

1969

The "Long Arm" Statute: Wyoming Expands the Jurisdiction of the State Courts over Non-Residents

Edward A. Lewkowski

V. Frank Mendicino

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Lewkowski, Edward A. and Mendicino, V. Frank (1969) "The "Long Arm" Statute: Wyoming Expands the Jurisdiction of the State Courts over Non-Residents," *Land & Water Law Review*. Vol. 4 : Iss. 1 , pp. 235 - 253.

Available at: https://scholarship.law.uwyo.edu/land_water/vol4/iss1/15

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

LEGISLATIVE COMMENT

THE "LONG-ARM" STATUTE: WYOMING EXPANDS JURISDICTION OF THE STATE COURTS OVER NON-RESIDENTS

The traditional common law basis of jurisdiction over the person is personal service on the defendant while he is present within the territorial limits of the state in which the court sits.¹ In explaining this fundamental doctrine, which was established in *Pennoyer v. Neff*,² Mr. Justice Holmes said, "the foundation of jurisdiction is physical power."³

As the nation's population increased, transportation methods improved, interstate commerce increased, and the amount of litigation between residents of different states increased. The assets and business of corporations, which carried on the bulk of interstate business, were, then as now, often located outside the state of incorporation. The necessity for the courts to devise a method by which in personam jurisdiction could be obtained over these corporations was instrumental in setting in motion the process of expanding the limitations on jurisdictional authority.

Three methods of acquiring jurisdiction over foreign corporations were developed. The first of these was the traditional basis of consent. As a condition for permission to do business within a state a corporation was required to appoint an agent to receive process. If such an appointment was not made jurisdiction was justified on the basis of "implied consent."⁴ The second theory to be applied was the "presence" theory which was based on the concept that by doing sufficient business within a state a corporation becomes "present" there and is therefore amenable to its authority.⁵ The third theory, basically an extension of the second, was the "doing business" theory which necessitated that the courts determine whether the corporation was doing a sufficient amount of business within a state to justify in personam jurisdiction in that state.⁶

1. CHEATHAM, GOODRICH, GRISWOLD & REESE, *CONFLICT OF LAWS* 94 (4th ed. 1957).

2. 95 U.S. 714 (1877).

3. *McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

4. *Lafayette Insurance Co. v. French*, 59 U.S. 404 (1856).

5. *Philadelphia & Reading R.R. v. McKibbin*, 243 U.S. 264 (1917).

6. GOODRICH, *CONFLICT OF LAWS* § 73(7), at 127 (4th ed. 1964).

Similar development took place with regard to personal jurisdiction over natural persons primarily on the basis of "consent" and the "power to exclude." In the case of *Hess v. Pawloski*⁷ the Supreme Court held that, inasmuch as automobiles were dangerous instruments, the state had the power to regulate its highways and could therefore require a non-resident to appoint an agent to receive process before using its highways. By virtue of using the highways the non-resident motorist "consented" to such an appointment. The "agent" usually was the Secretary of State.⁸

The trend toward broadening a state's in personam jurisdiction was substantially advanced in the landmark case of *International Shoe v. State of Washington*.⁹ In that case the Supreme Court swept away the old theories and the legal fictions upon which they were based when it stated that "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 has certain *minimum contacts* with it such that the maintenance of the suit *does not offend traditional notions of fair play and substantial justice*."¹⁰ The test is basically one of reasonableness which takes into consideration all the relevant factors of the particular case.

THE PURPOSE OF LONG ARM STATUTES

International Shoe ushered in a new era in personal jurisdiction doctrine by vastly expanding the constitutional limitations of the due process clause. However, state courts are not required to exercise personal jurisdiction to the extent constitutionally permissible under *International Shoe*.¹¹ Those states which had statutes based on the consent, presence, or doing business doctrines found that their statutes fell far short of the constitutional barriers. Some state courts attempted to broaden their statutes by reinterpreting them in

7. 274 U.S. 352 (1927).

8. With the exception of *Hess v. Pawlaski*, most of the landmark decisions concerning personal jurisdiction involve corporations. As a result it has been suggested that the rationale of *International Shoe* is limited to corporations. The courts, however, have made it clear that these decisions apply to individuals as well as corporations. See, e.g., *Owens v. Superior Court of Los Angeles County*, 52 Cal. 2d 822, 345 P.2d 921 (1959).

9. 326 U.S. 310 (1945).

10. *Id.* at 316 (emphasis added).

11. *Perkins v. Benquet Mining Co.*, 342 U.S. 437 (1952).

light of *International Shoe*.¹² Others refused to do so. In an effort to expand personal jurisdiction to constitutional limits, several states passed new statutes which came to be known, appropriately, as "long arm" statutes.

