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Torts - In Personam Jurisdiction over Foreign Corporation and Due Process - a New Frontier - Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 176 N.E.2d 761 (1961)

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extension of the doctrine of recovery for prenatal injuries to nonviable infants has gained notable support in the past few years, and is an indication that courts may now overlook the frequently utilized "viability theory" in favor of the newer "conception theory." The "conception theory" as set forth in the instant case has risen in popularity in a relatively short period of time. This novel doctrine should see adoption in more jurisdictions in the future. Such a selection would be in the interest of justice.

TORTS–IN PERSONAM JURISDICTION OVER FOREIGN CORPORATION AND DUE PROCESS–A NEW FRONTIER

Gray, an Illinois resident, brought an action against American Radiator and Standard Sanitary Corporation and the Titan Valve Manufacturing Company for injuries suffered when a water heater allegedly exploded. The complaint charged, *inter alia*, that plaintiff's injuries were proximately caused by the negligent manufacture of the safety valve by the Titan Company, a foreign corporation. Titan manufactured the valve in Ohio and sold it outside of Illinois to American Radiator, who incorporated it into the water heater in Pennsylvania and sold heater and valve to plaintiff through a distributor in Illinois. Jurisdiction was predicated upon section 17(1)(b) of the Civil Practice Act[1] with summons personally served upon Titan's registered agent in Ohio, as provided for in the Act.[2]

Titan appeared specially and moved to quash the service, contending that it had committed no "tortious act" in Illinois, in that it did no business in Illinois, had no agent physically present in Illinois, and that it sold the valve to defendant American Radiator outside of Illinois. The circuit court of Cook County granted Titan's motion and dismissed the complaint.

Plaintiff appealed directly to the Illinois Supreme Court because a constitutional question was involved.[3] The Court held that defendant Titan

[1] ILL. REV. STAT. ch. 110, § 17(1)(1961). Section 17(1) provides: "Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts: ...

"(b) The commission of a tortious act within this State;"

[2] ILL. REV. STAT. ch. 110, § 16 (1961). Section 16 provides that personal service of summons outside of the state, upon a person who has submitted to the jurisdiction of the courts of the state, shall have the force and effect of personal service of summons within the state.

[3] ILL. REV. STAT. ch. 110, § 75(1)(a)(1961).

committed a tortious act in Illinois, and subjecting defendant to the jurisdiction of the Illinois court under these circumstances did not violate due process, and the fourteenth amendment. The case was reversed and remanded with directions to deny the motion to quash. *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961).

The Court characterizes the first of the two questions presented—whether a tortious act was committed *in Illinois*—as one of statutory construction. All of defendant's acts were done outside of Illinois; only the consequences occurred in Illinois. Reasoning that the alleged negligence cannot be separated from the resulting injury, the Court supported its holding that the tortious act was committed in Illinois by citing the rule of the Restatement of Conflict of Laws, section 377, which fixes the place of wrong where the last event occurs which is necessary to render the actor liable. A second indication pointing to the same result, thought the Court, is the rule recognized by Illinois courts that the time within which an action in tort may be brought is measured from the time when the injury occurs.[4]

Titan's argument, that in using the term "tortious act," instead of "tort," the legislature contemplated only acts or conduct, apart from the consequences of such conduct, was rejected by the court. "To be tortious an act must cause injury. The concept of injury is an inseparable part of the phrase."[5] Further, the opinion continues, legislative intent is to be determined by considerations of general purpose and effect, rather than by technicalities of definition. "As we observed in *Nelson v. Miller*, 11 Ill. 2d 378, the statute contemplates the exertion of jurisdiction over nonresident defendants to the extent permitted by the due-process clause."[6]

Turning to the constitutional issue—whether subjecting defendant to the jurisdiction of the Illinois court under these circumstances would exceed the limits of due process—the Court distinguished this case from the *Nelson* case in which defendant's employee committed the tort while physically present in Illinois. In *Nelson*, the Court found that Illinois had an interest in providing relief for injuries caused by persons having "substantial contacts" within the state.

After noting that under modern doctrine the power of a state court to enter a binding in personam judgment against one not served with process within the state depends upon his having "minimum contacts" and

[4] Madison v. Wedron Silica Co., 352 Ill. 60, 184 N.E. 901 (1933).

[5] Gray v. American & Standard Sanitary Corp., 22 Ill.2d 432, 436, 176 N.E.2d 761, 763 (1961).

[6] *Ibid.*

being reasonably notified, the Court reviews *International Shoe Co. v. Washington,*[7] *McGee v. International Life Ins. Co.,*[8] *Smyth v. Twin State Improvement Corp.,*[9] and *Hanson v. Denckla,*[10] and notes an expansion of the power of a state to exert jurisdiction over nonresidents, particularly over foreign corporations.

