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Jurisdictional Challenges in E-Commerce

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ABSTRACT

The rapid development in information and communications technologies and the global nature of the Internet have seen both small and large businesses strive to establish their presence online in order to remain viable and competitive. This development has led to a paradigm shift from the physically oriented commercial environment to the more technology and internet driven environment giving birth to e-commerce. According to definition by WTO e-commerce is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. E-commerce has enabled companies to sell goods and services to customers located anywhere globally without having to establish their presence in those locations. This presents a problem in so far as jurisdictional laws and regulations are concerned because in traditional and conventional commerce, a company must have some physical ties to a country or a state for it to be subjected to that country's or state's laws. This theory does not hold with e-commerce particularly where a company sells its goods and services on the Internet to global customers who are outside the country or state where the company's web site and server is located. Given the nature of e-commerce as being global, borderless, virtual and anonymous, the issue of jurisdiction can be a sticky and murky business. This paper discusses jurisdictional challenges brought by the development of e-commerce especially where disputes arise between businesses and individuals in cross-border transactions.

Keywords– E-Commerce, B2B, E-Contracts, Cyberspace, Jurisdiction, B2C

1. Introduction

According to definition by WTO e-commerce is understood to mean “the production, distribution, marketing, sale or delivery of goods and services by electronic means”. The Asia Pacific Economic Co-operation has adopted a wider definition of e-commerce to include “all business activity conducted using a combination of electronic communications and information processing technology” while the United Nations Economic and Social Commission for Asia and the Pacific defines e-commerce as “the process of using electronic methods and procedures to conduct all forms of business activity”. Basically, it is the trading in goods and services that are either generated or facilitated by electronic means.

This means that e-commerce can relate to products that used to be physical but have been transformed into digital goods such as e-books or digital economy products where data is itself either a good or used to provide a service such as software.

E-commerce trade has grown in leaps and bounds over the recent past. According to data from Statista, there is a projected increase of 246% in worldwide e-commerce sales from \$1.3 trillion in 2014 to 4.5 trillion by 2021 presenting nearly threefold lift in online revenue. These massive opportunities are making global e-commerce too big to be ignored. Although there are no real official statistics on developing country participation in e-commerce, some surveys of private firms point out that, in 2016, e-commerce sales amounted to \$41 billion for Latin America and \$14.7 billion for Africa and the Middle East, both figures dwarfed by those of Asia, where sales amount to \$877.6 billion, with India contributing \$25 billion and Indonesia \$3.2 billion

2. Categories of e-Commerce

There are different categories of e-commerce which can be grouped into different application areas and problems they tend to solve. E-commerce transactions that is conducted between two business entities is referred to as business-to-business (B2B) while those conducted between businesses and consumers is referred to as business-to-consumer (B2C) which is the most prevalent form of e-commerce. Business-to-consumer e-commerce involves direct sale of goods and services between the supplier and the consumer such direct purchase of items from e-Bay.com and Amazon.com. The last category which is still at its infancy in most countries is the electronic transaction carried out between governments and the business community and is referred to as business-to-government (B2G) e-commerce. Examples of such transactions include online tax submission, paying licenses online passport application and such like transactions.

It can be established that B2B e-commerce can help companies cut costs in three main ways. First, it reduces the cost of procurement by making it easier to find the cheapest and most affordable supplier online thereby cutting transaction processing costs. Second, it affords the organization the flexibility to manage their supply chain and lastly it helps the organization to tightly control their inventory by either reducing their stocks or eliminating them altogether. These three channels of B2B e-commerce can help organizations reduce their production costs, increase efficiency thereby increasing the organization's profit margins.

3. E-Contracts

A prerequisite for conducting e-commerce transaction is the requirement for contracting parties to create a valid and legally binding online contract which substitutes signed paper documents with their electronic equivalents. An electronic contract is therefore any type of contract created during the advancement of electronic commerce transaction between two or more parties interacting by electronic means such as e-mail or an individual interacting electronically with a computer program or automatic interaction between two computer programs or electronic agents that are legally acknowledged to concede the existence of the contract. E-contract is usually a contract modeled, specified, executed and deployed by a software system. Since there is no hand written signature in most of the time and no handwriting is required, the risk factor is always very high as there is no utmost security.

The three ingredients in the formation of a contract include an offer, unconditional acceptance by the offeree and a consideration for the contract. The same three ingredients are applicable to e-contracts. The question in law however, that pops up is how to know and at what instance has the offeree has accepted the offer. The question of time arises because in internet communication, there is always no direct communication link between the sender and the receiver of email as customary in post office mail communication. Instead, the email is broken into small data packets in the process of delivery. This brings the issue as to when the communication of acceptance by the offeree is considered complete. Time is therefore very critical factor in determination of the rights of the contracting parties in e-contracts.

The other challenge in e-contracts is in *clickwrap* contracts. This is where an internet user fills an online form by inserting their name and email address then clicking the submit button after reading and agreeing to the terms and conditions of the contract. The question which arises here is whether a person would be bound by the terms of the contract without reading it or having the chance to negotiate its terms. Even though clickwrap contracts are legally enforceable the issue is whether clicking the submit button be deemed a valid acceptance without the subscriber reading its terms and conditions.

The borderless nature of the internet gives rise to jurisdictional issues in e-contracts. A classic example is where a company incorporated in Kenya enters into agreement over the internet with a Tanzanian company to offer services in Uganda and the internet service provider of the Kenyan company and its servers is in the United States while that of the Tanzanian company is in the United Kingdom. When a dispute arises and the evidence spans all the five countries, it becomes challenging to determine which jurisdictional law would apply to resolve the dispute. Unfortunately most countries that have implemented e-contract laws do not deal properly with international aspects of e-commerce such as the choice of law which is a very big issue of conflict in cross-border e-commerce. This is a major setback on e-contracts in case of breach.