THE WYOMING "LONG ARM" STATUTE

Inasmuch as the states which first passed "long arm" statutes did so independently, the statutory bases for jurisdiction are not uniform from state to state. This lack of uniformity has been problematical as have variations in procedure as well as in substantive law. For these reasons the National Conference of Commissioners of Uniform State Laws promulgated the Uniform International and Interstate Procedure Act.¹³ The Uniform Act was designed to promote uniformity in state "long arm" statutes and to go to the full constitutional limits of due process as established by the Supreme Court. The Wyoming Legislature, in 1967, adopted sections 1.01, 1.03, and 1.04 of Article I of the Uniform Act as follows:

Section 5-4.1 PERSONAL JURISDICTION—
"PERSON DEFINED."—As used in this act, "person" includes an individual or his executor, administrator or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state.

Section 5-4.2 SAME—PERSONAL JURISDICTION WHERE OTHERWISE NOT PROVIDED BY LAW.—(a) In addition to all other bases of jurisdiction otherwise authorized or provided by law, any court of this state may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's

- (i) transacting any business in this state;
- (ii) contracting to supply services or things in this state;
- (iii) causing tortious injury by an act or omission in this state;

12. *See, e.g., Benson, Jr. v. Brattleboro Retreat*, 103 N.H. 28, 164 A.2d 560 (1960).

13. 9B UNIFORM LAWS ANN. 307 (1966).

(iv) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct in this state or derives substantial revenue from goods consumed or services used in this state;

(v) having an interest in, using, or possessing real property in this state; or

(vi) contracting to insure any person, property, or risk located within this state at the time of contracting.

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

Section 5-4.3 SAME—SERVICE OF PROCESS OUTSIDE STATE.—When the exercise of personal jurisdiction is authorized by this act, service may be made outside this state and may be proved according to the Wyoming Rules of Civil Procedure, the law of the place in which the person is served, or on any order of the court.

Much of the remainder of the Uniform Act, not adopted by Wyoming, is in substance identical to the Wyoming Rules of Civil Procedure.

MINIMUM CONTACT AND DUE PROCESS

The central issue with regard to section 5-4.2(a)(1) of the act and, to a lesser degree, with regard to all of the other provisions of section 5-4.2(a), is the interpretation of "minimal contacts" as used in *International Shoe*. More specifically, the question raised is whether a single act or transaction is sufficient to satisfy the minimal contacts requirement. The leading Supreme Court case holding that the due process clause is not violated by the assertion of jurisdiction on the basis of a single act or transaction is *McGee v. International Life Ins. Co.*¹⁴ In *McGee* the Court held that servicing a simple insurance policy by mail was enough to constitute "minimal contact" and further, that the state had a substantial interest in controlling the insurance industry within the state. Reference to the "substantial interest" of the state indicates that it is the quality of the acts rather than the

14. 355 U.S. 220 (1957).

quantity that is determinative for purposes of jurisdiction.¹⁵ As was said in *International Shoe*: "Whether due process is satisfied must depend upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure."¹⁶

On the other hand, the Supreme Court, just one year after *McGee*, stated that, while the trend was toward expanding personal jurisdiction over non-residents as a result of greatly increased interstate commerce and rapid progress in communication and transportation, it is a mistake to assume that this trend "heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. It is essential in each case 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 and protection of its courts."¹⁷

Considered together the *McGee* and *Hanson* cases have resulted in a rather wide divergence of opinion in state and federal courts. Some courts say that *Hanson* limits personal jurisdiction, particularly with regard to single acts or transactions, and distinguish *McGee* on the grounds that it pertains to the "special" matter of state control over the insurance industry. Others say that *McGee* clearly upholds the validity of personal jurisdiction in single act cases. In a recent case the Supreme Court of Arizona expressed the view that *Hanson* involved an unusual situation in which the court achieved substantial justice and is "of questionable value as a precedent regarding the problem of personal jurisdiction over non-resident defendants."¹⁸ The court pointed out that the language requiring that a defendant "purposefully" avail itself of conducting activities within the forum state before personal jurisdiction can be maintained cannot be construed literally because to do so would be to revitalize the "implied consent" theory which was done away with by *International*

15. *Hamilton National Bank of Chattanooga v. Russell*, 261 F. Supp. 145 (E.D. Tenn. 1966).

16. *International Shoe v. State of Washington*, *supra* note 9.

17. *Hanson v. Denckla*, 357 U.S. 235 (1958).

