

December 2019

Basis for Acquiring in Personam Jurisdiction over Foreign Corporations Expanded

Robert M. Wampler

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

Recommended Citation

Robert M. Wampler, *Basis for Acquiring in Personam Jurisdiction over Foreign Corporations Expanded*, 17 Wyo. L.J. 68 (1962)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol17/iss1/5>

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

BASIS FOR ACQUIRING IN PERSONAM JURISDICTION OVER FOREIGN CORPORATIONS EXPANDED

In the case of *Bank of Augusta v. Earle* in 1839, Mr. Chief Justice Taney said:

A corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation; and cannot migrate to another sovereignty.¹

This decision was the start of one of the most troubled areas of our law—the question of in personam jurisdiction over foreign corporations. After the *Bank of Augusta* case, there sprang forth many legal fictions to obtain jurisdiction over the foreign corporation. The first was a “consent theory” which was accepted by the Supreme Court in *Lafayette Insurance Co. v. French*² and which was limited in *St. Clair v. Cox*.³

Also, out of the *St. Clair* case came the notion that the cause of action must arise out of the business transactions in the state.⁴ The next theory which sprang forth was the “presence theory” as stated by Mr. Justice Brandeis in *Philadelphia and Reading R.R. v. McKibbin*.⁵ The defective patterns in these two theories were supplemented by the “doing business doctrine,” which also was not satisfactory because of the lack of definition as to what constituted the doing of business. The law reports became full of decisions as to what constituted doing business, of which *Hutchinson v. Chase and Gilbert*⁶ is a fair sample. The Restatement of The Law of Judgments and many courts still use the “doing business” theory to acquire jurisdiction over foreign corporations.⁷ However, The Restatement of The Law of Judgments expressly refrains from expressing an opinion on the question of whether a court acquires jurisdiction over a foreign corporation which is doing business in the state, but where the cause of action does not arise out of such business.⁸ This is the question that will be specifically dealt with in this note.

Can a state expand its jurisdiction over foreign corporations to include causes of action not arising out of the business transacted in the state when the corporation has not consented to be sued? In the face of the due process clauses and possibly the equal protection clause, this is at least questionable. This question is hard upon us in Wyoming. In Wyo. Sess. Laws 1961, ch. 85 the Wyoming Business Corporation Act was passed

1. 38 U.S. (13 Pet.) 277, 282 (1839).

2. 59 U.S. (18 How.) 404 (1855).

3. 106 U.S. 350 (1882).

4. *Id.*, at 356.

5. 243 U.S. 264 (1917).

6. 45 F.2d 139 (C.A. 2d, 1930).

7. Restatement, Judgments § 30 (1942). 44 Iowa L. Rev. 345 (1959).

8. Restatement, Judgments § 30 (1942).

and took effect on July 1, 1961. In the passing of this act, Wyoming Statute 17-44 (1957) was repealed. The first sentence of Wyoming Statute 17-44 (1957) stated that Wyoming courts had jurisdiction over a foreign corporation only when the cause of action grew out of the transaction of any business in the state.⁹ This statute was replaced by Wyoming Statute 17-36.104 in Wyo. Sess. Laws 1961, ch. 85, and this new law has not included the limitation of the cause of action arising out of the business transacted in the state, and its express language gives Wyoming jurisdiction over foreign corporations doing business in the state as to all causes of action. There is no limitation as to where or under what circumstances the cause of action must arise and there is no need for the corporation's consent.¹⁰ Thus, if the statutory expansion of this jurisdiction is constitutional, Wyoming has added a new basis for jurisdiction over a foreign corporation doing business in the state.

Before the decision of the U. S. Supreme Court in the *International Shoe Co. v. Washington*¹¹ in 1945, the theories of consent, presence, and doing business were used to acquire jurisdiction over foreign corporations, and there was a wide variety of decisions. Many courts held that a foreign corporation, even when present within the state and amenable to suit, may not, unless it has consented, be sued on causes of action arising elsewhere which are unconnected with any corporation action by it within the state.¹² In other jurisdictions the courts held that even with an agent appointed, the cause of action must arise out of the business done in the state.¹³ In still other jurisdictions the courts held that if the foreign corporation was found to be present in the state, jurisdiction extends to causes of action arising outside the state.¹⁴ The issue is further complicated by a number of courts which have held that a court sitting in one state will generally decline to interfere with or control management of internal affairs of corporations organized under laws of other states,¹⁵ and it has been held that this general rule will not apply where the directors are guilty of misconduct equivalent to a breach of trust or where they stand in a dual relation which prevents an unprejudicial exercise of judgment.¹⁶ It has also been held that state statutes which give jurisdiction over foreign corporations doing business in the state and require appointment by the corporation of an agent on whom process may be served are primarily to subject them to the jurisdiction of local courts in controversies arising from transactions within the state, and the

