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# Conflict of Laws - Jurisdiction Over Foreign Corporations - What Constitutes Doing Business

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## NOTES

### CONFLICT OF LAWS — JURISDICTION OVER FOREIGN CORPORATIONS — WHAT CONSTITUTES DOING BUSINESS

Plaintiff, a resident of Utah, sued for injuries resulting from the use of a hair application manufactured by defendant, a foreign corporation. Defendant advertised through a local television station which received all orders for the product. These orders were mailed by the television station to defendant which in turn filled the orders and shipped them from its out-of-state plant to local residents, C.O.D. Plaintiff had the process served on the television station's manager on the ground that he or the station was either doing the business or was in charge of defendant's business within the meaning of the Utah service of process statute. The trial court entered an order quashing the service of process. On appeal, *held*, affirmed. The activities of defendant *did not* and *should not* justify the imposition of the state's power on a foreign corporation. *McGriff v. Charles Antell Inc.*, 256 P.2d 703 (Utah 1953).

The privileges and immunities clause of the Federal Constitution virtually forbids a state to exclude citizens of other states from doing a local business.<sup>1</sup> A corporation, however, has been held not to be a citizen entitled to the protection of the clause for this purpose and not to have a legal existence outside the state of incorporation.<sup>2</sup> Consequently, a state may exclude or admit a foreign corporation on its own terms if in doing so it does not violate some other provision of the Constitution.<sup>3</sup> However, because of the increase of extraterritorial business, the corporation has been recognized<sup>4</sup> and held amenable to suit in the courts outside of the state of its creation.<sup>5</sup> The validity of state statutes providing for suits against and service of process upon foreign corporations doing business within the state was sustained at an early date by the United States Supreme Court.<sup>6</sup>

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1. U.S. CONST. art. IV, § 2; STUMBERG, CONFLICT OF LAWS 351 (2d ed. 1951).

2. *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519 (1839).

3. STUMBERG, CONFLICT OF LAWS 351 (2d ed. 1951).

4. See LORENZEN, CASES ON CONFLICT OF LAWS 70-71 note (6th ed. 1951).

5. *Middlebrooks v. Springfield Fire Ins. Co.*, 14 Conn. 301 (1841); HENDERSON, THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW 77 (1918).

6. *Lafayette Insurance Co. v. French*, 59 U.S. (18 How.) 404 (1855).

Nevertheless, any assumption of jurisdiction over a nonresident is subject to the due process requirements of the fourteenth amendment.<sup>7</sup> This principle, first expounded in *Pennoyer v. Neff*,<sup>8</sup> has been held to apply not only to individuals but also to personal judgments of state courts against foreign corporations.<sup>9</sup> If the foreign corporation has consented to local jurisdiction, due process is satisfied.<sup>10</sup> In cases where foreign corporations are engaged in local activities without consenting to be sued, the Supreme Court, in determining jurisdiction, has relied previously on three factors: express or implied consent, "doing business," and "presence" within the jurisdiction.<sup>11</sup>

In *International Shoe Co. v. Washington*,<sup>12</sup> the Supreme Court repudiated any notion that it was limited to those factors in determining jurisdiction. In that case, the test laid down to meet the jurisdictional requisites of due process was that the foreign corporation have sufficient contacts or ties with the state of the forum to make it reasonable and just according to the court's traditional conception of fair play and substantial justice to permit the state to invoke its jurisdiction.<sup>13</sup> To illustrate the application of this test, one federal court held a foreign corporation subject to the jurisdiction of the state's court where the corporation's representatives carried on a systematic sales promotion campaign although no sales were consummated within the state.<sup>14</sup> Defendants' out-of-state sales to local residents, however, comprised a substantial part of its business.<sup>15</sup> On the other hand, another federal court held that where a foreign insurance company issued but a single policy through a Louisiana broker to a Louisiana resident, it constituted an isolated act short of doing business and did not give the state jurisdiction over the foreign

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7. *Pennoyer v. Neff*, 95 U.S. 714 (1878), noted in 94 L. Ed. 1167 (1950).

8. *Ibid.*

9. *Riverside and Dan River Cotton Mills v. Menefee*, 237 U.S. 189 (1915); *Goldey v. Morning News*, 156 U.S. 518 (1895); *St. Clair v. Cox*, 106 U.S. 350 (1882).

10. *In re The Louisville Underwriters*, 134 U.S. 488 (1890); *Ex parte Schollenberger*, 96 U.S. 369 (1877).

11. *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404 (1855); see GOODRICH, *CONFLICT OF LAWS* § 76 (3d ed. 1949); Culp, *Constitutional Problems Arising from Service of Process on Foreign Corporations*, 19 MINN. L. REV. 375 (1935); Comment, *Amenability of Foreign Corporations to Suit in Louisiana*, 14 LOUISIANA LAW REVIEW 625, 639 (1954); Note, 9 WASH. & LEE L. REV. 284 (1952).

