B. Waiver of Exemption from Execution

Under Section 1 of Presidential Decree No. 1807, the Republic of the Philippines waived its immunity from execution. However, this waiver should be limited to the patrimonial properties of the Republic of the Philippines and should not be expanded to cover properties for public use and for public service.[196]

XI. CONCLUSION

The application of the principle of State immunity from suit will keep involving a delicate balancing act between the claim of private individuals for redress for violation of their rights and the need to protect the State from suability because of the demands of public interest. Doubtless, special factors will crop up in future cases that will test the applicability of the principle of State immunity from suit. In a given case, can an exemption from the principle of State immunity from suit be fashioned out and still leave this principle intact? The quest for justice is unceasing. The interplay between individual demand for justice and the principle of State immunity from suit will pose a continuing challenge to the creativity of lawyers and judges alike.

[196] Tan Toco v. Municipal Council of Iloilo, 49 Phil. 52, 59 (1926); Municipality of Paoay v. Manaois, 86 Phil. 629, 632 (1950); Municipality of San Miguel v. Fernandez, 130 SCRA 56, 60 (1984); Municipality of Makati v. Court of Appeals, G.R. No. 89898 (October 1, 1990).

JURISDICTION OF PHILIPPINE COURTS OVER NON-RESIDENT DEFENDANTS

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The world seems to be shrinking as a result of technological advancement in high-speed communication and air travel. Oral and written communications are now received almost instantly in most parts of the world; while travel from one continent to another now takes only several hours. These developments have facilitated greater interaction among people in different countries and accelerated the increase in the number of transnational transactions.

In the Philippines, transactions containing foreign elements are becoming very common as shown by the volume of imports and exports, inflow of foreign investments, international subcontracting, overseas employment, and tourist trade. Disputes are likely to occur in a number of these transactions and the party residing in the Philippines would most likely ask the question: Can it be resolved by a Philippine Court?

Even in everyday living a dispute may arise as a result of a simple purchase made by a Filipino consumer of a defective foreign-manufactured product or a Philippine-manufactured product containing defective parts produced in a foreign country. In this case, the Filipino plaintiff's interest is to satisfy his claim against the defendant. He has a strong interest in being heard in the forum which he finds most convenient. More often, this will mean that the plaintiff will sue in his home forum.[1] In the ordinary habits of life, anyone would be disinclined to litigate before a foreign tribunal.[2] This paper will try to establish the reasonable limits of a Philippine Court's jurisdiction over non-resident defendants. The focus will be on *quasi in rem* jurisdiction and *in personam* jurisdiction over foreign corporations.

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[1] Smit, *The Enduring Utility of In Rem Rules: A Lasting Legacy of Pennoyer v. Neff*, 43 BROOKLYN L. REV. 600, 607 (1977).

[2] Hongkong & Shanghai Banking Corp. v. Sherman, 176 SCRA 331 (1989).

I. Current *In Personam* Jurisdictional Standards

The word 'jurisdiction' as applied to the faculty of exercising judicial power is used in several different, though related, senses. It may have reference: (1) to the authority of the court to entertain a particular kind of action or to administer a particular kind of relief; or (2) to the power of the court over the parties, or over the property which is the subject of litigation.[3] In order that a Philippine court may validly try and decide a case, it must have jurisdiction both over the subject matter and over the person of the parties.

As a rule, physical presence of a non-resident defendant within the state is necessary before a court can exercise jurisdiction over his person. This is so because the "fundamental rule is that jurisdiction *in personam* over non-residents, so as to sustain money judgment, must be based upon personal service within the state which renders the judgment."[4] Hence, when the defendant is not residing and is not found in the Philippines, the Philippine courts cannot try any case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court.[5]

When, however, the defendant resides in the Philippines, but is merely absent temporarily, jurisdiction over his person may still be acquired by means of substituted service of summons.[6] A different rule obtains with regard to unknown defendants residing in the Philippines. As to them, summons may be served by publication, but only if the action filed is an action *in rem* or *quasi in rem.*[7]

Service of summons is the means by which a specific court acquires jurisdiction over the person of the defendant. In the absence of a valid waiver, trial and judgment without such service are null and void. This process is solely for the benefit of the defendant and its purpose is not only to give the court jurisdiction over the person of the defendant, but also to afford the latter an opportunity to be heard on the claim made against him.[8] It is well settled that a court can not obtain jurisdiction over the person of a defendant

[3] Banco Espanol-Filipino v. Palanca, 37 Phil. 921 (1918).

