CIVIL PROCEDURE

Quasi In Rem Jurisdiction • Minimum Contacts • State Statutes

Intermeat, Inc. v. American Poultry, Inc., 575 F.2d 1017 (2d Cir. 1978)

The decision of Intermeat, Inc. v. American Poultry, Inc. is the first decision rendered by a federal appeals court based on the United States Supreme Court decision of Shaffer v. Heitner. The Shaffer Court handed down a landmark decision in 1977 that appeared at first light to aim the principles of quasi in rem jurisdiction in a new direction. From the date of the decision it appeared that a court could no longer take jurisdiction of a lawsuit based merely on the fact that property of the defendant was located in the state in which the suit was filed. However, in applying the holding of Shaffer to the Intermeat lawsuit, it seems that the decision in Shaffer is not as sweeping as the legal community first thought.

Intermeat, with its principal place of business in New York, brought an action to recover damages arising out of a wrongful rejection of a shipment of meat by American Poultry, an Ohio corporation. The lawsuit was filed in the New York Supreme Court and later was removed to the United States District Court for the Eastern Division of New York. After the district court held that there was no in personam jurisdiction, Intermeat moved to attach a debt owed to American Poultry by the Great Atlantic and Pacific Tea Company, a corporation doing business in New York. The motion was granted and an order of attachment was entered. In sustaining Intermeat's motion for attachment, the court stated "that there were sufficient contacts with New York by American Poultry to satisfy Shaffer v. Heitner."

In the United States Court of Appeals for the Second Circuit, Appellant American Poultry argued that the lower court's holding of jurisdiction based on attachment was unconstitutional in light of Shaffer v. Heitner. Appellant contended that Shaffer required "minimum contacts" with the forum state and in this case the contacts were not present. The basis of its argument was that American Poultry did not have an office in New York, nor had it consented to service of process through the office of the Secretary of State of New York.

However, the district court found that the parties to the action did

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1 Intermeat, Inc. v. American Poultry, Inc., 575 F.2d 1017 (2d Cir. 1978).
3 575 F.2d at 1018.
4 433 U.S. at 212.

[317]
enter into at least five contracts for the sale of meat. The contracts were mailed from New York to Ohio and fully described the goods involved, the selling price, and the terms of delivery. In some cases, American Poultry signed the contract and returned a copy to New York, while at other times the Ohio corporation retained all the copies of the contract without apparent objection to its terms. In addition to the terms spelled out above, all of the contracts contained the following arbitration clause: "Any dispute or controversy arising in or out of this contract shall be submitted to the American Arbitration Association, New York, N.Y., for arbitration in accordance with its rules and the parties hereto agree to be bound by its determination."

Finally, the district court, in weighing the evidence, found the volume of American Poultry's business with New York companies amounted to approximately seven million dollars a year. The method of payment for the meat purchased from New York companies was by check and mailed to the proper company in New York.

Intermeat's theory of attachment, which was based on two sections of the New York Civil Practice Law and Rules was upheld by the Second Circuit. In doing so, Intermeat was able to bring American Poultry into New York to defend itself in the lawsuit.

It is important to note that the controversy over jurisdiction that arose in both Shaffer and Intermeat was centered around the concept of quasi in rem, not in personam jurisdiction. But Justice Marshall, writing for the Supreme Court in Shaffer v. Heitner, stated that the standard to be applied in in rem actions should be the same test set forth in International Shoe Co. v. Washington. Therefore, in order to fully comprehend the holding of Shaffer in subsequent cases such as Intermeat that have quasi in rem jurisdiction in issue, it is necessary to examine the development of in personam jurisdiction up to International Shoe.

The foundation for in personam jurisdiction was laid 101 years ago in Pennoyer v. Neff. Basically, the Supreme Court in Pennoyer held that "every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory," and that "no state can exercise direct jurisdiction over persons and property outside its limits."
jurisdiction and authority over persons without its territory." Thus, the concept of territoriality of the state's borders was born. It restricted the state's adjudicatory authority to persons upon whom service could be made, in other words, only persons found within the borders of the state.

