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Case Digest

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Case Digest

This Case Digest provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that apply established legal principles in new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

TABLE OF CONTENTS

I. CONSTITUTIONAL LAW	671
II. FORUM NON CONVENIENS	672
III. JURISDICTION	673
IV. STANDING	674

I. CONSTITUTIONAL LAW

RELIGIOUS ORGANIZATIONS AND MEMBERS OF CLERGY OF VARIOUS DENOMINATIONS LACK STANDING TO CHALLENGE ADOPTION AND IMPLEMENTATION OF DIPLOMATIC RELATIONS WITH THE VATICAN—*Americans United for Separation of Church and State v. Reagan*, 786 F.2d 194 (3d Cir. 1986).

On November 22, 1983, Congress repealed legislation which prohibited any expenditures in support of an official United States delegation at the Vatican. In turn, President Reagan nominated William A. Wilson as Ambassador to the Vatican. The Senate confirmed Wilson and the State Department designated funds for Wilson's salary and other related expenses. Twenty religious organizations, twelve officials of those organizations, and seventy-one members of the clergy challenged the creation of the ambassador position by filing suit in the United States District Court for the Eastern District of Pennsylvania. The plaintiffs contended that the appointment of a diplomatic representative to the Vatican violates the President's constitutional powers, claiming that the Vatican is not a state which can be recognized diplomatically. They argued further that the establishment of diplomatic relations with the headquarters of a religious organization is a violation of equal protection since it provides special treatment to one religious group. The district court determined that the

plaintiffs lacked standing and dismissed the complaint. The court added that even if one of the plaintiffs had standing the political question doctrine shielded the President's decision from judicial review. The Second Circuit agreed with the district court on both the standing issue and the justiciability issue. With regard to the standing question, the Second Circuit considered whether the plaintiffs had standing as taxpayers, citizens, or as victims of stigmatization. The plaintiffs lacked standing as taxpayers because none of them suffered direct injury as a result of the President's decision. Furthermore, they lacked taxpayer standing under the two part exception enunciated in *Flast v. Cohen*, 392 U.S. 83 (1968), since they failed to attack an expenditure for which authority is found in Article I, § 8, clause 1 of the Constitution. As citizens, the plaintiffs did not have standing because they failed to assert a sufficiently protectable interest. They were also denied standing as victims of stigmatization because they could not show a causal connection between their alleged injuries and the challenged action. The plaintiffs alleged the following injury: they would not be able to enjoy the benefits and prestige that diplomatic recognition would bring the Vatican and the Roman Catholic Church. The court maintained that the plaintiffs' interests were unlike those of the Vatican because the Vatican exercised territorial sovereignty. The appellate court added that even if the plaintiffs had standing the President's resolution of questions of state recognition and diplomatic relations constitutes a judicially unreviewable political decision. *Significance* — American religious organizations which exercise no territorial sovereignty may not challenge the President's decision to establish a diplomatic mission at the Vatican. The Vatican's unique position as a traditional territorial sovereign as well as a religious organization make diplomatic recognition permissible without granting the Roman Catholic Church preferred status over other religious groups.

II. FORUM NON CONVENIENS

EVEN THOUGH PROCEEDINGS IN THE FOREIGN FORUM MAY TAKE MORE TIME AND MAY YIELD A SMALLER RECOVERY THAN PROCEEDING IN THE UNITED STATES FORUM, THE FOREIGN FORUM MAY BE CONSIDERED AN ADEQUATE FORUM FOR THE PURPOSES OF THE FORUM NON CONVENIENS DOCTRINE—*De Melo v. Lederle Laboratories*, 801 F.2d 1058 (8th Cir. 1986).

Cleonilde de Melo, a Brazilian citizen, suffered permanent blindness after ingesting Myambutol, a medical drug developed, patented, and marketed by Lederle Laboratories, a United States corporation. De Melo filed a products liability action in the United States District Court for the District of Minnesota, a state in which Lederle was licensed to do business. De Melo alleged that Lederle's negligence and failure to warn

her of the dangers of Myambutol were the legal causes of her blindness. The district court noted that the complaint established a cause of action recognized by Brazilian law and that Lederle had agreed to service of process in Brazil. After finding that Brazil offered an adequate alternative forum and that the balance of convenience of the forum tipped in favor of Brazil, the court granted Lederle's motion for dismissal based on forum non conveniens grounds. On appeal, the Eighth Circuit affirmed the lower court's decision holding that the court had not abused its discretion in deciding to dismiss the action under an application of the two part test articulated in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). The *Gulf Oil* test requires, as a condition precedent to a dismissal on forum non conveniens grounds, that the court find that: a) an adequate alternative forum exists and b) the balance of convenience factors for the litigants and the respective fora support dismissal. Noting that both federal and Minnesota choice of law rules would require the United States forum to apply Brazilian law, the Eighth Circuit determined that Minnesota courts and juries should not be burdened with the task of interpreting Brazilian law in the present case. This conclusion came despite the probability that litigation might take longer and would probably bring a smaller recovery because of Brazil's refusal to permit the recovery of punitive damage and pain and suffering awards. The court maintained that these factors did not render the Brazilian forum inadequate. *Significance*—This decision demonstrates that the adequacy of a forum for forum non conveniens purposes will not be judged on the amount of time that litigation would require or the types of damages recoverable.

