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The Expansion of the International Shoe Doctrine

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THE EXPANSION OF THE INTERNATIONAL SHOE DOCTRINE—*Shaffer v. Heitner*, 433 U.S. 186 (1977).

I. INTRODUCTION

In *Shaffer v. Heitner*,[1] the Supreme Court joins judicial and scholarly advocates in the destruction of the distinction between in personam and in rem jurisdiction. Traditionally, the presence of the person or the *res* formed the basis of the court's power over the dispute.[2] While in rem and quasi in rem actions have continued to be established in this manner, in personam jurisdiction incorporates additional considerations of due process in determining the extent of a court's power.[3] *Shaffer* adopts this standard for all other types of actions as well, thereby limiting a distressing trend in some courts to stretch in rem and quasi in rem jurisdiction to its constitutional limits.[4]

Following *Shaffer*, jurisdiction in all types of actions, whether in personam, in rem, or quasi in rem, will be measured by considerations of "fair play and substantial justice," a concept set out in the landmark case *International Shoe v. Washington*.[5] For in rem and quasi in rem actions, it will no longer be sufficient merely to find property within a court's jurisdiction. Instead, the court must determine whether it would be equitable for the non-resident owner of the property to be subject to the court's power.

II. BACKGROUND

Actions have traditionally been divided into three categories: in rem, quasi in rem, and in personam. Although the line of separation often becomes blurred, courts have always relied on these distinctions in order to determine the extent of their power over litigants.

In rem actions are those which directly affect the rights in a particular piece of property, tangible or intangible, located within the court's territory. It is binding not only upon the litigants, but upon the entire world. Strict in rem actions are relatively rare, and courts often use the term in rem for quasi in rem actions as well.

Quasi in rem actions are also based upon the presence of property within the forum state's boundaries. However, that property is

1. 433 U.S. 186, (1977).

2. *See* Pennoyer v. Neff, 95 U.S. 714 (1877); Ownbey v. Morgan, 256 U.S. 94 (1921).

3. *See* International Shoe Co. v. Washington, 326 U.S. 310 (1945); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Buckeye Boiler Co. v. Superior Court of Los Angeles County, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969).

4. *See* Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

5. 326 U.S. at 316, *quoting from* Milliken v. Meyer, 311 U.S. 457, at 463 (1940).

not the subject of the action, but is merely used by the plaintiff in order to obtain a judgment against a non-resident owner to the extent of his interest in that property. Such judgment is only binding upon a party to the suit. *Pennoyer v. Neff*[6] set the standard applied for such actions. So long as there is attachment of the property prior to the proceeding, as well as service by publication, there is sufficient basis to determine the interests of the owner in that property.[7]

The traditional basis for in personam jurisdiction has been the presence of the person, as long as there has been proper service of process.[8] In place of this requirement, which is difficult to satisfy, two interacting standards have gained acceptance following the leading case, *International Shoe*. In determining whether a non-resident corporation was subject to the court's power, the Supreme Court measured "the quality and nature of the corporation's activity in relation to the fair and orderly administration of the laws" of the forum state.[9] The corporation's activities in the state must be of such breadth that it would reasonably expect to be subject to the state's laws. In addition, there must be certain minimum "contacts, ties or relations."[10] This is to ensure the fairness of subjecting the corporation to the court's jurisdiction. Subsequent decisions have found sufficient ties on the basis of the commission of a tortious act within the state,[11] or a contract that had a "substantial connection"[12] with the state. It is this two-part standard which the *Shaffer* Court has extended to cover in rem and quasi in rem actions as well.

III. SHAFFER V. HEITNER

Heitner, a non-resident of Delaware, brought a derivative suit against Greyhound and Greyhound Lines, two Delaware corporations, and their officers and directors.[13] He charged the defendants with mismanagement resulting in a judgment against the corpora-

6. 95 U.S. 714 (1877).