There were only two exceptions to the ironclad rule of Pennoyer. One permitted a plaintiff suing for divorce to obtain jurisdiction even though the defendant spouse could not be found in the state. The other recognized the concept of implied consent of a corporation doing business in the state and allowed jurisdiction over the corporation.

The first major advance in personal jurisdiction after Pennoyer was spurred by developments in transportation. With the invention of the automobile and its rapid popularity, a great number of injuries were inflicted on residents of the state by nonresident motorists. The Supreme Court in Hess v. Pawloski solved the problem of obtaining service on the nonresident motorist through the concept of implied consent. The ruling in Hess permitted an agent in the state to be appointed for purposes of service of process whenever a nonresident motorist crossed the state's borders in his automobile. Thus, this decision violated the strict principle of territoriality set forth in Pennoyer, but it did recognize the necessity of permitting the resident to obtain service on the nonresident motorist and have his day in court in his home state.

Excluding the nonresident motorist exception, there were no startling changes that altered the Pennoyer decision until the landmark holding of International Shoe Co. v. Washington. The Supreme Court made inroads on the concept of state territorial power as set forth in Pennoyer and arrived at a new standard for personal jurisdiction. The new standard to be applied by the state in exercising its adjudicatory authority was the "minimum contacts" test. The contacts acceptable to allow jurisdiction had to be such that the state did not offend "traditional notions of fair play and substantial

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12 Id.
13 See F. James & G. Hazard, Civil Procedure (2d ed. 1977), for comments that sharply criticize the sovereignty rule of Pennoyer v. Neff as being superficially simplistic.
14 The original power concept was set forth in D'Arcy v. Ketchum, 52 U.S. 586 (1850). The Supreme Court stated that the authority of every tribunal is necessarily restricted by the territorial limits of the state in which it is established. Any attempt to exercise authority beyond those limits would be an illegitimate assumption of power.
15 95 U.S. at 735.
16 Id.
18 95 U.S. 714.
19 326 U.S. 310.
20 Id. at 319.
This standard, adopted in *International Shoe*, has been the law concerning in personam jurisdiction for over three decades. The basis of the decision was fairness to nonresidents. At no time were the constitutional rights of the nonresident defendant to be jeopardized in applying the "minimum contacts" test. If the nonresident's contact with the forum was nonexistent or too far removed, jurisdiction would not lie, and the resident plaintiff would not be permitted to bring his lawsuit in the forum.

In *International Shoe v. Washington*, the State of Washington filed suit to compel the defendant to pay unemployment taxes based on commissions paid by the defendant to salesmen who sold their products in Washington. The International Shoe Company was incorporated in Delaware, had its principal place of business in Missouri, and did not have an office in Washington. The only connection with the State of Washington was the contact that the salesmen had with their customers. However, these salesmen did not have the authority to enter into any contracts as all prospective orders had to be approved by the Missouri office. Nevertheless, the Court held that the contacts with Washington were sufficient to allow personal jurisdiction to lie without violating the defendant's constitutional rights.

Writing for the majority, Mr. Justice Stone stated, "whether due process is satisfied must depend . . . upon the quality and the 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." This statement reflects the "minimum contacts" test of in personam jurisdiction. The Court reasoned that there was a mutual exchange of benefits when sufficient contacts existed between the nonresident and the forum. The nonresident had available the opportunity to earn profits due to the privilege granted by the state to do business in the state. Furthermore, the nonresident enjoyed the benefit of the state's laws and was protected by the enforcement of such laws by the state. Therefore, the nonresident having sufficient contacts with the forum should and would be amenable to suit.

*International Shoe* was only the beginning. Following that decision, several other cases concerning the issue of personal jurisdiction reached the United States Supreme Court. The holdings in these cases were based on the "minimum contacts" test as set forth in *International Shoe*.