[4] Boudard v. Tait, 67 Phil. 170 (1939).

[5] The Dial Corporation v. Soriano, 161 SCRA 737 (1988); 1 MORAN, COMMENTS ON THE RULES OF COURT (2d 1963).

[6] Montalban v. Maximo, 22 SCRA 1070 (1968).

[7] Panteleon v. Asuncion, 105 Phil. 765 (1959).

[8] Keister v. Navarro , 77 SCRA 211 (1977).

without valid service of process and that service is not valid unless it is made pursuant to a statute.[9]

In some instances, the jurisdiction of the court over the person is made to depend, indirectly at least, on the party's volition. Jurisdiction over the person may be conferred by consent, expressly or impliedly given, or it may, by objection, be prevented from attaching or removed after it has attached.[10]

II. *Quasi In Rem* Jurisdiction

When the defendant does not reside and is not found in the Philippines, the service of summons may be effected outside the Philippines pursuant to the provisions of section 17, Rule 14 of the Rules of Court only in the following instances: (1) When the action affects the personal status of the plaintiff; (2) When the action relates to, or has for its subject, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) When the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) When the non-resident defendant's property has been attached within the Philippines.[11]

The cases referred to above are actions *in rem* and *quasi in rem* because the court can not, by extraterritorial service of summons, acquire jurisdiction to render and enforce a money judgment against a non-resident defendant who has no property in the Philippines.[12] A judgment *in rem* affects the interests of all persons in a designated property while a judgment *quasi in rem* affects the interest of particular persons in a designated property. The latter is of two types. In one, the plaintiff seeks to secure a pre-existing claim in the subject property and to extinguish or establish the non-existence of similar interests of particular persons. In the other, the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him.[13]

When the action affects the personal status of the plaintiff residing in the Philippines, or is intended to seize or dispose of any property, real or

[9] Wells Fargo & Co. v. Wells Fargo Express Co., 556 F. 2d 406 (1977).

[10] Manila Railroad Co. v. Attorney-General, 20 Phil. 523 (1911).

[11] De Midgely v. Ferandos, 64 SCRA 23 (1975).

[12] *Dial Corporation*, 161 SCRA at 742.

[13] Hanson v. Denckla, 357 U.S. 235 (1958).

personal, of the defendant located in the Philippines, it may be validly tried by the Philippine courts. For then, they have jurisdiction over the *res*, i.e. the personal status of the plaintiff or the property of the defendant, and their jurisdiction over the person of the non-resident defendant is not essential.[14] But the judgment which may be rendered by Philippine courts in such cases shall be confined strictly to the personal status of the plaintiff or to the disposition of the property litigated or attached. The courts cannot grant a relief which would be a personal liability upon the non-resident defendant.[15] And although, as above stated, Philippine courts can not and need not acquire jurisdiction over the person of the non-resident defendant, summons must be served upon him, not for the purpose of acquiring jurisdiction over his person, but merely to satisfy the due process requirement.[16]

An action which affects the status of the plaintiff is well recognized to be a case wherein the physical presence of the defendant within the state is not necessary before the court can validly render a judgment. This is a necessary litigation and Justice Field's opinion in the case of *Pennoyer v. Neff* carefully noted that "cases involving the personal status of the plaintiff, such as divorce actions, could be adjudicated in the plaintiff's home state even though the defendant could not be served summons within the state."[17]

The Philippine concept of jurisdiction *in rem* seems to have been derived from the United States Supreme Court decision in the case of *Pennoyer v. Neff*, which declared "the ability of a resident plaintiff to satisfy a claim against a non-resident defendant by bringing to court any property of the defendant located in the plaintiff's state".[18] The Philippine Supreme Court, in the case of *Dial Corp. v. Soriano*[19] declared that "an action *in rem* is an action against the thing itself, instead of against the person".[20] Thus, it is sufficient that the property of the defendant is brought within the jurisdiction of the court.

