily intrastate, and neither, concomitantly, are the harms they can give rise to. Relatedly, crossing a state border is far less arduous than it once was,[71] so parties are both more likely to cross state borders and less likely to be grievously inconvenienced by having to litigate in a non-home state.[72] Finally, it may be that changes in how people and businesses interact across state lines have been so salient that they overshadow the importance of nexus and claim for the Court.

The Court's expansion of specific personal jurisdiction thus took place largely through elaborating on what contacts would render defendants subject to a state's jurisdiction. *International Shoe* emancipated contacts from the strictures of physical presence: conduct in a state where a defendant did not reside could count.[73] A few years later, the Court approved state jurisdiction over a defendant that affirmatively reached out of state to solicit a contract.[74] Later cases suggested that advertisements in one state, even if soliciting business elsewhere, could create sufficient

67. *See, e.g.*, *McGee*, 355 U.S. at 222 (discussing how the "trend [in personal jurisdiction] is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents").

68. *See, e.g.*, Mary Anne Mellow, Steven. T. Walsh & Timothy R. Tevlin, *Supreme Court Strikes Another Blow to Litigation Tourism in* Bristol-Myers Squibb, 85 DEF. COUNS. J. 1, 2 (2018) ("Since 2014, the United States Supreme Court has continued a trend of limiting personal jurisdiction states may exercise over non-resident defendants."); *see also* Dodson, *supra* note 45, at 45 (tracking the expansion and contraction of the doctrine).

69. *See, e.g.*, Lindy Burris Arwood, Note, *Personal Jurisdiction: Are the Federal Rules Keeping Up with (Internet) Traffic?*, 39 VAL. U. L. REV. 967, 997–98 (2005) (mapping the growth of personal jurisdiction in the second half of the twentieth century).

70. *See, e.g.*, *Walden*, 571 U.S. at 285 (2014) (refining minimum contacts analysis); Calder v. Jones, 465 U.S. 783, 788–89 (1984); Keeton v. Hustler Mag., Inc., 465 U.S. 770, 775 (1984) (same).

71. *See, e.g.*, Xcentric Ventures, L.L.C. v. Bird, 683 F. Supp. 2d 1068, 1075 n.2 (D. Ariz. 2010) (discussing "the relative ease of modern air travel").

72. Moreover, as the Court has constricted the reach of general personal jurisdiction, *see* Rhodes & Robertson, *supra* note 63, it makes sense to expand specific personal jurisdiction to ensure that plaintiffs are able to seek relief.

73. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

74. *See* McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957) (finding personal jurisdiction because the lawsuit was premised on a contract with substantial connections to the forum state).

contacts as well.[75] Even where a defendant neither enters nor conducts business in the forum state, the Court has approved exerting personal jurisdiction when the defendant intentionally undertakes conduct aimed at or primarily effective in the forum state.[76]

This expansion of minimum contacts has not always been consistent or prompt. Even justices themselves have criticized the Court for failing to fully resolve the kinds of questions that differentiate the modern economy from the horseback world of *Pennoyer*.[77] The Court has failed to clarify the so-called stream of commerce.[78] Should a component part maker be subject to suit where the final product was used?[79] Should a manufacturer be subject to suit where a distributor sold its wares?[80] Similarly, the Court has yet to generate a useable framework for internet-based contacts that reach into a forum, despite their modern-day omnipresence.[81] Still, overall, the movement has been toward expanding jurisdiction through redefining contacts.

Bucking this trend, *Bristol-Myers Squibb v. Superior Court* focused instead on nexus[82]—that is, the requirement that the litigation "aris[es] out

75. *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) ("[I]f the sale of a product . . . arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States . . . .").

76. *See, e.g.*, Calder v. Jones, 465 U.S. 783, 791 (1984) (finding jurisdiction based on defendant's intentional effects in the forum state); Keeton v. Hustler Mag., Inc., 465 U.S. 770, 777 (1984) ("The reputation of the libel victim may suffer harm even in a State in which he has hitherto been anonymous.").

77. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 887 (2011) (Breyer, J., concurring) ("[T]here have been many recent changes in commerce and communication, many of which are not anticipated by our precedents."); *see also* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1032 (2021) (Alito, J., concurring) ("[T]here are . . . reasons to wonder whether the case law we have developed . . . is well suited for the way in which business is now conducted."); *id.* at 1034 (Gorsuch, J., concurring) ("To cope with these changing economic realities, this Court has begun cautiously expanding the old rule in exceptional cases.") (internal quotation marks omitted).

78. *See, e.g.*, Jack B. Harrison, *Here and There and Back Again: Drowning in the Stream of Commerce*, 44 STETSON L. REV. 1, 17 (2014) ("[L]ower courts [are] simply left with more questions than answers.").

79. *See, e.g.*, Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 105 (1987) (considering whether defendant's awareness that the components it manufactured were sold to the forum state is sufficient to establish jurisdiction).

80. *See, e.g.*, *Nicastro*, 564 U.S. at 878 (examining whether a court can exercise jurisdiction over a foreign manufacturer that did not target or advertise in the forum state).

81. *See* Zainab R. Qureshi, *If the* Shoe *Fits: Applying Personal Jurisdiction's Stream of Commerce Analysis to E-Commerce—A Value Test*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 727, 728 (2018) ("[T]he Supreme Court has yet to define the parameters of personal jurisdiction vis-à-vis Internet activity.").

82. Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1780 (2017) (emphasizing the significance of the connection between the forum state and the underlying controversy that occurred in that state).

of or relate[s] to the defendant's contacts with the forum."[83] In *Bristol-Myers Squibb*, plaintiffs from several states joined to sue a pharmaceutical corporation in California.[84] The corporation had extensive contacts in California, including sales and advertising, and the Court found those contacts sufficiently related to the claims of the plaintiffs who resided in California. However, the Court did not allow plaintiffs who did not reside or suffer harm in California to sue there: their claims lacked a sufficient "affiliation between the forum [state] and the underlying controversy."[85] The Court did not hold that the company's forum state contacts had to directly cause a plaintiff's injury, but it did demand some relationship between the two.[86]

Unlike the contacts cases, which often left the Court splintered and produced a string of plurality decisions,[87] *Bristol-Myers Squibb* garnered relative consensus regarding the nexus. Unfortunately, consensus did not equate to clarity. *Bristol-Myers Squibb* proved a challenging template for lower courts, which floundered in applying it to differing fact patterns. Courts recognized that a plaintiff's claim needed some connection to a defendant's contacts with the forum, but the kind of connection required was hotly debated. Some maintained the defendant's contacts needed only to relate to the claim; others required the contacts be the but-for cause of the litigation; still others demanded an even tighter relationship.[88]

In March of 2021, *Ford v. Montana* ensured that the nexus requirement did not throttle a state's ability to hear litigation involving a nonresident defendant.[89] In *Ford*, which consolidated two cases from Montana and Minnesota, forum state residents had been injured in the forum states by Ford cars that "the company had originally sold . . . outside the forum States," and which "[o]nly later resales and relocations by consumers had brought" there.[90] Ford conceded it had minimum contacts with both states, but

83. Daimler AG v. Bauman, 571 U.S. 117, 127 (2014) (alterations in original) (quoting Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U. S. 408, 414 n.8 (1984)).

84. *Bristol-Myers Squibb*, 137 S. Ct. at 1778.

85. *Id.* at 1780 (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U. S. 915, 919 (2011)).

86. *See id.* at 1782.

87. *See, e.g.*, Burnham v. Super. Ct., 495 U.S. 604, 607 (1990) (plurality opinion); Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 105 (1987) (plurality opinion); J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 877 (2011) (plurality opinion).

88. *Compare, e.g.*, Car-Freshner Corp. v. Scented Promotions, L.L.C., No. 519CV1158GTSATB, 2021 WL 1062574, at *9 (N.D.N.Y. Mar. 19, 2021) (requiring defendants contacts to relate to the claim), *with* Waite v. AII Acquisition Corp., 901 F.3d 1307, 1315 (11th Cir. 2018) (requiring "but for" relationship), *and* Danziger & De Llano, L.L.P. v. Morgan Verkamp L.L.C., 948 F.3d 124, 130 (3d Cir. 2020) ("But-for causation is not enough . . . .").

89. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1026 (2021).

90. *See id.* at 1023.

moved to dismiss for lack of personal jurisdiction, arguing that its contacts lacked a sufficient nexus to the plaintiffs' claims.[91] Ford maintained that because it did not design, manufacture, or originally sell the plaintiffs their vehicles in their home states, there was no "causal link" between its conduct in the forum states and plaintiffs' claims.[92]

Writing for the majority, Justice Kagan rejected this interpretation of nexus. The Court held that Ford's "causation-only approach finds no support in th[e] . . . requirement of a 'connection' between a plaintiff's suit and a defendant's activities."[93] Rather, the litigation need only "arise out of or relate to" forum state conduct, a phrasing that "contemplates that some relationships will support jurisdiction without a causal showing."[94] Consistent with the overall trend towards expanding personal jurisdiction, the Court's definition of nexus ensured that "[w]hen 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."[95]

Personal jurisdiction remains relatively restrictive, and defendants have numerous opportunities to avoid it.[96] A defendant can move to dismiss for lack of personal jurisdiction before answering a complaint,[97] and plaintiffs bear the burden of both pleading personal jurisdiction and proving it in response to such a motion.[98] Even then, a defendant can still avoid personal jurisdiction if its exercise would be unfair or unreasonably burdensome,[99] or if the state lacks sufficient interest or competence to hear the case.[100]

Nonetheless, as this brief review makes clear, Supreme Court opinions have, overall, increased the reach of specific personal jurisdiction. By

91. *See id.*
92. *See id.*
93. *Id.* at 1026.
94. *Id.*
95. *Id.* at 1022.
96. Corporate defendants, in particular, have benefited from restrictive personal jurisdiction requirements. *See* Brett J. Workman, *Deference to the Plaintiff in Forum Non Conveniens Cases*, 86 FORDHAM L. REV. 871, 883 (2017).
97. FED. R. CIV. P. 12(b)(2).
98. FED. R. CIV. P. 8 (requiring a complaint include jurisdictional allegations). If "the defendant . . . contradict[s] the plaintiff's allegations," moreover, the plaintiff must "prove—not merely allege—jurisdiction." Argos Glob. Partner Servs., L.L.C. v. Ciuchini, 446 F. Supp. 3d 1073, 1084 (S.D. Fla. 2020) (internal citations omitted).
99. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476–78 (1985); *see also* Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 114 (1987) ("The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.").
100. *See Asahi*, 480 U.S. at 116 (denying personal jurisdiction because the forum state lacked sufficient interest in the litigation).

tinkering with the connotation of contacts and nexus—words whose meanings influence a court's ability to exercise specific personal jurisdiction over a defendant—the Court has begun modernizing the doctrine.

II. NEXUS TO WHAT?

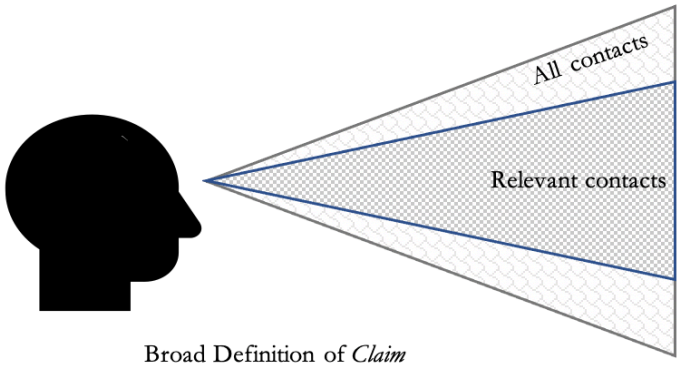
As Part I explains, the Supreme Court has articulated personal jurisdiction's policy principles and provided an analytical frame: courts evaluate whether a defendant's state contacts have a nexus with a plaintiff's claim.[101] The Court has also shed light on what kinds of contact justify court power over a defendant, and how tight the nexus of contact and claim must be.[102] But it has neglected to define a claim.

Like adjusting an aperture, the scope of relevant contacts depends on the definition of claim. The broader the definition, the more contacts count; the narrower, the fewer. For instance, if a court defines a claim to mean all the real-world events that surrounded the lawsuit, then many of a defendant's state contacts will be relevant to that claim. But if a court defines a claim to include only the specific legal elements of the cause of action, then many of the defendant's contacts with the forum state may not seem relevant at all. Figure A illustrates this relationship visually.

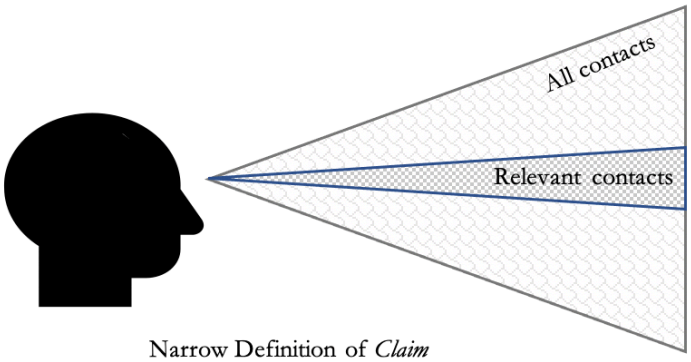
101. *See supra* Part I.

102. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1026 (2021) (rejecting a causal nexus test and holding that contacts need only relate to the claim).

Figure A



Broad Definition of *Claim*



Narrow Definition of *Claim*

Before *Ford*, the Supreme Court did little to define this controlling term beyond mentioning that the defendant's contacts must relate to the plaintiff's injury,[103] or to "the underlying controversy" more broadly.[104] To the extent the Court addressed the issue at all, it sowed confusion.[105] Justice Alito's majority opinion in *Bristol-Myers Squibb*, for example, veered between defining claim broadly—as in the phrase "case-linked"

103. *See, e.g.*, Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1781 (2017) (requiring defendant's in-state activities relate to the underlying controversy before exercising personal jurisdiction); Keeton v. Hustler Mag., Inc., 465 U.S. 770, 774 (1984) (exercising jurisdiction because defendant's conduct in New Hampshire was related to the harm plaintiff suffered there).

104. *See, e.g.*, Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011) (requiring "an 'affiliatio[n] 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" (quoting Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966))).

jurisdiction[106]—and narrowly, as when demanding "a connection between the forum and the specific claims at issue."[107] While the opinion describes its holding as a "straightforward application . . . of settled principles of personal jurisdiction,"[108] it never clarifies its key terms.