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21 Id. at 316, quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940).
22 Id. at 311.
23 Id. at 319.
In *McGee v. International Life Insurance Co.* the defendant insurance company assumed the insurance obligations of the previous insurer of the deceased. All the premiums were mailed to International Life Insurance Company from the deceased's state of residence, California. Also, the beneficiary was a resident of California. The defendant had no offices in California and had not done any business in California with the exception of the policy in question. The defendant refused to pay the benefits because of its belief that the death was the result of suicide. The beneficiary of the policy brought suit in California.

The Supreme Court held that California did have jurisdiction, relying on a California statute permitting jurisdiction in suits based on insurance contracts held by California residents. The ruling stated that it was immaterial that the insurance company only had one policyholder in the state of California.

A year later the Supreme Court was faced with a case involving beneficiaries of a trust. Here, the facts were more complicated than in *International Shoe* and *McGee*. A Mrs. Donner, while a resident of Pennsylvania, set up a trust and named a Delaware bank as the trustee. By the terms of the trust, Mrs. Donner was given a life estate and the power to appoint the remainder of the estate during her lifetime or bequeath it by will. Later Mrs. Donner moved to Florida and assigned the remainder of the trust to her grandchildren who lived in Delaware. While a resident of Florida, Mrs. Donner bequeathed the remaining assets of the estate to her two daughters who were also residents of Florida, if her assignment to her grandchildren should be held invalid. After her death, the daughters sued in Florida for a declaratory judgment that the remainder of the trust should pass directly to them through the will. The Delaware trustee did not appear even though notification of the lawsuit was made by mail and publication. The Florida court held the daughters were entitled to the funds.

Meanwhile, in Delaware, the grandchildren of Mrs. Donner also brought suit seeking a declaratory judgment that the funds should go to them based on Mrs. Donner's assignment. Notification of the suit was made by mail, but the daughters did not appear. Judgment was rendered for the grandchildren by the Delaware Court.

The United States Supreme Court held that there was no jurisdiction because the Delaware bank had never done any other business in Florida.

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25 355 U.S. 220.
26 Id. at 224.
27 357 U.S. 235.
Furthermore, the basis for the complaint arose out of business transacted in Pennsylvania, not in Florida.\textsuperscript{28}

In both decisions, \textit{McGee} and \textit{Hanson v. Denckla}, the Supreme Court relied on the test of "minimum contacts" set down in \textit{International Shoe.}\textsuperscript{29} In the case of \textit{McGee},\textsuperscript{30} the contacts were held to be sufficient between the resident and the nonresident to warrant jurisdiction. However, in \textit{Hanson},\textsuperscript{31} the contacts were held not to be sufficient, and jurisdiction was denied. There have been many other decisions over the issue of in personam jurisdiction since 1945. The question that always had to be answered was whether sufficient contacts existed between the nonresident and the forum so as not to offend "traditional notions of fair play and substantial justice."\textsuperscript{32}

Another train of thought was developed by Justice Black in the concurring opinions in \textit{International Shoe} and \textit{Hanson} and the majority opinion in \textit{McGee}. Basically Mr. Justice Black's thoughts revolved around the supremacy of the state's interest rather than the aspects of fairness to the nonresident. In rejecting the subjective words "fair play," Black in his concurrence in \textit{International Shoe}, stated:

\begin{quote}
I believe the Federal Constitution leaves to each State, without "ands" "ifs" or "buts", a power to tax and open the doors of its courts for its citizens to sue corporations whose agents do business in those States. Believing that the Constitution gave the States that power, I think it a judicial deprivation to condition its exercise upon the Court's notion of "fair play", however appealing that term may be. Nor can I stretch the meaning of due process so far as to authorize this Court to deprive a State of the right to afford judicial protection to its citizens on the ground that it would be more "convenient" for the corporation to be sued somewhere else.\textsuperscript{33}
\end{quote}

Thus, the basis for jurisdiction according to Justice Black is not that it is "fair" to do so, but that it is the absolute constitutional right of the state to protect its citizens by permitting jurisdiction to lie on any lawsuit brought in the forum on any claim arising from a citizen's in-state dealings with the corporation.

