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## Foreign Corporations Doing Business in State

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FOREIGN CORPORATIONS DOING BUSINESS IN STATE—The amenability of foreign corporations to suit in state courts has long been a troublesome problem, both to the state courts, and, since the problem is essentially one of due process under the Fourteenth Amendment, to the federal courts.<sup>1</sup> A recent United States Supreme Court decision strengthens state jurisdiction without, however, clarification of principle calculated to minimize the area of doubt. *International Shoe Company v. State*, 66 S.Ct. 154 (U.S. 1945).

The International Shoe Company, a Delaware corporation whose principal place of business was St. Louis, employed eleven to thirteen salesmen in the State of Washington. The salesmen were mere solicitors who took orders subject to home office approval, on a commission basis. Although the company had neither an office nor merchandise in the state, some of the agents rented permanent sample rooms for which they were reimbursed by the corporation. The state assessed the company under the unemployment compensation act with respect to the resident employees. Notice was served by personal service on one of the agents in addition to service by registered mail addressed to the home office.<sup>2</sup> On appeal the United States Supreme Court, in affirming the judgment below, reasoned (a) that the "quality and nature" of the activity of the company in the state "in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure"<sup>3</sup> was such as to subject the company to the jurisdiction for purposes of the tax<sup>4</sup> and the suit; and (b) that either of the forms of service resorted to was sufficient notice. Mr. Justice Black, in a concurring opinion, vigorously attacked the "vague constitutional criteria" which was advanced by the majority. It was his opinion that the doing of any business in the state would suffice and that the test set forth by the majority would tend to curtail the power of a state to regulate business carried on within its boundaries by foreign corporations simply because their headquarters are in other states.

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1. This note relates to actions *in personam* only.

2. Timely objection to the service and to the jurisdiction was made by special appearance before the Commissioner of Unemployment Compensation. The objection was denied and the assessment upheld. This ruling was affirmed by the Louisiana Supreme Court over the company's contention that it was being denied due process of law under the Fourteenth Amendment.

3. 66 S.Ct. 154, 160 (U.S. 1945).

4. The court summarily disposed of the plea to jurisdiction to tax on grounds that such unemployment taxation is expressly authorized by Congress. 53 Stat. 1391, c. 666 (1935), 26 U.S.C.A. § 1606(a) (Supp. 1940).

State and federal courts alike have been reluctant to lay down a definite yardstick with which to measure the business activity of foreign firms; they have preferred rather to judge each case on its own facts.<sup>5</sup> In dealing with this problem, however, courts have distinguished between cases (a) in which the cause of action arose either in the state<sup>6</sup> or out of the business conducted there,<sup>7</sup> and (b) where the cause of action arose out of the state.<sup>8</sup> Cases of the latter type generally require a substantially greater degree of business activity on the part of the corporation in order to ground jurisdiction.

Since, quite commonly, the corporation's sole contact with a state is through its solicitors, it is not surprising that there have been countless cases in which the question has been whether such a corporation can be sued in the state courts without deprivation of due process of law. Out of these cases evolved the rule that solicitation alone does not manifest the "presence" of the corporation.<sup>9</sup> In some instances, however, the additional requirements have been negligible.<sup>10</sup>

Although, as Justice Black accuses, the court is still advancing "vague constitutional criteria," the principal case is definitely a liberalizing influence; it at least brought within these criteria a set of facts which should be suggestive to state legislatures and courts alike.

What has just been said is certainly applicable to Louisiana. Our laws require any foreign corporation "doing business" in the state to register with the secretary of state and to name an agent for service of process.<sup>11</sup> For failure to comply with these requirements the statute not only provides a penalty<sup>12</sup> but also renders the firm amenable to service of process through the sec-

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5. *Proctor Trust Co. v. Pope*, 12 So. (2d) 724, 727 (La. App. 1943).

6. *R. J. Brown Co. v. Grosjean*, 189 La. 778, 180 So. 634 (1938).

