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Personal Jurisdiction Over Non-Resident Individuals

RECENT CASES

CONFLICT OF LAWS

PERSONAL JURISDICTION OVER NON-RESIDENT INDIVIDUALS

The Supreme Court of Utah has recently asserted the right of Utah Courts to exercise *personal* jurisdiction over non-resident *individuals* conducting business within the state through agents. While such a power has long existed over non-resident *corporations*, the Supreme Court of the United States has held it not to exist where the nonresident is an *individual*.[1] But there is every indication that the sounder view expressed by the Utah court will prevail in the future.

Morris Wein, a resident of California, owned a roadhouse in Utah which he operated locally through an agent. A building contractor residing in Utah commenced a contract action against Wein for costs of construction of the building by serving process on the local agent in compliance with a Utah statute.[2] Wein appeared especially, denying the constitutionality of the statute under the due process provisions of the Fourteenth Amendment.[3] In recalling a writ of prohibition, the Supreme Court of Utah upheld the statute as an exercise of the police power; finding it reasonable that nonresident individuals be subject to the personal jurisdiction of the state in which they conduct business through local agents. *Wein v. Crockett*, Utah, 195 P.2d 222 (1948).

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1. Rulings of the Supreme Court of the United States as to jurisdiction over nonresidents are binding upon the states. If a judgment is rendered in one state and an action is brought thereon in another state, a federal question is involved under the provisions of Article IV, § 1, that "full faith and credit shall be given in each state to the proceedings of every other state." Old Wayne Life Ass'n v. McDonough, 214 U. S. 8 (1907). The enforcement of a judgment against a defendant over whom the court has no jurisdiction involves a violation of the provision of the Fourteenth Amendment that no state shall "deprive any person of life, liberty or property without due process of law." Riverside, etc. Mills v. Menefee, 237 U. S. 189 (1915).

2. Laws of Utah 1947, c. 10 § 2 provides that "when a non-resident person is associated in and conducts business within the State of Utah . . . under the supervision of an agent, said person may be sued on any action arising out of the conduct of said business . . . , and the summons in such cases may be served . . . upon his agent."

Some states have enacted statutes requiring less than "doing business." *E.g.*, IND. STAT. ANN (Burns Repl. 1948) § 25-316 (nonresident corporations); Ark. Acts 1947, No. 347, § 2 (nonresident individuals).

3. U. S. CONST. AMEND. XIV, § 1.

The common law requirements for personal jurisdiction, resting primarily upon actual presence[4] and consent, have not prevented state courts from assuming jurisdiction over foreign corporations which enter and do business within the state. In satisfying these requirements, the courts have said that the corporation impliedly consents to jurisdiction,[5] the consent being derived from the power of the state to exclude a foreign corporation from doing business within its borders.[6] By another rationalization the courts have found that a corporation doing business within a state manifests its *presence* there for purposes of jurisdiction.[7] Recently, however, in *International Shoe v. Washington*,[8] the Supreme Court of the United States broke sharply from these ficticious explanations. Due process, the court said, requires only that there be adequate notice machinery[9] and certain minimum contacts with the state of the forum to render the maintenance of the suit inoffensive to traditional notions of fair play and substantial justice.[10]

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4. For a discussion of the shift away from this physical power as the foundation of personal jurisdiction see Ross, *The Shifting Basis of Jurisdiction*, 17 MINN. L. REV. 146 (1932).

5. Lafayette Insurance Co. v. French, 18 How. 404 (U. S. 1855).

6. Since a foreign corporation may be compelled to fulfill conditions before entering into business within a state, by doing business within another state it must be taken to assent to the condition upon which alone such business could be transacted by them, *i.e.*, that the corporation's agent conducting the business be an agent to receive service of process. *Id.* at 408.

7. *E.g.*, International Harvester Co. v. Ky., 234 U. S. 579, 589 (1914). This fictional presence is hard to reconcile with Chief Justice Taney's famous dictum that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. Bank of Augusta v. Earle, 13 Pet. 519 (U. S. 1839).

8. 326 U. S. 310 (1945).

9. In the exercise of personal jurisdiction over nonresidents, the particular form of substituted service adopted must give reasonable assurance that the notice will be actual. Reasonable assurance seems satisfied if provisions are made for service upon an actual agent of the nonresident. Doherty v. Goodman, 218 U. S. 623 (1935); or if provisions are made for service upon a state official plus a requirement that the official send notice to defendant by registered mail, Hess v. Pawloski, 274 U. S. 352 (1927).