Courts developing the definition of claim have had to work against this backdrop of mixed messages and neglect. It should come as no surprise that they have come to highly varied conclusions. Even courts in the same circuit sometimes take differing approaches.[109] Because the definition of claim is not recognized as something about which there might be binding precedent—nor, usually, as something a court need directly address at all—even courts taking opposite approaches often fail to note any disagreement.[110] Although opinions use the common terminology of contact-nexus-claim, in practice courts focus primarily on evaluating contacts.[111] And when they turn to the other components, they frequently conflate nexus with claim, leaving the terms even murkier.[112] Only careful examination of the particular, often idiosyncratic, ways courts apply the personal jurisdiction formula reveals their differing approaches.[113] Rather

106. *Bristol-Myers*, 137 S. Ct. at 1779–80 ("Since our seminal decision in *International Shoe*, our decisions have recognized two types of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.") (internal quotation marks omitted) (citation omitted).

107. *Id.* at 1781.

108. *Id.* at 1783.

109. *Compare* Def. Training Sys. v. Int'l Charter Inc., 30 F. Supp. 3d 867, 882 (D. Alaska 2014) (taking an underlying controversy approach), *with* Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1149 (9th Cir. 2017) (taking a cause of action approach).

110. *See, e.g.*, CE Distrib., L.L.C. v. New Sensor Corp., 380 F.3d 1107, 1111 (9th Cir. 2004) (presuming a cause of action approach is necessary without addressing debate as to how to define claim); Ima Jean Robinson Springs v. Sec. Fin. Corp., No. SA-11-CA-797-OG, 2011 WL 13324311, at *4 (W.D. Tex. Nov. 21, 2011) (same).

111. *See* Phillips Exeter Acad. v. Howard Phillips Fund, 196 F.3d 284, 289 (1st Cir. 1999) (stating "there is a natural blurring of the relatedness and purposeful availment inquiries"); *see, e.g.*, Mold-A-Rama Inc. v. Collector-Concierge-Int'l, 451 F. Supp. 3d 881, 889 (N.D. Ill. 2020); ABG Prime Grp., L.L.C. v. Innovative Salon Prod., 326 F. Supp. 3d 498, 506 (E.D. Mich. 2018); Int'l Truck & Engine Corp. v. Quintana, 259 F. Supp. 2d 553, 557 (N.D. Tex. 2003).

112. *See, e.g.*, Blessing v. Chandrasekhar, 988 F.3d 889, 901 (6th Cir. 2021); Cray Inc. v. Raytheon Co., 179 F. Supp. 3d 977, 985 (W.D. Wash. 2016); Anderson v. Century Prod. Co., 943 F. Supp. 137, 141 (D.N.H. 1996).

113. That courts do not recognize the judicial disagreement over the meaning of claim also makes it difficult to identify judicial trends. There are no readily apparent search terms connected with each approach. Courts not only do not recognize where they differ from other courts; they often do not even recognize that they are using one definition of claim as opposed to another in the first place. Only a close reading of an opinion shows how a court applies the term. There are tens of thousands of published personal jurisdiction decisions, on top of unknown numbers of unpublished ones. And circuit courts have not, so far, handed down precedential rulings on this issue. Consequently, there is no practical, grounded way to generalize about circuit trends. What is clear, though, is that each approach is widespread. *See infra* notes 114–117, 128–148, 165, and 171–184 (presenting cases adopting each approach to defining claim).

than looking to what courts say they do, here we analyze what they do without ever saying so.

This Part surveys the terrain, mapping out the range of ways courts use the concept of *claim* in personal jurisdiction. Some ask whether the facts giving rise to the lawsuit relate closely to the defendant's contacts with the state. At the other extreme, some courts look solely to those contacts that relate to an element of a cause of action. Still others land in the middle. In developing a typology, this Part highlights the dangers of defining claims restrictively.

A. Underlying Controversy

Some courts define a claim to mean the litigation's underlying controversy, including all counts based on the same operative facts—regardless of whether the plaintiff actually alleged those counts in the complaint.[114] They approach personal jurisdiction with an eye toward evaluating how the defendant's contacts with the forum relate to the transactions, occurrences, and events that led to litigation.[115] For these courts, what matters is whether the defendant's contacts with the state demonstrate purposeful availment and whether they relate to "the operative facts" of the litigants' dispute.[116] How the plaintiff's complaint lays out its particular counts does not control. Rather, because all related counts are part of the same underlying controversy, it is the events leading to litigation that determine what contacts are relevant.[117] This approach allows the court to

114. *See, e.g.*, Compania de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V., 970 F.3d 1269, 1284–89 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 2739 (2021); uBID, Inc. v. GoDaddy Grp., 623 F.3d 421, 430–31 (7th Cir. 2010); Novian & Novian, L.L.P. v. Wireless Xcessories Grp., No. 2:20-CV-11715-CAS-Ex, 2021 WL 1577786, at *9 (C.D. Cal. Apr. 19, 2021) (exercising personal jurisdiction over plaintiff's fraud and contract claims arising from the same underlying controversy); Def. Training Sys. v. Int'l Charter Inc., 30 F. Supp. 3d 867, 877–83 (D. Alaska 2014) (analyzing personal jurisdiction based on the underlying controversy in a multiclaim suit between military contractor and subcontractor); Sutton v. Advanced Aquaculture Sys., Inc., 621 F. Supp. 2d 435, 439–42 (W.D. Tex. 2007); Am. Builders & Contractors Supply Co. v. Lyle, No. 05-2461-CM, 2006 WL 3533090, at **1–3 (D. Kan. Dec. 7, 2006).

115. *See, e.g.*, Beemac, Inc. v. Republic Steel, No. 2:20-cv-1458, 2021 WL 2018681, at *4 (W.D. Pa. May 20, 2021) (analyzing the connection between the defendant's activity in the forum and the underlying factual circumstances of the litigation); TorcUP, Inc. v. Aztec Bolting Servs., Inc., 386 F. Supp. 3d 520, 527 (E.D. Pa. 2019) (denying personal jurisdiction after considering defendant's contacts relating to the litigation as a whole).

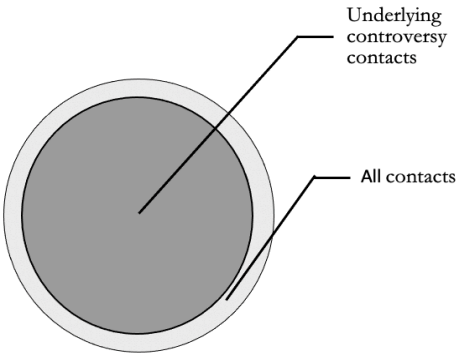
116. Lyngaas v. Curaden AG, 992 F.3d 412, 423 (6th Cir. 2021) ("[T]he standard here . . . is met when 'the operative facts are at least marginally related to the alleged contacts' between the defendant and the forum.") (quoting Bird v. Parsons, 289 F.3d 865, 875 (6th Cir. 2002)).

117. *See, e.g.*, Mack Trucks, Inc. v. Arrow Aluminum Castings Co., 510 F.2d 1029, 1032 (5th Cir. 1975) (holding a claim "gives rise to jurisdiction for all [related] theories of relief"); New Lenox Indus., Inc. v. Fenton, 510 F. Supp. 2d 893, 904 (M.D. Fla. 2007) (finding personal jurisdiction because the

consider a wide range of contacts connected with the dispute—regardless of whether those contacts were with the particular plaintiff.

This approach keeps courts focused on the "constitutional touchstone" of the defendant's purposeful availment of forum state benefits.[118] It is also most likely to yield a finding of personal jurisdiction. See Figure B.

Figure B



Defense Training Systems v. International Charter exemplifies this approach.[119] A business relationship between a contractor hired to provide training sessions for the U.S. military after 9/11 and its subcontractor broke down.[120] The contractor sued in Alaska, claiming intentional interference with contract, intentional interference with prospective economic advantage, defamation per se, intentional misrepresentation, and negligent misrepresentation.[121] The court rejected the defendant subcontractor's request to rule on personal jurisdiction separately for each cause of action. Rather, the court viewed the defendant's contacts "related to obtaining and executing"[122] the contract collectively, considering "the entire course of events"[123] from the period leading up to the parties' contractual relationship

defendants' contacts with Florida collectively related to plaintiff's claim); Cent. Freight Lines, Inc. v. APA Transp. Corp., 322 F.3d 376, 383 (5th Cir. 2003) (exerting specific jurisdiction over multiple claims because defendants' in-state contacts related to events giving rise to the litigation). Unrelated claims available for joinder under Federal Rule of Civil Procedure 20 require a separate personal jurisdiction evaluation.

118. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985).
119. 30 F. Supp. 3d 867, 869 (D. Alaska 2014).
120. *See id.* at 871–72.
121. *Id.* at 874.
122. *Id.* at 882.
123. *Id*. at 883 (quoting Alexander v. Circus Circus Enters., Inc. 939 F.2d 847, 853 (9th Cir. 1991).

through its demise.[124] For example, the court considered the defendant's trip to the forum state for a wedding, because he used the occasion to visit the plaintiff's office to discuss the subcontract.[125]

This approach ensured that the defendant did not "prohibit Alaskan courts from adjudicating tort and contract claims" against a defendant that had "purposefully avail[ed] himself of the privilege of doing business in [the state]."[126] As the court explained, the defendant:

> cannot travel to Alaska seeking the contracting advantage of Alaskan-based [Alaskan Native Corporations] (ANCs), avail himself of the powerful contracting advantages of teaming with an ANC-owned business, sign a $29.5 million contract that provides that Alaskan law governs the relationship, travel to Alaska in relation to that contract, and then claim that due process principles prohibit Alaskan courts from adjudicating tort and contract claims that arise from that relationship.[127]

The court thus treated the plaintiff's claim as encompassing the entire business relationship that led up to litigation.

B. Cause-of-Action

The underlying controversy, however, is a minority approach. Most courts define claim as the cause of action, such that "each count must be considered as though it constituted a separate complaint."[128] These courts require the plaintiff to identify the defendant's contacts, sort them by cause of action, and then articulate the connection between the two.[129] A contact can potentially apply to more than one cause of action. But it does not matter if the same facts give rise to more than one count; the plaintiff must show each count-contact connection individually. See Figure C.

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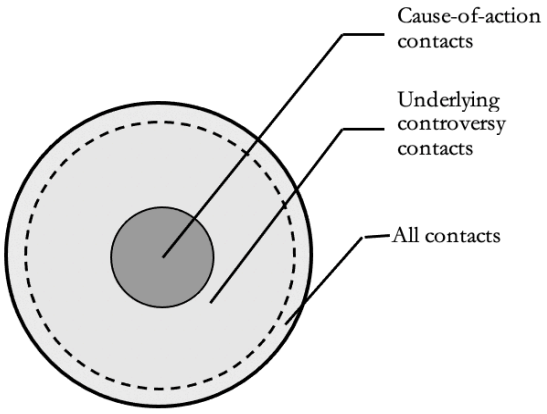
124. *See id.*
125. *See id.* at 873.
126. *Id.* at 883.
127. *Id.*
128. Jack O'Donnell Chevrolet, Inc. v. Shankles, 276 F. Supp. 998, 1002 (N.D. Ill. 1967); *see, e.g.*, Picot v. Weston, 780 F.3d 1206, 1212 (9th Cir. 2015) (considering personal jurisdiction for declaratory judgment cause of action and tortious interference cause of action separately); Zumbro, Inc. v. Cal. Nat. Prods., 861 F. Supp. 773, 777–79 (D. Minn. 1994) (analyzing personal jurisdiction for each of three causes of action); *see also* Remick v. Manfredy, 238 F.3d 248, 254–55 (3d Cir. 2001); Morris v. Barkbuster, Inc., 923 F.2d 1277, 1283 (8th Cir. 1991); Int'l Union, United Mine Workers. v. CONSOL Energy, Inc., 465 F. Supp. 3d 556, 578 (S.D.W. Va. 2020); Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539, 544 (3d Cir. 1985).
129. *See, e.g.*, Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1147–49 (9th Cir. 2017).

Figure C



This approach significantly limits which contacts a court considers in evaluating specific personal jurisdiction. Take, for example, *Seiferth v. Helicopteros Atuneros, Inc.*, the previously mentioned design defect case brought by the estate of a worker who died after a helicopter platform collapsed in Mississippi.[130] The defendant knew the platform would be used in Mississippi and even inspected it there.[131] The wreckage and witnesses to the tragedy were all in Mississippi.[132] The decedent's loved ones naturally brought suit there against the defective platform's designer. The court nonetheless held that the defendant's contacts with Mississippi lacked a sufficient nexus with the plaintiff's causes of action—which the court viewed narrowly as including only the actual design of the defective platform.[133] Because the platform designer just happened to live in Florida when he made his designs, the court instructed the plaintiff to sue there instead.[134]

It seems both unfair and inefficient to force a Mississippi resident who suffers tortious harm in Mississippi to track the tortfeasor down to wherever he may lie. But the absurdity is brought home when we learn that the platform designer *no longer resided in Florida* when the platform

130. 472 F.3d 266 (5th Cir. 2006).
131. *See id.* at 270.
132. *See id*. (detailing the platform failure).
133. *See id.* at 275.
134. *See id.* at 270, 275.

collapsed.[135] The court, however, saw no absurdity in sending plaintiffs to sue in a state that had no regulatory interest in either party and with which neither party currently had a connection. Because the court viewed the plaintiff's claim as restricted to the design defect cause of action, just the locus of the design mattered, not the factual circumstances that triggered the lawsuit.