III. JURISDICTION

ASSERTION OF PERSONAL JURISDICTION IN CALIFORNIA OVER AN INSURANCE FUND WHICH WAS DESIGNED TO COVER CALIFORNIA DOCTORS DID NOT VIOLATE FOURTEENTH AMENDMENT DUE PROCESS EVEN THOUGH THE FUND WAS BASED IN THE CAYMAN ISLANDS AND HAD NO PHYSICAL CONTACTS WITH CALIFORNIA—*Haisten v. Grass Valley Medical Reimbursement Fund, Ltd.*, 784 F.2d 1392 (9th Cir. 1986).

An insurance indemnity fund (the Fund), covering doctors of a California hospital, was established in the Cayman Islands and was designed so that all of the Fund's activities took place on the Cayman Islands. The purpose behind the location of the fund was avoiding jurisdiction in the courts of California. One of the doctors covered by the Fund owed a malpractice arbitration award to the plaintiff. Before satisfying his obligation, the doctor declared bankruptcy. Plaintiff then sought to collect the award from the Fund based on a California law which grants an injured claimant an action against an insurance company even where the

doctor's own liability is extinguished through bankruptcy. The Fund argued that the court lacked personal jurisdiction over it because it conducted no activities in California. The district court rejected the Fund's defense and granted summary judgment to the plaintiff; the Ninth Circuit affirmed. The Ninth Circuit stated that, under California's three-part test for determining whether limited jurisdiction could be exercised, (1) the defendant Fund had committed an act whereby it purposefully availed itself of the privilege of conducting activities in the forum and thereby invoked the benefits and protections of its laws; (2) the claim *did* arise out of the forum-related activity: the contract to indemnify doctors; and (3) the exercise of jurisdiction was reasonable. The court noted that two recent Supreme Court cases modified the previous three-part test by permitting the exercise of jurisdiction over a defendant whose only contact was the purposeful direction of an act in another state which has an effect in the forum state. Furthermore, the court noted, if considerations of reasonableness so dictate, a court may exercise jurisdiction with a lesser showing of minimum contacts than would otherwise be required, and where a defendant purposefully directs his activities at forum state residents, a presumption arises that the jurisdiction is reasonable. The Court concluded that the Fund should have anticipated being sued in California because the Fund had purposefully directed its activities at California and had purposefully availed itself of the benefit and privilege of conducting activities there. The court determined that the Fund had minimum contacts with California. Furthermore, the Fund was unable to overcome the presumption that the exercise of jurisdiction was reasonable. *Significance* — By allowing the exercise of personal jurisdiction for cases where the defendant has purposefully directed its activities toward the forum state, the Ninth Circuit has increased the likelihood that defendants with little or no physical contact with a forum state will be subject to its jurisdiction, even where the activities are directed from a foreign country.

IV. STANDING

PRIVATE CITIZENS LACK STANDING TO SUE THE ATTORNEY GENERAL FOR ALLEGED VIOLATIONS OF THE ETHICS IN GOVERNMENT ACT—*Dellums v. Smith*, No. 84-1525 (9th Cir. 1986).

In 1983, private citizens requested that the United States Attorney General conduct a preliminary investigation of possible criminal violations by seven high level federal officials regarding United States activities in Nicaragua. After the Attorney General refused to investigate, the citizens brought suit under the Ethics in Government Act, 28 U.S.C. §§ 591-598 (1982). The district court held that the plaintiffs had standing under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (1982), to

seek review of the Attorney General's refusal to investigate and ordered the Attorney General to investigate. The district court rejected the Attorney General's post-trial motion which argued that the plaintiff's information did not warrant a preliminary investigation given (1) the Justice Department's no prosecution policy concerning violations of the Neutrality Act, 19 U.S.C. § 960 (1982); and (2) that the Neutrality Act does not apply to paramilitary operations authorized by the President. The district court stated that the Neutrality Act prohibited paramilitary operations even though they were authorized by the President. The Ninth Circuit reversed, concluding that the plaintiffs lacked standing to challenge the Attorney General's decision not to investigate the plaintiffs' request. The court reasoned that Congress did not intend to grant the public a right of action under the Ethics Act. Instead, the court noted that the Ethics Act provides members of the Congressional judiciary committees the right to seek review of the Attorney General's compliance with the Ethics Act. Furthermore, the court stated that the legislative history demonstrates an intent to preclude a private right of action. Finally, the Ninth Circuit rejected the district court's reasoning that the duty imposed on the Attorney General to investigate created a correlative procedural right in the persons who supplied the information. *Significance*—Private citizens will have little power in compelling the Attorney General to enforce the Ethics Act.