Justice Field's opinion in *Pennoyer v. Neff*, focused on the territorial limits of the state's judicial powers. He noted that "every State possesses

[14] *Dial Corporation*, 161 SCRA at 743 *citing* 1 Moran, COMMENTS ON THE RULES OF COURT 105 (2d 1963).

[15] 1 MORAN, COMMENTS ON THE RULES OF COURT 394, (210 1963).

[16] *Id.*

[17] Pennoyer v. Neff, 95 U.S. 714, 733 (1878).

[18] *Id.*; Shaffer v. Heitner, 433 U.S. 186, 200 (1977).

[19] 161 SCRA 737.

[20] *Id.* at 742 *citing* Hernandez v. Rural Bank of Lucena, Inc., 76 SCRA 85 (1977).

exclusive jurisdiction and sovereignty over persons or property within its territory" and "that no State can exercise direct jurisdiction and authority over persons or property without its territory." Thus, "in virtue of the state's jurisdiction over the property of the non-resident situated within its limits," the state courts "can inquire into that non-resident's obligation to its own citizens to the extent necessary to control the disposition of the property." The United States Supreme Court recognized that if the conclusions of the inquiry were adverse to the non-resident property owner, his interest in the property would be affected. But any direct attempt to assert extra-territorial jurisdiction over persons or property would offend sister states and exceed the inherent limits of the state's power.[21]

The decision in *Pennoyer v. Neff* sharply limited the availability of *in personam* jurisdiction over defendants not residing in the forum state. If a non-resident defendant could not be found in a state, he could not be sued there. On the other hand, since the state in which property was located was considered to have exclusive sovereignty over the property, *in rem* actions could proceed regardless of the owner's location. Indeed, since a state's process could not reach beyond its borders, the United States Supreme Court held after *Pennoyer* that due process did not require any effort to give the property owner personal notice that his property was involved in an *in rem* proceeding.[22]

The extreme to which that concept could be carried is demonstrated by *Harris v. Balk*,[23] in which one Epstein, a resident of Maryland, had a claim against Balk, a resident of North Carolina. Balk was not subject to jurisdiction *in personam* in Maryland. Harris, another North Carolina resident who owed Balk money, ventured into Maryland, and had his debt to Balk garnished by the alert Epstein. Harris paid Epstein and subsequently successfully defended a suit by Balk on the debt, the Supreme Court holding "that Harris' payment to Epstein be treated as a discharge of his debt to Balk." The court reasoned that the debt Harris owed Balk was an intangible form of property belonging to Balk, and that the location of that property travelled with the debtor. By obtaining personal jurisdiction over Harris, Epstein had 'arrested' his debt to Balk,[24] and brought it to the Maryland Court. Under the structure established by *Pennoyer*, Epstein was then entitled to proceed against that debt to

[21] *Shaffer*, 433 U.S. at 197.

[22] *Id.* at 200.

[23] 198 U.S. 215 (1904).