These thoughts were further emphasized in the majority opinion written by Black in \textit{McGee},

\begin{quote}
It is sufficient for purposes of due process that the suit was based on a
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\textsuperscript{28} \textit{Id.} at 254.
\textsuperscript{29} \textit{Id.} at 219.
\textsuperscript{30} \textit{326 U.S.} at 319.
\textsuperscript{31} \textit{355 U.S.} 220.
\textsuperscript{32} \textit{357 U.S.} 235.
\textsuperscript{33} \textit{Id.} at 316.
contract which had substantial connection with the forum state. It cannot be denied that California has a manifest interest in providing effective means of redress for its citizens when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant state in order to hold it legally accountable.\textsuperscript{34}

In \textit{Hanson}, Justice Black wrote the dissenting opinion and professed jurisdiction to exist in Florida due to the absolute constitutional rights of the state to protect its citizens by allowing jurisdiction to lie. In disagreeing with the majority of the Court, Black wrote,

In light of the foregoing circumstances it seems quite clear to me that there is nothing in the Due Process Clause which denies Florida the right to determine whether Mrs. Donner's appointment was valid as against its statute of wills. This disposition which was designed to take effect after her death, had very close and substantial connections with that state. Not only was the appointment made in Florida by a domiciliary of Florida, but the primary beneficiaries also lived in that State.\textsuperscript{35}

In \textit{International Shoe}, the test of “minimum contacts” was developed, and was strengthened through its application to later factual situations. However, different rationales have been used for permitting jurisdiction to lie based upon this test. One view favors the concept of “fairness” to the non-resident while the other favors an absolute constitutional right of the state to protect its citizens. Both views must be followed by the courts since each has, at one time or another, been the basis for a majority opinion of the United States Supreme Court. In actually trying to dissect each view the distinction between the two sometimes becomes almost nonexistent. No matter which point of view was followed, the end result has been the same: either sufficient contacts existed or they did not. This has been the sole basis for the decision, it being irrelevant whether the rationale was “fairness” or an absolute constitutional right. However, in taking the case law of in personam jurisdiction after \textit{International Shoe} and applying it to quasi in rem jurisdiction, it is necessary to consider both viewpoints since they are both valid law.

The decisions just discussed have dealt with in personam jurisdiction. The other two areas of jurisdiction are in rem and quasi in rem jurisdiction. An in rem action is designed not to place personal liability on any one person, but rather to affect the interests of persons in a specific res. A quasi in rem action is one that would have been in personam if the party

\textsuperscript{34} 355 U.S. at 223.
\textsuperscript{35} 357 U.S. at 258.
seeking relief had been able to obtain jurisdiction over the defendant's person. Unable to do so, the plaintiff seizes property which is not the object of the litigation, but is a means available to satisfy a possible judgment. Quasi in rem jurisdiction has aspects of both in rem and in personam actions. It takes on the quality of in rem when, because of the location of the defendant's property in the state, the court is able to adjudicate the lawsuit. Since the property attached is unrelated to the subject matter of the complaint before the court, it has the character of an in personam action.

The Pennoyer decision recognized that an action against property did affect the defendant in that the defendant owned the property being attached for jurisdictional purposes. But at the same time, the Pennoyer Court expressed the belief that since the property was within the territorial borders of the forum, it was subject to in rem jurisdiction. Furthermore, even if a judgment were awarded to the resident plaintiff, the judgment was limited to the value of the attached property. Thus, from the date of the Pennoyer ruling, 1877, a resident could obtain power over a nonresident defendant by merely seizing property owned by the defendant and located in the forum. In 1977, the decision of Shaffer v. Heitner was handed down and at first glance seemed to spell the demise of quasi in rem jurisdiction based on attachment due to the fact the res was located in the state where the plaintiff resided or decided to bring the lawsuit.