> The revelant decisions since *Pennoyer v. Neff* show a development of the concept of personal jurisdiction from one which requires service of process within the State to one which is satisfied either if the act or transaction sued on occurs there or if defendant has engaged in a sufficiently substantial course of activity in the State, provided always that reasonable notice and opportunity to be heard are afforded.[11]
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> [T]he trend in defining due process of law is away from the emphasis on territorial limitations and toward emphasis on providing adequate notice and opportuity to be heard: from the court with immediate power over the defendant, toward the court in which both parties can most conveniently settle their dispute.[12]

No longer, continued the Court, is a course of business or a given volume of business within the state necessary for the requisite minimum contact—the record in the instant case failed to show whether Titan did any other business in Illinois, though the Court thought it a "reasonable inference" that its commercial transactions result in substantial use and consumption in Illinois; today, it is enough that the act or transaction out of which the action arose had a substantial connection with the forum. Whether the particular activity conducted within the state provides the contact requisite to sustain jurisdiction, the opinion continues, must be determined from the facts of each case.

> The question cannot be answered by applying a mechanical formula or rule of thumb but by ascertaining what is fair and reasonable in the circumstances. In the application of this flexible test the relevant inquiry is whether defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the law of the forum.[13]

Quoting from the opinion in *McGee,* Mr. Justice Klingbiel observes that jurisdictional concepts, though perhaps reasonable in a less complicated economy, lose their reality if changes wrought by technological and economic progress are ignored in the application of these concepts. Commerce has become increasingly national and increasingly specialized. Sel-

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

[8] 355 U.S. 220 (1957).

[9] 116 Vt. 569, 80 A.2d 664 (1951).

[10] 357 U.S. 235 (1958).

[11] Grey v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 440, 176 N.E.2d 761, 765 (1961).

[12] *Id.* at 440–41, 176 N.E.2d at 765.

[13] Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 440, 176 N.E.2d 761, 765 (1961).

dom does a manufacturer deal directly with the ultimate consumer of his products. The Court reasoned, that by virtue of Titan's accepting the benefit and protection of Illinois law, it is not unfair to hold that sufficient minimum contacts exist to subject Titan to the jurisdiction of Illinois courts. The fact that someone other than defendant shipped the merchandise into the state and made the sale to plaintiff will not shield the defendant from liability.

Finally, the Court discusses the relationship between due process and convenience in settling disputes, and concludes that "the principles of due process relevant to the issue in this case support jurisdiction in the court where both parties can most conveniently settle their dispute."[14] Plaintiff resides in Illinois; the injury occurred in Illinois; Illinois law will govern substantive questions; witnesses on the issues of injury and damages are more likely to be found in Illinois. Much of the inconvenience formerly attendant upon defense of suits in foreign jurisdictions has been removed by modern communication and transportation facilities. It would be unjust to require Illinois citizens to seek redress in some distant state.

Recognizing that the opposite result was reached in decisions presenting different factual situations,[15] the Court concludes that, under the circumstances of this case, the better rule supports jurisdiction.

We have indeed come a long way from the power concept of jurisdiction of *Pennoyer v. Neff*.[16] The "consent," "doing business" and "presence" fictions gave way to the "sufficient contacts," "reasonableness" and "fair play and substantial justice" criteria enunciated in *International Shoe*. Even the latter case, though providing us with criteria by which we may mark the boundaries of due process, does not indicate the extent to which in personam jurisdiction over foreign corporations has been carried. Legislatures in an ever increasing number of states have enacted "single act" statutes investing courts of the state with jurisdiction over causes of action brought against foreign corporations—in some instances, against any nonresident—arising out of single transactions or single torts committed in the state.[17] Thus, a foreign corporation, which had trans-

[14] Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 443, 176 N.E.2d 761, 766 (1961).

[15] Hellriegel v. Sears Roebuck & Co., 157 F. Supp. 718 (N.D. Ill. 1957); Erlanger Mills Inc. v. Cohoes Fibre Mills Inc., 239 F.2d 502 (4th Cir. 1956); Johns v. Bay State Abrasive Products Co., 89 F. Supp. 654 (D. Md. 1950).

[16] 95 U.S. 714 (1878).