A similarly narrow view characterizes the analysis in *Anderson v. Century Products Company*, in which a New Hampshire resident sued an Ohio-based manufacturer for misappropriating his innovative infant stroller design.[136] The two corresponded about the plaintiff's invention from their respective states. Plaintiff alleged that, soon after the defendant stated it had no interest in his invention, it "began manufacturing and marketing an infant stroller substantially identical to [Plaintiff's] invention."[137] Plaintiff filed eight counts against the defendant in the District Court of New Hampshire, two of which sounded in contract; the rest were common law and statutory tort claims. Defendant moved to dismiss all for lack of personal jurisdiction.[138]

The court acknowledged the defendant had multiple contacts with New Hampshire: it sent a written offer into the forum, invited the formation of a potential contract, and caused foreseeable injury in the state. But, applying a cause-of-action definition to the claim,[139] the court sorted these contacts between the contract and tort claims. It found Defendant's contacts sufficient to justify specific personal jurisdiction over the tort claims, but not the contract claims. The court recognized that "both arise from the same harmful effects; namely, the uncompensated loss of proprietary rights in plaintiff's idea."[140] It even conceded that "[i]t should not matter for jurisdictional purposes whether the plaintiff chooses to characterize the conduct as a breach of contract or tortious or both, because the state's deference interest remains constant."[141] And yet, contrary to these acknowledgements, the court refused to view the counts as part of the same claim.[142]

This kind of splintering—where courts exercise personal jurisdiction over some but not other causes of action based on the same facts—is

135. *See id.*
136. 943 F. Supp. 137 (D.N.H. 1996).
137. *Id.* at 140.
138. *Id.*
139. *See id.* at 141 ("Personal jurisdiction over the defendant must be proper for each and every cause of action in the complaint.") (citations omitted).
140. *Id.* at 146.
141. *Id.* at 147.
142. *See id.* at 143–44.

common when courts define claims narrowly.[143] This approach often results in *leftover counts*—causes of action based in the same basic factual events as those over which the court takes jurisdiction, but for which a plaintiff cannot identify specific related contacts, even while the defendant may have many contacts related to the litigation as a whole. Courts handle these leftover counts in different ways.[144]

Some courts, like in *Anderson*, pull in leftover counts through the back door of pendent claim personal jurisdiction.[145] Under this doctrine, a court that finds it has personal jurisdiction over a defendant for the purposes of adjudicating one cause of action can use that count as an anchor for asserting jurisdiction in other related causes of action. For example, a court that has asserted personal jurisdiction over a defendant for the purposes of a Clayton Antitrust Act cause of action may apply the cause-of-action notion of claim to conclude that the defendant's contacts do not suffice to substantiate jurisdiction for other causes of action, yet still agree to hear those related claims under pendent claim personal jurisdiction.[146] Or a Multiemployer Pension Plan Amendments Act (MPPAA) cause of action can serve as an anchor for a court to exercise pendent claim personal jurisdiction over state law causes of action for a related scheme to avoid withdrawal liability.[147]

Pendent personal jurisdiction works by analogy to the quite distinct doctrine of supplemental *subject matter* jurisdiction.[148] The Constitution delimits federal courts' subject matter jurisdiction.[149] Hence, a federal court's authority to hear claims for which they lack original subject matter jurisdiction turns on 28 U.S.C. section 1367. This statute affords the court subject matter jurisdiction over a cause of action that forms part of the same "case or controversy"—that is, one that is based in the same basic facts.[150] Courts employing pendent *personal* jurisdiction use the same logic—

143. *See, e.g.*, Remick v. Manfredy, 238 F.3d 248, 254–55 (3d Cir. 2001); Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539, 544 (3d Cir. 1985).

144. *Compare, e.g.*, Cuello-Suarez v. Autoridad de Energia Electrica de P.R., 737 F. Supp. 1243, 1249 (D.P.R. 1990) (exercising pendent jurisdiction over claims for which court lacked specific personal jurisdiction), *with* Deutsch v. Carl Zeiss, Inc., 529 F. Supp. 215, 219 (S.D.N.Y. 1981) (dismissing claims for which court lacked personal jurisdiction).

145. *See, e.g.*, United States v. Botefuhr, 309 F.3d 1263, 1272 (10th Cir. 2002) ("[O]nce a district court has personal jurisdiction over a defendant for one claim, it may 'piggyback' onto that claim other claims over which it lacks independent personal jurisdiction, provided that all the claims arise from the same facts as the claim over which it has proper personal jurisdiction."). For an excellent discussion of pendent personal jurisdiction, see generally Simard, *supra* note 5.

146. *See* Action Embroidery Corp. v. Atl. Embroidery, Inc., 368 F.3d 1174, 1181 (9th Cir. 2004).

147. *See* IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1059 (2d Cir. 1993) (applying pendent jurisdiction to state claims to ensure judicial economy).

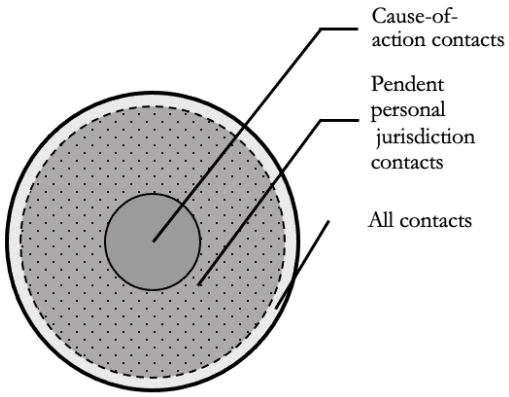
148. *See Botefuhr*, 309 F.3d at 1273; Hargrave v. Oki Nursery, Inc., 646 F.2d 716, 720 (2d Cir. 1980).

149. *See* U.S. CONST. art. III, § 2.

150. *See* 28 U.S.C. § 1367.

though without the same legal authority—to extend personal jurisdiction to related causes of action. In practice, applying pendent claim personal jurisdiction often yields the same results as the underlying controversy approach.[151] See Figure D.

Figure D



The doctrine has certain benefits. A single suit serves "judicial economy, avoidance of piecemeal litigation, and overall convenience of the parties" better than fragmentary litigation about the same issues.[152] But pendent personal jurisdiction suffers from problems. Aside from being a mouthful, it is a discretionary,[153] judge-made doctrine,[154] ill-suited to remedy the dangers of restrictive definitions of a claim. Despite judicial opinions

151. *See, e.g.*, Anderson v. Century Prods. Co., 943 F. Supp. 137 (D.N.H. 1996) (finding personal jurisdiction over the original cause of action and those related thereto).

152. Action Embroidery Corp. v. Atl. Embroidery, Inc., 368 F.3d 1174, 1181 (9th Cir. 2004) ("When a defendant must appear in a forum to defend against one claim, it is often reasonable to compel that defendant to answer other claims in the same suit arising out of a common nucleus of operative facts. We believe that judicial economy, avoidance of piecemeal litigation, and overall convenience of the parties is best served by adopting this doctrine.").

153. *See, e.g.*, Rolls-Royce Corp. v. Heros, Inc., 576 F. Supp. 2d 765, 784 (N.D. Tex. 2008) ("as with supplemental subject matter jurisdiction, the exercise of pendent personal jurisdiction remains discretionary with the court.").

154. *See* Olin Corp. v. Fisons P.L.C., 47 F. Supp. 2d 151, 155 (D. Mass. 1999). The Supreme Court has not recognized pendent personal jurisdiction, only pendent subject matter jurisdiction. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966), *superseded by statute*, Pub. L. No. 101-650, 104 Stat. 5113 (1990) (codified at 28 U.S.C. § 1367).

suggesting the contrary,[155] courts apply this odd doctrine unpredictably and idiosyncratically.

The validity and scope of pendent personal jurisdiction is hotly contested.[156] Some courts apply the doctrine to both federal and diversity suits.[157] Others limit it to litigation anchored by a federal question, or even to cases with causes of action for which Congress has authorized nationwide service of process.[158] Some courts extend pendent personal jurisdiction to permit not just claim joinder but party joinder, using it to haul in additional parties without regard to whether they have connections to the forum.[159] Others reject pendent party joinder altogether.[160]

The application of pendent personal jurisdiction can also improperly invite courts to consider the merits of cases at the motion to dismiss stage. For example, in *United Mine Workers v. Consolidated Energy*, a labor organization and retired coal miners sued an energy company and its subsidiaries over violations of two federal statutes: the Employee Retirement Income Security Act (ERISA) and the Labor Management Relations Act (LMRA).[161] The court found personal jurisdiction over the ERISA claim, and determined that, because the LMRA claim arose from the same basic facts, it could apply pendant personal jurisdiction. But the

155. *See, e.g.*, United States v. Botefuhr, 309 F.3d 1263, 1273 (10th Cir. 2002) ("[T]he majority of federal district courts and every circuit court of appeals to address the question have upheld the application of pendent personal jurisdiction . . . .").

156. *See, e.g.*, Louis J. Capozzi III, *Relationship Problems: Pendent Personal Jurisdiction After* Bristol-Myers Squibb, 11 DREXEL L. REV. 215, 218 (2018) ("[T]here is no . . . authoritative account of what [pendent jurisdiction] is or why it exists."); Rhodes & Robertson, *supra* note 63, at 245 ("There is considerable disagreement over [pendent jurisdiction]: some courts have allowed the extension of pendent personal jurisdiction over the related claim, while others have not."); Jason A. Yonan, *An End to Judicial Overreaching in Nationwide Service of Process Cases: Statutory Authorization to Bring Supplemental Personal Jurisdiction Within Federal Courts' Powers*, 2002 U. ILL. L. REV. 557, 579 ("In [turning to pendent jurisdiction] . . . courts have acted without congressional guidance and have overstepped their bounds.").

157. *See, e.g.*, Hargrave v. Oki Nursery, Inc., 636 F.2d 897, 898 (2d Cir. 1980); N.C. Mut. Life Ins. Co. v. McKinley Fin. Serv., Inc., 386 F. Supp. 2d 648, 656 (M.D.N.C. 2005); Hunter v. Mountain Com. Bank, No. 1:15CV1050, 2016 WL 5415761, at *8, *10 (M.D.N.C. Sept. 28, 2016); Rosenberg v. Seattle Art Museum, 42 F. Supp. 2d 1029, 1037 (W.D. Wash. 1999).

158. *See, e.g.*, Poor Boy Prods. v. Fogerty, No. 3:14-CV-00633-RCJ-VPC, 2015 WL 5057221, at *6 (D. Nev. Aug. 26, 2015); *accord* Wiggins v. Bank of Am., 488 F. Supp. 3d 611, 624–25 (S.D. Ohio 2020) (declining to apply pendent jurisdiction because "the precedent for applying pendent jurisdiction in diversity cases is weak at best").

159. *See, e.g.*, *In re* Packaged Seafood Prods. Antitrust Litig., 338 F. Supp. 3d 1118, 1172–73 (S.D. Cal. 2018); Sloan v. Gen. Motors L.L.C., 287 F. Supp. 3d 840, 858–59 (N.D. Cal. 2018); Allen v. ConAgra Foods, Inc., No. 3:13-cv-01279-WHO, 2018 WL 6460451, at *7 (N.D. Cal. Dec. 10, 2018) (concluding that exercise of pendent personal jurisdiction over nonresident parties was appropriate).

160. *See, e.g.*, Story v. Heartland Payment Sys., L.L.C., 461 F. Supp. 3d 1216, 1229 (M.D. Fla. 2020) (rejecting party pendent jurisdiction); Carter v. Ford Motor Co., No. 19-62646-CIV, slip op. at 9–15 (S.D. Fla. Mar. 26, 2021) (noting no binding authority supports pendent party jurisdiction).

161. 465 F. Supp. 3d 556 (S.D.W. Va. 2020).

court declined to do so because, it explained, the plaintiffs' ERISA counts were just too weak to anchor the LMRA ones.[162] In making the pendent personal jurisdiction determination, the court lost sight of the underlying controversy and made a muddle of a basic principle: courts may not weigh facts at the motion to dismiss stage.[163]

Consequently, other courts reject pendent personal jurisdiction altogether.[164] For example, in *Interface Biomedical Laboratories Corp. v. Axiom*, the court simply dismissed the leftover counts.[165] There, a New York plaintiff sued a California corporation after a planned joint venture to manufacture and market a medical sponge failed.[166] Suing in New York, the plaintiff sought a declaratory judgment that the parties had never consummated a joint venture as well as relief on three commercial tort counts for intellectual property rights violations.[167]

Applying a cause-of-action approach, the court defined the defendant's contacts with New York as three in-person meetings there. These meetings, the court held, constituted relevant contacts for the declaratory judgment cause of action. The alleged intellectual property theft obviously took place in the context of the companies' ongoing relationship. But because that theft occurred after the New York meetings, the court refused to consider them as relevant contacts for the plaintiff's tort claims.[168] That the plaintiff suffered foreseeable injury in New York did not matter to the court either, because "intangible property has no actual situs."[169] Nor did the court consider the ongoing communications between the parties after the defendant's in-person visit. Having ruled most of the business relationship irrelevant, the court decided it only had personal jurisdiction over the declaratory judgment action, and not the three tort counts.[170] To seek relief on those, the New York corporation would presumably have had to file a

162. *See id.* at 581.

163. *See, e.g.*, Auto-Owners Ins. Co. v. LBC Landscaping Servs., Inc., No. 1:19CV1011, 2020 WL 3893284, at *2 (M.D.N.C. July 10, 2020) ("When properly raised, personal jurisdiction is a threshold question that precedes consideration of the merits of a claim.").

164. *See, e.g.*, Seiferth v. Helicopteros Atuneros, Inc., 472 F.3d 266, 274–75 (5th Cir. 2006); Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001); Phillips Exeter Acad. v. Howard Phillips Fund, Inc., 196 F.3d 284, 289 (1st Cir. 1999); Gatekeeper Inc. v. Stratech Sys., Ltd., 718 F. Supp. 2d 664, 667–68 (E.D. Va. 2010); Edwards v. Schwartz, 378 F. Supp. 3d 468, 491 (W.D. Va. 2019).

165. *See* Interface Biomedical Lab'ys Corp. v. Axiom Med., Inc., 600 F. Supp. 731, 732 (E.D.N.Y. 1985).

166. *See id.* at 732–34.

167. These claims included: injunctive relief for unfair competition and to stop defendant from engaging in trade secret misappropriation, and damages for unjust enrichment. *Id.* at 732.

168. *See id.* at 737.

169. *Id.* at 740 (citations omitted).

170. *See id.* at 740.

separate suit—on the same facts, using the same evidence, calling the same witnesses—in California.

In these courts, adopting a cause-of-action definition of a claim dramatically narrows the scope of the suit, leaving leftover counts on the cutting room floor. A plaintiff's only options are to abandon seeking relief altogether, or to file a second suit in a different forum—even though the facts, witnesses, and even counts for the suits are related.

C. Element

For other courts, even a cause-of-action approach is too generous. For courts adopting the most restrictive definition, personal jurisdiction is only proper if a plaintiff identifies defendant forum contacts that relate to a particular element or aspect of a claim.[171]

These courts might decide specific personal jurisdiction based on the location of the plaintiff's injury in a tort case,[172] or where a product was sold in a trademark infringement case.[173] In a breach of contract claim, these courts might only focus on contacts related to the particular contractual provision breached, not the business relationship as a whole. They would ignore the defendant's phone calls, letters, or other communications about other aspects of the contract, no matter how extensive.[174] They would even

171. *See, e.g.*, Scottsdale Cap. Advisors Corp. v. The Deal, L.L.C., 887 F.3d 17, 20–21 (1st Cir. 2018) (considering each element of a defamation claim individually to decide personal jurisdiction); Figawi, Inc. v. Horan, 16 F. Supp. 2d 74, 80 (D. Mass. 1998) (focusing on defendant's contacts regarding the trademark at issue's registration, not the defendant's subsequent fraudulent use); *see also* Seiferth v. Helicopteros Atuneros, Inc., 472 F.3d 266, 274 (5th Cir. 2006); Murray v. Cirrus Design Corp., 339 F. Supp. 3d 783, 787–88 (N.D. Ill. 2018); *accord* Talbot's Pharms. Fam. Prods. L.L.C. v. Skanda Grp. Indus. L.L.C., No. CV 3:20-0716, 2021 WL 1940203 (W.D. La. April 28, 2021) (applying an element definition despite saying the analysis is by cause of action in a magistrate judge opinion), *adopted without discussion by* Talbot's Pharms. Fam. Prods. L.L.C. v. Skanda Grp. Indus. L.L.C., No. CV 3:20-0716, 2021 WL 1929354 (W.D. La. May 13, 2021); Anderson v. Century Prods. Co., 943 F. Supp. 137, 142 (D.N.H. 1996).