In Shaffer, the United States Supreme Court was faced with a situation where Heitner, a nonresident of Delaware, filed a stockholder's derivative action in the Delaware courts charging the officers and directors of Greyhound Corporation with violations of their duty to the stockholders. Heitner's motion for quasi in rem jurisdiction was based on the sequestration of Delaware property of the individual defendants pursuant to Delaware law. The Supreme Court reversed the Delaware Supreme Court's ruling

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87 See Zammit, Quasi in Rem Jurisdiction: Outmoded and Unconstitutional?, 49 ST. JOHN'S L. REV. 668 (1976). The author suggests that the institution of quasi in rem jurisdiction has outlived its usefulness. Its value as an escape from the strictures of a discarded territorial theory is gone. Its continued survival only beclouds jurisdictional thinking and conflicts with significant due process concerns. The time has come to abolish jurisdictional attachment and to approach all jurisdictional problems in terms of "minimum contacts." By so doing, it is hoped that results can be achieved that are predicted upon a rational process of weighting interests and not upon purely fortuitous circumstances.

88 433 U.S. at 186.

89 Del. Code tit. 10, § 366 (1974) provides that if it appears in any complaint filed in the Court of Chancery that the defendant or any one or more of the defendants is a nonresident of the state, the court may make an order directing such nonresident defendant or de-
that jurisdiction did lie. In writing for the Court, Justice Marshall adopted the "minimum contacts" test for in personam jurisdiction as set forth in *International Shoe v. Washington.* Therefore, after *Shaffer,* the same test used to determine the question of in personam jurisdiction will also be used in deciding the issue of jurisdiction in quasi in rem actions. If the contacts are sufficient, then jurisdiction will lie. If not, then the attachment is invalid and jurisdiction will not lie.

The United States Court of Appeals, Second Circuit, in *Intermeat, Inc. v. American Poultry, Inc.*** considered for the first time the effect of *Shaffer* on the New York statute authorizing attachment of debt due the defendant by a debtor located in New York. This statute, by permitting attachment, allows quasi in rem jurisdiction to lie. The Second Circuit Court, applying the decision of *Shaffer,* affirmed the district court's decision of proper jurisdiction. Circuit Judge Gurfein in writing for the majority stated,

The "minimum contacts" test cannot be formularized. Rather, as Judge Hand suggested, such a test leaves the court to "step from tuft to tuft across the morass, ..." deciding in each case whether the relationship among the plaintiff, the defendant, and the forum state make it fair and reasonable to compel the defendant to try the action in the forum state. In the case at bar, we agree with the District Court that its exercise of jurisdiction over American Poultry was consistent with due process.

Thus, according to Judge Gurfein, the courts are to take each case as it is presented and consider all factors before rendering a decision.

Ohio presents a situation different from the one in New York, in that the Ohio attachment statutes do not accomplish the same purpose as New

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41 326 U.S. at 319.
42 The inconsistency among the tests of in personam, in rem, and quasi in rem jurisdiction is eliminated by *Shaffer v. Heitner. See Note, 35 WASH. & LEE L. REV. 131 (1978).*
43 *See Zammit, Reflections on Shaffer v. Heitner, 5 HASTINGS CONST. L. QTRLY. 15 (1978).* *Shaffer* has not tolled the death knell for actions in which quasi in rem statutes are utilized to compel personal jurisdiction, except where the nonresident defendant's only link with the forum state is the fortuitous presence of his property within its borders.
44 575 F.2d 1017.
45 *See N.Y. CIV. PRAC. art. 62, § 6202; art. 52, § 5201.*
46 575 F.2d at 1023.
However, several statutes in the Ohio Revised Code might allow jurisdiction to lie in similar situations. In order to analyze the effect of

47 N.Y. Civ. Prac. art. 62, § 6202; art. 52, § 5201.


**Personal Jurisdiction**

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this state;
2. Contracting to supply services or goods in this state;
3. Causing tortious injury by an act or omission in this state;
4. Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
5. Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected such person to use, consume, or be affected by the goods in this state, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
6. Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state;
7. Causing tortious injury to any person by a criminal act, any element of which takes place in this state, which he commits or in the commission of which he is guilty of complicity;
8. Having an interest in, using, or possessing real property in this state;
9. Contracting to insure any person, property, or risk located within this state at the time of contracting.