18. *Phillips v. Anchor Hocking Glass Corp.*, 100 Ariz. 251, 413 P.2d 732, 735 (1966).

Shoe and to reverse the trend expanding state jurisdiction over non-residents.¹⁹

The United States Supreme Court has never ruled on a "long arm" statute which predicates jurisdiction of a state on a single act.²⁰ In considering whether the Court would uphold such a statute some courts²¹ have noted that in footnote 2 of the *McGee* opinion referral was made, apparently with approval, to *Smyth v. Twin State Improvement Corp.*²² which upheld a statute basing jurisdiction upon the commission of a single tort within the state, and to *Compania de Astral, S. A. v. Boston Metals Co.*²³ which upheld a statute basing jurisdiction upon the making of a single contract within the state. The view that the Court would uphold a statute granting jurisdiction based upon a single act was strengthened by the opinion of Mr. Justice Goldberg, acting as a single justice, in *Rosenblatt v. American Cyanamid Co.*²⁴ Although he did not directly decide the question of the due process validity of single act statutes, Justice Goldberg stated that the logic of the *International Shoe* and *McGee* decisions supports the validity of state "long arm" statutes. He further pointed out that these statutes have been consistently upheld in state and federal courts.

The leading Wyoming case on in personam jurisdiction over non-residents is *Ford Motor Co. v. Arguello*.²⁵ In that case Justice Gray, in applying *International Shoe*, *Hanson*, and *McGee*, stated that:

So long as the activities of a foreign corporation are sufficiently qualitative in nature and extent reasonably to show "minimal contact" with the state and state law on the subject is justly construed and applied to reach those activities for jurisdictional purposes under "traditional motions of fair play and substantial justice," all demands of due process are satisfied.²⁶

19. *Id.*

20. The only Supreme Court decisions relative to jurisdiction based on a single act are those pertaining to "implied consent" statutes. See, e.g., *Hess v. Pawlaski*, 274 U.S. 352 (1927).

21. *Beck v. Spindler*, 256 Minn. 543, 99 N.W.2d 670 (1959).

22. 116 Vt. 568, 80 A.2d 664 (1951).

23. 205 Md. 237, 107 A.2d 357 (1954).

24. 86 S. Ct. 1 (1965).

25. 382 P.2d 886 (Wyo. 1963).

26. *Id.* at 895.

Although it may be argued that *Arguello* implies that it will usually take more than a single act to justify jurisdiction over a foreign corporation, a single act may still be sufficient to justify jurisdiction over a non-resident so long as that act is of "sufficiently qualitative nature" so as to constitute "minimal contact." Furthermore, it must be remembered that *Arguello* was decided before the Wyoming Legislature expressed its intention to broaden personal jurisdiction to the constitutional limits set by the Supreme Court.

TRANSACTING ANY BUSINESS IN THIS STATE

The scope of this provision depends upon how it is interpreted by the courts. It is derived from the Illinois "long arm" statute and has been interpreted by Illinois as giving its courts power over non-residents to the extent permitted by the due process clause.²⁷ This interpretation is consonant with the general purpose of the "long arm" statute. The issue, then, becomes one of determining whether or not the test of "minimal contacts" has been met. It should be noted that this test does not lend itself to the promulgation of a formula which will automatically determine every case. As stated in numerous cases dealing with due process, validity, and applicability of "long arm" statutes, each case must be decided on its own facts.²⁸

Although this provision has been applied in actions in tort,²⁹ it is most often applied in actions in contract. In *Wisconsin Metal & Chemical Corp. v. Dezurik Corp.*³⁰ a Minnesota corporation was sued in Wisconsin. The only contact with the state was through an independent manufacturer's representative who solicited orders for defendant and forwarded them to defendant's offices in Minnesota. Defendant would accept the offer and ship the goods into Wisconsin. The court held that suit in Wisconsin was not a violation of due process.

27. *Nelson v. Miller*, 11 Ill. 2d 278, 143 N.E.2d 673 (1957).

28. *Consolidated Laboratories, Inc. v. Shandon Scientific Co.*, 384 F.2d 797 (7th Cir. 1967).

29. *Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 209 N.E.2d 68 (1965).

30. 222 F. Supp. 119 (E.D. Wis. 1963).

A 1967 Illinois case held that the applicability of the transacting-any-business provision does not require the physical presence in Illinois of a non-resident *or* his agent.³¹

The inclusion of the word "any" in this provision of the statute adds weight to the contention that in personam jurisdiction over a non-resident can be based on a single act.