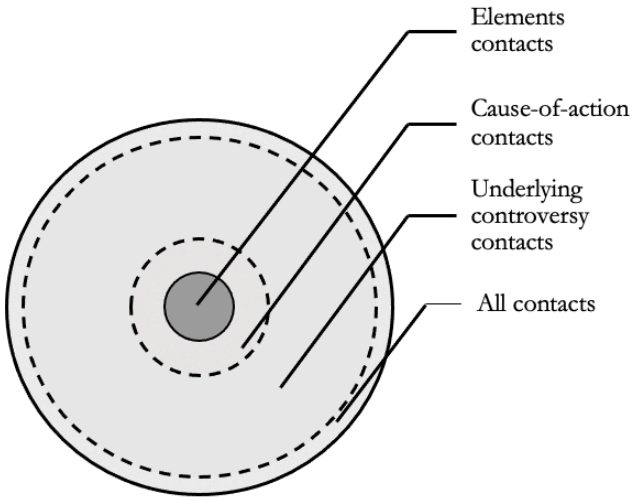
172. *See, e.g.*, Jobe v. ATR Mktg., Inc., 87 F.3d 751, 753 (5th Cir. 1996) ("[P]ersonal jurisdiction lies where . . . the actual injury occurs." (citing Smith v. Temco, Inc., 252 So. 2d 212, 216 (Miss. 1971))).

173. *See, e.g.*, Louis Vuitton Malletier, S.A. v. Mosseri, 736 F.3d 1339, 1354 (11th Cir. 2013) (finding personal jurisdiction over defendant in Florida based on alleged sales of infringing products there).

174. EIQnetworks, Inc. v. BHI Advanced Internet Sols., Inc., 726 F. Supp. 2d 26, 31 (D. Mass. 2010) ("[I]n the case of a typical bilateral contract and a 'passive' purchaser, letters and phone calls into a forum that may accompany an order are viewed as ancillary activity without substantial commercial consequence in the forum.") (internal quotation marks omitted) (citations omitted); *see, e.g.*, Sawtelle v. Farrell, 70 F.3d 1381, 1386, 1390–91 (1995) (concluding evidence that the defendant "sent at least fifteen letters to [the plaintiffs] in New Hampshire and spoke to them by telephone on numerous occasions" was not relevant in evaluating personal jurisdiction).

discount the contacts that led to the contract,[175] or the existence of a choice of law clause.[176] See Figure E.

Figure E



This approach drastically reduces the contacts a court considers for personal jurisdiction. Consider *Phillips Exeter Academy v. Howard Phillip Fund*.[177] Howard Phillip sought to benefit Exeter, a secondary school in New Hampshire, through a testamentary bequest, of, primarily, stock. Under the terms of his will, three private family foundations would receive the stock on the condition they agreed to pay Exeter five percent of the stock proceeds when sold as well as an annual gift of five percent of the stock's net income. One of the private foundations agreed to the bequest and began

175. C & W Fabricators, Inc. v. Metal Trades, Inc., No. Civ.A. 01-40061-NMG, 2002 WL 32759591, at *4–5 (D. Mass. Mar. 27, 2002) (focusing personal jurisdiction inquiry on post-contract-formation telephone calls and facsimiles pertaining to a contract's nondisclosure provision); United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp., 960 F.2d 1080, 1090 (1st Cir. 1992) ("The location of the negotiations is vitally important to the jurisdictional inquiry in a case like this one. If the negotiations occurred outside the forum state, their existence cannot serve to bolster the argument for the assertion of jurisdiction in the forum.").

176. NeoDevices, Inc. v. NeoMed, Inc., No. 08-cv-375-SM, 2009 WL 689881, at *9 (D.N.H. Mar. 12, 2009) (rejecting plaintiff's argument that the choice of law clause was relevant in evaluating personal jurisdiction).

177. 196 F.3d 284 (1st Cir. 1999).

an ongoing relationship with Exeter, but repeatedly breached its obligations to Exeter, which—fourteen years later—sued in New Hampshire. The trial court granted defendant's motion to dismiss for lack of personal jurisdiction.[178]

The First Circuit affirmed the district court's decision, praising its "painstakingly thorough analysis."[179] The First Circuit focused solely on those defendant contacts that related to particular elements of the plaintiff's claims. For example, in evaluating Exeter's breach of contract claim, only defendant contacts relating to formation and breach counted.[180] This meant the court cared only about where the defendant accepted the conditions of the will and where it failed to pay—both of which occurred in Florida where the fund was based.[181] The court ignored the fund's annual payments in New Hampshire, its fourteen years of ongoing interactions with Exeter, and even the representative it sent to New Hampshire to negotiate its financial obligations. Instead, the court decided personal jurisdiction based on but a sliver of the defendant's contacts with the state.

Without stating so outright, in practice the element-specific approach to claims tends to lead courts back into personal jurisdiction's past, when physical presence within state borders decided whether a court had power over a defendant. For example, consider *New Venture Holdings, L.L.C. v. DeVito Verdi, Inc.*, where the Eastern District of Virginia held it lacked personal jurisdiction in a contract dispute.[182] Using an element approach, this court, too, focused solely on contract formation. Because the contract had not been physically executed in the state, the court denied personal jurisdiction. The decision acknowledged that "physical presence in the forum is not a requirement," but nonetheless used the defendant's lack of physical contacts to help explain the court's holding.[183] And it altogether ignored the defendant's virtual presence in the state, which included "various communications via phone and email" as well as "the continuing relationship and ongoing obligations created by the agreement."[184] Such a conclusion is wholly divorced from the realities of modern business transactions, where contract formation, execution, and performance often

178. *Id.* at 286.
179. *Id.* at 289.
180. *See id.* ("In contract cases, a court charged with determining the existence *vel non* of personal jurisdiction must look to the elements of the cause of action and ask whether the defendant's contacts with the forum were instrumental either in the formation of the contract or in its breach.").
181. *See id.* at 291.
182. New Venture Holdings, L.L.C. v. DeVito Verdi, Inc., 376 F. Supp. 3d 683 (E.D. Va. 2019).
183. *Id.* at 695–96 (citation omitted).
184. *Id.* at 694.

occur through virtual presence alone.[185] Using an element§ approach, the court let the defendant enjoy the benefits of doing business in Virginia but avoid facing the consequences.[186]

D. The Shifting Aperture

How a court defines a claim has a significant impact on whether it will exercise specific personal jurisdiction. Consider a simple hypothetical case involving the sale of a shoddy speedboat. The seller lives in Nevada and posts an ad for the boat on Facebook. The plaintiff lives in California and responds to the ad. The two speak on the phone several times to negotiate the deal. The defendant agrees to deliver the boat to the plaintiff in California. Prior to delivery, he makes a series of representations about his maintenance of the boat. Unfortunately, none of these are true. For her maiden voyage, the plaintiff takes the boat to Oregon. While sailing, she is seriously injured when the boat catches on fire. Given the gravity of her injuries and the limits of her means, traveling to Nevada to file suit is impracticable. Instead, the plaintiff wants to sue the defendant in California for breach of contract and false representations about the condition of the boat.

The definition of a claim alters the defendant's odds of success at contesting California's personal jurisdiction. With the underlying controversy approach, the court would have personal jurisdiction over both claims: the overall facts show that the defendant purposefully availed himself of the benefits of conducting business in California, and so he cannot be surprised that he would be responsible for litigation stemming from the sale of the boat.[187]

However, under a cause-of-action approach, the result is less clear. The court would likely find personal jurisdiction over the breach of contract claim, as part of contract performance occurred in California. But whether defendant's contacts are sufficient for the tort claim is ambiguous and might

185. *See, e.g.*, Scott Isaacson, *Finding Something More in Targeted Cyberspace Activities*, 68 RUTGERS U. L. REV. 905, 934 (2016) (discussing the ease and prevalence of virtual business dealings); *accord* Gorman v. Ameritrade Holding Corp., 293 F.3d 506, 510 (D.C. Cir. 2002) ("'Cyberspace,' however, is not some mystical incantation capable of warding off the jurisdiction of courts built from bricks and mortar."), *overruled on other grounds by* Erwin-Simpson v. AirAsia Berhad, 985 F.3d 883 (D.C. Cir. 2021).

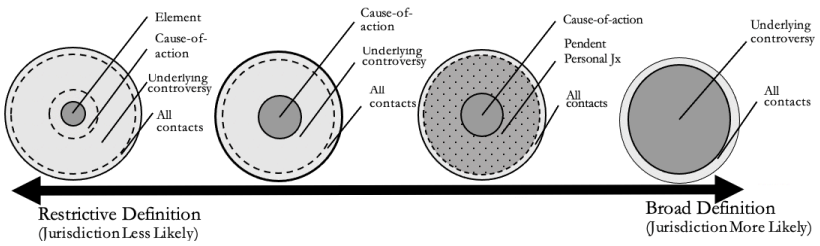
186. *See* Mellon Bank v. Farino, 960 F.2d 1217, 1225 (3d Cir. 1992) ("When a defendant has received the benefits and protections of the forum's laws by engaging in business activities with a forum resident, the courts have 'consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.'") (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 467 (1985)).

187. *Cf., e.g.*, Novian & Novian, L.L.P. v. Wireless Xcessories Grp., No. 2:20-CV-11715-CAS-Ex, 2021 WL 1577786, at *9 (C.D. Cal. Apr. 19, 2021).

depend on a judge's discretionary decision to apply pendent claim personal jurisdiction—an unsettled question.[188] Plaintiff will just have to try her luck if she wants to assert both claims.

Under the element definition of a claim, meanwhile, the court would lack personal jurisdiction over the defendant for either claim. The contract was formed online, not in California or Nevada. The locus of injury was Oregon. On this view, the plaintiff would need to bring separate suits in the two states, despite the related underlying facts. Thus, the more restrictive a definition a court adopts, the less likely it will find personal jurisdiction. See Figure F.

Figure F



While the more restrictive approaches create unpredictability and constrict jurisdiction, the underlying controversy approach, which looks to the factual basis of litigation to determine the nature of a claim, delivers consistency and promotes personal jurisdiction values.[189] As we explain in the following Part, *Ford* makes it clear that this is also the approach the Supreme Court has chosen.

III. MAKING THE CLAIM AFTER *FORD*

As Part I explained, *Ford*'s explicit focus was the nexus requirement: "The only issue," the opinion states, "is whether [the defendant's] contacts are related enough to the plaintiffs' suits."[190] But, without much fanfare, it also resolved a more fundamental controversy: what counts as a claim. The Supreme Court's haphazard use of the term claim in earlier opinions may have led some lower courts to infer that personal jurisdiction depended on

188. *See supra* notes 157–158.
189. *See infra* Part III.
190. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1031 (2021).

a plaintiff's specific cause of action or its elements.[191] *Ford* establishes that the inquiry is not that narrow: the decision requires that lower courts adopt the underlying controversy approach to claim definition. This Part explains how both *Ford*'s text and its application of the law to the facts defines a claim as the underlying transaction, occurrence, or event on which litigation is based.

Textually, *Ford* uses a number of terms to designate that to which a defendant's contacts must relate for personal jurisdiction. The opinion variously refers to "action[]," [192] "case," [193] "claim," [194] "controversy" [195] (also "underlying controversy"), [196] "litigation," [197] and "suit." [198] These terms may have slightly different valences in some situations. For instance, an action, like a piece of litigation and a suit, often indicates a lawsuit—the whole caboodle of plaintiff versus defendant in court, as opposed to some particular legal theory of harm.[199] A controversy may be a polite way to refer to the same thing, [200] though an underlying controversy suggests something bigger and more fact-based. A claim, meanwhile, can mean any number of things, as Part II itself demonstrates.[201]

Ford, however, clarifies that, at least for personal jurisdiction, the term claim is just another way of referring to the underlying controversy that brings parties to court. The opinion uses the listed terms interchangeably, sometimes even explicitly explaining that they are equivalent. For example, the opinion concludes that "the connection between plaintiffs' claims and [the defendant's] activities in [the forum] States—or, *otherwise said*, the 'relationship among the defendant, the forum, and the litigation'—is close enough to support specific [personal] jurisdiction."[202] When the opinion

191. *See supra* Part II.
192. *Ford*, 141 S. Ct. at 1027.
193. *Id.* at 1019, 1026, 1027 n.3.
194. *Id.* at 1025–26, 1027 n.3, 1028–29, 1031–32.
195. *Id.* at 1025.
196. *Id.* at 1025, 1031.
197. *Id.* at 1026, 1028, 1030, 1032.
198. *Id.* at 1023, 1026–28, 1030–32.
199. *See, e.g.*, *Action*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "action" as "[a] civil or criminal judicial proceeding"); *What is LITIGATION?*, LAW DICTIONARY, https://thelawdictionary.org/litigation/ [https://perma.cc/CY97-CMWD] (defining "litigation" as "[a] judicial controversy. A contest in court of justice, for the purpose of enforcing a right"); *Lawsuit*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/lawsuit [https://perma.cc/2LFB-N9AS] (defining "lawsuit" as "a civil legal action by one person or entity . . . against another person or entity").
200. *See, e.g.*, Hargrave v. Oki Nursery, Inc., 646 F.2d 716, 719 (2d Cir. 1980) ("The word 'action' has been commonly understood to denote not merely a 'claim' or cause of action' but 'the entire controversy,' and is so used in the Federal Rules of Civil Procedure.") (citation omitted).
201. *See supra* Part II (surveying varying definitions of claim).
202. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1032 (2021) (emphasis added) (quoting Walden v. Fiore, 571 U.S. 277, 284 (2014)).

introduces personal jurisdiction doctrine, it explains that a "plaintiff's claims 'must arise out of or relate to the defendant's contacts' with the forum" state,[203] "[o]r *put just a bit differently*, there must be an affiliation between the forum and the underlying controversy."[204] Treating all these terms as equivalent indicates that *Ford* incorporates all their connotations into its understanding of what constitutes a claim.[205]

Perhaps the clearest textual statement of just how the Court conceptualizes a claim comes when *Ford* concludes that the plaintiffs "brought suit in the most natural State—based on an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that t[ook] place' there."[206] That is, what matters for personal jurisdiction are the *factual* circumstances that lead to a lawsuit—the "activity or occurrence" that constitutes the "underlying controversy."[207] The opinion certainly does not isolate an element or a cause of action from the surrounding litigation, case, or controversy. And its text provides no basis to do so, nor any indication that a court should strive to find one.

