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CONFLICT OF LAWS—Limitation on "Any Act" Within the Scope of the Oklahoma Long Arm Statute

As a result of a 1945 Supreme Court decision¹ which stimulated states to lengthen their reach for jurisdiction over nonresidents, a number of so called "long arm" statutes were enacted. Generally, states have drafted their statutes to achieve the maximum in personal jurisdiction within constitutional limits.² To keep pace with the trend, Oklahoma enacted in 1963 a deceptively simple, yet apparently all-encompassing long arm statute. The statute derives its potential strength from the section which grants personal jurisdiction over a defendant for the commission of "any act" within the State of Oklahoma.³

A Kentucky widow recently instituted and settled in Oklahoma a wrongful death action arising out of an airplane accident which was fatal to her husband. In *Ohio Casualty Insurance Company v. First National Bank*,⁴ the airplane casualty insurer sought to assert a claim against the widow's recovery in an action between it and the airplane

¹ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

² See, e.g., *Gkiafis v. Steamship Yiosonas*, 342 F.2d 546, 552 (4th Cir. 1965); *Haas v. Francher Furniture Co.*, 156 F. Supp. 564, 567 (N.D. Ill. 1957).

³ OKLA. STAT. ANN. tit. 12, § 187 (Supp. 1965):

(a) Any person, firm or corporation other than a foreign insurer licensed to do business in the State of Oklahoma who is a nonresident of this state and who does any of the acts hereinafter enumerated, whether in person or through another, submits himself, and if an individual his personal property, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts: . . .

(2) the commission of any act within this State . . ."

See also OKLA. STAT. ANN. tit. 12, § 1701.03 (Supp. 1965) (a more recent statute setting out other bases of personal jurisdiction).

⁴ 425 P.2d 934 (Okla. 1967).

mortgagee. In construing the "any act" language of the statute for the first time, the Oklahoma Supreme Court held that the widow's action did constitute an "act" within the meaning of the statute. In the suit between the insurer and the mortgagee, however, the court refused to subject the widow to the jurisdiction of the Oklahoma court on the grounds that she did not have the requisite minimum contacts with the state to satisfy the requirement of due process of law.⁵

In construing "any act" within the scope of the long arm statute, the Oklahoma courts must rule on two issues: first, whether the activity of the defendant constituted "any act" within the framework of the long arm statute; and second, whether the defendant came within the constitutional boundaries established by the due process clause of the fourteenth amendment.⁶ While the *Ohio Casualty* case was decided primarily on the issue of due process, the case is significant because of its treatment of the statutory language, "any act". Justice Davison emphasized in *Ohio Casualty* that, although it is possible to set various minimal criteria or standards,⁷ the legislature furnished no description or words of limitation and neither would the court. "For the purposes of this decision we will assume that when [the Kentucky widow] filed and prosecuted her lawsuit she engaged in the commission of an act."⁸ By liberally interpreting what constituted "any act", the court has refused to adopt a restrictive precedent as a guideline for future determinations of the same type question.

⁵ *But see* *Lodge v. Western N.Y. Dance Studio*, 279 N.Y.S.2d 756 (Sup. Ct. 1966) (Fred Astaire allowed the use of his name for a fee and, although he was never physically within the state, was found to have transacted business in the state by his agency "alter ego").

⁶ U. S. CONST. amend. XIV, § 1.

⁷ *See, e.g., Randle v. Birmingham Ry., Light & Power Co.*, 169 Ala. 314, 53 So. 918, 921 (1910) (an act denotes an affirmative action or performance).

⁸ 425 P.2d at 939.

The court subordinated that issue to the more important discussion of due process.

The United States Supreme Court has long recognized that certain minimum relations between the defendant and the state must exist before the defendant can be subjected to the jurisdiction of that state. More specifically, the due process clause insures that an individual or corporate defendant who has had no contacts, ties, or relations with a state will not be subject to a binding in personam judgment in that state.⁹ The underlying basis of a state's right of exercise jurisdiction over nonresidents and foreign corporations stems from the fact that their activities invoke the benefits and protection of the laws of the state.¹⁰ Therefore, it is not a denial of due process for a state to require a corporation to respond to a suit brought to enforce obligations arising out of or connected with the corporation's activities in that state.¹¹

By 1945 the evolution of theories rationalizing and explaining the basis of jurisdiction amounted to a succession of mechanical, fictive principles.¹² These principles included personal service,¹³ consent,¹⁴ doing business,¹⁵ and presence.¹⁶

⁹ *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

¹⁰ *Id.*

¹¹ *Id.*

¹² Kurland, *The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569, 586 (1958).