12. 326 U.S. 310, 318 (1945).

13. *Id.* at 320.

14. *Green v. Equitable Powder Mfg. Co.*, 99 F. Supp. 237 (W.D. Ark. 1951).

15. *Id.* at 241.

corporation.<sup>16</sup> In a case decided prior to *International Shoe Co.* and similar in facts to the instant decision, a Colorado court held that advertising by a foreign insurance company through a radio broadcasting station within the state was "doing business" so as to subject the company to the jurisdiction of the state court.<sup>17</sup> For some years the company had advertised over a Colorado radio station and as a result issued numerous policies to Colorado residents.<sup>18</sup> The court stated that although the company's method of attracting the attention of the public was perhaps unique and assuredly modern, the manner in which it proceeded was not essentially different from that used by other companies to obtain business from Colorado residents.<sup>19</sup>

In the instant case the court recognized the principle that solicitation of business in and of itself does not subject a foreign corporation to the local forum.<sup>20</sup> What additional activities beyond solicitation would meet the test of doing business was left open by the court. It did state that the activity must be "of sufficient substance and of such scope and variety as would lead a court of last resort to conclude that immunization of the foreign corporation against the power of our forum would be unrealistic, unreasonable and a vehicle for oppressing or meting out injustice to our own local citizens."<sup>21</sup> The opinion does not indicate the volume of sales made by the defendant to local residents, but if the decision is to be consistent with the Colorado case where radio advertising resulted in sales of many insurance policies to local residents,<sup>22</sup> it must be assumed that the court found the defendant's sales of hair application to be insubstantial. At any rate the court held that it could not justify the imposition of its powers on the foreign corporation,<sup>23</sup> thus implying that to do so would violate the "fair play and substantial justice" rule of *International Shoe Co. v. Washington*. The opinion did not state whether the Utah service of process statute was broad enough to reach the defendant.

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16. *Employers' Liability Assurance Corp. v. Lejeune*, 189 F.2d 521 (5th Cir. 1951), 12 LOUISIANA LAW REVIEW 486 (1952).

17. *Union Mut. Life Co. v. District Court of City and County of Denver*, 97 Colo. 108, 47 P.2d 401 (1935); see Annot., 137 A.L.R. 1128, 1142 (1942).

18. 97 Colo. 108, 109, 47 P.2d 401, 402 (1935).

19. *Ibid.*

20. *McGriff v. Charles Antell Inc.*, 256 P.2d 703, 704 (Utah 1953).

21. *Id.* at 705.

22. *Union Mut. Life Co. of Iowa v. District Court of City and County of Denver*, 97 Colo. 108, 47 P.2d 401 (1935); see Annot., 137 A.L.R. 1128, 1142 (1942).

23. 256 P.2d 703, 705 (Utah 1953).

If under the due process clause a state would be allowed to assume jurisdiction over a foreign corporation under the facts of the instant decision, the question arises as to whether the Louisiana courts would be disposed to do so. The Louisiana legislature has not defined the term "doing business."<sup>24</sup> The criterion as imposed by the Louisiana Supreme Court was that "when a foreign corporation transacts a *substantial* part of its ordinary business in a state, it is doing, transacting, and carrying on or engaging in business therein."<sup>25</sup>

However, subsequent to the *International Shoe Co.* case, the Louisiana legislature added a provision to the service of process act<sup>26</sup> providing for service on a foreign corporation not required by law to appoint an agent but that has engaged in *business activities* in Louisiana through acts performed by its employees or agents. It has been suggested that this provision would permit the Louisiana courts to entertain all suits against foreign corporations on local causes of action permissible under the *International Shoe Co.* case.<sup>27</sup> It is submitted that the Louisiana courts, if faced with the facts of the instant case, could justifiably hold that the defendant did engage in business activities within the meaning of the statute thus subjecting the corporation to service of process within Louisiana.

*John M. Shaw*

CONSTITUTIONAL LAW — APPLICABILITY OF THE FIFTH  
AMENDMENT TO THE FEDERAL CONSTITUTION  
TO STATE PROCEEDINGS

In an investigation before the Orleans Parish Grand Jury of a public bribery charge, defendant refused to answer certain questions and was convicted of contempt of court. Having served his sentence, defendant was propounded the identical questions and again refused to answer, invoking the privilege against self-incrimination provided by article 1, section 11, of the Louisiana Constitution and the fifth amendment to the United States Constitution. As the basis for invocation of the privilege against self-incrimination, defendant contended that to compel him to

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

25. *R. J. Brown Co. v. Grosjean*, 189 La. 778, 783, 180 So. 634, 636 (1938).

26. LA. R.S. 13:3471(5) (d) (Supp. 1954).

27. See Comment, *Amenability of Foreign Corporations to Suit in Louisiana*, 14 LOUISIANA LAW REVIEW 625, 636 (1954).