To frame the decision,[208] the Court explains that the case "stem[s] from a car accident,"[209] an event in the world that harmed plaintiffs and created a controversy between the parties: not a contract, not a tort, and certainly not an element of tort or contract. The opinion then sets out the locus of injury and the residence of the injured party as relevant details of this underlying event: the "accident happened in the State where suit was brought. The victim was one of the State's residents."[210] These basic characteristics of the

203. *Id.* at 1025 (quoting Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1780 (2017)).

204. *Id.* (emphasis added) (internal citations omitted).

205. There is little reason to think that statutory interpretation canons like the rule against surplusage (which instructs courts not to interpret statutory language as redundant or meaningless) or the canon of meaningful differentiation (which instructs courts to give different statutory terms different meanings) should apply to judicial opinions. *See* WILLIAM N. ESKRIDGE, JR., JAMES J. BRUDNEY, JOSH CHAFETZ, PHILIP P. FRICKEY & ELIZABETH GARRETT, CASES AND MATERIALS ON LEGISLATION AND REGULATION: STATUTES AND THE CREATION OF PUBLIC POLICY 621–24 (6th ed. 2020) (describing these canons); Ethan J. Leib & James J. Brudney, *The Belt-and-Suspenders Canon*, 105 IOWA L. REV. 735, 740 (2020) (arguing, contrary to these canons, that redundancy is "widespread" in legislative drafting); *see also Ford*, 141 S. Ct. at 1034 (Alito, J., concurring) (criticizing the majority's focus on a single word in a precedential opinion as "pars[ing] . . . words 'as though we were dealing with . . . a statute'" instead of a judicial opinion) (quoting Reiter v. Sonotone Corp., 442 U.S. 330, 341 (1979)).

206. *Ford*, 141 S. Ct. at 1031 (alterations in original) (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1781).

207. *Id.*

208. *See* Anya Bernstein, *Before Interpretation*, 84 U. CHI. L. REV. 567, 593 (2017) (arguing that the way a judicial opinion frames its subject "*constitutes* the case as being about a particular question").

209. *Ford*, 141 S. Ct. at 1022.

210. *Id*. Similarly, the Court rejects the defendant's contention that "the place of accident and injury is immaterial." *Id.* at 1026. *Ford* also quotes approvingly *World-Wide Volkswagen*'s conclusion that personal jurisdiction is warranted over a corporation that expends "efforts . . . to serve . . . the market

claim show up throughout the opinion, which calls the plaintiffs "resident-plaintiff"[211] and notes that "[e]ach plaintiff's suit . . . arises from a car accident in one of [the forum] States."[212] The Court rejects the defendant's contention that the lawsuits should be brought where the cars were originally sold or designed. In those forums, "the suit [would] involve[] all out-of-state parties, an out-of-state accident, and out-of-state injuries," creating a "less significant 'relationship among the defendant, the forum, and the litigation.'"[213]

Ford's application of legal standards supports this reading: the opinion considers the entire chain of events that spurs a plaintiff to court.[214] That includes where actions that led to injury—such as prescribing a drug or driving a car—were taken. It includes where the injury itself—like a side effect or an accident—occurred. And it includes where the harms resulting from the injury—the state of a plaintiff's residence—were felt most keenly. *Ford* does not rank these locations, specify how to weigh them, or choose one that controls. Rather, it draws on these factors as aspects of a general analysis that identifies the primary locations of the real-world situation—the whole "underlying controversy"[215]—for which people seek judicial resolution.

In analyzing the underlying controversy, *Ford* instructs courts to think holistically: look at the *types* of products, the *types* of relationships, and the *types* of market activity that give rise to legal conflicts.[216] The opinion considers not just the plaintiff's relation to the individual products that caused harm, but also the overall context in which harm arose. Indeed, the opinion pointedly looks beyond the specific individual vehicles involved in the accidents to the larger market involved.[217]

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for its product in" the forum state "if its allegedly defective merchandise has there been the source of injury." *Id.* at 1027 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

211. *Id.* at 1026, 1028, 1032.

212. *Id.* at 1028.

213. *Id.* at 1030 (quoting Walden v. Fiore, 571 U.S. 277, 284 (2014)). Similarly, the opinion distinguishes *Bristol-Myers Squibb*, whose plaintiffs "were not residents of California. They had not been prescribed [the drug] in California. They had not ingested [the drug] in California. And they had not sustained their injuries in California." *Id.* at 1031.

214. Looking to application crucially delineates the contours of a legal holding. *See, e.g.*, FREDERICK SCHAUER, THINKING LIKE A LAWYER: A NEW INTRODUCTION TO LEGAL REASONING 55 (2009) (explaining that a "holding . . . is the legal rule that, as applied to the facts of [a] particular case, generates the outcome").

215. *Ford*, 141 S. Ct. at 1031.

216. *See id.* at 1026–27.

217. *See id.* at 1026 (rejecting the defendant's "causation-only approach," which would have limited personal jurisdiction to the states where the company designed, manufactured, or sold the injurious vehicles).

Far from focusing on the specific individual cars in which the plaintiffs were injured, the opinion treats those individual vehicles and their product lines as one and the same[218]: "Ford had systematically served a market in [the forum States] for *the very vehicles* that the plaintiffs allege malfunctioned and injured them in those States."[219] The Court notes, for instance, that Ford actively promoted and sold the product *line* at issue in the forum states—not the specific individual cars, but the same models as those that plaintiffs claimed had defects.[220]

The Court takes into account contacts—from market share to repair shop relations—that contributed to the underlying controversy.[221] It considers Ford's other forum state activities, like extensive advertising and relationships with dealers and repair facilities, whom it provided with cars and parts.[222] In doing so, it consistently analyzes the underlying controversy broadly. No single point in the transactions, occurrences, and events leading to litigation controls.

One could argue that this approach to the notion of claim conflicts with the reasoning of *Bristol-Myers Squibb*, the Supreme Court's 2017 specific personal jurisdiction decision.[223] As we explained in Part I, *Bristol-Myers Squibb* denied California courts personal jurisdiction over a major pharmaceutical corporation with extensive operations in California because

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218. In other words, the opinion resolutely focuses on the level of *types*—general concepts or categories like cars and accidents—and rejects the defendant's invitation to restrict the focus to *tokens*—specific instantiations of types such as an individual car or a particular accident. *See generally* Linda Wetzel, *Types and Tokens*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed. 2018), https://plato.stanford.edu/entries/types-tokens/ [https://perma.cc/DJ8C-2PXM]; *see also* T.L. Short, *Some Problems Concerning Peirce's Conceptions of Concepts and Propositions*, 20 TRANSACTIONS OF THE CHARLES S. PEIRCE SOCIETY 20, 20 (1984) ("[T]he word 'the' as a type occurs many times on this page, each occurrence being a token of that type.").

219. *Ford*, 141 S. Ct. at 1028 (emphasis added). *Ford* leaves open the precise role that something like a product line has in the personal jurisdiction analysis. *See id.* ("Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region."). Nonetheless, the opinion's reasoning supports treating the product line as one part of the underlying controversy that led to the lawsuit.

220. *See id.*

221. *See, e.g.*, *id.* at 1022 ("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.").

222. *See id.* at 1028. The opinion notes that these activities *may* have contributed to plaintiffs' decision to buy Ford cars but emphasizes that it does not really matter: "Nor should jurisdiction . . . ride on the exact reasons for an individual plaintiff's purchase." *Id.* at 1029. In fact, even "if a plaintiff had recently moved to the forum State with his car, and . . . had not considered any of Ford's activities in his new home State," that "should . . . make no difference" to the state's jurisdiction over Ford. *Id.* at 1029 n.5. Again, the Court focuses not on the defendant's relationship with the plaintiff, but on its relationship with the forum state, which has personal jurisdiction because the case's controversy—the harms caused by the defendant's car—has a nexus to the defendant's in-state activity whether or not that activity led the plaintiff to buy the car.

223. Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1776 (2017).

neither the plaintiffs nor their injuries had a relation to California.[224] Language in *Bristol-Myers Squibb* could suggest, to some, that claim means cause-of-action.[225]

To the extent *Bristol-Myers Squibb* conflicts, *Ford*'s holding and reasoning are the latest and therefore the binding Supreme Court statements on the matter. But perhaps more importantly, the two cases actually accord when it comes to the meaning of claim.[226] *Ford* teaches that the geographic locations in which real-world problems between parties play out matter in defining the claim to which a defendant's contacts relate. In *Bristol-Myers Squibb*, the underlying controversy was not related to California. The *Bristol-Myers Squibb* plaintiffs did not reside, ingest the drug, or suffer harm in California. For both cases, what matters is "the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there."[227] At least on this issue, *Bristol-Myers Squibb* is consistent with *Ford*.

In the terms we developed in Part II, *Ford* firmly supports an underlying controversy approach to a claim. An element approach would have required the plaintiffs to show that legally crucial aspects of their tort counts had a nexus with specific actions taken by Ford, limiting them to suing in the state where the cars were designed.[228] A cause-of-action approach would have required the plaintiffs to show that the defendant's in-state activity had a nexus with each count.[229] That may have relegated the plaintiffs to suing, perhaps piecemeal, where the vehicles were first sold, manufactured, or, again, designed.[230]

Instead, the Court considered not just design, production, and contract formation, but a host of other occurrences and transactions that relate to the litigation, even though many are not related to the individual vehicles at issue, much less to the specific plaintiffs. Following *Ford*, courts making personal jurisdiction determinations must consider the nexus of a

224. *See supra* notes 105–108 and accompanying text.

225. *See Bristol-Myers Squibb*, 137 S. Ct. at 1781 (discussing "the requisite connection between the forum and the *specific claims at issue*") (emphasis added).

226. *See, e.g.*, Williams v. Aguirre, 965 F.3d 1147, 1163 (11th Cir. 2020) (explaining courts are "obligated, if at all possible, to distill from apparently conflicting . . . decisions a basis of reconciliation and to apply that reconciled rule").

227. Walden v. Fiore, 571 U.S. 277, 285 (2014).

228. *Cf.* Seiferth v. Helicopteros Atuneros, Inc., 472 F.3d 266, 274 (5th Cir. 2006).

229. *Cf.* Anderson v. Century Prods. Co., 943 F. Supp. 137, 141 (D.N.H. 1996) (requiring separate personal jurisdiction analysis for each cause of action).

230. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1022 (2021) ("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.").

defendant's state contacts not just with causes of action or their elements, but with the entire set of factual circumstances in which conflicts arise.

IV. REFOCUSING PERSONAL JURISDICTION

In Part II, we surveyed the divergent ways courts approach the notion of claim in personal jurisdiction—from underlying controversy to cause-of-action to element, with ad hoc reliance on pendent personal jurisdiction sometimes thrown in. The legal community has not generally recognized or analyzed these variants, but it is easy to see how they make chaos of personal jurisdiction doctrine and impede plaintiffs' ability to sue for redress. *Ford* inscribes the underlying controversy approach into law. This Part evaluates how this standard accords with the principles motivating personal jurisdiction and civil procedure as a whole.

A. Promoting Fairness & Predictability

Ford's definition of a claim advances the fairness concerns underpinning personal jurisdiction, which have their roots in constitutional commitments.[231] First, an underlying controversy approach more accurately assesses whether exercising jurisdiction is equitable to the parties. Second, it adapts to changing circumstances, as required by due process. Third, it advances fairness by respecting a plaintiff's choice of forum. Fourth, it generates more predictable outcomes to jurisdictional questions. The underlying controversy approach to claim thus furthers the constitutional values that underlie personal jurisdiction.

First, *Ford*'s definition of claim ensures purposeful availment serves its function as a measure of fairness. The more contacts a defendant has with a state, the fairer it is for the defendant to face consequences for its conduct there.[232] Defendants should not be unduly burdened by having to litigate in a particular state, but that does not mean they need bear no burden at all.[233] A defendant that purposefully avails itself of a state's benefits through its

231. *See supra* Section I.B.

232. *See* Johnson v. Woodcock, 444 F.3d 953, 955 (8th Cir. 2006) ("[P]urposeful availment must be sufficient to provide the defendant with fair warning that his activities might result in his being haled into court in that jurisdiction.").

233. *See* Brainerd v. Governors of the Univ. of Alberta, 873 F.2d 1257, 1259 (9th Cir. 1989) ("The requirement of 'purposeful availment' is based on the presumption that it is reasonable to require a defendant who conducts business and benefits from his activities in a state to be subject to the burden of litigating in that state as well.") (internal citations omitted).

contacts implicitly consents to litigate there, making the burden reasonable.[234]

Restrictive definitions of a claim make only a small subset of a defendant's contacts relevant to the jurisdictional analysis.[235] They shift the focus from the defendant's contacts with the *forum*—the proper object of personal jurisdiction analysis—to the defendant's contacts with the *plaintiff* in the forum,[236] a concern quite foreign to *International Shoe*.[237]

Moreover, contacts in isolation do not tell a whole story; their collective, qualitative nature matters for fairness. The underlying controversy approach gives courts a more complete image. The more contacts considered, the more accurate the judicial determination of whether, as a whole, the contacts make exercising jurisdiction just.[238]

This approach also promotes fairness by allowing courts to recognize that different parties have differing abilities to litigate far from home.[239] Consider two defendants, each sued in Alabama for breach of contract by Alabama plaintiffs. The first, a large corporation domiciled in Delaware and Pennsylvania, utilizes a nationwide marketing campaign that reaches Alabama, employs workers and counsel there, has agreements with distributors in the state, and makes a significant number of Alabama sales. But the specific contract at issue was not formed in Alabama. The second,

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234. *See, e.g.*, Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) ("[T]o the extent that a [defendant] exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state."); *id.* ("[A] procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."); *see also* Michiana Easy Livin' Country, Inc. v. Holten, 168 S.W.3d 777, 785 (Tex. 2005) ("Jurisdiction is premised on notions of implied consent—that by invoking the benefits and protections of a forum's laws, a nonresident consents to suit there.").

235. *See supra* Section II.B–C.

236. *Cf.* Interface Biomedical Lab'ys Corp. v. Axiom Med., Inc., 600 F. Supp. 731, 734 (E.D.N.Y. 1985) (determining jurisdiction with reference only to the defendant's in-state contacts with the plaintiff).

237. *See Int'l Shoe*, 326 U.S. at 319 ("[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state."). For an example of this problem, think back to the Colorado rancher whose idea was allegedly stolen by two companies he wanted to work with. *See supra* note 2 and accompanying text; *see* Leachman Cattle, L.L.C. v. Am. Simmental Ass'n, 66 F. Supp. 3d 1327, 1331–34, 1340 (D. Colo. 2014). Each company had plenty of contacts with Colorado: they undertook related negotiations there both with the rancher and with one another. Yet, the court declined to exercise personal jurisdiction over the Montana company because the plaintiff could not tether the defendant's Colorado related conducts to *his* specific claims against it. *Id.* That approach inappropriately puts the focus on the defendant-plaintiff relationship, rather than the defendant-forum relationship, as the basis for personal jurisdiction.