10. 326 U. S. 310, 316 (1945). The International Shoe case was not the first to suggest that a valid assumption of jurisdiction need only conform to due process standards of reasonableness. *See* Hutchinson v. Chase and Gilbert, 45 F.2d 139, 141 (2d Cir. 1930). Judge Learned Hand has interpreted International Shoe v. Washington as holding that in order to determine jurisdiction "the court must balance the conflicting interests involved; *i.e.*, whether the gain to the plaintiff in retaining the action where it was, outweighed the burden imposed upon the defendant; or vice versa. That question is certainly indistinguishable from the issue of forum non conveniens." Kitpatrick v. Texas and Pac. Ry. Co.,

In contrast to the foreign corporations cases, there has been some doubt as to the constitutionality of statutes providing for personal jurisdiction over nonresident *individuals* doing business within the state. The assertion of such power was prohibited by the Supreme Court in *Flexner v. Farson*[11] on the theory that nonresident individuals, unlike foreign corporations, could not be denied the right to do business within the state without contravening the privileges and immunities clause of the Federal Constitution.[12] This reliance upon the power of exclusion ignored earlier Supreme Court decisions recognizing state jurisdiction over foreign corporations which were non-excludable because engaged in interstate commerce.[13] The Court, in subsequent cases, has indicated a greater willingness to recognize that the same considerations should apply to corporations and individuals. *Hess v. Pawloski*[14] held that a state may, under its power to regulate for public safety, provide for personal jurisdiction over nonresidents operating motor vehicles in the state.[15] Under a "doing business" statute,[16] *Doherty v. Goodman*[17] upheld personal jurisdiction over a nonresident selling securities in the state through agents. The scope of the decision, however, was

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166 F.2d 788 (2d Cir. 1948), *cert. denied* 335 U. S. 814 (1948). Under this related doctrine of forum non conveniens courts of equity and of law occasionally *decline*, in the interest of justice, to exercise jurisdiction, where . . . "the litigation can more appropriately be conducted in a foreign tribunal." Brandeis, J., in Canada Malting Co. v. Paterson Steamships, 285 U. S. 413, 423 (1932).

11. 248 U. S. 289 (1919).

12. U. S. CONST. Art. IV, § 2; U. S. CONST. AMEND. XIV, § 1.

13. In International Harvester Co. v. Kentucky, 234 U. S. 579, 588 (1914) the Supreme Court found foreign corporations subject to jurisdiction because they are within the state, receiving the protection of its laws, and may, and often do, have large properties located within the state.

14. 274 U. S. 352 (1927).

15. The statute as well as the decision limited jurisdiction to causes of action arising on highways within the state. *Id.* at 356. While the decision seemed to rest upon the power of a state to exclude nonresidents from the use of the highways as well as the power of a state to make and enforce regulations reasonably calculated to promote care by those who use the highways, upon the basis of the authority cited, it is more reasonable to base the decision on the latter ground. Culp, *Process in Actions Against Nonresident Motorists*, 32 MICH. L. REV. 325, 329 (1934).

16. The statute was much like Utah's, conferring jurisdiction irrespective of the type of business the nonresident engaged in. For a discussion of the different types of nonresident service statutes see NEW YORK LAW REVISION COMMISSION REPORTS, 136 *et seq.* (1940).

17. 218 U. S. 623 (1935).

severely limited by the court's dependence on past state regulation of the securities business.[18] Both cases employed a fictional consent to jurisdiction, wrung from the power of the state to regulate, and both seemed to limit their application to acts especially frought with danger and economic harm to the general public.

The significance of *Wein v. Crockett* is its extension of personal jurisdiction over nonresident individuals to a position that is beyond the confining limit of *Hess* and *Doherty* and is directly opposed to the stand in *Flexner v. Farson.*[19] Utah, the court said, may exercise jurisdiction no matter what type of business is engaged in by the nonresident. A statute providing for such power meets the usual due process requirements, it was further explained, because it is reasonable that a nonresident conducting business in the state should defend locally any action growing out of that business. Not only will the local law usually govern the action and witnesses be more readily available in the local state, but to compel the plaintiff to seek out his creditor elsewhere may virtually destroy the value of his remedy. The result can hardly be questioned in the light of the extensive power of states today to regulate for public convenience or general prosperity as well as for health, safety, and morals.[20]

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18. *Accord,* Condon v. Snipes, 38 So.2d 752 (1949). *Cf.* Suggs v. Hendrix, 142 F.2d 740 (5th Cir. 1944) (jurisdiction found under a general statute relating to all business because the state had the power to regulate the particular business in question, even though the power remained unexercised).