7. *Simon v. Southern Railway Co.*, 236 U.S. 115, 35 S.Ct. 255, 59 L.Ed. 492 (1915).

8. *French v. Artistic Furniture Co., Inc.*, 173 La. 982, 139 So. 307 (1932); *Staley-Wynne Oil Corp. v. Loring Oil Co.*, 182 La. 1007, 162 So. 756 (1935). Note (1936) 10 *Tulane L. Rev.* 639.

9. *Peoples Tobacco Co. v. American Tobacco Co.*, 246 U.S. 79, 38 S.Ct. 233, 62 L.Ed. 587, Ann. Cas. 1918C 537 (1918); *Norm Advertising Inc. v. Parker*, 172 So. 586 (La. App. 1937); *Schultz v. Long Island Machinery & Equipment Co.*, 173 So. 569 (La. App. 1937); *State v. Best & Co.*, 194 La. 918, 195 So. 356 (1939); *National Pumps Corp. v. Bruning*, 1 So. (2d) 320 (La. App. 1941).

10. *International Harvester Co. of America v. Commonwealth of Kentucky*, 234 U.S. 579, 34 S.Ct. 944, 58 L.Ed. 1479 (1914) (holding that agent's authority to receive payment in money, check, or draft, and to take notes payable at banks in Kentucky was sufficient in addition to solicitation to constitute "doing business").

11. La. Act 267 of 1914, § 23, as amended by La. Act 120 of 1920, § 1 [*Dart's Stats.* (1939) § 1246].

12. *Id.* at § 24 [*Dart's Stats.* (1939) § 1247].

retary of state<sup>13</sup> and at the same time precludes resort to the state courts by the corporation.<sup>14</sup>

Two factors have served to weaken these statutes in their effect: (1) the narrow interpretation of "doing business" adopted by our courts and (2) the necessary exclusion of firms engaged solely in interstate commerce from the provisions of the act.<sup>15</sup>

The reluctance of Louisiana courts to construe liberally the phrase "doing business" so as to give wider effect to our state laws on the subject is evidenced in *Schultz v. Long Island Machinery and Equipment Company, Incorporated*.<sup>16</sup> This case involved an action by a citizen of Louisiana against a New York corporation on a contract for scrap iron bought by that firm. The court refused to entertain jurisdiction in the case since the corporation was not deemed to be, in the legal sense, "doing business" in the state, although each year its agents conducted large-scale scrap iron purchasing expeditions into the state.

In order to effect more liberal judicial treatment of "doing business" and at the same time to minimize constitutional hazards the general provisions of the present act might be so amended as to require that a corporation be deemed to be "doing business" in the state when the quality and nature of its activity therein is such that it can, in the fair and orderly administration of the laws, be subjected to the jurisdiction of the state. Were the Black view to prevail later this language would still be applicable.

Since all corporations qualifying under the Louisiana act are required to pay a franchise tax, the act would not be supportable if applied to foreign corporations engaged solely in interstate commerce in the state.<sup>17</sup> Even so, there is ample basis for statutory amendment which would require such a firm doing business in the state to appoint an agent for service of process or submit to service through the secretary of state for suits brought on actions arising in the state or out of the business conducted there.<sup>18</sup>

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13. *Id.* at § 25 [Dart's Stats. (1939) § 1248].

14. La. Act 8 of 1935 (3 E.S.), § 1 [Dart's Stats. (1939) § 1247.1]. But does not preclude suits brought against corporation.

15. La. Act 267 of 1914, § 23, as amended by La. Act 120 of 1920, § 1 [Dart's Stats. (1939) § 1246].

16. 173 So. 569 (La. App. 1937).

17. U.S. Const., Art. I, § 8.

18. *International Harvester Co. of America v. Commonwealth of Kentucky*, 234 U.S. 579, 34 S.Ct. 944, 58 L.Ed. 1479 (1914). This case determined that although the business carried on by a foreign corporation is entirely interstate in its character, such firm is not immune from the ordinary process of the courts of the state.