[24] *Id.* at 223; Feder v. Turkish Airlines, 441 F. Supp. 1273 (SDNY Dist. Ct. 1977).

vindicate his claim against Balk, even though Balk himself was not subject to the jurisdiction of the Maryland tribunal.[25]

Justice Marshall pointed out in *Shaffer*, that *Pennoyer* laid the foundation for such a result by conceptualizing that the "owner is affected only 'indirectly' by an *in rem* judgment adverse to his interest in the property subject to the court's disposition."[26] That distinction may have eluded Mr. Balk, who could be pardoned for feeling 'directly' affected by the legal consequences of Mr. Harris' Maryland visit.[27]

Well-reasoned lower court opinions have questioned the proposition that the presence of property in a state gives that state jurisdiction to adjudicate rights to the property regardless of the relationship of the underlying dispute and the property owner to the forum.[28] The overwhelming majority of commentators have also rejected *Pennoyer's* premise that a proceeding "against" property is not a proceeding against the owners of that property. Accordingly, they urged that the "traditional notions of fair play and substantial justice" governing a state's power to adjudicate *in personam* should also govern its power to adjudicate personal rights to property located in the state.[29]

If a direct assertion of personal jurisdiction over the defendant would violate the constitution, it would seem that an indirect assertion of that jurisdiction should be equally impermissible.[30]

The concept of action *in rem* in the United States has undergone some changes. It has been recognized that "judicial jurisdiction over a thing is [now] a customary elliptical way of referring to jurisdiction over the interests of persons in a thing."[31] This recognition leads to the conclusion that an exercise of jurisdiction *in rem* is proper only if the basis for such jurisdiction suffices to justify an exercise of "jurisdiction over the interest of persons in a thing." The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the due process clause is the minimum-contacts standard elucidated in *International Shoe vs.*

[25] Harris v. Balk, 198 U.S. at 205

[26] 433 U.S. at 198

[27] *Harris*, 198 U.S. at 205

[28] *Id.*; *Shaffer*, 433 U.S. at 197

[29] *Shaffer* at 205

[30] *Id.* at 209.

[31] Restatement (2nd) of Conflict of Laws, Sec. 56, Introductory Note.

Washington.[32]

The primary rationale for treating the presence of the property as a sufficient basis for jurisdiction to adjudicate claims is that a wrongdoer "should not be able to avoid payment of his obligations by the expedient of removing his assets to a place where he is not subject to an *in personam* suit." The justification suggests that a state in which the 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.*[33]

There are cases where the property serving as the basis for state court jurisdiction is completely unrelated to the plaintiff's cause of action. Thus, although the presence of the defendant's property in a state might suggest the existence of other ties among the defendant, the state, and the litigation, the presence of the property alone would not support the state's jurisdiction. If those other ties do not exist, cases over which the state is now thought of to have jurisdiction could not be brought in that forum.[34]

The United States Supreme Court, in declaring the new doctrine that all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny, stated:

> Traditional notions of fair play and substantial justice can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures that are inconsistent with the basic values of our constitutional heritage. The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification. Its continued acceptance could serve only to allow state-court jurisdiction that is fundamentally unfair to the defendant.[35]

III. *In Personam* Jurisdiction over Foreign Corporations

Jurisdiction of Philippine courts over private foreign corporations is based on the consent theory which was adopted by the Court in *Republic v.*

[32] 326 U.S. 310 (1944).

[33] *Shaffer*, 433 U.S. at 210.

[34] *Id.* at 209.

[35] Sniadach v. Family Finance Corp. 395 U.S. at 340 (1969).

Ker & Company, Ltd,[36] when it declared that "[a] foreign corporation actually doing business in this jurisdiction, with or without a license or authority to do so, is amenable to process and the jurisdiction of local courts." As can be gleaned from the above-cited case, a requisite for our courts exercise of *in personam* jurisdiction over foreign corporations is the fact of doing business. Only when such fact is established may service of summons be made and jurisdiction acquired over foreign corporations.[37]

There are three (3) modes of effecting service of summons upon private foreign corporations as provided for in Section 14, Rule 14 of the Rules of court to wit: (1) by serving upon the agent designated in accordance with law to accept service of summons; (2) if there is no resident agent, by service on the government official designated by law to that office; and (3) by serving on any officer or agent of the said corporation within the Philippines.[38]

The law has designated the Securities and Exchange Commission (SEC) to receive service of summons for foreign corporations which shall cease to transact business in the Philippines or shall be without any resident agent in the Philippines. Whenever such service of summons or other process shall be made upon the Securities and Exchange Commission, it must, within ten (10) days thereafter, transmit by mail a copy of such summons or other legal process to the corporation at its home or principal office. The sending of such copy by the Commission shall be a necessary part of and shall complete such service. All expenses incurred by the commission for such service shall be paid in advance by the party at whose instance the service is made.[39]

The service of summons to foreign corporations which do not or failed to designate an agent is extraterritorial in nature since the Securities and Exchange Commission, upon which summons is first served, is required to transmit a copy of said summons to the foreign corporation's principal office abroad.

