

1963

# Civil Procedure--Jurisdiction--Minimum Contacts

Gary W. Melsher

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

---

## Recommended Citation

Gary W. Melsher, *Civil Procedure--Jurisdiction--Minimum Contacts*, 14 W. Res. L. Rev. 610 (1963)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol14/iss3/34>

This Recent Decisions is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## CIVIL PROCEDURE — JURISDICTION — “MINIMUM CONTACTS”

*Sanders Associates, Inc., v. Galion Iron Works & Mfg. Co.*,  
304 F.2d 915 (1st Cir. 1962)

In *Sanders Associates, Inc. v. Galion Iron Works & Mfg. Co.*<sup>1</sup> an action for breach of contract<sup>2</sup> was initially brought in the United States District Court for the District of New Hampshire<sup>3</sup> against an Ohio corporation which had neither qualified to do business in New Hampshire nor had appointed an agent for service of process in that state. The defendant corporation was served in New Hampshire pursuant to a New Hampshire “doing business” statute authorizing its courts to take in personam jurisdiction to the full extent of constitutional limits.<sup>4</sup> Dismissing the action for lack of jurisdiction, the district court held that neither the corporation’s contacts with the plaintiff in making the contract nor the corporation’s contacts with its independent distributor were sufficient to subject the defendant to suit in New Hampshire.

Reversing, the court of appeals circumvented the rule that a manufacturer which channels its products through an independent distributor is not “doing business” in the state.<sup>5</sup> Moreover, the court adopted what might be called the “reasonable” test, holding:

[U]pon a consideration of the record as a whole, we believe that Galion was “doing business” within the State of New Hampshire and that its contacts with the forum were of sufficient sweep and scope to make it *eminently reasonable* that it be amenable to suit in that jurisdiction both as to claims related and unrelated to the “mainstream” of its commercial intercourse within the state.<sup>6</sup> (Emphasis added.)

Although the distributor was independently owned, and purchased the machinery F.O.B. Ohio, the defendant dominated its activities. The

1. 304 F.2d 915 (1st Cir. 1962).

2. For a discussion of the liberal jurisdictional policies in regard to torts, see Annot., 25 A.L.R.2d 1202 (1952).

3. 203 F. Supp. 522 (D.N.H. 1961). Diversity of citizenship was the basis of jurisdiction.

4. 3 N.H. REV. STAT. ANN. § 300-11 (1955).

In interpreting its “doing business” statute, the California court stated that the term “doing business” was “a descriptive one that courts have equated with such minimum contacts with the state ‘that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice”’ . . . . Whatever limitation it imposes is equivalent to that of the due process clause.” *Henry R. Jahn & Son, Inc. v. Superior Court*, 49 Cal. 2d 855, 857, 323 P.2d 437, 439 (1958).

For service of process on a foreign corporation to be valid in diversity cases, it must be authorized by state law. *Lone Star Motor Import, Inc. v. Citroen Cars Corp.*, 288 F.2d 69, 72 (5th Cir. 1961).

For a discussion of statutes which expressly provide for jurisdiction of cases arising from contracts made within the state by a foreign corporation even though the corporation is not “doing business,” see Annot., 49 A.L.R.2d 668 (1956).

5. *LeVeche v. Griesedieck Western Brewery Co.*, 233 F.2d 772, 776 (9th Cir. 1956).

6. *Sanders Associates, Inc. v. Galion Iron Works & Mfg. Co.*, 304 F.2d 915, 923 (1st Cir. 1962).

distributor was limited to selling only the defendant's road graders and rollers and had to have approval before selling to certain potential New Hampshire customers, such as the State Highway Department. Further controlling the distributor, the defendant set prices and discounts, received many elaborate reports, and required the distributor to comply with all the defendant's policies and to conduct warranty inspection and service at no extra cost. The defendant's plane was even used to bring prospective customers to Ohio.

The court utilized the standard adopted in *International Shoe Co. v. Washington*,<sup>7</sup> that is, the court will take in personam jurisdiction over a foreign corporation when it has such "minimum contacts" within the state that requiring it to defend a suit in that state will not offend "traditional notions of fair play and substantial justice."<sup>8</sup> The doctrine of "minimum contacts," however, is somewhat ambiguous since it presents no precise test to determine what are "minimum contacts."<sup>9</sup> Therefore, it is not surprising that the courts have announced varying tests which have made this area of the law confusing and bemuddled.