(B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.


(G) In an action in which it is sought by a provisional remedy to take or to appropriate in any way property of the defendant, when the defendant is not a resident of this state or is a foreign corporation whose place of residence cannot be ascertained . . . .

Ohio Rev. Code Ann. § 2715.01 (1977) states:

**Grounds of Attachment**

In a civil action for the recovery of money, at or after its commencement, the plaintiff may have an attachment against the property, other than personal earnings, of the defendant upon any one of the following grounds:

(A) Excepting foreign corporations which by compliance with the law therefore are exempted from attachment as such, that the defendant or one of several defendants is a foreign corporation;

(B) That the defendant is not a resident of this state;

(C) That the defendant has absconded with the intent to defraud his creditors;

(D) That the defendant has left the county of his residence to avoid the service of a summons;

(E) That the defendant so conceals himself that a summons cannot be served upon him;

(F) That the defendant is about to remove his property, in whole or part, out of the jurisdiction of the court, with the intent to defraud his creditors;

(G) That the defendant is about to convert his property, in whole or part, into money, for the purpose of placing it beyond the reach of his creditors;

(H) That the defendant has property or rights in action, which he conceals;

(I) That the defendant has assigned, removed, disposed of, or is about to dispose of his property in whole or part, with the intent to defraud his creditors;

(J) That the defendant has fraudulently or criminally contracted the debt, or incurred the obligations for which suit is about to be or has been brought;
Shaffer on Ohio law it might be helpful to consider Intermeat, Inc. v. American Poultry, Inc. as though the situation were reversed thus having the Ohio corporation attempting to bring the New York corporation into Ohio state courts for its refusal to accept the shipments of meat.

In light of Shaffer, the Ohio courts must be satisfied that the "minimum contacts" standard of International Shoe9 has been met. However, in analyzing a statute enacted by a state legislature, there is a presumption of constitutionality when it is enacted, and the courts will generally interpret a statute in such a manner so as to bring it within the bounds of constitutionality.50 Thus, the Ohio statutes that might allow jurisdiction to lie in the reverse situation of Intermeat will generally be presumed to be valid unless they are clearly contrary to Shaffer v. Heitner.

Under Ohio's long arm statute,51 it appears that the Ohio corporation might be able to obtain personal jurisdiction over the New York corporation pursuant to Section A (1) and (2). The question that arises is whether

(K) That the claim is for work or labor, or for necessaries;
(L) That the defendant has not complied with the provisions of sections 1306.01 to 1308.09, inclusive, of the Revised Code, relating to bulk transfers.

An attachment shall not be granted on the ground that the defendant is a foreign corporation or not a resident of this state for any claim, other than a debt or demand arising upon contract, judgment, or decree, or for causing damage to property or death or personal injury by negligent or wrongful act.

An attachment against the personal earnings of a defendant, through an action in garnishment, may be granted after a judgment has been obtained by the plaintiff.

No person shall discharge an employee solely by reason of such employee's personal earnings from such person having been attached through no more than one action in garnishment in any twelve-month period.

Ohio Rev. Code Ann. § 2715.11 (Page Supp. 1977), states:

Commencement of action; filing affidavit.
(A) An action in garnishment may be commenced in a court of common pleas by the filing of an oath in writing made by the plaintiff, his agent, or attorney setting forth:

(1) The name of the defendant;
(2) That affiant has good reason to believe and does believe that the person, partnership, or corporation named in the affidavit as the garnishee has property of the defendant not exempt under section 2329.62 or 2329.66 of the Revised Code;
(3) A description of that property;
(4) That the demand in writing has been made as required by section 2715.02 of the Revised Code;
(5) That the payment demanded in the notice required by section 2715.02 of the Revised Code has not been made nor has a sufficient portion been made to prevent the garnishment of personal earnings as described in section 2715.02 of the Revised Code;
(6) That affiant has no knowledge of any application by defendant for the appointment of a trustee so as to preclude the garnishment of defendant's personal earnings.