-
9. Wyo. Stat. § 17-44 (1957).
 10. Wyo. Sess. Laws ch. 85, § 104 (1961).
 11. 326 U.S. 310 (1945).
 12. *Louisville & Nashville R.R. Co. v. Chatters*, 279 U.S. 320 (1929). This case is a fair sample. For other cases see *Corporations Key No. 662* and 44 *Iowa L. Rev.* 345.
 13. *O'Brien v. Southern Bell Tel. & Tel. Co.*, 292 F. 379 (D. Ala. 1923); *Robert Mitchell Furniture Co. v. Selden Breck Const. Co.*, 257 U.S. 213 (1921).
 14. *Massachusetts Bonding & Ins. Co. v. Concrete Steel Bridge Co.*, 37 F.2d 695 (4th Cir. 1930); *Frank Co. v. Erikson*, 20 F.2d 707. Vacating, 16 F.2d 498 (1927).
 15. *Rogers v. Guaranty Trust Co. of New York*, 288 U.S. 123 (1933). See 89 *A.L.R.* 736.
 16. *Hirshhorn v. Mine Safety Appliances Co.*, 54 F. Supp. 588 (D. Pa. 1944).

statutes will not be construed to give state courts jurisdiction of other transactions in absence of language compelling such construction.¹⁷

In 1945 the Supreme Court of the United States decided the case of *International Shoe Co. v. Washington*,¹⁸ which did not solve the question by any means, but which served rather to destroy existing doctrines. In this case the Supreme Court rejected the theories of consent, presence, and to some extent the "doing business doctrine," and in their place it stated:

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.¹⁹

However, Mr. Chief Justice Sone in the *International Shoe* case also stated:

To 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. The exercise of that privilege may give rise of obligations, and, so far as those obligations arise out of or are connected with the activities within the state, 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.²⁰

So even though the tests of fair play, substantial justice, and reasonableness, which were brought out in *International Shoe*, are still being used by the Supreme Court, the question of whether or not the cause of action must arise out of the business done in the state or activities in the state is still unresolved.

The doctrine announced in *International Shoe* was not applied again by the Supreme Court until 1950 in the case of *Traveler's Health Association v. Virginia*.²¹ However, this case gave no help with the issue, for the question of whether the cause of action must arise out of the business done in the state was not directly passed upon.

The only time that the question was directly in issue before the Supreme Court was in 1952, when the case of *Perkins v. Benquent Consolidated Mining Co.*²² was decided. It was held in this case that the cause of action did not have to arise out of the business transacted in the state in order for the state to acquire jurisdiction. When the court was applying the reasoning of *International Shoe* it stated:

The instant case takes us one step further to a proceeding in personam to enforce a cause of action not arising out of the corporation's activities in the state of the forum. Using the tests mentioned above we find no requirement of federal due process that

17. *Morris and Co. v. Skandinavia Ins. Co.*, 279 U.S. 405 (1929).

18. 326 U.S. 310 (1945).

19. *Id.*, at 316. *Travelers Health Ass'n. v. Virginia*, 339 U.S. 643 (1950).

20. 326 U.S. 310, 319 (1945).

21. 339 U.S. 643 (1950).