238. *See* Adam M. Samaha, *Looking over a Crowd—Do More Interpretive Sources Mean More Discretion?*, 92 N.Y.U. L. REV. 554, 560 (2017) ("Assuming relevance, increasing the amount of information considered should increase the quality of decisionmaking."); United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp., 960 F.2d 1080, 1090 (1st Cir. 1992) ("The Supreme Court, when analyzing personal jurisdiction in contract cases, has taken a holistic approach . . . .").

239. *Cf.* Scott Dodson, *Jurisdiction in the Trump Era*, 87 FORDHAM L. REV. 73, 78 (2018) (noting a range of litigation costs that "corporate defendants often bear more easily" than individual plaintiffs).

an individual in Maine, is the sole proprietor of a small, online-only duck decoy business.[240] His website reaches Alabama, of course. But he has engaged in no further marketing there, has hired no employees there, and has never retained an attorney there. He did, however, form one contract in Alabama: the contract at issue in the case.

A court using the underlying controversy approach would consider all of our defendants' contacts to Alabama, since they all relate to the dispute. The court would more likely exercise personal jurisdiction over the corporate defendant, which has more robust contacts with Alabama, than the sole proprietor. The underlying controversy approach ensures that the full range of benefits defendants derive from their contacts with the forum state matter to personal jurisdiction.[241]

In contrast, using an element approach, a court would concentrate solely on where the contract was formed.[242] That court would be more apt to exert personal jurisdiction over the sole proprietor, even though he likely finds it more difficult to litigate out of state than the corporation, which also benefits far more from its Alabama contacts and has a far greater constructive presence in the state. This myopic result fails to accurately assess the fairness of making a defendant litigate in the state.

Second, defining a claim through the underlying controversy also ensures that purposeful availment, the barometer of fairness, adjusts to changing social and economic realities. Instead of "mechanical" determinations that imagine fairness as a fixed or absolute term,[243] personal jurisdiction "should be determined and adjusted according to the customs of the age,"[244] yielding a flexible standard that evolves with "modern commercial life."[245]

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240. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1028 n.4 (2021) ("[C]onsider, for example, a hypothetical offered at oral argument. '[A] retired guy in a small town' in Maine 'carves decoys' and uses 'a site on the Internet' to sell them. Can he be sued in any state if some harm arises from the decoy?' The differences between that case and the ones before us virtually list themselves. (Just consider all our descriptions of Ford's activities outside its home bases.")) (internal citations omitted).

241. *See* Adelson v. Hananel, 510 F.3d 43, 50 (1st Cir. 2007) (noting that the purposeful availment "requirement ensures that jurisdiction is not based on merely random, isolated or fortuitous contacts with the forum state") (internal quotation marks omitted).

242. *Cf. United Elec.*, 960 F.2d at 1090 (grounding jurisdictional determination in "[t]he location of [contract] negotiations").

243. *See supra* note 31 and accompanying text.

244. *See supra* note 33 and accompanying text.

245. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479 (1985) (directing courts to evaluate "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing . . . in determining whether the defendant purposefully established minimum contacts within the forum"); Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 316 (1943) (rejecting personal jurisdiction tests that turn on "conceptualistic . . . theories of the place of contracting or of performance").

Fairness assessments must thus adjust to account for changes in technology, commerce, and social life that make interstate interaction easier and more common. After all, today's world affords people multiple ways to purposefully avail themselves of a state without ever crossing a border. Even in 1945, when the Court revamped personal jurisdiction in *International Shoe*, American society looked dramatically different than it had at the time of *Pennoyer* in 1877.[246] A third of American families had a telephone, global trade was beginning after wartime stagnation, the country was on the precipice of the golden age of flight, and a highway finally connected all the states.[247] Since then, the ways defendants can "[reach] out beyond one state and create continuing relationships and obligations with citizens of another state" have multiplied dramatically. Changes to transportation, technology, and communication have only grown faster[248]: everything from the elimination of long distances to the growth of the internet to the globalization of commerce has facilitated cross-state transactions.[249] As the "increasing nationalization of commerce" creates disputes among newly connected parties,[250] whose interactions "have only accelerated,"[251] the strict territorial boundaries so important to *Pennoyer* become less relevant and less appropriate.

The Court, however, has had trouble keeping up with the effects of the internet, which exponentially expands the contacts people can make without ever leaving home. This has led to a kind of technological lag in the doctrine.[252] When courts view claims narrowly, they overemphasize the

246. *See, e.g.*, DAVID HARVEY, THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE 211–21 (1989) (explaining how technological developments have fundamentally altered people's experience of space and time).

247. *See* NAT'L PARK SERV., SPECIAL RESOURCE STUDY: ROUTE 66 (1995); Statista Rsch. Dep't, *Percentage of Housing Units with Telephones in the United States from 1920 to 2008*, STATISTA (Sept. 30, 2010), https://www.statista.com/statistics/189959/housing-units-with-telephones-in-the-united-states-since-1920/ [https://perma.cc/B83N-6VK6].

248. *See* HARVEY, *supra* note 246 (showing that change accelerated in the second half of the twentieth century).

249. *See, e.g.*, *Burger King*, 471 U.S. at 476 ("[I]t is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted."); *see also* Steven Globerman, Thomas W. Roehl & Stephen Standifird, *Globalization and Electronic Commerce: Inferences from Retail Brokering*, 32 J. INT'L BUS. STUD. 749, 749–50 (2001) ("E-commerce . . . has emerged as a major force in reshaping the nature of commerce . . . ."); Saskia Sassen, *Globalization or Denationalization?*, 10 REV. INT'L POL. ECON. 1, 1–2 (2003) (describing globalization as involving not just "global institutions" but also new activities within nations that nonetheless "involve transboundary networks and formations connecting multiple local or 'national' processes and actors").

250. McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957).

251. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980).

252. *See* Carla L. Reyes, *Moving Beyond Bitcoin to an Endogenous Theory of Decentralized Ledger Technology Regulation: An Initial Proposal*, 61 VILL. L. REV. 191, 202 (2016) (discussing "law

need for physical contact with a state, as though we still lived in the slow-moving days of *Pennoyer*. That extends the law lag, retarding specific personal jurisdiction's potential to address the realities of contemporary commerce. Restrictive approaches to claims lead courts to decide a forum's authority based on rote, stagnant inquiries divorced from modern realities.[253]

Given these changes, one might wonder whether it really matters anymore which forum a plaintiff may sue in. It does.[254] Interstate activity remains easier for some than for others. Pursuing a lawsuit far from home requires all sorts of resources in addition to baseline expenditures on attorneys and filing fees.[255] A party needs to travel to the forum state and potentially stay there for unpredictable lengths of time. She must find a lawyer there, and, if litigating piecemeal, potentially split her fees among several lawyers. To do all this, she needs not just considerable money and time—both in short supply for many—but also physical stamina. A plaintiff with a severe injury, for instance, will be hard put to travel around the country seeking compensation for it. A large corporation simply does not face the same hurdles.[256] Geography can thus become almost irrelevant for some but remain outcome-determinative for others.

Third, courts have long recognized that a plaintiff's choice of forum deserves deference.[257] Personal jurisdiction limits this deference to ensure

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lag," the idea that "existing legal provisions are inadequate to deal with a social, cultural or commercial context created by rapid advances in information and communication technology"); *see also* Christine P. Bartholomew, *E-Notice*, 68 DUKE L.J. 217, 244–47 (2018) (discussing law lag in civil procedure).

253. *See supra* Section II.D.

254. *See* Dodson, *supra* note 239, at 73 ("Forum matters to litigants, sometimes a great deal. Forum affects the relative cost of litigation . . . . [It] can be law selection . . . because different courts will apply different laws to the dispute. The forum [also] determines the range of judges who may preside over the case and the range of jurors who will resolve factual disputes . . . . [F]orum choice is a litigation advantage.") (internal citation omitted).

255. *See* Daniel Klerman, *Personal Jurisdiction and Product Liability*, 85 S. CAL. L. REV. 1551, 1585–86 (2012) ("[P]otential plaintiffs are likely to perceive out-of-state litigation as a significant hardship."); Todd David Peterson, *Categorical Confusion in Personal Jurisdiction Law*, 76 WASH. & LEE L. REV. 655, 762 (2019) ("[I]t is clearly in a corporate defendant's interest to force a plaintiff to travel from the plaintiff's home state."); Adam N. Steinman, *Access to Justice, Rationality, and Personal Jurisdiction*, 71 VAND. L. REV. 1401, 1421 (2018) ("To require the plaintiff to seek judicial remedies outside her home state can impose significant cost and inconvenience.").

256. It is possible that, as online hearings and other innovations progress, the location of litigation may matter less and less. However, the benefits of such advances are often not shared equally by all. *See* Anita Ramsetty & Cristin Adams, *Impact of the Digital Divide in the Age of COVID-19*, 2 J. AM. MED. INFORMATICS ASS'N 1147, 1147 (discussing studies showing that "technology may actually be widening the gap between groups both nationally and even globally due to persistent social, economic, and political factors").

257. *See, e.g.*, Iragorri v. United Techs. Corp., 274 F.3d 65, 70–71 (2d Cir. 2001) ("[C]ourts should give deference to a plaintiff's choice of forum. '[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.'") (quoting Gulf Oil Corp. v. Gilbert*,* 330 U.S. 501, 508 (1947)).

the forum is fair to both parties. Over the last few decades, however, defendants—especially corporate defendants—have gained more ways to evade litigating in the states where they act. Unlike individuals, corporate defendants are not subject to "tag" jurisdiction: they cannot be sued wherever they happen to physically find themselves.[258] Forum selection clauses restrict forum choices by contract, even without the plaintiff's affirmative consent.[259] Indeed, a defendant can often transfer a case based on a forum selection clause even if the transferee court would otherwise lack personal jurisdiction over the plaintiff.[260] Despite courts' traditional commitment to respecting plaintiffs' choices about where to sue, corporate defendants have maximized this forum control tool. This allows them to immunize themselves from suit in any state but the one they choose, forcing plaintiffs to bear the burdens of litigating far from home.[261]

Defining claim as the underlying controversy supports plaintiffs' forum choices.[262] Restrictive approaches can force plaintiffs to litigate where a defendant is subject to general jurisdiction,[263] which undermines the functioning of specific personal jurisdiction and insulates defendants from facing consequences in states whose benefits they reap. This is an especially perverse result for corporate defendants, for whom litigating out of state

258. Burnham v. Super. Ct., 495 U.S. 604, 607 (1990) (allowing personal jurisdiction over an individual "personally served with process while temporarily in that State, in a suit unrelated to his activities in the State," but not extending such power over corporations). This exemption creates a significant asymmetry, "afford[ing] corporations *greater* protection under the Due Process Clause than natural persons." Jacobs, *supra* note 61, at 3.

259. *See* Christine P. Bartholomew & James A. Wooten, *The Venue Shuffle: Forum Selection Clauses & ERISA*, 66 UCLA L. REV. 862, 865 (2019) ("The power to designate a court affects the course of litigation[,] . . . shift[ing] litigation costs to plaintiffs and reduc[ing] settlement pressure on defendants. . . . In some cases, a forum selection clause forecloses any realistic opportunity for a day in court.") (internal citations omitted); Scott Dodson, *Plaintiff Personal Jurisdiction and Venue Transfer*, 117 MICH. L. REV. 1463, 1465 (2019) (explaining that a forum selection clause can cause a "case [to be] whisked out from under the plaintiff to a remote destination in a faraway state, against the plaintiff's choice and without the plaintiff's consent"); *see also* Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 600 (1991) (Stevens, J., dissenting) (criticizing the majority for abandoning the "tradition[] [of] review[ing] with heightened scrutiny the terms of contracts of adhesion, form contracts offered on a take-or-leave basis by a party with stronger bargaining power to a party with weaker power").

260. *See, e.g.*, *In re* Genentech, Inc., 566 F.3d 1338, 1346 (Fed. Cir. 2009) ("There is no requirement under § 1404(a) that a transferee court have jurisdiction over the plaintiff . . . ."); Atl. Marine Constr. Co. v. U.S. Dist. Ct., 571 U.S. 49, 64 (2013) ("When parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient . . . .").

261. *See* Allan Erbsen, *Impersonal Jurisdiction*, 60 EMORY L.J. 1, 26 (2010) (noting that personal jurisdiction "doctrine's emphasis on limiting state power and protecting the defendant's 'liberty' tips the scales against plaintiffs") (internal citation omitted).

262. *See* Jones v. IPX Int'l Eq. Guinea, S.A., 920 F.3d 1085, 1094 (6th Cir. 2019) ("Courts presume that plaintiffs choose convenient forums, so a plaintiff's choice of forum is given deference.").

263. *See, e.g.*, Seiferth v. Helicopteros Atuneros, Inc., 472 F.3d 266, 277 (5th Cir. 2006) (consigning the plaintiff to suing in the defendant's home state by refusing to exert jurisdiction over related claims).

tends to be less burdensome than for many plaintiffs.[264] The underlying controversy approach does not allow a plaintiff to sue just anywhere, of course.[265] But it does ensure that deference to plaintiff choice is more than judicial lip service.

Fourth, an underlying controversy approach creates more predictable outcomes, allowing people to anticipate litigation based on their conduct, rather than on a plaintiff's theory of recovery.[266] Both plaintiffs and defendants can act in the knowledge that controversy-related contacts count.[267] If a case involves a business deal, all contacts relating to that deal count. If a case involves a car accident, all contacts related to that accident count.

In contrast, restrictive approaches require unachievable prescience, leaving parties guessing about which conduct matters and which doctrine will hold.[268] With restrictive approaches, the cause of action or its elements, rather than purposeful availment, determine jurisdiction.[269] Because the Supreme Court has articulated more personal jurisdiction theories in torts,[270] moreover, restrictive approaches tend to find personal jurisdiction more for tort than for contract claims—an imbalance not justified by the doctrine's principles or logic. Plaintiffs with multiple claims against multiple defendants must make blind guesses to divine which forums may permit the greatest number of claims against the greatest number of defendants. With jurisdictional discovery unavailable pre-filing,[271] plaintiffs cannot shape their causes of action to a defendant's full breadth of state contacts; they

264. Dodson, *supra* note 239, at 78 (noting a range of litigation costs that "corporate defendants often bear more easily" than plaintiffs).

265. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1025 (2021) ("[T]here 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.") (alteration in original) (internal quotation marks omitted) (quoting Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1780 (2017)).

