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# Expansion of Jurisdiction Under CPLR 302 Does Not Broaden the "Doing Business" Concept

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logically, therefore, that if a *claim* asserted in an original pleading can give notice, certainly a defense can do likewise and enable the avoidance of the bar of the statute of limitations.

## ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

*Expansion of jurisdiction under CPLR 302 does not broaden the "doing business" concept.*

The fact that the federal constitution permits a state to exercise in personam jurisdiction over a foreign defendant under the "minimum contacts" [20] theory does not compel the state to expand its concept of "doing business." [21] Subsequent to the case of *International Shoe Co. v. Washington,*[22] while it was clear that the New York Legislature could expand jurisdiction over non-resident defendants, due to legislative inactivity, the courts were confined solely to the "doing business" test until CPLR 302 was enacted.[23] Since the effective date of the CPLR, a foreign corporation, although not "doing business," will be held in personam if it is "transacting business" provided, however, that the cause of action arises out of that business.[24] Considerably less is required for "transacting business" than is required by the "doing business" test. It must be noted, however, that the "doing business" test has not been altered, and if CPLR 302 is inapplicable to a case, the non-resident defendant must be "present" in order to be held in personam.[25] To be "present" is to be "doing business."[26]

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[20] McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[21] Perkins v. Benquet Consol. Mining Co., 342 U.S. 437, 440-41 (1952); see Fremay, Inc. v. Modern Plastic Mach. Corp., 15 App. Div. 2d 235, 239, 222 N.Y.S.2d 694, 699 (1st Dep't 1961); Ames v. Senco Prods., Inc., 1 App. Div. 2d 658, 146 N.Y.S.2d 298 (1st Dep't 1955).

[22] *Supra* note 20.

[23] Simonson v. International Bank, 14 N.Y.2d 281, 285-86, 200 N.E.2d 427, 429-30, 251 N.Y.S.2d 433, 436-37 (1964).

[24] CPLR 302(a): "A court may exercise personal jurisdiction over any non-domiciliary . . . as to a cause of action arising from any of the acts enumerated in this section . . . if, in person or through an agent, he:

1. transacts any business within the state; or
2. commits a tortious act within the state . . . or
3. owns, uses or possesses any real property situated within the state."

[25] See Simonson v. International Bank, *supra* note 23, at 286-87, 200 N.E.2d at 430, 251 N.Y.S.2d at 437-38.

[26] "[I]f it [the defendant] is here, not occasionally or casually, but with a fair measure of permanence and continuity, then . . . it is within the jurisdiction of our courts . . . ." Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 267, 115 N.E. 915, 917 (1917).

The minimum contacts theory enunciated in the leading Supreme Court cases does not stand for the proposition that a state may exercise in personam jurisdiction over a non-resident defendant indiscriminately on the ground that defendant has had contact with the state at some time or another. Rather, it is contended that *International Shoe* stands for the proposition that "solicitation plus" is enough only in so far as the obligation arises out of that activity. The exercise of the privilege of conducting activities within the state "may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state," [27] the defendant may be held in personam without any violation of due process. It is within this limited area of activity that CPLR 302 has its effect.

The recent case of *Bryant v. Finnish Nat'l Airline* [28] is an illustration of the fact that the "doing business" (presence) test has not been altered in New York by the broadening of jurisdiction under the "longarm" statute (CPLR 302). In that case, plaintiff, a New York resident, was injured at an airport in Paris, France, allegedly as the result of defendant's negligence. The defendant, Finnair, was a corporation organized under the laws of Finland and not registered in the United States. Service was made upon the manager of Finnair's New York office. This office was staffed by three full time and four part time employees, none of whom was an officer of Finnair. All of defendant's flights originated and terminated outside the United States. The New York office sold no tickets, nor could it bind defendant by contract. Finnair's New York office maintained a bank account which averaged less than $2,000 and was used primarily to pay salaries and rent. Aside from advertising and publicity work, it appeared that the principal function of the New York office was to receive from travel agencies reservations for travel on Finnair in Europe. This information was transmitted thereafter to the defendant in Europe. The court reaffirmed the "presence" test holding that these activities were incidental and that they did not constitute "doing business" in New York.[29] The court stated that CPLR 302 did not apply because the cause of action did not originate from the business transacted in New York.

### *CPLR 302(a)(1): The "transaction of business."*

CPLR 302(a)(1) requires a relationship between the transaction and the cause of action in order to be effective. Two recent cases demonstrate the need for this relationship.

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[27] International Shoe Co. v. Washington, *supra* note 20, at 319; see Hanson v. Denckla, 357 U.S. 235, 253 (1958).

[28] 22 App. Div. 2d 16, 253 N.Y.S.2d 215 (1st Dep't 1964).

[29] *Id.* at 22, 253 N.Y.S.2d at 221-22.