Note that a license to do business is not necessary for the court to obtain ***in personam*** jurisdiction over the foreign corporation. This is pursuant to the consent theory which states that as long as a private foreign corporation engages in business in this jurisdiction, it should and will be

[36] 18 SCRA 223 (1966).

[37] Pacific Micronesian Line v. Del Rosario, 96 Phil. 23 (1954).

[38] Wang Laboratories v. Mendoza, 156 SCRA 44 (1987); Far East Int'l Import and Export Corp. v. Nankai Kogyo Ltd., 6 SCRA 725 (1962).

[39] CORPORATION CODE OF THE PHILIPPINES, BP 68 Sec. 128 (1976)

amenable to the process and jurisdiction of the local courts.[40] Where a foreign corporation actually doing business here has not obtained a license to do so and has not designated an agent to receive summons, then service of summons on it will be made in accordance with Section 14, Rule 14 of the Revised Rules of Court.[41]

Although the term 'doing business' has a comprehensive definition, there is still difficulty in determining what act or acts of the foreign corporation constitute doing business. Under the Omnibus Investments Code, "doing business" shall include soliciting orders, purchases, service contracts; opening offices, whether called liaison offices or branches; appointing representative or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines, and any other act or acts that imply the continuity of commercial dealings or arrangements and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.[42] The rules and regulations implementing the provisions of the Omnibus Investments Code further explained the meaning of the term "doing business." The application of the said definitions to factual situations, however, has not produced a uniform result as shown by the various decisions of the Supreme Court.

The Supreme Court, in the case of *Mentholatum Co. Inc. vs. Mangaliman*,[43] declared:

> No general rule or governing principles can be laid down as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of

[40] General Corporation of the Philippines v. Union Society of Canton, 88 Phil. 313 (1950).

[41] *Id.*

[42] OMNIBUS INVESTMENTS CODE, Exec. Order 226, Sec. 65 (1987).

[43] 72 Phil. 524.

acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.

Most of the decided cases involving a question of whether or not a foreign corporation is doing business in the Philippines relate to the capacity of the foreign party to bring a suit in the Philippines. Section 133 of the Corporation Code provides that no foreign corporation transacting business in the Philippines without a license may be permitted to maintain or intervene in any action, suit or proceeding in any court of the Philippines. Where, however, the act or acts of a foreign corporation do not constitute 'doing business', but merely, isolated transactions, the license requirement is dispensed with.[44] As to what acts may be considered isolated, there is no definite rule. Each case is judged in the light of its peculiar environmental circumstance.

The acts or transactions in the case of *Eastboard Navigation, Ltd. vs. Juan Ysmael*[45] were considered by the Court as 'isolated transactions'. It said:

> While plaintiff is a foreign corporation without license to transact business in the Philippines, it does not follow that it has no capacity to bring the present action. Such license is not necessary because it is not engaged in business in the Philippines. In fact, the transaction herein involved is the first business undertaken by plaintiff in the Philippines, although on a previous occasion plaintiff's vessel was chartered by the National Rice and Corn Corporation to carry rice cargo from abroad to the Philippines. These two isolated transactions do not constitute engaging in business in the Philippines within the purview of sections 68 and 69 of the corporation law so as to bar plaintiff from seeking redress in our courts.