[17] ILL. REV. STAT. ch. 110, § 17(1) (1961); ME. REV. STAT. ANN. ch. 112, § 27 (1961); MD. ANN. CODE art. 23, § 92(d) (1957); MINN. STAT. § 303.13(3) (Supp. 1961); N. C. GEN. STAT. § 55-145(a) (1960); TEX. REV. CIV. STAT. art. 2031 b (3) (4) (Supp. 1961); VT. STAT. tit. 12, § 855 (1958); W. VA. CODE ANN. § 3083 (Supp. 1960). The FINAL REPORT OF THE ADVISORY COMMITTEE ON PRACTICE AND PROCEDURE A-155-56(1961) recommended enact-

acted no other business in Vermont, was found subject to the jurisdiction of a Vermont court in an action arising out of defendant's alleged negligence in roofing plaintiff's residence.[18] A Wisconsin resident was subject to the jurisdiction of an Illinois court in an action arising out of the negligence of his employee while delivering a stove in Illinois.[19] No case has been found holding a "single act" statute unconstitutional on its face, though courts in several cases have refused to apply the statute on the grounds that to do so would violate due process.[20]

In *McGee*, though not involving a "single act" statute, a contract action was brought by a California resident against a foreign insurance corporation. The record showed only this one insurance contract sold and delivered in California by mail, with the premiums mailed from California. This single contract was found to supply such substantial connection with California that requiring the defendant to defend the action there did not offend the principles of due process.

It seems clear that in the case of a single tort, when the action arises out of activity of defendant within the state, subjecting defendant to the in personam jurisdiction of the courts of the state is consonant with due process.

In the noted case, though the Court finds acts and consequences inseparable, we have something less than a "whole tort." All that occurred in Illinois was the injury. Analysis of cases dealing with the question whether consequences alone provide sufficient contact does not provide a conclusive answer because the statutes involved and the facts of each case

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ment of a single act statute in New York as § 302 of the N.Y. CIV. PRAC. ACT. As illustrative of the differences among these statutes, the Illinois and Maine statutes apply to "any person, whether or not a citizen or resident" of the state; the Texas statute applies to "nonresidents," and all of the other statutes apply only to foreign corporations. The Illinois and Maine statutes provide for personal service outside of the state; the other statutes provide for service upon a state official with the additional requirement of notification of defendant by registered mail (except that the Minnesota statute provides for notification by "mail"). With respect to actions in tort, the statutory language also differs: Illinois and Maine: commission of a tortious act; North Carolina: tortious conduct; Minnesota, Texas, West Virginia, and Vermont: commission of a tort in whole or in part. Several other states have broader statutes, not true single act statutes, a liberal interpretaion of which can extend jurisdiction almost as far. See Florio v. Powder Power Toil Corp., 248 F.2d 367 3d Cir. 1957), a case arising under the Pennsylvania statute. The following are examples of such statutes: ALA. CODE tit. 7, § 199(1)(1960); ARK. STAT. ANN. § 27-340(1947); MISS. CODE ANN. § 1437(1942); PA. STAT. ANN. tit. 15, § 2852-1011(B)(1958)(C)(Supp. 1960).

[18] Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951).

[19] Nelson v. Miller, 11 Ill.2d 378, 143 N.E.2d 673 (1957).

[20] Mueller v. Steelcase Inc., 172 F. Supp. 416 (D. Minn. 1959); Erlanger Mills Inc. v. Cohoes Fibre Mills Inc., 239 F.2d 502 (4th Cir. 1956); Johns v. Bay State Abrasive Products Co., 89 F. Supp. 654 (D. Md. 1950).

differ. Several courts have found consequences alone insufficient;[21] other courts have reached the result of the instant case and have found no due process difficulties in applying the statute.[22] In these latter cases, however, each of the defendants had some other connection with the forum so that consequences of acts done elsewhere did not have to bear the entire burden of contact.[23] Probably in no case, where assertion of jurisdiction has been upheld, has defendant's connection with the forum been so tenuous as in the instant case.

If a single tort provides the minimum contact necessary to satisfy due process, then whether consequences equals tort ("tortious act") committed in Illinois, presents, in reality, the question of due process. The Court, however, treats the question as one of statutory interpretation, applies conflict of laws principles, and then faces the due process question in application of the statute.

In summary, then, what do the cases teach? Probably no more than that the question of due process must turn upon the application of the statute involved to the particular facts at hand. This is nothing more than the United States Supreme Court said in *Perkins v. Benguet Consol. Mining Co.*,[24] and is implicit in the language of the *International Shoe* case.[25] We know from the latter case that the demands of due process

[21] Rufo v. Bastian-Blessing Co., 405 Pa. 123, 173 A.2d 123 (1961); Mueller v. Steelcase, Inc., 172 F. Supp. 416 (D. Minn. 1959); Trippe Mfg. Co. v. Spencer Gifts, Inc., 270 F.2d 821 (7th Cir. 1959); Insull v. New York, World-Telegram Corp., 273 F.2d 166 (7th Cir. 1959); Hellriegel v. Sears Roebuck & Co., 157 F. Supp. 718 (N.D. Ill. 1957); Putnam v. Triangle Publications, Inc., 245 N.C. 432, 96 S.E.2d 445 (1957); Johns v. Bay State Abasive Products Co., 89 F.Supp. 654 (D. Md. 1950). The *Hellriegel, Insull* and *Trippe* cases involved the Illinois statute.