¹³ *Pennoyer v. Neff*, 95 U.S. 714 (1878).

¹⁴ See, e.g., *Nierbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 170, 174 (1939); *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95 (1916); *Simon v. Southern Ry.*, 236 U.S. 116, 122 (1914).

¹⁵ See, e.g., *Doherty v. Goodman*, 294 U.S. 623, 628 (1935); *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914); *Superior Distrib. Corp. v. Hargrove*, 312 P.2d 893, 897 (Okla. 1957).

¹⁶ *Philadelphia & R. R.R. v. McKibbin*, 243 U.S. 268 (1916).

*International Shoe Co. v. Washington*¹⁷ served to combine the existing principles into a general test of reasonableness in view of the defendant's activities. Mr. Chief Justice Stone declared:

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."¹⁸

Professor Goodrich concluded that the decision in effect synthesized the concepts of doing business and doing an act for the purpose of determining jurisdiction.¹⁹ *International Shoe* marked the first instance where the Court recognized that acts in general or contacts were the legal base upon which *in personam* jurisdiction over nonresidents was founded. However, the type of act which might give rise to the minimum contact required for jurisdiction under a long arm statute was left unanswered.

The Oklahoma statute is unique in establishing jurisdiction over nonresident defendants who commit "any act" within the state. The closest parallel to the Oklahoma statute is found in a Maryland statute²⁰ which calls for corporate liability for acts done within the state. This statute has been interpreted to apply only to torts committed in the state by a corporation which later withdraws from the state.²¹ Where the act is a tort, it has long been held that the performance of that single act could be sufficient contact with the state to confer jurisdiction.²² A seemingly insignificant

¹⁷ 326 U.S. 310 (1945).

¹⁸ *Id.* at 316 (footnotes omitted).

¹⁹ H. GOODRICH, *CONFLICT OF LAWS* 216 (3rd ed. 1949).

²⁰ MD. ANN. CODE art. 23, § 92 (d) (1957).

²¹ *Rosenberg v. Andrew Weir Ins. Co.*, 154 F. Supp. 6, 9 (D. Md. 1957).

²² *See, e.g., Doherty v. Goodman*, 294 U.S. 623 (1935); *Hess v. Pawloski*, 274 U.S. 352 (1926).

contact may also prove constitutionally adequate if it leads to the cause of action involved in the particular suit.²³ A recent Maryland case²⁴ went as far as any court has gone in interpreting minimum contacts. The court ruled that regular contacts with the forum state were not a prerequisite to jurisdiction since each case depended upon its peculiar facts and circumstances. In light of these decisions, the holding of the Oklahoma Supreme Court in the *Ohio Casualty* case is surprising. The maintenance of a single negligence action in Oklahoma did not constitute sufficient minimum contact with the state to subject the defendant to the jurisdiction of the Oklahoma courts.²⁵

The importance of the *Ohio Casualty* decision is twofold. In addition to recognizing the familiar due process limitation on state long arm statutes, the case preserves the potential value of the Oklahoma long arm statute for a future plaintiff. In refusing to restrict the general term "any act", the court must have realized that if a state is to exercise the maximum jurisdiction available over nonresidents, Oklahoma courts must deal with the issue of due process unhampered by restrictive interpretations of the state long arm statute. In the future, it appears that Oklahoma courts will face but one limitation—due process of law—in determining whether a non-resident defendant is subject to the jurisdiction of the state. With the trend toward clarifying and delineating the scope of the minimum contact doctrine, the only limits on in personam jurisdiction in Oklahoma are those inherent in the fourteenth amendment.

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²³ *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

²⁴ *Gkiafis v. Steamship Yiosonas*, 342 F.2d 546, 550 (4th Cir. 1965). The contact of respondent with Maryland consisted of its ship's six unscheduled visits to port in a nine-year period, one visit giving rise to the libel in this case.

²⁵ *Ohio Cas. Ins. Co. v. First Nat'l Bank*, 425 P.2d 934 (Okla. 1967).