The same conclusion was reached by the court in the case of *Antam Consolidated, Inc. vs. Court of Appeals*.[46] It ruled:

> From these facts alone, it can be deduced that in reality, there was only one agreement between the petitioners and the respondent and that was the delivery by the former of 500 long tons of crude coconut oil to the latter, who in turn, must pay the corresponding price for the same. The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines.

[44] Eastboard Navigation Ltd. v. Ysmael, 102 Phil. 1 (1957).

[45] *Id.*

[46] 143 SCRA 288 (1986).

A single act or transaction, however, was considered by the court as 'doing business' in *Far East International Import and Export Corporation vs. Nankai Kogyo Co., Ltd.*[47] It said:

> The rule stated in the preceding section that the doing of a single act does not constitute business within the meaning of statutes prescribing the conditions to be complied with by foreign corporations must be qualified to this extent, that a single act may bring the corporation within the purview of the statute where it is an act of the ordinary business of the corporation. In such a case, the single act or the transaction is not merely incidental or casual, but it is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, and to make the state a basis of operations for the conduct of a part of the corporation's ordinary business.

The Court distinguished the above case from that of *Pacific Micronesian Line, Inc. vs. Baens Del Rosario*,[48] through the following pronouncements:

> And the only act it did here was to secure the services of Luceno Pelingon to act as cook and chief steward in one of its vessels authorizing to that effect the Luzon Stevedoring Co., Inc., a domestic corporation, and the contract of employment was entered into on July 18, 1951. It further appears that petitioner has never sent its ships to the Philippines, nor has it transported nor even solicited the transportation of passengers and cargoes to and from the Philippines. In other words, petitioner engaged the services of Pelingon not as part of the operations of its business but merely to employ him as member of the crew in one of its ships. That act is apparently an isolated one incidental, or casual, and not of a character to indicate a purpose to engage in business within the

[47] 6 SCRA 725.

[48] 96 Phil. 23

meaning of the rule.[49]

The Court seemed to have given a restrictive interpretation of the term 'doing business' in the cases of *Eastboard Navigation and Antam Consolidated*. But in the case of *Far East Int'l.*, the court favored an expanded meaning of the term 'doing business'. It is very difficult to reconcile the said decisions unless they are viewed from different perspectives. Eastboard Navigation Ltd. and Antam Consolidated Inc. are foreign corporations suing in the Philippines. They could probably not sue the defendants anywhere else because of the difficulty of acquiring *in personam* jurisdiction over them. It may, therefore, be reasonable for the Court to consider these foreign corporations as not doing business in the Philippines in the interest of justice. But in the case of Far East Int'l Import and Export Corp., the foreign corporation is being sued in the Philippines by a domestic corporation. The Philippine corporation will probably find it very difficult to litigate in a foreign forum and obtain a relief. It is, therefore, reasonable as well for the Court, in the interest of justice, to find the foreign corporation to be 'doing business' to enable the domestic corporation to sue in the Philippines.

Recent developments have made the issue of whether or not the foreign corporation is doing business in the Philippines appear irrelevant in determining whether such corporation may be sued here. The first case to show this irrelevancy was *Facilities Management Corporation vs. Dela Osa*.[50]

Facilities Management Corporation is a foreign corporation domiciled in Wake Islands. It hired De La Osa to work in Wake Island under an employment contract approved by the Department of Labor. When De La Osa returned to the Philippines, he filed an action for reinstatement, payment of backwages, overtime compensation, swing shift and graveyard shift differentials. The principal question involved in the case: "Is the mere act by a non-resident foreign corporation of recruiting Filipino workers for its own use abroad, in law, doing business in the Philippines?"[51]

The Court quoted a portion of the decision of the CIR, to wit:

> But before we consider and discuss the foregoing issues, let us first ascertain if this court acquire jurisdiction over the case at bar, it having been contended by respondents that they are domiciled in Wake Island which is beyond the territorial jurisdiction

[49] *Far East International*, 6 SCRA at 725

[50] 89 SCRA 132 (1979).