In determining whether a corporation has sufficient "minimum contacts" with a state, some courts weigh the convenience of defending the suit in the state of the forum against the convenience of the plaintiff in suing in another state where the defendant is incorporated or where its principal place of business is located.<sup>10</sup> Although this test was approved in *International Shoe*, it is more appropriate for determining venue rather than jurisdiction, since it should have nothing to do with the power of the court to decide the case.<sup>11</sup>

Other courts assume jurisdiction when the corporate function is on a scale sufficient to be "seen, felt or palpitated,"<sup>12</sup> or the like. But these tests are ineffective because "seen," "felt," and "palpitated" are as ambiguous as is "minimum contacts."<sup>13</sup> The *Sanders Associates* court wisely avoided the use of such phrases and adopted the "reasonable" test.

---

7. 326 U.S. 310 (1945).

8. *Id.* at 316.

9. "No generally applicable standards can be ascertained from the decision as to the circumstances under which a foreign corporation will be deemed . . . [to] be subjected to suit." Annot., 49 A.L.R.2d 668, 669 (1956).

10. *E.g.*, *Boney v. Trans-State Dredging Co.*, 237 S.C. 54, 115 S.E.2d 508 (1960).

11. The doctrine of forum non conveniens has been embodied in 28 U.S.C. § 1404(a) (1948): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might be brought." For a discussion of the doctrine forum non conveniens, see *Developments in the Law — State-Court Jurisdiction*, 73 HARV. L. REV. 909, 1008 (1960).

12. *Benware v. Acme Chem. Co.*, 284 App. Div. 760, 761, 135 N.Y.S.2d 207, 209 (1954).

13. Chief Justice Stone's comment on the courts' use of the term "presence" is equally applicable to the words quoted in the text. "[T]he terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to

When using the "reasonable" test, it is unnecessary to differentiate between activities related or unrelated to occurrences or transactions giving rise to the cause of action.<sup>14</sup> Although some cases hold to the contrary,<sup>15</sup> the better view introduces a duty upon the court "to weigh all of those acts by which the defendant manufacturer established contact with the foreign state."<sup>16</sup> In making its determination of whether the foreign corporation has made "minimum contacts" in the state, the court will certainly consider the relationship of the cause of action to the defendant's contacts with the state. But there is no sound reason why a court should conclusively presume that a foreign corporation does not have sufficient minimum contacts simply because the suit is unrelated to its contacts in the state.

In conclusion, "minimum contacts" should be determined by scrutinizing all of the acts of the corporation in the state of the forum and applying the test of reasonableness — a test which is subjective, but practical, as it does not confuse jurisdiction with venue nor expound "magic" words which are in themselves ambiguous. The decision in *Sanders Associates, Inc.* and cases like it will allow the courts to escape the historical rigidity that characterizes this area of the law and will allow the law to develop to meet the needs of the times.<sup>17</sup>

#### GARY W. MELSHER

---

be sufficient to satisfy the demands of due process." *International Shoe Co. v. Washington*, 326 U.S. 310, 316-17 (1945), citing *Hutchison v. Chase & Gilbert*, 45 F.2d 139, 141 (2d Cir. 1930) (L. Hand, J.) The words, therefore, do not impart a test but state a conclusion. 14. Historically, the courts have made this distinction. Before *International Shoe* was decided, many courts solved the problem under the "presence" doctrine. Once a corporation was found to be present in the state of the forum, it was deemed present for purposes of jurisdiction whether or not the suit related to the corporation's activities in the state. See, e.g., *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E. 915 (1917).

*International Shoe Co.* does not indicate when a corporation will be amenable to process if the suit is not related to the mainstream of the defendant's activities. "'Presence' in the state . . . has never been doubted when the activities of the corporation have not only been continuous and systematic, but also gave rise to the liabilities sued on . . . . Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there." *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945).

15. E.g., *L. D. Reeder Contractors v. Higgins Indus.*, 265 F.2d 768 (9th Cir. 1959).

16. 108 U. PA. L. REV. 131, 139 (1960). In *Perkins v. Banquet Consol. Mining Co.*, 342 U.S. 437 (1952), the Court held that, although the cause of action arose outside of Ohio, the Ohio court had jurisdiction since the corporation's contacts with Ohio were sufficiently substantial to justify jurisdiction without regard to the connection of the cause of action to the forum state. But this case is inconclusive since there was no alternative forum in which the suit could have been brought.

17. "As technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase." *Hanson v. Danckla*, 357 U.S. 235, 251 (1958).

# Try **LAW WEEK**

*for three months*

*at 1/2 the regular rate*

*LAW WEEK safeguards you against missing a single point of legal importance . . . saves your time by greatly reducing your reading load!*

## WHAT YOU GET — each week

- **SIGNIFICANT FEDERAL AND STATE DECISIONS** — all the precedent-setting cases establishing new principles of law. Typical headings: Antitrust, Taxation, Insurance, Public Contracts, Labor, Transportation, Trade Regulation, Criminal Law, Public Utilities, Railroads.
- **IMMEDIATE NOTICE OF IMPORTANT NEW FEDERAL AGENCY RULINGS** — among them rulings in the fields of Money and Finance, Aeronautics, Taxation, Public Contracts, Shipping, Labor.
- **SUPREME COURT OPINIONS, IN FULL TEXT** — mailed to you the same day they are handed down — plus Supreme Court Orders, Journals, Docket, Arguments.
- **SUMMARY AND ANALYSIS** — a five minute review of new law, including an incisive analysis of the leading cases of the week.