266. *See* Livnat v. Palestinian Auth., 851 F.3d 45, 56 (D.C. Cir. 2017) ("Jurisdictional rules should be '[s]imple,' 'easily ascertainable,' and 'predictab[le].'") (alterations in original) (quoting Daimler AG v. Bauman, 571 U.S. 117, 126 (2014)).

267. *Ford*, 141 S. Ct. at 1030 (noting that an "exercise of jurisdiction" that is "reasonable . . . is also predictable—and thus allows [a defendant] to 'structure [its] primary conduct' to lessen or even avoid the costs of state-court litigation") (alteration in original) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

268. *See supra* Section II.B–C.

269. The purposeful availment requirement supports predictability: "it is essential . . . that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958).

270. *See, e.g.*, Calder v. Jones, 465 U.S. 783, 791 (1984); Keeton v. Hustler Mag., Inc., 465 U.S. 770, 777 (1984).

271. *See* S.I. Strong, *Jurisdictional Discovery in United States Federal Courts*, 67 WASH. & LEE L. REV. 489, 495 (2010) ("[N]o reliable and easily identifiable legal standard regarding the availability of jurisdictional discovery appears to exist . . . .").

have to hope that particular judges with idiosyncratic views on what constitutes a claim agree with them. After all, courts in the same circuit sometimes adopt conflicting approaches. This leaves jurisdiction unpredictable, giving defendants no way to "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."[272]

Defining a claim in terms of the underlying controversy thus keeps the doctrine attuned to changing times, balances the parties' rights, and keeps specific personal jurisdiction focused on the defendants' in-state contacts. Viewing claims not as legal artifacts but as real-world events that lead to litigation allows personal jurisdiction doctrine to advance the fairness concerns so central to it.

B. Cohering Civil Procedure Doctrine

Using the transaction, occurrence, or event to identify the claim helps cohere personal jurisdiction with civil procedure writ large.[273] Personal jurisdiction doctrine is based in the Constitution,[274] while most of civil procedure rests on the Federal Rules, statutes, and common law principles.[275] Yet allowing personal jurisdiction to diverge from the law of procedure has costs. We see those costs quite starkly in the element and cause-of-action approaches to claim definition, which create confusion and complicate litigation.[276]

But perhaps the greater costs are systemic. The element and cause-of-action approaches stand in serious tension with one of modern procedure's primary characteristics: liberal joinder.[277] Modern civil procedure has numerous rules and doctrines to encourage—and sometimes even require—

272. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

273. *See* Ehrenfelt v. Janssen Pharms., Inc., 737 F. App'x 262, 264–65 (6th Cir. 2018) ("An appellate court's duty . . . is to harmonize different . . . provisions to make them sensible.") (citation omitted); Balt. Gas & Elec. Co. v. Fed. Energy Regul. Comm'n, 954 F.3d 279, 286 (D.C. Cir. 2020) (noting that "basic principles of fair notice and equal treatment [are] inherent to the rule of law").

274. First Inv. Corp. of Marsh. Is. v. Fujian Mawei Shipbuilding, Ltd., 703 F.3d 742, 750 (5th Cir. 2012) ("[P]ersonal jurisdiction is grounded in constitutional due process concerns, [and] there can be no question that the Constitution takes precedence [over legislation]."). *But see* Weinstein, *supra* note 22, at 209 (explaining that personal jurisdiction emerged before the Constitution).

275. *See, e.g.*, FED. R. CIV. P. 1 ("These rules govern the procedure in all civil actions and proceedings in the United States district courts."); 28 U.S.C. § 1331–32 (circumscribing subject matter jurisdiction of federal courts); Kevin M. Clermont, *Res Judicata as Requisite for Justice*, 68 RUTGERS U. L. REV. 1067, 1072–73 (2016) (noting that res judicata emerged from common law).

276. *See supra* Section II.D.

277. *See, e.g.*, United Mine Workers v. Gibbs, 383 U.S. 715, 724 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.").

the joinder of claims and parties.[278] The Federal Rules allow parties to join claims from the start or through amendment.[279] Preclusion doctrines restrict the ability to sue if a party fails to consolidate all its claims into one lawsuit.[280] Joinder lets parties present a controversy in all its complexity, enabling the court to both see issues in their real-world context and resolve entire disputes at once.[281] It also conserves party and court resources by preventing piecemeal litigation of issues with overlapping evidence or analysis.[282]

Jurisdictional requirements, of course, do inherently limit joinder. A plaintiff cannot simply join everything and everyone. A court must have personal jurisdiction over each party, and subject matter jurisdiction over each claim. Restrictive versions of claims in *personal* jurisdiction, however, double up on the constraints: the cause-of-action and element approaches require plaintiffs to show that a court has not only subject matter jurisdiction over each claim, but also personal jurisdiction over each defendant for each claim. This additional burden undermines liberal joinder principles and diverges from the overarching preferences of civil procedure.[283]

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278. *See* A. Benjamin Spencer, *The Restrictive Ethos in Civil Procedure*, 78 GEO. WASH. L. REV. 353, 353–55 (2010) (noting that "[l]iberal joinder rules" that "promoted access by enabling parties with substantially related claims to prosecute together claims that they might otherwise have been unable to sustain individually," express the "'liberal ethos'" of the federal rules); Dodson, *supra* note 45, at 4–5 ("Modern federal law generally encourages . . . aggregation . . . for the efficiency and fairness that it provides . . . . In some instances, the law even forces joinder over the preferences of the parties because the efficiencies and sensibilities of aggregation are so strong."). This contrasts with premodern rules that severely constricted the number of parties and causes of action that a lawsuit could involve. *See id.* at 6 ("[T]he Federal Rules of Civil Procedure . . . [express] equity-driven preferences, including for aggregation, which became entrenched in law and practice in subsequent decades.").

279. FED. R. CIV. P. 18, 15.

280. *See* Polymer Indus. Prods. Co. v. Bridgestone/Firestone, Inc., 347 F.3d 935, 938 (Fed. Cir. 2003) ("[A] party that does not assert its compulsory counterclaim in the first proceeding . . . is . . . barred from asserting that claim in future litigation.").

281. *See* Dodson, *supra* note 45, at 1–5 (demonstrating the benefits of joinder).

282. *See id.*

283. *See In re* Olympia Brewing Co. Sec. Litig., 612 F. Supp. 1370, 1372 (N.D. Ill. 1985) (noting "the philosophy of the Federal Rules to reject rigid categories of causes of actions in favor of a transactional or claim analysis."). The Federal Rules' other major innovations—notice pleading and discovery—also focus on transactions, occurrences, and events. *See* Spencer, *supra* note 278, at 354–55 (identifying notice pleading, discovery, and joinder as modern procedure's primary innovations). Pleading focuses not on the legal categories a dispute satisfies but on its real-world characteristics. *See* FED. R. CIV. P. 10(b) (instructing litigants to organize claims by the "circumstances" described, and to state separately legal arguments based in "separate transaction[s] or occurrence[s]"). Even doctrine-bending cases like *Twombly* and *Iqbal*—widely criticized for undermining notice pleading—emphasize the transactional nature of the claim. *See* Ashcroft v. Iqbal, 556 U.S. 662 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); *see* Alexander A. Reinert, *Measuring the Impact of Plausibility Pleading*, 101 VA. L. REV. 2117, 2118 (2015) ("Almost all commentators agree that *Iqbal* and *Twombly* mark a break from the liberal pleading doctrine . . . ."). These cases require that complaints go beyond "recit[ing] . . . elements" and "plead[] *factual* content that allows the court to draw the reasonable

Think, for instance, of Rule 18, which allows a party to "join . . . as many claims as it has against an opposing party."[284] This permission seems pretty straightforward, and is not qualified or constrained in any way. The rule even provides that the party joining claims may do so "as independent or alternative claims"[285]—a very broad grant indeed. Now recall the rancher suing the two entities that stole his idea.[286] Rules 18 and 20 certainly seem to encourage him to bring all related claims in the same lawsuit.[287] An underlying controversy approach would allow that. An element approach, in contrast, would eliminate joinder if any of defendant's contacts were relevant to some of the legal elements but not to others. Similarly, the cause-of-action approach makes joinder difficult: it teases the causes of action apart, treating each as a mini-complaint with its own individual personal jurisdiction analysis. These narrow approaches undercut the Federal Rules' commitment to liberal joinder.[288]

The underlying controversy approach comes closer to the way other Rules conceptualize the lawsuit, too: they rest litigation on the events that motivate it, not the legal categories the plaintiff uses to structure it. For example, Rule 15 allows parties to add new arguments to their pleadings as long as those additions "assert[] a claim or defense that arose out of the conduct, transaction, or occurrence set out . . . in the original pleading."[289] Although the Rule uses the word "conduct" instead of "event,"[290] this requirement clearly refers to the facts in the world on which the legal conflict is based. Similarly, Rule 13 allows parties to add counterclaims and crossclaims "aris[ing] out of the transaction or occurrence that" underlies existing claims.[291] Counter- and crossclaims are defined by the underlying

inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (emphasis added). Since *whether* a party may sue depends on real-world events, it would be odd indeed to instead fixate on legal categories to determine *where* that lawsuit may be brought. Further, discovery, too, is an innovation of modern procedure. David L. Noll, *A Reader's Guide to Pre-Modern Procedure*, 65 J. LEGAL EDUC. 414, 421 (2015). Discovery is the mechanism through which parties develop and present the factual underpinnings, as opposed to the legal categories, of their dispute to the court.

284. FED R. CIV. P. 18.

285. *Id.*

286. *See* Leachman Cattle, L.L.C. v. Am. Simmental Assoc., 66 F. Supp. 3d 1327 (D. Colo. 2014).

287. FED R. CIV. P. 18, 20.

288. *See* Leimer v. Woods, 196 F.2d 828, 833 (8th Cir. 1952) ("Rule 18(a) . . . permits and encourages [joinder].").

289. FED. R. CIV. P. 15(c)(1)(B).

290. *Id.*

291. FED. R. CIV. P. 13(a), (g); *see* United States v. United Pac. Ins. Co., 472 F.2d 792, 794 (9th Cir. 1973) ("The Federal Rules of Civil Procedure substantially increase the possibility that all claims will be adjudicated in a single proceeding. Rules 13, 14, and 18 provide for a liberal joinder of claims, cross-claims, counter-claims, and third-party claims.").

controversy that brings litigants to court, [292] as are claims generally throughout the Federal Rules.[293]

Thus, concerns about the facts on the ground that lead people to seek a legal remedy—not about the legal terminology, statutory underpinnings, or doctrinally determined elements of the legal rights ultimately adjudicated—govern how parties formulate claims and how they assemble the personnel involved in litigation.[294] Mobilizing the same concern to determine where suit can be brought, as *Ford* does, gives the formulation and the prosecution of civil lawsuits greater coherence, thus ensuring personal jurisdiction requirements do not overly undermine civil procedure's other major commitments.

Ford's underlying controversy approach also corresponds with modern preclusion principles, which prevent the same case from being adjudicated more than once.[295] This lets defendants rest assured that they will not be dragged to court over and over about actions they have already litigated.[296] It also conserves judicial resources, and arguably shores up judicial legitimacy by avoiding inconsistent judgments.[297]

Premodern preclusion focused strictly on labels. It asked courts to evaluate whether one lawsuit involved the same cause of action as another. [298] The contemporary standard instead takes a "transactional" approach under which a claim is identified "with respect to the transaction from which the action arose."[299] Rather than being limited to a cause of action or its elements, "a claim will be big enough to include: (1) different

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292. *See also* FED. R. CIV. P. 14(a)(2)(D) (requiring third party defendants to assert counterclaims "arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff").

293. *See* Douglas D. McFarland, *Seeing the Forest for the Trees: The Transaction or Occurrence and the Claim Interlock Civil Procedure*, 12 FLA. COASTAL L. REV. 247, 247–48 (2011) ("The reporter for the committee drafting the Federal Rules of Civil Procedure wrote, 'the new rules make it clear that it is not differing legal theories, but differing occurrences or transactions, which form the basis of separate units of judicial action.'") (internal citation omitted).

294. Parties may also join other parties for claims or defenses "with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and share a question of law or fact. FED. R. CIV. P. 20(a)(1)(A), (2)(A).

295. *See* Clermont, *supra* note 275, at 1070 ("*Claim preclusion* . . . would typically say a party may not . . . relitigate a claim decided therein by a valid and final judgment . . . .").

296. *See* Gilbert v. Ben–Asher, 900 F.2d 1407, 1410 (9th Cir. 1990) (explaining how claim preclusion limits "the number of times a defendant can be vexed by the same claim or issue"). In this sense, preclusion doctrine's insistence on joinder echoes other procedural concerns: statutes of limitations, double jeopardy, and full faith and credit. *See* Clermont, *supra* note 275, at 1075.

297. *See Gilbert*, 900 F.2d at 1410 ("[Claim preclusion] promote[s] efficiency in the judicial system by putting an end to litigation.").

298. *See* Clermont, *supra* note 275, at 1108 ("The old view . . . defined claim narrowly, but foggily, in terms of a single legal theory or a single substantive right or remedy . . . .").

299. *Id.*; *see also id.* at 1076 ("[T]he United States today enjoys a semi-codification of most of res judicata law, one that is fairly uniform, albeit unofficial.").

harms; (2) different evidence; (3) different legal theories, whether cumulative, alternative, or even inconsistent; (4) different rights and remedies, whether legal or equitable; and (5) a series of related events."[300] The motivating theory of preclusion comes down to the idea that a party "*should* in a single lawsuit fully litigate his or her grievances arising from a transaction, considering that . . . the [party] *may* do so."[301]

The element and cause-of-action approaches cut against that philosophy, encouraging piecemeal litigation across multiple states and undermining the "efficiency and fairness" that aggregation serves.[302] These approaches fly in the face of the Federal Rules' explicit commitment, in the very first Rule of all, "to secur[ing] the just, speedy, and inexpensive determination of every action and proceeding."[303] The underlying controversy approach, in contrast, applies the same standard to a range of decisions about a court's ability to hear a litigant's argument, enables the philosophy of liberal joinder that underpins modern procedure, and helps fulfill the mandate of Rule 1.

Perhaps surprisingly, *Ford*'s approach to claims has the potential not just to resolve some of personal jurisdiction's tensions with contemporary civil procedure, but also to pull the doctrine forward into our new era.[304] The Court has been rightly criticized for failing to flesh out a doctrine that can accommodate multiple players, multiple components, and multiple media—cases involving distributors, component parts, internet transactions, and other standard features of contemporary commerce.[305] The standard *Ford* adopts gives lower courts a touchstone for confronting such complicated, yet all too ordinary, situations. Rather than trying to create ad hoc tests to address technological and social developments,[306] courts can stay focused

300. *Id.* at 1108 (citing RESTATEMENT (SECOND) OF JUDGMENTS § 24).