CONTRACTING TO SUPPLY SERVICES OR THINGS IN THIS STATE

This is a very broad provision. It authorizes jurisdiction over a defendant who has never been in the state if he has contracted to supply services or things in the state. Inasmuch as the provision does not state that the contract must be made with the injured party it is conceivable that jurisdiction could be obtained even though the injured person is not a party to the contract.³² In addition it is not necessary that the contract be partially or wholly perfected in the state, but merely that services or things be supplied in the state as a result of that contract. All that is required is that the claim for relief arise from the defendant's contract to supply services or things in the state.

The "contract" provision and the transacting-any-business provision overlap to some degree and are frequently applied interchangeably by the courts. In fact, some states do not have the "contract" provision in their "long arm" statutes. As a result they find it necessary to stretch the transacting-any-business provision to include contract cases.³³

Obviously, a much stronger case can be made for personal jurisdiction in contract cases when the applicable "long arm" statute includes this provision. In *Waukesha Building Corp. v. Jameson*³⁴ a Wisconsin corporation contracted to supply valves to be used in the air conditioning and heating unit of an Arkansas motel. The valves were shipped by common carrier to the job site in Arkansas and installed by a subcontractor. When the motel owner discovered that the valves

31. *Ziegler v. Houghton-Mifflin Co.*, 80 Ill. App. 2d 210, 224 N.E.2d 12 (1967).

32. *See, e.g., Coreil v. Pearson*, 242 F. Supp. 802 (W.D. La. 1965).

33. In *Clinic Masters, Inc. v. McCollar*, 269 F. Supp. 395 (D. Colo. 1967). The court allowed jurisdiction over a non-resident defendant who had contracted with plaintiff, a Colorado resident, to attend a training session for chiropractors in Colorado and to share any increase in income resulting from attendance at the sessions. Plaintiff brought suit when defendant terminated the contract. Although the Colorado "long arm" statute does not have a contract provision, the court stretched the transacting-any-business provision to include the contract.

34. 246 F. Supp. 183 (D. Ark. 1965).

did not function properly he complained to the manufacturer who sent one of his engineers to Arkansas to inspect the valves. After his inspection the engineer agreed to supply the sub-contractor with another set of valves. Subsequently a third set of valves was installed by an Arkansas contractor hired for the job by the manufacturer. In denying the manufacturer's motion to quash service the Arkansas court mentioned the transacting-any-business provision of the Arkansas "long arm" statute but based its decision that the manufacturer was subject to the jurisdiction of Arkansas courts primarily on the contract to supply services and goods within Arkansas.

Some states, requiring more than was required in *Waukesha Building Corp.*, have held that acts must be continuous in order for this provision to justify jurisdiction over a non-resident.³⁵ However, in view of the purpose of the "long arm" statute and the suggestion of the National Conference of Commissioners that these provisions should be construed liberally, it is submitted that a single act under this section should be sufficient.

CAUSING TORTIOUS INJURY BY AN ACT OR OMISSION IN THIS STATE

When a defendant's act or omission and the resulting injury both occur in Wyoming, there is clearly a sufficient contact for personal jurisdiction. This is the basis upon which the non-resident motorist cases have been upheld. There has been a big gap in the personal jurisdiction of the state over persons who enter Wyoming and cause injury by a single act not arising out of the use of the highways. One of the purposes of this provision of the "long arm" statute is to close that gap. A provision of New York's "long arm" statute similar to this provision was at issue in the *Rosenblatt*³⁶ case and was approved by the Supreme Court.

In addition, the provision will support jurisdiction when the act or omission occurs in Wyoming but the resulting injury occurs outside the state.³⁷ Court decisions dealing with similar statutes in other states, such as *Smyth v. Twin State Improve-*

35. *Erlanger Mills v. Cohoes Fibre Mills*, 239 F.2d 502 (4th Cir. 1956).

36. *Rosenblatt v. American Cyanamid Co.*, *supra* note 24.

37. 9B UNIFORM LAWS ANN. 311 (1966).

ment Corp.³⁸ (cited with approval by the Supreme Court in *McGee v. International Life Ins. Co.*³⁹) and *Nelson v. Miller*⁴⁰ have been primarily concerned with where the act causing the injury occurred, rather than with where the injury resulted. It should be noted, however, that case law applicable to this provision is complex and somewhat misleading. This is because many states have included this provision in their "long arm" statute but have omitted the provision concerning injury in the state caused by an act or omission outside the state.⁴¹ As a result, the courts of those states have found it necessary to stretch this provision to include virtually all tort cases.

The wisdom of the Wyoming Legislature in avoiding this pitfall is to be commended. Under this provision of the Wyoming "long arm" statute personal jurisdiction over non-residents can be asserted in two situations: (1) an act or omission in the state causes tortious injury in the state, (2) an act or omission in the state causes tortious injury outside the state.