(B) No action in garnishment of personal earnings shall be brought against a defendant sooner than thirty days after the filing of the last successful action in garnishment of personal earnings against such defendant, regardless of who brings such action or who brought the last successful action.

49 326 U.S. 310.
the contacts between the forum and the nonresident New York corporation are sufficient to warrant jurisdiction over the nonresident without offending traditional notions of fair play and substantial justice. Here, the contacts were that the contracts were mailed back and forth between the Ohio and New York offices of the corporations, an arbitration clause in the contract providing for arbitration in Ohio, and the volume of business transacted between the corporations. Based on this hypothetical, it does seem plausible that the contacts are sufficient to satisfy the International Shoe and Shaffer standards without having to attach the debt of a third party resident owed to the New York corporation.

Also deserving of analysis are Section 2703.14, Section 2715.01, and Section 2715.11 of the Ohio Revised Code which may provide for service over nonresidents on the basis of the existence of property alone within the law of Ohio. The purpose of the statutes falls in line with the Pennoyer territorial concept, and therefore would seem to run contra to the Shaffer decision which emphatically stated that the fortuitous presence of property in the state was not enough to establish jurisdiction. Thus, it appears that if a lawsuit came before the Ohio courts for which the basis of jurisdiction was solely the presence of a debt in Ohio, the statutes might very well be declared invalid in light of Shaffer. Of course, if contacts were present other than just the existence of property within the state, then jurisdiction possibly might lie on the basis of these statutes and the long arm statute. To date there have been no cases in Ohio to challenge the validity of Sections 2703.14, 2715.01, or 2715.11. As is the situation with all landmark decisions of the United States Supreme Court, only time will reveal the true impact of Shaffer v. Heitner in Ohio, as well as in the other states.

It has been suggested that the Shaffer decision left a loophole for the

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52 This theory is not new to Ohio courts. See Lantsberry v. Tilley Lamp Co., 27 Ohio St. 2d 303 (1971). The court held where there is no proof of record establishing the existence of minimal contacts between Ohio and a nonresident corporation under Ohio Revised Code §§ 2307.38.2 and 2307.38.3 (long arm statute), a motion to quash such service should be sustained. See also M and W Contractors, Inc. v. Arch Mineral Corp., 335 F. Supp. 972 (S.D. Ohio 1971). In this case, the court stated among the facts to be weighed by the court in determining if a defendant has the necessary minimum contacts, are the number of contacts, the nature and quality of the contacts, the source and connection between the cause of action and the contacts, the interest of the forum state and the convenience of the parties. In applying the facts to this criteria, the court held that negotiations leading to execution of the contract between the Ohio corporation and Delaware corporations, conducted in Ohio at the Ohio corporation’s office or in residences of officers of Delaware corporations were insufficient to establish the minimal contacts necessary to subject nonresident buyer to suit in Ohio under the Ohio long arm statute.

53 OHIO REV. CODE ANN. §§ 2703.14 (G), 2715.01 and 2715.11.

54 95 U.S. 714; see also Zammit, supra note 43.

55 OHIO REV. CODE ANN. §§ 2703.14 (G), 2715.01 and 2715.11.

56 OHIO REV. CODE ANN. § 2307.38.2.
states. This line of thought emphasizes the strong state interest in providing a forum for its residents so as to obtain redress through the state courts for injuries incurred. In October, 1978, the Minnesota Supreme Court, on remand in light of *Shaffer v. Heitner*, considered the case of *Savchuk v. Rush* and appeared to make use of this loophole. The Court upheld the Minnesota garnishment statute permitting a resident motorist injured in an out-of-state automobile accident to garnish the nonresident’s automobile liability insurance company’s contractual obligations up to the policy limits in order to obtain quasi in rem jurisdiction. The Court gave credence to the two-fold purpose of the garnishment statute: 1) the state’s interest in providing a forum for residents, and 2) extension of the long arm concept to the maximum limits consistent with due process. The Minnesota statute was enacted prior to *Shaffer*, but it reflects the theory that a state can expressly and purposely enact legislation so as to provide a forum for its residents. In doing so, the state legislatures must be careful not to offend due process by establishing some guidelines and standards to assure compliance with the “minimum contacts” standard of *International Shoe* and *Shaffer*, and thus guarantee fairness to both parties.