19. Virtually the same result has been reached before. Stoner v. Higginson *et al.* 316 Pa. 481, 175 Atl. 527 (1934) (decided before Doherty v. Goodman *supra* note 17); Melvin Pine and Co. v. McConnell, 298 N. Y. 27, 80 N.E.2d 137 (1948) (constitutionality of statute not raised); *accord,* Rauber v. Whitney, 125 Ind. 216, 25 N. E. 186 (1890); State *ex rel.* Cook *et al.* v. Dist. Ct. 102 Mont. 424, 58 P.2d 273 (1936); Condon v. Snipes *supra* note 18; *see* Interchemical Corp. v. Mirabelli *et al.* 54 N. Y. S.2d 522, 525-527, 269 App. Div. 224 (1945); Gillioz v. Kincannon, 213 Ark. 1010, 1014, 214 S. W.2d 212, 214 (1948); Kaffenberger *et al.* v. Kremer *et al.*, 63 F. Supp. 924, 926 (E. D. Pa. 1945); *cf.* Dubin v. City of Philadelphia, 34 Pa. D. & C. 61 (1938) (ownership of property within the state confers personal jurisdiction).

20. In speaking of statutes providing for substituted service on agents of nonresident individuals doing business within the state Professor Scott has said, "a state may then, in the exercise of its police power, impose reasonable conditions upon nonresidents wishing to do acts within the state. The mere fact that the state may not prevent the doing of such acts does not preclude it from imposing such conditions. The police power is not confined to regulations of public health, morals, safety, and the like. It embraces regulations designed to promote public convenience or the general prosperity or welfare . . . and it would seem that it is as easy to apply the doctrine of implied consent to an individual

But almost as impressive as the result reached in *Wein v. Crockett* was the failure of the Utah court to mention or rely upon the supporting authority of *International Shoe v. Washington.* While that case involved a foreign corporation, the broad sweep of the court's reasoning invites the application of identical criteria in determining the exercise of jurisdiction over both corporations and individuals.[21] Rejected as determinative of jurisdiction were fictional consent, fictional presence, and the power to exclude—the very bases of former distinctions between the two situations; distinctions which are predicated upon no apparent realistic considerations. The two cases, however, are not dissimilar in their approach. Conceding minor differences, both the Utah case and *International Shoe* made "convenience" the determinative factor of jurisdiction rather than employing narrow interpretations of the police power.[22] The doctrinal shortcoming of *Wein v. Crockett* is that it overcame the greatest obstacles, then failed to take the additional step of applying *International Shoe* and merging the corporate and individual cases under a common authority.

EVIDENCE - PRIVILEGE AGAINST SELF-INCRIMINATION - COMPULSORY VOICE EXHIBITION

Taylor, under arrest for rape, and four other men of the same general appearance were compelled by the sheriff

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nonresident as to a foreign corporation. If the mere fact that a corporation does business within a state constitutes a consent to the conditions which the state may properly and does impose, it is hard to see why the doing of business by an individual is not a consent to the conditions which a state may properly and does impose." Scott, *Business Jurisdiction over Nonresidents,* 32 HARV. L. REV. 871, 886 *et. seq.* (1919).

21. In the International Shoe case, Chief Justice Stone spoke of individuals as well as corporations as he said, "historically the jurisdiction of courts to render judgment *in personam* is grounded on their *de facto* power over the defendant's person . . . . But now . . . due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

22. The main difficulty with the new approach seems to lie in the vagueness of the terms "fair play," "substantial justice," and "minimum contacts" utilized in International Shoe v. Washington. The problem, however, is not wholly unique. For almost a century British courts have been applying with success similar tests in determining the propriety of *in personam* jurisdiction in actions against out-of-state defendants. See Note: *British Precedents for Due Process Limitations on In Personam Jurisdiction,* 48 COL. L. REV. 605 (1948).