CAUSING TORTIOUS INJURY IN THIS STATE BY AN ACT OR OMISSION OUTSIDE THIS STATE

This provision authorizes the exercise of jurisdiction when the tortious act or omission takes place outside the state but the injury occurs within the state, provided, however, that the non-resident has had other contacts with the forum.⁴² The additional contacts need not be related to the cause of action upon which the suit is based but, of course, the claim for relief must relate to the tortious act causing the injury.⁴³ According to the statute the necessary additional contacts exist if the non-resident (1) regularly does, or solicits business, or (2) engages in any persistent course of conduct, or (3) derives substantial revenue from goods consumed or services used in this state.

There has been a wide divergence of judicial decision in other states concerning the constitutionality of "long arm"

38. 116 Vt. 568, 80 A.2d 664 (1951).

39. 355 U.S. 220 (1957).

40. 11 Ill.2d 278, 143 N.E.2d 673 (1957).

41. See discussion, *infra*, p. 244-48.

42. 9B UNIFORM LAWS ANN. 312 (1966).

43. *Id.*

statute provisions dealing with tortious acts and injuries. This is primarily due to the fact that many "long arm" statutes do not require contacts other than the occurrence of an injury within the forum state. As a result, a question arises concerning the existence of contacts sufficient to meet the requirements of due process as set forth in *International Shoe*.⁴⁴

There is very little question about the constitutionality of this provision in the Wyoming statute in view of the "additional contacts" required. This is particularly true in view of the fact that courts have often emphasized the existence of similar contacts in upholding jurisdiction based upon an in-state injury caused by an out of state act.⁴⁵ In fact it is suggested that in order to accomplish the "long arm" statute's purpose of broadening jurisdiction to the constitutional limits set by *International Shoe*, the three "additional contacts" should be liberally construed. Another approach is to follow the lead of Colorado in *Lichina v. Futura, Inc.*⁴⁶ In that case the court held that the contacts with Colorado were insufficient under a provision similar to section 5-4.2(a)(iv) but sustained jurisdiction on the ground that the foreign corporation had been "transacting" business in the state and was, therefore, within the purview of a Colorado provision similar to 5-4.2(a)(i).

Actions falling within section 5-4.2(a)(iv) are typically products liability cases. The Colorado case of *Vandermee v. District Court*⁴⁷ is an excellent example of what constitutes a "persistent course of conduct" within the meaning of this provision. A Colorado construction worker was injured as a result of a defect in a crane being used on a Colorado construction site. The crane had been manufactured in New York by a Delaware corporation and sent to Colorado where the defect resulted in injury to the plaintiff. The court cited *Gray v.*

44. See, e.g., *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961); *Keckler v. Brookwood Country Club*, 248 F. Supp. 645 (Ill. 1965); *Golden Gate Hop Ranch, Inc. v. Velsicol Chemical Corp.*, 66 Wash.2d 469, 403 P.2d 351 (1965) upholding jurisdiction on constitutional grounds; *Lichina v. Futura, Inc.*, 260 F. Supp. 252 (D. Colo. 1966); *Newman v. Charles S. Nathan, Inc.*, 24 App. Div. 2d 867, 264 N.Y.S.2d 382 (1965) denying jurisdiction on constitutional grounds.

45. *Ford Motor Co. v. Arguello*, 382 P.2d 886 (Wyo. 1963); *Deveny v. Rheem Mfg. Co.*, 319 F.2d 124 (2d Cir. 1963); *Aftanase v. Economy Baler Co.*, 343 F.2d 187 (8th Cir. 1965); *Ewing v. Lockheed Aircraft Corp.*, 202 F. Supp. 216 (D. Minn. 1962).

46. 260 F. Supp. 252 (D. Colo. 1966).

47. 433 P.2d 335 (Colo. 1967).

American Radiator,⁴⁸ the leading authority for the constitutionality of this provision of the statute, and stated that there existed "minimal contact in Colorado because defendant has set up channels of sales promotion and distribution in Colorado for the purpose of selling its products in Colorado."⁴⁹

Specific mention should be made of the third "additional contact"—deriving substantial revenue from goods consumed or services used in this state. Any large producer of consumer goods will derive substantial revenue from virtually every state. These goods may be sent into the state by a wholesaler or other distributor completely independent of the manufacturer, but the manufacturer will be deriving revenue, if only indirectly, from the goods sold within the state. This is sufficient to render him liable under this provision.