[22] Mays v. Oxford Paper Co., 195 F. Supp. 414 (E.D. Pa. 1961); Adamek v. Michigan Door Co., 258 Minn. 571, 108 N.W.2d 607 (1961); Atkins v. Jones & Laughlin Steel Corp., 258 Minn. 71, 104 N.W.2d 888 (1960); Hutchinson v. Boyd & Sons Press Sales, Inc., 188 F. Supp. 876 (D. Minn. 1960); Florio v. Powder Power Tool Corp., 248 F.2d 367 (3d Cir. 1957). The *Hutchinson, Atkins* and *Adamek* cases involved a Minnesota statute conferring jurisdiction over causes of action arising from torts committed "in whole or in part" in the state.

[23] Thus in *Adamek* defendants solicited business in Minnesota by mail and shipped the product to independent lumber yards in Minnesota; in *Atkins,* defendant shipped merchandise to a purchaser in Minnesota; in *Hutchinson,* defendant sold to plaintiff's employer in Minnesota an instrument which caused the injury; in the *Mays* case, defendant had two salesmen who traveled through the forum state soliciting orders; and in *Florio,* defendant had, by contract, appointed a local dealer its exclusive distributor and sent a regional representative into the forum with regularity.

[24] 342 U.S. 437 (1952).

[25] "It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely . . . whether the activity . . . is a little more or a little less. Whether due process is satisfied must depend

may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.[26] A state may not make a binding judgment in personam against a defendant with which the state has no contacts.[27] We learn from *Hanson v. Denckla*[28] that the evolution in the requirements for personal jurisdiction from the rigid doctrine of *Pennoyer* has not removed all limits of due process. Within this framework, then, the instant case must fit.

Without question, a state has an interest in providing redress for tortious injuries to its residents.[29] Since the test of defendant's activities which will justify subjecting defendant to jurisdiction of Illinois courts is not merely quantitative, commission of a single tort in Illinois should suffice. Due process does not forbid a state to protect its citizens from the injustice of seeking redress in some distant state.[30] In the last analysis, the test reduces itself to one of reasonableness—whether, under the circumstances of each case, it is reasonable to require defendant to defend in the state. An estimate of the inconveniences to the parties, depending upon where the action is brought, is pertinent. The forum in which justice can most expeditiously be done should also be a consideration. It would be unreasonable, however, to require defendant to stand trial in a jurisdiction with which it has no connection. The relevant inquiry in determining what is fair and reasonable, according to the opinion, is "whether defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the law of the forum."[31] In finding such benefit in the protection given by Illinois law to the marketing of hot water heaters containing defendant's valves—valves which the Court assumes must have been sold in Illinois—the Court decides that requiring defendant to defend in Illinois comports with due process. One might wonder how minimum can be minimum contact.

In choosing to infer a course of business not apparent from the record, the Court seems reluctant to hold squarely that if defendant placed in the stream of commerce *a single valve,* intending to benefit from its sale, and

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rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." 326 U.S. 310, 319 (1945).

[26] *Id.* at 317.

[27] International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[28] 357 U.S. 235 (1958).

[29] Watson v. Employers Liab. Assur. Corp., 348 U.S. 66 (1954).

[30] Travelers Health Ass'n v. Virginia *ex rel.* State Corp. Comm'n, 339 U.S. 643 (1950).

[31] Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 440, 176 N.E.2d 761, 765 (1961).

such valve caused injury, defendant could fairly and reasonably be required to defend an action arising from that injury. Perhaps by avoiding such a conclusion, the Court stopped short of exceeding the ultimate limits of due process. On the other hand, one might argue that the Court could have gone the further step and, confining itself to the record before it, required defendant to defend in Illinois on the theory that, in balancing the equities, he whose product caused the loss should bear the greater burden.[32]

Though some may disagree with the decision in *Gray*, few will dispute that, with respect to in personam jurisdiction over foreign corporations, it indeed represents a "New Frontier."

[32] Cardozo, *The Reach of the Legislature and the Grasp of Jurisdiction*, 43 CORNELL L. Q. 210 (1957).