In conclusion one might reasonably argue that the new frontier that emerged on the horizon in June of 1977 with the decision in *Shaffer* was not as startling as members of the legal community at first thought. A standard, “minimum contacts,” had withstood the test of time and was now being applied to quasi in rem actions as well as in personam actions. The purpose behind the adoption of this standard by the *International Shoe* Court was to guarantee fairness to the nonresident. Even if one accepts and favors Justice Black’s line of thought, namely the absolute constitutional right of the state to provide a forum for its aggrieved citizens, the concept of justice is still the ultimate guiding light for the courts, and that goal is paramount above all others. The *Shaffer* Court recognized this goal and adopted the “minimum contacts” test to further its purpose.

57 See Note, 32 U. MIAMI L. REV. 680 (1978). The states can apparently enact statutes expressly for the purpose of exercising jurisdiction over the suits and activities affecting state-created entities in order to further a compelling state interest in the regulation of its corporations and uniform application of its laws.


59 Note, supra note 62.

60 See Comment, 14 WAKE FOREST L. REV. 51 (1978). Refinement and expansion of jurisdiction statutes will produce an integrated system of rational jurisdiction rules on realistic policy and fairness to the parties.

61 See id. The distinction between in rem and in personam jurisdiction will become meaningless with the adoption of the new standard laid down in *Shaffer v. Heitner*.

62 For an interesting discussion of a proposed scale to conceptualize how property provides contacts, see Comment, 63 IOWA L. REV. 504 (1977). The author divides the property contact relationship into three levels. Level one involves actions in which the jurisdictional basis is that the property involved is directly related to the claim and the property matter is the
In *Intermeat*, the effect of *Shaffer* was felt for the first time. A cursory reading of the two cases might result in a belief that the *Intermeat* Court did not follow *Shaffer*. However, a closer evaluation of the decisions reveals that the holdings resulted from a completely different set of facts. The contacts between Greyhound and Delaware in *Shaffer* were minimal and insufficient. The only connection between the forum state and the corporation was that Greyhound had incorporated itself there. On the other hand, American Poultry's contacts with New York were several, close, and substantial. American Poultry had contracted with the New York plaintiff, agreed to an arbitration clause in the contracts providing for arbitration in New York, and did a substantial volume of business with New York companies. The situations between the parties in the two lawsuits were vastly different indeed. It is suggested that in *Intermeat*, the Court did follow *Shaffer* since the contacts were sufficient so as not offend “traditional notions of fair play and substantial justice.”

It is also suggested that the *Intermeat* court was correct in stating that there was no magical formula a court could use to set itself on a pedestal and proclaim the existence or nonexistence of sufficient contacts. Rather, it had to examine each set of facts in each and every case it heard. On the basis of these facts and with the decisions of prior cases in mind, the court then had to determine whether jurisdiction would lie. Furthermore, in order that justice be done, it would be necessary for the court to be flexible, not arbitrary, in applying a standard such as the “minimum contacts” to a set of facts; it could not be locked into any sort of rigid structure that would impair the goal of fairness and justice to both parties in the litigation.

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subject of the litigation and the rights to the property are determined. Level two or the middle part of the scale involves quasi in rem jurisdiction of related claims, i.e., actions in which a plaintiff's claim arises from rights and duties associated with defendant's interest in the attached or sequestered property. Level three involves quasi in rem jurisdiction of unrelated claims such as personal injuries. The author suggests that in regard to levels one and two, sufficient contacts exist and jurisdiction lies. As to level three, the contacts will usually be deemed insufficient and more will be needed to support jurisdiction.

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*3* 326 U.S. at 316.