HAVING AN INTEREST IN, USING OR POSSESSING REAL PROPERTY IN THIS STATE

This provision is confined to actions arising from the ownership of an interest in, use, or possession of real property. The concept of possession of real property is well established and presents no serious problems with respect to the "long arm" statute. According to the *Restatement of Torts*, a person is in possession of land if: (a) he is occupying the land with intent to control it; (b) he has been occupying the land but is no longer doing so and no other person has since obtained possession; or (c) he has the right to occupy the land and no other person is doing so.⁵⁰ This definition is broad enough to include adverse possessors, lessees, or persons who hold legal title to the land.

What constitutes "using" real property is less clear. In *Dubin v. City of Philadelphia*,⁵¹ the court held that a mortgagee, in possession of the property and collecting rent, was using the property. *Chang v. Faulstich*⁵² held that a non-resident building contractor came under the statute because he was using the property on which he was building pursuant to contract. The courts have generally construed the term

48. 22 Ill.2d 432, 176 N.E.2d 761 (1961).

49. *Lichina v. Futura, Inc.*, *supra* note 44, at 388.

50. RESTATEMENT OF TORTS § 157, at 276 (1965).

51. 34 Pa. D. & C. 61 (1938).

52. 88 Pa. D. & C. 557 (1954).

"using real property" liberally. This is in keeping with the purpose of the "long arm" statute.

The situation becomes somewhat more complicated when deciding what amounts to an "interest in" real property. *Porter v. Nahas*,⁵³ an Illinois case, held that a lease constitutes an interest in real property. As already mentioned, a lessee is also a possessor and in most situations, a possessor will be using the property and will also have an interest in that property.

However, there are a few unique situations where a person could have an interest in property without having possession or use of the property. One such situation would be where a non-resident contracts to purchase real property within the state. He would not yet be in possession nor would he be using the land. The only way the courts of Wyoming could acquire jurisdiction over such a person would be by concluding that he has an interest in real property within the state. The question would be whether a contract to purchase land gives a non-resident vendee an interest in the land. Where there is a contract to purchase land, "the contract creates a status of vendor-purchaser and the latter acquires real rights in the property due to the possibility of specific performance."⁵⁴ Since an "interest is any right in the nature of property less than title,"⁵⁵ a contract to buy land gives an interest in that land. Under the "long arm" statute, if a non-resident has an interest in real property in Wyoming, he is subject to in personam jurisdiction of the courts. This has great repercussions upon the remedies available in such a case. Under this provision, a resident is able to bring an action for damages for breach of a contract having to do with the land and, even more significantly, for specific performance.⁵⁶

An interesting question arises concerning the time when the relationship of the defendant with the property should exist. In *Gearhart v. Pulakos*⁵⁷ the court held that a sale of the property after the cause of action arose does not defeat

53. 35 Ill. App. 2d. 360, 182 N.E.2d 915 (1962).

54. CRIBBET, PRINCIPALS OF THE LAW OF PROPERTY 137 (1962).

55. THOMPSON, REAL PROPERTY § 2395, at 149 (1957).

56. *Otis Oil & Gas Corp. v. Maier*, 284 P.2d 653 (Wyo. 1955).

57. 207 F. Supp. 369 (W.D. Pa. 1962).

jurisdiction even if the sale was completed before service of process. However, if the owner of land creates a hazardous condition on the land but sells it before an injury occurs, jurisdiction cannot be maintained.⁵⁸

There is little question about the constitutionality of the provision due to the substantial connection of the land with the situs state. Similar provisions have been upheld since the 1930's, long before the advent of "long arm" statutes, and have never been overturned by the Supreme Court.

CONTRACTING TO INSURE ANY PERSON, PROPERTY, OR RISK
LOCATED WITHIN THIS STATE AT THE TIME OF CONTRACTING.

In addition to adopting this provision in the "long arm" statute,⁵⁹ the Wyoming Legislature recodified the Wyoming Insurance Code.⁶⁰ Section 26.1-233 of the Insurance Code states that the purpose of the Unauthorized Insurers Process Act is to protect Wyoming residents by subjecting to the jurisdiction of Wyoming courts unauthorized insurers who have delivered policies in the state or sent advertising into the state. Section 26.1-235 provides for appointment of the Secretary of State as agent for service of process upon any unauthorized insurer who solicits, effectuates, or delivers an insurance contract within this state or performs within the state any other service or transaction connected with such insurance. It is apparent that in order to base jurisdiction upon the Insurance Code the unauthorized insurer must have performed an act, however insignificant, within the state. The "long arm" statute, however, subjects a non-resident insurer to jurisdiction if he contracts to insure a person, property, or risk within the state. The insurer need not perform any act in Wyoming. All that is necessary is that the person, property, or risk insured be located in the state at the time of contracting.⁶¹

Together, the Insurance Code and the "long arm" statute give Wyoming broad jurisdictional authority over foreign

58. *Murphy v. Indovina*, 384 Pa. 26, 119 A.2d 258 (1956).