7. *See, e.g.*, Minichello v. Rosenberg, 410 F.2d 106 (2d Cir. 1969), *cert. denied*, 396 U.S. 844 (1969); Simpson v. Loehmann, 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967), *reargument denied per curiam*, 21 N.Y.2d 319, 290 N.Y.S.2d 1914 (1968); Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

8. *See* Pennoyer v. Neff, 95 U.S. 714 (1877). However transiently the defendant may have been within the state, so long as the service of process is correct, the court may obtain proper jurisdiction.

9. 326 U.S. at 319.

10. *Id.* at 320.

11. Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

12. McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957).

13. 433 U.S. at 189-90.

tion in an antitrust suit, and a fine in a criminal contempt action. In order to obtain jurisdiction over the defendants, who were nonresidents, Heitner obtained a sequestration order for about 82,000 shares of Greyhound stock belonging to 19 of the defendants. He was able to do this because of a unique Delaware statute[14] which allows quasi in rem jurisdiction over stock owned by non-resident parties in any company incorporated under state laws. If the non-residents wish to protect their stock, they must make an appearance in the state court, thus rendering them subject to the court's general power.[15] In this way, the state gains personal jurisdiction over parties it could not have otherwise reached.

The court of chancery, as well as the Delaware Supreme Court, ruled against the defendants' contentions that the Delaware statute violated due process, and that the standard of *International Shoe* should be applicable to proceedings quasi in rem.[16] The United States Supreme Court reversed, stating that, not only are quasi in rem actions subject to the *International Shoe* standard, but "*all* assertions of state court jurisdiction must be evaluated according to standards set forth in *International Shte* and its progeny."[17]

The rationale of the decision was based on the premise that the old distinction between quasi in rem and personal actions is largely illusory,[18] and that a party's rights are affected regardless of whether they are based on a piece of property or not. The Court found that *International Shoe* has proven to be a very workable and much more equitable standard than the traditional one and therefore should replace it. Where there are insufficient contacts, the court must not extend its power over a party simply because he owns something within its boundaries. In this case the Court determined that the defendants had no contacts at all with the state beyond the "situs" of the Greyhound stock. Therefore, Delaware could not assert jurisdiction over them.[19]

IV. ANALYSIS

A. *Dissolution of In Rem and In Personam Distinctions*

The *Shaffer* holding reverses a formidable line of cases that

14. DEL. CODE, tit.VII,§ 169 (1975).

15. DEL. CODE, tit.X,§ 366 (1975). Justice Powell points out that Delaware is the only state which has such a law, 97 S. Ct. at 2588 (concurring opinion). *See* Note, *Attachment of Corporate Stock: The Conflicting Approaches of Delaware and the Uniform Stock Transfer Act*, 73 HARV. L. REV. 1579 (1960).

16. Greyhound Corp. v. Heitner, 361 A.2d 225 (1976).

17. 433 U.S. at 212 (emphasis added).

18. *Id.* at 207.

19. *Id.* at 213-17.

followed the "time-honored method of procedure . . . [of] . . . adhering logically to the ancient distinction"[20] between personal and property actions. Ever since *Pennoyer*[21] clearly separated the treatment that should be accorded to the two types of proceedings, most American courts have followed this distinction. The Delaware courts consequently refused to discuss the problem beyond the conclusion that since *Shaffer* is a quasi in rem proceeding and *International Shoe* was only applicable to personal actions, the two should not be analyzed in the same manner. Even before *Shaffer*, however, the Supreme Court had disregarded this historic distinction in ruling on the notice requirements for beneficiaries of a judicial settlement of a trust. Once a court has obtained jurisdiction over the parties or property, its power to decide the controversy is still incomplete until proper service of process has been achieved. In *Mullane v. Central Bank & Trust Co.*[22] the Court said that, if at all possible, an effort must be made to notify the defendants of the proceedings. This brought in rem-quasi in rem proceedings away from the *Pennoyer* principle that notice by publication is sufficient, and closer to the notice required in personal actions. The *Mullane* court explained its reasoning:

> It is not readily apparent how the courts of New York did or would classify the present proceeding, which has some characteristics and is wanting in some features of proceedings both *in rem* and *in personam*. But in any event we think that the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state. . . . *[W]e do not rest the power of the State to resort to constructive service in this proceeding upon how its courts or this Court may regard this historic antithesis.*[23]

The value of the *Shaffer* holding is most clearly illustrated in those actions, such as *Mullane*, where the court has trouble classifying the applicable type of jurisdiction.[24] Rather than attempting to determine the nature of the action, the court can immediately get to the heart of the problem by weighing the relative equities of

20. Ownbey v. Morgan, 256 U.S. 94, 108 (1921).

21. 95 U.S. 714 (1877).

22. 339 U.S. 306 (1950).

23. *Id.* at 312-13 (emphasis added). *See also* Walker v. City of Hutchinson, 352 U.S. 112 (1965), and Schroeder v. City of New York, 371 U.S. 208 (1962), which held that mere notice by publication is insufficient for in rem proceedings where the defendants could have been personally notified.

24. *See, e.g.*, U.S. Industries v. Gregg, 540 F.2d 142 (3d Cir. 1976), *cert. denied*, 97 S. Ct. 2972 (1977). This case involves the same Delaware statute as *Shaffer*.

adjudicating the case in the particular forum.

Several lower court decisions have foreshadowed the *Shaffer* rationale, placing little value in exercising jurisdiction merely because of the existence of property in their territories. A notable example is *Atkinson v. Superior Court*[25] in which Justice Traynor upheld quasi in rem jurisdiction over a New York trustee, not through establishing some theoretical *situs* of an obligation within California, but by examining the activities of the trustee in order to find some sort of justification through minimum contacts.

In a subsequent law review article, Justice Traynor followed up the *Atkinson* case with a proposal for a test based on minimum contacts.[26] He heartily endorsed the movement to abolish "state statutes that prattle of 'in rem' or impose outdated tests. . . ."[27]

B. *Recent Quasi In Rem Trends*

The *Shaffer* case, although consistent with the trend in personal actions, flies in the face of quasi in rem development.[28] In this area courts have often gone to great lengths to obtain jurisdiction by disregarding due process and practical considerations and conjuring up the theoretical "presence" of an intangible concept. For example, the famous textbook case of *Harris v. Balk*[29] established court jurisdiction by attaching a debt personified in the nonresident defendant's debtor, who had just happened to pass through the plaintiff's state.[30]

New York courts have been especially eager to take advantage of this way of extending their powers. Their method originated with *Seider v. Roth*,[31] a case that involved a New Yorker who was injured outside the state by a Canadian. In a four-to-three decision, the court held it could attach as a "debt" a New York insurance company's duty to defend the Canadian policyholder. As the dissenters pointed out, the obligation to defend furnished the jurisdiction for a suit brought in order to determine that very issue.[32] The ultimate

25. 49 Cal.2d 338, 316 P.2d 960 (1955), *appeal dismissed and cert. denied sub nom.* Columbia Broadcasting Systems v. Atkinson, 357 U.S. 569 (1958).

26. Traynor, *Is This Conflict Really Necessary?* 37 TEX. L. REV. 657 (1969). For other legal writers advocating the elimination of the in rem-in personam difference, *see, e.g.*, Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1966); Hazard, *A General Theory of State Court Jurisdiction*, 1965 SUP. CT. REV. 241 (1965), Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The Power Myth and Forum Conveniens*, 65 YALE L.J. 289 (1956).

27. Traynor, *supra* note 26, at 662.

28. *See* note 7 *supra*.

29. 198 U.S. 215 (1905).

30. *Id.* at 224-26.

31. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

32. *Id.*

effect of this type of reasoning is the establishment of personal jurisdiction over the insurer on a quasi in rem basis. Although this appears to present constitutional due process problems, the *Seider* decision was upheld by the Second Circuit Court of Appeals.[33]

Shaffer implicitly overrules the *Seider* line of reasoning by making the *situs* merely a factor to be considered in the search for the proper forum. Due process prohibits the courts from using quasi in rem jurisdiction as a tool to further their own power without considering possible unfairness to the out-of-state defendant. Therefore where, as in *Seider,* the insurance company has no other ties with the forum state,[34] under the *Shaffer* standard, the court may not exercise power on the company's obligation to defend.

C. *The Scope of Shaffer*

The Supreme Court does not limit its holding to fact situations similar to that in *Shaffer.* In every case, whether in rem, quasi in rem, or in personam, courts must use the *International Shoe* standard. However, the Court immediately mentions two possible exceptions.[35] The first situation is where "a State in which property is located should have jurisdiction to attach that property by use of proper procedures, as security for a judgment being sought in a forum where the litigation can be maintained consistently with *International Shoe.*"[36] The sequestration process could still be used if there is danger the defendant would remove his assets from the reach of the successful plaintiff. This exception would become applicable where there is a possibility the defendant will remove his assets completely out of the country.

After *Shaffer, California Power & Light Co. v. Uranex*[37] upheld attachment of a foreign company's only assets in the United States, in a state other than that of the suit's location, because of this danger. In cases such as this, *Shaffer* allows attachment of property without regard to minimum contacts where the court would be powerless to enforce its judgment in any other manner.

The second possible exception the Court discussed is a real property strict in rem action.[38] In these cases the state has a very strong interest in providing a judicial resolution of property disputes within its boundaries.[39] Minimum contacts would include records

33. Minichello v. Rosenberg, 410 F.2d 106 (1969).
34. Seider v. Roth, 117 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).
35. 433 U.S. at 207-08.
36. *Id.* at 210 (footnote omitted).
37. 46 U.S.L.W. 2194 (N.D. Cal., Sept. 26, 1977).
38. 433 U.S. at 207.
39. *Id.*

and witnesses, which are usually located in the state in which the property is found.[40] The *Shaffer* Court concludes that these factors will ordinarily make it fair and equitable for the state to exercise jurisdiction over the property in any case, thus satisfying the *International Shoe* test. This analysis demonstrates that it is unclear whether traditional in rem actions are to be considered as an exception to the general rule, or whether they would have been affected even if the rule is applied.

V. CONCLUSION

There are underlying problems with the *Shaffer* doctrine which soon become apparent. Courts are so accustomed to using the historic labels of in rem and in personam as conclusions, and not merely factual considerations, in determining the proper forum, that there is bound to be confusion in the analytic process. The *Shaffer* Court itself, although it attempts to dissolve the differences between in rem and personal actions, emphasizes the dichotomy in pointing out that real property in rem actions may not be covered by its rule.

Confusion in application as well as analysis may also result because the Court created a general rule out of a case that involves only one type of fact situation among hundreds of possibilities. The concurring opinions demonstrated immediate differences as to the extent of the majority holding.[41] The fact that the first case to follow *Shaffer* falls under the exception to the rule adds to the complexity.[42]

The safest prediction of the impact of the *Shaffer* decision is that the cases will follow the pattern set by in personam suits. Each situation will be determined separately, for in different cases the elements will take on varying significances. Although the analysis may be time consuming, it is also more equitable.

Shaffer is the first major step towards a dramatic change in the method of determining a court's jurisdiction. It establishes a universal standard that incorporates new due process considerations into the traditional concern for physical presence. In adopting the *International Shoe* standard, it effectively halted a trend in quasi in rem actions to extend a court's power despite great injustices. It also set out a standard which can be applied consistently and with

40. *Id.*

41. *Id.* at 217-19 (Stevens, J.).

42. California Power & Light Co. v. Uranex, 46 U.S.L.W. 2194 (N.D. Cal., Sept. 26, 1977).

relative ease in all types of actions. The threshold question will no longer be: Where is the defendant's property located?; but rather: Is it fair and just to adjudicate the defendant's interests in the forum?

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