301. *Id.* at 1109.

302. Dodson, *supra* note 45, at 4.

303. FED. R. CIV. P. 1.

304. *Cf.* Matthew R. Burnstein, *Conflicts on the Net: Choice of Law in Transnational Cyberspace*, 29 VAND. J. TRANSNAT'L L. 75, 81 (1996) ("Traditional notions of jurisdiction are outdated in a world divided not into nations, states, and provinces but networks, domains, and hosts."); John A. Lowther IV, *Personal Jurisdiction and the Internet Quagmire: Amputating Judicially Created Long-Arms*, 35 SAN DIEGO L. REV. 619, 653 (1998) ("[T]he judiciary is stuck with the same old rules and statutes that long ago had been based on *geographic* presence, not *technological* presence.").

305. *See, e.g.*, J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 890 (2011) (Breyer, J., concurring) (What do current "standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through popup advertisements that it knows will be viewed in a forum? Those issues have serious commercial consequences but are totally absent in this case.").

306. *See, e.g.*, Richard K. Greenstein, *The Action Bias in American Law: Internet Jurisdiction and the Triumph of* Zippo Dot Com, 80 TEMP. L. REV. 21, 22 (2007) (arguing that the current test for internet-based jurisdiction "achieved prominence" even though it "had no obvious logical or policy advantage over its competitors") (citing Zippo Mfg. Co. v. Zippo Dot Com, 952 F. Supp. 1119 (W.D. Pa. 1997)).

on the underlying controversy that gives rise to litigation and the purposeful availment that connects a defendant to the forum state.[307] Defining a plaintiff's claim with reference to the underlying transactions, occurrences, and events gives courts a firm and consistent position from which to determine which of a defendant's state contacts to consider when evaluating jurisdiction.[308] *Ford* thus helps cohere personal jurisdiction doctrine both with the rest of civil procedure, and with the real world around it.

C. Supporting State Sovereignty

Finally, defining a claim as the underlying controversy furthers the state sovereignty and federalism interests of personal jurisdiction doctrine.[309] Sovereignty concerns have "flowed and ebbed," so their role in the doctrine is not entirely clear.[310] Occasional Supreme Court opinions emphasize them and even assume their centrality, yet "the Court has never explained exactly what impact, if any, sovereignty has on the doctrine."[311]

Scholars and courts have advanced several ways to fit state sovereignty into personal jurisdiction doctrine. A "regulatory" view supports focusing on sovereignty to ensure that forum states can adjudicate issues that impinge on the "health, safety, and general welfare of [their] people," but do not stretch beyond such central aspects of "sovereign power" to impose their authority on unrelated parties or other states.[312] A doctrine-cohering view may argue that the sovereignty concerns of personal jurisdiction should be hooked to those in choice of law, where courts evaluate relative state interest in a given case to decide which state's law should apply.[313] A precedentially

307. *See, e.g.*, Serrante v. Figliolia, No. CV 09-417 (AET), 2009 WL 10729929, at *1 (D.N.J. Aug. 3, 2009) (describing purposeful availment as "the pivotal inquiry" for personal jurisdiction); Euromarket Designs, Inc. v. Crate & Barrel Ltd., 96 F. Supp. 2d 824, 834 (N.D. Ill. 2000) (same).

308. Courts can, of course, still undermine this goal with a miserly definition of underlying controversy. One can imagine, for instance, a court deciding that the transactions, occurrences, and events giving rise to a contract breach claim were confined to contract formation, effectively implementing a cause of action approach while repeating the underlying controversy terminology. *Ford*, however, clearly rejects this approach; the opinion considers a broad swath of the defendant's contacts, many of which have no direct relationship to the plaintiffs or their injuries. *See supra* Part III.

309. *See* Pennoyer v. Neff, 95 U.S. 714, 723 (1877) (warning against state "encroachment" on the sovereignty of other states).

310. Douglas D. McFarland, *Drop the* Shoe*: A Law of Personal Jurisdiction*, 68 MO. L. REV. 753, 791 (2003).

311. Jeffrey M. Schmitt, *Rethinking the State Sovereignty Interest in Personal Jurisdiction*, 66 CASE W. RSRV. L. REV. 769, 770 (2016); *see also id.* at 775–76 (discussing cases in which the Supreme Court adverted to, but failed to explain, state sovereignty as a basis for personal jurisdiction).

312. *See id.* at 773–74 (introducing a "regulatory model" of state sovereignty in personal jurisdiction).

313. *See id.* at 787–88; Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 TEX. L. REV. 689, 739–48 (1987) (discussing choice of law analysis).

focused description might note that sovereignty mattered in the canonical Supreme Court cases that created personal jurisdiction: state boundaries "appear consistently to mean something to the Court,"[314] even though precisely *what* they mean might remain unclear. And a weak notion of sovereignty may still help explain why personal jurisdiction is organized around state lines, even for federal courts.[315] In the end, "[m]ost scholars of jurisdiction have rejected state sovereignty as a meaningful basis for personal jurisdiction" in favor of due process and fairness values.[316]

Nonetheless, it is worth considering how an underlying controversy understanding of a claim affects a state's interest in adjudicating a lawsuit. Defining claims by their underlying factual basis, as *Ford* suggests, comports better with all these ideas about state sovereignty than the other alternatives discussed in Part II. It also effectively eliminates the need for pendent personal jurisdiction—a doctrine that conflates subject matter and personal jurisdiction and is difficult to justify.[317] The transactional reading that *Ford* gives to claims thus brings some order even to this particularly disordered corner of the doctrine.

Only the underlying controversy approach to claims makes sense of a state's interest in any given litigation. Take the element approach. Basing a court's authority over a defendant on whether some key elements of the plaintiff's legal claim, such as contract formation or faulty product design, occurred in that state does not adequately serve a state's interest in the well-being of its public.[318] After all, many legally cognizable injuries result from complex, ongoing relations and situations that are not defined by the elements of a cause of action. Under any reasonable interpretation of state sovereignty, a state's interest extends beyond regulating its residents' entry into contracts to the general well-being and conduct of its populace and the effective rule of law in their dealings.[319] An element approach to claims severely limits a state's ability to protect those interests. A cause-of-action approach similarly renders a state's ability to protect its interests dependent

314. McFarland, *supra* note 310, at 793.

315. *See* Wendy Collins Perdue, *What's "Sovereignty" Got to Do with It? Due Process, Personal Jurisdiction, and the Supreme Court*, 63 S.C. L. REV. 729, 741 (2012) ("[D]efendants have a liberty interest in not being subject to the governmental authority of a state with which they have not affirmatively affiliated themselves."); Schmitt, *supra* note 311, at 788 (describing view that sovereignty is peripheral to personal jurisdiction, and "merely explains why state borders matter in the jurisdictional analysis").

316. Schmitt, *supra* note 311, at 771; *see* Perdue, *supra* note 315, at 730 ("[A]lthough at one time the concept of sovereignty provided an important analytic component of personal jurisdiction analysis, this is largely no longer true.").

317. *See supra* note 156.

318. *Cf.* Scottsdale Cap. Advisors Corp. v. The Deal, L.L.C., 887 F.3d 17, 20–21 (1st Cir. 2018).

319. *See generally* WILLIAM NOVAK, THE PEOPLE'S WELFARE (1996) (detailing how states pervasively regulated their territories in the nineteenth century).

on the legal categories a plaintiff chooses to use in litigation.[320] But, again, a state's broad, general interest in its territorial order and public welfare is not defined by the legal categories a plaintiff chooses.[321]

As we explain in Part II, where a restrictive claim approach blocks jurisdiction over a defendant for a cause of action, some courts nonetheless exert that power using the doctrine of pendent claim personal jurisdiction.[322] Pendent claim personal jurisdiction justifies such an exertion of authority if the out-of-reach cause of action accompanies one that does give the court jurisdiction over the same defendant.[323]

This convenient way to achieve a generous claim-defining effect in a miserly claim-defining regime suffers from a lack of legal authority. Supplemental subject matter jurisdiction—from which courts analogize to rationalize pendent personal jurisdiction—is authorized by a federal statute that explicitly allows federal courts to extend their jurisdiction.[324] That federal statute, moreover, ties directly into the constitutional grant of federal jurisdictional power, limiting supplemental jurisdiction to "claims that are so related that they form part of the same case or controversy under Article III."[325] As a federal statute governing federal courts, this provision does not extend state court power. Pendent personal jurisdiction lacks this legal authority and its constraints.[326] No statute authorizes it, and—given personal jurisdiction's focus on fairness, due process, and state interests—it is unclear why a court that lacked personal jurisdiction over a defendant should be able to piggyback on a *plaintiff's* litigation decisions to assert it. Moreover, its discretionary application means only some personal jurisdiction decisions accord with state sovereignty interests, while others do not—with little rhyme or reason.

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320. *Cf.* Seiferth v. Helicopteros Atuneros, Inc., 472 F.3d 266, 270, 275 (5th Cir. 2006) (finding Mississippi lacked personal jurisdiction over a defendant in a design defect suit even though the defendant designed and even inspected an installation that caused the death of a Mississippi resident in Mississippi).

321. *See, e.g.*, NOVAK, *supra* note 319, at 128, 197 (detailing states' interests); Cody J. Jacobs, *In Defense of Territorial Jurisdiction*, 85 U. CHI. L. REV. 1589, 1624 (2018) (arguing territory does and should matter to personal jurisdiction).

322. *See supra* Section II.B.

323. *See supra* notes 145–163 and accompanying text. *See, e.g.*, Anderson v. Century Prods. Co., 943 F. Supp. 137 (D.N.H. 1996).

324. *See* 28 U.S.C. § 1367.

325. § 1367(a).

326. *See In re* Fannie Mae 2008 Sec. Litig., 891 F. Supp. 2d 458, 481 (S.D.N.Y. 2012), *aff'd*, 525 F. App'x 16 (2d Cir. 2013) ("[P]endent personal jurisdiction is not explicitly authorized by statute . . . .") (citing U.S. v. Botefuhr, 309 F.3d 1263, 1272–73 (10th Cir. 2002)); *see also* Jon Heller, *Pendent Personal Jurisdiction and Nationwide Service of Process*, 64 N.Y.U. L. REV. 113, 117 (1989) (discussing pendent personal jurisdiction's "questionable theoretical underpinnings").

Fortunately, *Ford*'s underlying controversy view of claim, which binds all courts, makes pendent personal jurisdiction unnecessary. Rather than idiosyncratically claiming to lack jurisdiction but then exerting it anyway, courts can simply look to the underlying controversy that led to the litigation. If that whole mess of real-world transactions, occurrences, and events, which provide the context for the conflict and harm at issue, has a nexus with defendant's state contacts, the court should assert power over the defendant.

In sum, the underlying controversy approach supports the ability of states to protect their sovereign interests. It enhances the internal coherence of civil procedure as an area of law. And it furthers the constitutional commitment to fairness that motivates personal jurisdiction doctrine to begin with.

CONCLUSION

Chaotic,[327] flawed,[328] confusing[329]—caselaw and scholarship are replete with adjectives to malign personal jurisdiction doctrine. From *Pennoyer*, to *International Shoe*, to this year's *Ford v. Montana*, the Supreme Court has struggled to bring order to the basic question of whether a state has authority over a nonresident. Supreme Court consensus is rare, with plurality decisions littering this already complicated area of law. And while personal jurisdiction is meant to match an ever-changing economic landscape, progress in developing and clarifying specific jurisdiction requirements is slow going.[330]

Even though technological and commercial changes justify expanding personal jurisdiction's reach, its evolution has been halting: an endless dance of two steps forward, one step back. Moreover, as this Article reveals, lower courts' current approaches to personal jurisdiction often lead to just the perverse results the doctrine aims to avoid. If left unaddressed, things will only get worse.

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327. *See, e.g.*, Fontanetta v. Am. Bd. of Internal Med., 421 F.2d 355, 357 (2d Cir. 1970); Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 540 (1995).

328. *See, e.g.*, David Wille, *Personal Jurisdiction and the Internet—Proposed Limits on State Jurisdiction over Data Communications in Tort Cases*, 87 KY. L.J. 95, 131 (1999).

329. *See* Donnie L. Kidd, Jr., *Casting the Net: Another Confusing Analysis of Personal Jurisdiction and Internet Contacts in* Telco Communications v. An Apple a Day, 32 U. RICH. L. REV. 505, 541 (1998).

330. *See, e.g.*, Robin J. Effron, *The Lost Story of Notice and Personal Jurisdiction*, 74 N.Y.U. ANN. SURV. AM. L. 23, 28 (2018) (discussing "the Court's slow evolution of personal jurisdiction doctrine").

Ford rights the course.[331] It not only clarifies personal jurisdiction's nexus requirement; it ensures lower courts do not misconstrue claims. Courts may no longer decide personal jurisdiction questions by focusing solely on whether a defendant's contacts relate to a single cause of action, or even worse, particular elements of a count. After *Ford*, lower courts are on notice that a claim includes all the facts underlying the controversy that led to litigation.[332]

This Article has laid bare an underrecognized judicial debate over the definition of a claim. By recognizing, documenting, and typologizing the range of approaches to this question, we have topicalized a crucial aspect of personal jurisdiction analysis that has flown under the radar of both courts and scholars. We have developed a shared terminology that will help litigants, courts, and commentators alike identify, challenge, and analyze a claim. And we have explained why the underlying controversy standard is the only one compatible with the principles justifying, and the legal regime surrounding, personal jurisdiction.

Personal jurisdiction is, fundamentally, about access to justice.[333] A rule about *where* to litigate easily becomes a decision about *whether* to litigate. This is because the benefits of technological and societal change are not distributed evenly.[334] Corporations looking for bigger markets find it ever easier to seek those benefits in ever more states. But smaller entities and individuals do not necessarily find it equally easy to seek recompense for harm. The mother of the worker who died on the defective helicopter platform may lack the resources to litigate far from home: the money for travel and residence, the freedom to take time off work, the local knowledge of attorneys and courts, the fees for lawyers in different states. Shut out of her home court, she may—quite reasonably—simply give up her fight for rightful restitution. Understanding a claim to mean the underlying controversy, as *Ford* demands, begins to right this wrong.

331. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1031 (2021).

332. This fundamental tweak will, of course, not solve all of personal jurisdiction's long-standing access to justice issues. *See, e.g.*, *supra* notes 259–261 and accompanying text (discussing forum selection clauses); Bartholomew & Wooten, *supra* note 259 (same).

333. *See* Steinman, *supra* note 255, at 1417.

334. *See* BROOKINGS INSTITUTE, GROWTH IN A TIME OF CHANGE 4 (Hyeon-Wook Kim & Zia Qureshi eds. 2020).