59. 9B UNIFORM LAWS ANN. 313 (1966). This provision is to be treated as part of the regulatory scheme for the insurance industry in Wyoming.

60. WYO. STAT. §§ 26.1-1 to -669 (1957).

61. Constitutionally, even this limitation may be unnecessary in view of *Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179 (1964). In that case the Supreme Court upheld jurisdiction of a Florida court over a non-resident insurer where the owner of the insured property moved into Florida bringing the property with him. The loss occurred in Florida.

insurers. The Insurance Code requires some act in the state but does not require that a contract be made. The "long arm" statute requires that a contract be made but does not require an act in the state. Thus, virtually all insurance activity is covered by the two statutes.

WHEN JURISDICTION OVER A PERSON IS BASED SOLELY UPON THIS SECTION, ONLY A CLAIM FOR RELIEF ARISING FROM ACTS ENUMERATED IN THIS SECTION MAY BE ASSERTED AGAINST HIM

As has been pointed out previously, the purpose of the "long arm" statute is to expand personal jurisdiction to the constitutional limits established by the United States Supreme Court. However, in accomplishing this worthwhile goal care must be taken to insure that the statute does not become a tool of oppression. Because of the desirability of settling an entire dispute in a single litigation whenever possible, the concept of claim for relief should be broadly construed. On the other hand, assertion of independent claims unrelated to claims for relief provided for in subsection (a) of the statute must be prevented.⁶² This is the purpose of subsection (b).⁶³ In the absence of this provision certain constitutional problems of due process could arise.

This limitation does not apply in all situations. A defendant, of course, may appear and consent to unlimited jurisdiction if he prefers to litigate all aspects of a related dispute, the provision notwithstanding. In addition, the limitation imposed does not apply if jurisdiction is based on grounds other than the "long arm" statute. For example, under the Wyoming Business Corporation Act, if a person is "doing business" within the terms of the act, it appears that he may be subjected to jurisdiction even if the claim for relief does not arise from the business being done.

WHEN THE EXERCISE OF PERSONAL JURISDICTION IS AUTHORIZED BY THIS ACT, SERVICE MAY BE MADE OUTSIDE THIS STATE

This section authorizes service of process outside Wyoming, as provided for in the *Wyoming Rules of Civil Procedure* (1966) when personal jurisdiction is based upon the

62. *Murphy v. Indovina*, *supra* note 58, at 313. For an example of the application of this requirement *see* 339 F.2d 317 (2d Cir. 1964).

63. *Murphy v. Indovina*, *supra* note 58, at 314.

“long arm” statute. Rule 4(c) enumerates the persons by whom service of process may be made within Wyoming, in another state or United States territory, and in a foreign country. Generally, a sheriff or his deputy or person over twenty-one years of age appointed by the clerk may serve process. Rule 4(d) provides for the manner of serving process upon individuals over fourteen years of age, individuals under fourteen years of age, partnerships or other unincorporated associations, corporations, governmental departments or agencies, and the Secretary of State.

Although the *Wyoming Rules of Civil Procedure* do not specifically state the manner in which personal service of process upon non-residents is to be made, it may be reasonably inferred that the procedure provided for in Rule 4(c) and 4(d) is appropriate.⁶⁴ It is suggested that the Supreme Court of Wyoming could resolve this question by changing the rules to provide for personal service of process upon non-residents outside the state.

This provision of the “long arm” statute also provides for proof of process according to the laws of the place in which service is made, or according to any order of the court. Although the procedural rules of most states are similar to the Federal Rules of Civil Procedure, care should be taken in looking for differences. If service is not made properly, jurisdiction is not acquired.

RETROACTIVITY

With regards to the question of the retroactive application of the “long arm” statute, the cases appear to be divided into three general classifications: (1) the act or transaction upon which jurisdiction is based occurred prior to the enactment of the statute but the action is initiated after enactment; (2) action is initiated prior to the enactment of the statute and enactment occurs before final disposition of the case; (3) the elements of the cause of action occur in part prior to enactment of the statute and in part after enactment.

64. Service of process, to meet the standard of due process, must be the method most likely to “appraise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

In the first class of cases a distinction has been made between implied consent statutes and statutes, such as Wyoming's, which provide that the acts or transactions specified therein are the bases of jurisdiction of local courts.⁶⁵ A substantial majority of courts have held that the general rule that statutes pertaining to procedure operate retroactively applies to "long arm" statutes of the first kind but does not apply to the second kind.