22. 342 U.S. 437 (1952).

either prohibits Ohio from opening its courts to the cause of action here presented or compels Ohio to do so. This conforms to the realistic reasoning in *International Shoe*. . . .²³

At first blush the *Perkins* case would seem to be the answer to the question, but under the peculiar factual situation in this case the only jurisdiction readily available for suit was Ohio. The corporation was doing business in Ohio, it had not consented to be sued in Ohio, and the cause of action did not arise out of the business done in Ohio. The facts seem to fit the question perfectly except that the only other jurisdiction where suit could be brought was the Philippine Islands. The Philippine Islands were no longer occupied by enemy forces and their courts were open, but there was still a state of unrest and it was a foreign tribunal. Because of this situation it is doubtful that the *Perkins* case has completely decided the question. The case of *L. D. Reeder Contractors v. Higgins Indus.* (9th Cir. 1959)²⁴ distinguished the *Perkins* case on its facts, and held that a foreign corporation was not subject to in personam jurisdiction where activities in form did not directly give rise to the cause of action. The *Perkins* case has also been limited and distinguished in other state courts.²⁵

In 1957 and 1958 the reasoning of *International Shoe* was again applied and upheld by the Supreme Court.²⁶ The *McGee* case placed particular emphasis upon the propriety of jurisdiction where the defendant is called on to defend himself in a state where he engaged in economic activity.²⁷

From the above cases it can be seen that they give little, if any, help to the question of whether a state can acquire jurisdiction over a foreign corporation doing business in the state, but where the corporation has not consented to be sued and the cause of action does not arise out of the business transacted in the state. The most that can be deduced from the cases is, what the courts have deemed to be sufficient contacts to hold a foreign corporation amenable to suit. The decisions of the courts after the *International Shoe* case have revealed some, if not all, the factors to be considered. The factors that have been considered, as listed and discussed in 108 U. Pa. L. Rev. 134-137 (1959), are type and amount of activity of the corporation in the forum, extent to which the cause of action in suit arises from such activity, means by which the activity is achieved, foreseeability of juridicial consequences which may require invoking the process of the courts, interest of the state in regulating the particular type

23. *Id.*, at 446.

24. 265 F.2d 768 (9th Cir. 1959).

25. Distinguished at *Graham and Ross Mercantile Co. v. Sprout, Waldron & Co.*, 174 F. Supp. 551, 556 (D. Mont. 1959). *Anschell v. Sackheim*, 145 F. Supp. 447, 454 (D. N.J. 1956); *Erlanger Mills v. Cohoes Fibre Mills*, 239 F.2d 502, 506 (4th Cir. 1956); *Partin v. Michaels Art Bronze Co.*, 202 F.2d 541, 544 (3rd Cir. 1953). It was limited in *L. D. Reeder Contractors of Ariz. v. Higgins Indus.*, 265 F.2d 768, 775 (9th Cir. 1959).

26. *McGee v. International Life Ins. Co.*, 354 U.S. 220 (1957). *Hanson v. Denckla*, 357 U.S. 235 (1958).

27. *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957).

of activity involved, questions of whether the plaintiff is a resident of the forum, burden upon defendant of defending away from home, general trial efficiency achieved by holding trial where the evidence is close at hand, ease of access to an alternative forum, and the relationship between the defendant corporation and the person upon whom process is served in the forum. These elements have all been considered by the courts, but the courts have revealed neither how each factor is to be weighed nor what combination of factors will be sufficient to give in personam jurisdiction. The answer to the question with which this note is concerned depends on what weight will be given to the casual connection to in-forum activity. This factor has been discussed by the courts several times, but not in connection with statutes similar to Wyoming's or when it was directly in issue. The one case that is directly in point²⁸ has such a peculiar factual situation that it may be limited to just that situation. It is certainly not clear how much weight will be given to the casual connection to in-forum activity.

Wyo. Stat. § 17-36.104 (1961 Supp.) gives jurisdiction over foreign corporations doing business in the state as to all causes of action whether they arose from the business transacted within or without the state, and whether or not the corporation has consented to be sued. The *Perkins* case²⁹ is a good indication that there will be circumstances where the cause of action will not have to arise out of the business transacted in the forum in order to acquire jurisdiction over a foreign corporation doing business in the forum and which has not consented to be sued. However, to hold that a state will have jurisdiction over a foreign corporation doing business in the state as to all causes of action whether they arise in the state or not and under all circumstances, is going much further than the courts have been willing to go. The only real conclusion that can be drawn from the cases is that the weight to be given the casual connection to in-forum activity is very uncertain, and if there is any other basis for gaining jurisdiction, it would seem advisable to use it.

ROBERT M. WAMPLER

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

29. *Ibid.*