[51] *Id.* at 134

> of the Philippine Government. To this incidental question, it may be stated that while it is true the site of work is identified as Wake Island, it is equally true that the place of hire is established in Manila (See Section B, Filipino Employment Contract, Exhibit 1). Moreover, what is important is the fact that the contract of employment between the parties litigant was shown to have been originally executed and subsequently renewed in Manila, as asserted by Petitioner and not denied by respondents. Hence, any dispute arising therefrom should necessarily be determined in the place or venue where it was contracted.[52]

However, it should be pointed out that the place of hire and execution of the contract cannot serve as basis for exercising jurisdiction over the defendant. At most, said facts will help in determining the applicable law.

In denying the petition, the Court said:

> Indeed, if a foreign corporation not doing business in the Philippines is not barred from seeking redress from courts in the Philippines, a fortiori, that same corporation can not claim exemption from being sued in Philippine Courts for acts done against a person or persons in the Philippines.[53]

This was after reviewing the previous decisions wherein foreign corporations not doing business in the Philippines were held to be authorized to sue in the Philippines.

The case of *FBA Aircraft, S.A. vs. Zoza*[54] followed the doctrine laid down in the *Facilities Management Corp.* case. The Court said that:

> In the interest of an expeditious disposition of cases and to avoid needless delays in their determination on the merits, the Court holds that it is unnecessary with reference to the first option to secure and await a definite ruling from the appellate court on the suability of petitioners-foreign corporations, prescinding from the ruling in Facilities Management Corporation vs. De La Osa (89 SCRA 131) that indeed, if a foreign corporation, not engaged in business in the Philippines, is not barred from seeking redress from courts in the Philippines, a fortiori, that same corporation cannot claim exemption from being sued in the Philippines for acts done

[52] *Id.* at 132

[53] *Id.* at 139

[54] 110 SCRA 1 (1981).

against a person or persons in the Philippines as underscored by Petitioner's filing of the petition at bar and seeking redress from this court.

Again, in the case of *Wang Laboratories vs. Mendoza*[55] the court said:

> Be that as it may, the issue on the suability of a foreign corporation whether or not doing business in the Philippines has already been laid to rest. The court has categorically stated that although a foreign corporation is not doing business in the Philippines, it may be sued for acts done against persons in the Philippines.

In the United States, the original practice was to consider a foreign corporation doing business in a state to have consented to being sued in that state. This basis for *in personam* jurisdiction over foreign corporations was later supplemented by the doctrine that a corporation doing business in a state could be deemed 'present' in that state and so subject to service of process.[56] However, in the case of *International Shoe vs. Washington*, the court adopted 'minimum contacts' as the basis for *in personam* jurisdiction over foreign corporations.

The question in *International Shoe*[57] was whether the corporation was subject to the judicial and taxing jurisdiction of Washington. Chief Justice Stone's opinion for the court began its analysis of that question by noting that the historical basis of *in personam* jurisdiction was a court's power over the defendant's person. That power, however, was no longer the central concern. Now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only, for the exercise of *in personam* jurisdiction, the existence of certain minimum contacts between the non-resident defendant and the forum. Thus, the inquiry into the state's jurisdiction over a foreign corporation appropriately focused not on whether the corporation was "present" but on whether there have been "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."[58]

Whether due process is satisfied must depend upon the quality and

[55] *Wang Laboratories*, 156 SCRA 44; *Far East International*, 6 SCRA 725.

[56] *Shaffer*, 433 U.S. at 202

[57] 326 U.S. 310

[58] *Id.*; *Shaffer*, 433 U.S. 186

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 ensure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contact, ties, or relations.[59] The relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the states on which the rules of *Pennoyer* rests became the central concern of the inquiry into personal jurisdiction. The immediate effect of this departure from *Pennoyer's* conceptual apparatus was to increase the ability of the state courts to obtain personal jurisdiction over non-resident defendants.[60]

The *International Shoe* standard of *in personam* jurisdiction governs actions against natural persons as well as corporations.[61] Application of the standard would vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of the laws.[62]

IV. Conclusion

The Philippine concept of jurisdiction *quasi in rem* has not followed the changes in the United States introduced by the case of *Shaffer vs. Heitner*.[63] The mere presence of property is still sufficient basis for our court to render a judgment against the property of a defendant who is outside of the Philippines. The property does not have to be related to the action provided the same has been attached and subject to the court's exercise of jurisdiction. Of course, the judgment is not considered a judgment against the defendant but merely against the property.