In *McGee v. International Life Ins. Co.*⁶⁶ the Supreme Court held that, although an insurance contract had been issued and delivered prior to enactment of the statute, the statute was remedial and its application neither enlarged or impaired the insurance company's substantive rights or obligations under the contract, but merely provided the insured with a California forum to enforce whatever substantive rights he might have. The Court stated that the company did not have a vested right not to be sued in California and pointed out that it was given a reasonable time to appear and defend on the merits of the suit.

A vast majority of courts have followed the reasoning in *McGee* in holding that a "long arm" statute enacted after accrual of the cause of action but before suit has been brought may be applied.⁶⁷

A different situation exists, however, when the action was initiated prior to enactment of the statute. In the absence of statutory provisions to the contrary it has been held that the statutes may not be applied retroactively under those circumstances.⁶⁸ A leading case in this area is *Simonson v. International Bank*.⁶⁹ The court pointed out that the "long arm" statute cannot be applied retroactively so as to make good a service of process which was jurisdictionally defective when made. It then went on to make the distinction between

65. See, e.g., *Chovan v. E. I. DuPont de Nemours & Co.*, 217 F. Supp. 808 (E.D. Mich. 1963); *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 261 N.Y.S.2d 8, 209 N.E.2d 68 (1965).

66. 355 U.S. 220 (1957).

67. See, e.g., *Hoen v. District Court*, 159 Colo. 451, 412 P.2d 428 (1966); *Smith v. Putnam*, 250 F. Supp. 1017 (D. Colo. 1965); *State ex rel. Johnson v. District Court of Fourth Judicial District*, 417 P.2d 109 (Mont. 1966); *Roberts v. Hodges*, 401 S.W.2d 332 (Tex. Civ. App. 1966); *Simonson v. International Bank*, 14 N.Y.2d 281, 200 N.E.2d 427 (1964).

68. See, e.g., *Cedar Rapids Community School Dist. v. R. F. Ball Construction Co.*, 237 F. Supp. 965 (N.D. Iowa 1965).

69. 14 N.Y.2d 281, 251 N.Y.S.2d 433, 200 N.E.2d 427.

actions which were initiated before enactment of the statute and those which were initiated after enactment.

The third class of cases are those wherein part of the elements of the cause of action occurred prior to enactment and part occurred after enactment. In this situation it has been generally held that the cause of action sued on did not fully accrue until after enactment of the statute and that, therefore, the statute is applicable.⁷⁰

CONCLUSION

The evolution of the law relative to personal jurisdiction has resulted in an entirely new legal doctrine. From the physical power theory as set forth in *Pennoyer v. Neff*, to the fictions of consent, presence, and doing business, to the "minimal contacts" theory of *International Shoe* and finally to the judicial decisions based on *International Shoe*, the trend toward expanding personal jurisdiction is clear. Subsequent to the *International Shoe*, decision, which broadened the constitutional limitations of due process, many states which had statutes based on the old concepts found that these statutes fell far short of the jurisdictional barriers. Many state courts attempted to rectify this situation by re-interpreting existing law. However, this solution proved inadequate. In 1955, ten years after the Supreme Court handed down its decision in *International Shoe*, the state of Illinois enacted the first "long arm" statute. During ensuing years other states followed suit.

In 1967 Wyoming adopted its "long arm" statute which is patterned after the *Uniform International and Interstate Procedure Act*. The purpose of this act is to permit Wyoming courts to go to the full constitutional limits of due process, thus assuring Wyoming jurisdiction over cases having substantial Wyoming interest. The principal beneficiaries of the act are Wyoming residents, inasmuch as a resident who has a claim for relief against a foreign corporation or non-resident individual arising out of events which create minimal contacts with the state is given greater access to Wyoming courts. The restriction of minimal contacts and the require-

70. See, e.g., *Sampson Constr. Co. v. Farmers Co-operative Elevator Co.*, 382 F.2d 645 (10th Cir. 1967).

ment that the claim for relief must arise under the statute insures that, while the plaintiff may bring his action in a convenient forum, at the same time, jurisdiction obtained under the statute is fair to the defendant.

It is hoped that in interpreting the "long arm" statute Wyoming courts will recognize the interest of the state and its citizens in expanding personal jurisdiction over non-residents to the full constitutional limits and will effectuate the purpose of the statute to that end.

EDWARD A. LEWKOWSKI
V. FRANK MENDICINO