



MondayMonday

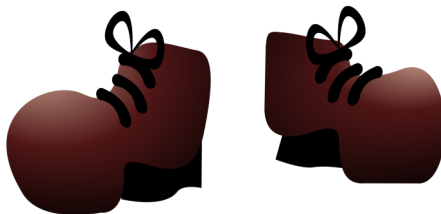
No Home For Old (Int'l) Shoes

October 17, 2016

There used to be a chicken in Chinatown; a wonderful, marvelous and strange animal. She resided in a penny arcade on Mott Street, as we recall and, for all we know, she lives there still. For 25¢, the chicken would play Tic-Tac-Toe with you, Unless you played to a draw, the chicken would always win.

In thinking about the upcoming election, we remembered that chicken. What about those people who you speak to nowadays, straighten their backs, and tell you that they're not voting at all? They don't like Trump or Clinton and they're sitting it out, at least on the national level. While it may seem that they are like the person who never played Tic-Tac-Toe with the chicken (why play if you were going to lose anyway?), that's not it at all. The value was in playing that silly game with the chicken. That's what you were paying for, playing, not winning or losing.

Democracy is all about the ability to play the game and not having the game played for you by someone else. The way you lose in Democracy is by being silent; by not playing. We have seen this firsthand and can assure you that who votes, how many votes and where they cast those votes means more than you can imagine. In fact, your everyday interactions with representative government will be changed, for better or worse, by these factors. A large Republican vote in an otherwise Democratic district will send shockwaves into the very heart of any politician, influ-



encing how money is allocated in the legislature, what sort of candidates stand for election in the off-year, and what laws are passed or defeated on the legislative docket. If you don't play, the chicken just becomes soup; if you do play, it's you, not the chicken, who gets value for his quarter, because the chicken will never know the difference and it's you who's played the game.

Still not convinced? Don't fret. We'll vote and we'll make the right choice for you. Trust us. After all, the chicken did. Soup anyone?

The world changes and those changes can be awfully uncomfortable for those of us who have grown safe in the past. Whether you know it or not, a battle is going on over one of those areas of safety, NY's long-arm jurisdiction statute. After the Supreme Court's decision in *DaimlerAG v. Bauman*, 134 S.Ct. 746 (2016), we can no longer say that a foreign corporation can be sued in NY solely upon proof that it has done business in the state. Instead, due process requires more; it requires that "the corporation's affiliations with the State in which suit is brought are so constant and pervasive as to render [it] essentially at home in the forum State." *Id.* at 751. If this doesn't sound to you like the sufficient "minimum contacts" of *International Shoe* or *Milliken v. Meyer*, welcome to the New World.

What does this all add up to for the family of Janis Fernandez, whose 2003

DaimlerChrysler Jeep Liberty went out of control in Pennsylvania and killed her? Everything.

Daimler is a German corporation that made the Jeep, which had defective ball joints and front lower control arms. It moved to dismiss the complaint alleging a lack of personal jurisdiction. AD2 found that the Estate had failed to establish that Daimler's activities in NY had subjected it to personal jurisdiction pursuant to CPLR 301 under *Daimler AG v. Bauman*. As you might have guessed, the Estate fared no better under CPLR 302(a)(1)'s "transact business within the state" which gave rise to the cause of action either. The vehicle was not made in NY or sold by Daimler in NY to the deceased.

Has the world changed? We leave you with this from Justice Ginsburg's majority opinion and ask you that question. "In *Goodyear* [131 S.Ct. 2846 (2011)], we addressed the distinction between general or all-purpose jurisdiction, and specific or conduct-linked jurisdiction. As to the former, we held that a court may assert jurisdiction over a foreign corporation 'to hear any and all claims against [it]' only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive "as to render [it] essentially at home in the forum State." *Id.*, at —, 131 S.Ct., at 2851. Instructed by *Goodyear*, we conclude Daimler is not 'at home' in California[.]"

"At home?" Our suggestion is that you find a 1L next semester who has taken Civil Procedure and have her explain it you. Tell her you're old and confused. Maybe she'll have pity on you and your *International Shoe*.

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