*For further information on the Special LAW WEEK introductory offer, write:*

**THE BUREAU OF NATIONAL AFFAIRS, INC.**  
1231 — 24th Street, N.W., Washington 7, D.C.

# Are Your Statutes • • • Up To Date?

- All the Amendments, Additions, Repeals, etc.
- To your current compilations of Statutes, Codes and Laws
- By subsequent sessions of the legislative bodies (including 1963)
- For all State and Federal Statutes—
- As well as citations and constructions by the State and Federal Courts and references in several legal periodicals—
- Appear in the current issues of Shepard's Citations.

These are only a few of the many invaluable citation features appearing in the Shepard Bound Editions and the Cumulative Supplement Services which keep each edition Up To Date.

---

SHEPARD'S CITATIONS  
COLORADO SPRINGS  
COLORADO

**Franklin Thomas Backus**  
**SCHOOL OF LAW**  
**of**  
**Western Reserve University**

Founded in 1892. A graduate professional school for men and women with a rapidly expanding library of over 100,000 volumes.

A charter member of the Association of American Law Schools and the League of Ohio Law Schools. On the approved list of the American Bar Association from its inception. Registered by the Regents of the University of the State of New York.

The regular course of six semesters leads to the degree of Bachelor of Laws. A nine-week summer session is offered, at which students wishing to do so may obtain credit hours amounting to one-half a semester. There is also a graduate program providing for continuing legal education or leading to the degree of Master of Laws.

**ADMISSION**

Entering classes are admitted in September and in February.

Admission is on a selective basis. Graduation from a fully accredited college or university is a prerequisite.

Financial assistance is available through scholarships, loans, special research projects, and law library employment.

Bulletins and applications for admission may be obtained from the University Admission Office, Western Reserve University, Cleveland 6, Ohio.

***Leading Attorneys Are Saying . . .***

THERE'S NOTHING QUITE LIKE  
BALDWIN'S OHIO  
LEGAL FORMS

. . . in scope, detailed coverage, clarity  
and workability.

**6 VOLUMES . . . 5000 PAGES**

of Forms, Check Lists, Tax Comments, Hints, Notes  
of Caution, Statute References and Citations.

**FOUR VOLUMES NOW READY—TWO MORE SOON**

Order your set today for 30-day examination  
. . . at the low, pre-publication price of only

**\$27.50 per volume**

billed as delivered

***BANKS - BALDWIN LAW PUBLISHING CO.***

*America's Oldest Law Publishing House • Est. 1804*

UNIVERSITY CENTER • • CLEVELAND 6, OHIO

**WESTERN RESERVE LAW REVIEW**

**Volume 14, Pages 615 to 831**

# WESTERN RESERVE LAW REVIEW

---

*Member, National Conference of Law Reviews*

---

## EDITORIAL STAFF

SANFORD YOSOWITZ, *Editor-in-Chief*

EDWARD KANCLER, *Managing Editor*

### *Associate Editors*

WILLIAM T. BULLINGER

JAMES A. LAURENSEN

W. KIELY CRONIN

GARY W. MELSHER

---

## BOARD MEMBERS

ARMAND P. BOISSELLE

PAUL C. MORRISON

RONALD P. KANANEN

DON H. PACE

NEIL B. KURIT

RITCHIE T. THOMAS

---

## APPRENTICE

Dale T. Evans

---

DAVID T. SMITH, *Faculty Advisor*

---

*Published quarterly by students of THE SCHOOL OF LAW OF WESTERN RESERVE UNIVERSITY, Cleveland 6, Ohio. Copyright 1963 by Western Reserve University. Application to mail at second-class postage rates pending at Oberlin, Ohio. Subscriptions: \$5.00 per annum payable in advance; \$2.50 for single Tax Symposium issues, excluding Volume 12, Number 2 which is \$3.00; other single issues: \$2.00; back issues available upon request. If subscription is to be discontinued at expiration, notice should be sent to the Managing Editor, otherwise it will be renewed as usual.*

---

The Review prints matter it deems worthy of publication. The views expressed in the articles appearing herein do not necessarily represent the views of the Editors or of Western Reserve Law School.

---

Citations conform to *A Uniform System of Citation* (10th ed. 1958), copyright by the Columbia, Harvard, and University of Pennsylvania Law Reviews and the Yale Law Journal.