In the United States the current concept of *quasi in rem* jurisdiction has been equated to jurisdiction over the interests of persons in the thing. The judgment is no longer considered just against the property but against the person's interests in the property. In determining whether the exercise of jurisdiction over the interests of persons is consistent with the due process

[59] *International Shoe*, 326 U.S. at 319

[60] *Shaffer*, 433 U.S. at 204

[61] *Id.*

[62] *Hanson*, 357 U.S. 325

[63] *Shaffer*, 433 U.S. at 204

clause, the minimum contacts standard elucidated in *International Shoe* shall be used.

The practice of requiring that a foreign corporation must be doing business in the Philippines before it becomes subject to *in personam* jurisdiction effectively limits the exercise of jurisdiction by the court. In the United States, that practice has given way to the application of the 'minimum contacts' standard which effectively expanded the exercise of jurisdiction by U.S. Courts.

Whether or not a foreign corporation is 'doing business' in the Philippines is an issue which is quite difficult to resolve inspite of the standards laid down in the Omnibus Investments Code. However, the new direction charted by the Supreme Court in *Facilities Management Corporation* oversimplifies the standard to be used in determining whether our courts can exercise *in personam* jurisdiction over foreign corporations.

It is desirable to increase the ability of our courts to exercise *in personam* jurisdiction over foreign corporations in the light of increasing volume of transnational transactions. But the expansion resulting from the decision in *Facilities Management Corporation* seems to exceed the bounds of reasonableness. It may be necessary to immediately lay down reasonable criteria which will temper the application of the new standard adopted by the court.

ENFORCEMENT OF CIVIL LIABILITY FOR CRIMINAL ACTS OR OMISSIONS

ANGELIQUE SANTOS*

I. INTRODUCTION

In a paper[1] presented before the delegates of the Tenth National Convention of the Philippine Political Science Association on May 29, 1989, Chief Justice Marcelo B. Fernan stated that an efficient court system would require the streamlining of procedural rules. To this end, the Supreme Court created the Revision Committee of the Rules of Court to study "proposed amendments that would cut procedural red-tape and limit avenues for the abuse of technical rules to delay litigation".[2]

The foregoing statement of objectives, though made six months after the effectivity of the New Rules on Criminal Procedure[3], certainly influenced the introduction of changes in the system. Particularly on the subject of enforcement of civil liability for criminal acts or omissions, the amendments introduced are viewed as an expression of the policy of the Supreme Court "to consolidate proceedings, most obviously for the benefit of the parties and in the interest of a speedy and inexpensive determination of the controversy".[4]

The objectives of the amendments, however, can only be achieved if our courts comply with the new rules. To command obedience, the new rules would have to pass the test of validity, i.e. they must not increase, diminish or modify substantive rights.[5] Set against this test, the new rules on enforcement of civil liability for criminal conduct, contained in Rule 111, may not stand to see the realization of the goals of the Revision Committee of the Rules of

* J.D. Candidate, 1992, Notes and Comments Editor, Ateneo Law Journal, 1991.

[1] *See* Fernan, *The Judiciary and Challenge of the Times*, 35 ATENEO L.J. 1, 11 (February 1991).

[2] *Id.* at 18.

[3] *See* Supreme Court Resolution dated June 17, 1988.

[4] Gupit, *The Civil Action Under the 1988 Amendments to the Rules on Criminal Procedure*, PHIL. L.G., February 1989 at 5, 11.

[5] PHIL. CONST. OF 1987, Art. VII, Sec. 5 (5).