4. Jurisdiction in the Cyberspace

According to Black's Law Dictionary, the term jurisdiction refers to a *“government’s general power to exercise authority over all persons and things within its territory*. It also refers to *“the authority given by law to a **court** to try cases and rule on legal matters within a particular geographic area and or over certain types of legal cases”*. Jurisdiction can be divided into three categories namely legislative jurisdiction, judicial jurisdiction and executive jurisdiction.

Jurisdiction in cyberspace can therefore be construed to mean physical government's power and court's authority over internet users and their online activities. Even though the internet is borderless, internet users can always be tracked to a specific country of residence. Therefore in a case where someone from country A transmits information to another person in country B, then country B can exercise jurisdiction over the person residing in country A on the basis that the activities of that person reached country B.

a) Legislative Jurisdiction

This is sometimes called the jurisdiction to prescribe and it refers to government's power to enact its substantive laws applicable to its citizens or in particular circumstances. Any state or country has jurisdiction to impose laws with regard to:

- a) activities that, completely or to a greater extent happen within its borders;
- b) activities external to its borders that have or are intended to have considerable influence within its borders;
- c) activities external to its borders by non citizens that are aimed to disrupt its national security or threaten security and well being of its citizens.

However, as internet activities may involve many countries, the question arises as to which country's laws will be superior and binding to the particular persons or activities in the cyberspace. A classic example was in 1997 when German prosecutors indicted the general manager of CompuServe, a German ISP for knowingly distributing pornography and Neo-Nazi materials to its customers which was contrary to German laws. As long as the company engaged with the illegal activities is within Germany, the courts are free to apply German laws. However, as much as distribution of Neo-Nazi material is illegal in Germany, its circulation may not be illegal in other countries and the dilemma could arise if Neo-Nazi materials were distributed by a person who does not reside in Germany.

Another issue regarding jurisdictions would be where two people who reside in different countries enter into a contract via the internet. Since internet transactions may not have any substantial relationship to any physical place, it may prove difficult to specify which country's law will be applied.

b) Judicial Jurisdiction

This is known as jurisdiction to adjudicate and refers to authority by any state or country government to subject its citizens or things to its courts and tribunals processes for the sake of administering justice in civil or criminal lawsuits. While legislative jurisdiction is concerned with the issue of choice of law, judicial jurisdiction is more concerned with the issue of choice of forum in the internet. It is possible for a country to unilaterally declare that its laws will be applicable to non residents who engage in activities that its law prohibits. An example is in the statement on internet jurisdiction where the Minnesota attorney general declared that “*persons outside Minnesota who transmit information via the internet knowing that information will be disseminated in Minnesota are subject to jurisdiction in Minnesota courts for violation of state criminal and civil laws*”.

As much as a country can decide if a non-resident person could be prosecuted for breaking its existing laws, the question is about what standard can be used by the courts to exercise jurisdiction to adjudicate over non-resident person who is sued for illegal activities on the internet.

c) Executive Jurisdiction

This is also known as jurisdiction to enforce and it is concerned with government’s power to compel compliance or penalize non-compliance with its legislation through courts, use of administrative organs or other non-judicial action. The pressing issue is that if a country A passes a judgment in a case (jurisdiction to adjudicate) by applying its national laws (jurisdiction to prescribe), it cannot take a measure that violates country B’s sovereignty. It will be very wrong for country A to send its agents to country B’s territory to arrest a person who has been convicted for criminal charges by country A. Eichmann case raised an international law issue when Israeli commando squad kidnapped Adolf Eichmann in Argentina, brought him to Israel and charged him with *crimes against the Jewish people* and *crimes against humanity* under the Nazis and Nazi Collaborators Law. There are multilateral and bilateral agreements between states regarding recognition and enforcement of court decisions. Any state may invoke prosecution charges against a person residing outside its borders if:

- a) that person is served with a notice of the charges against him that are rational in the prevailing situations;
- b) that person is accorded the chance to be heard, ordinarily before executing prosecution order;
- c) prosecution is through the courts, and the country has power to exercise jurisdictional authority.

However, the setback is that these agreements are unable to deal with peculiarities on jurisdictions to enforce issues raised by internet activities.

5. Landmark Case Laws in Unites States

Various cases involving jurisdiction in the cyberspace have emerged and raised two fundamental questions. First, does anybody who wants to publish content on a website have to adhere to the laws of every country with accessibility to the website? Second, do courts in all countries with accessibility to that website possess personal jurisdiction over the publisher of that content or the administrator of the website? Two model cases have come to the frontline when testing personal jurisdiction.

a) The Zippo Case

This case involved *Zippo Manufacturing v. Zippo Dot Com, Inc.* Zippo Manufacturing is a company based in Pennsylvania and is a manufacturer of the famous *Zippo* pocket lighters while Zippo Dot Com was a Californian based company operating an internet website offering access to USENET newsgroups. Dot Com’s offices were headquartered in California and did not keep offices, agents or employees in Pennsylvania. Its contacts with Pennsylvania occurred entirely on the internet and it advertised its services to Pennsylvania

residents through its website which accessible to residents of Pennsylvania and worldwide audience. Dot Com had about 140,000 subscribers worldwide and about 3000 of them resided in Pennsylvania. Subscribers contracted with Dot Com to receive its services by filling out an online application form. In order to provide better services to its subscribers, Dot Com signed contracts with seven internet service providers in Pennsylvania in order to allow their customers to access Dot Com's USENET database. Zippo Manufacturing brought an action against Dot Com under the Lanham Act and state law for infringing and diluting its trademark and for false designation. It claimed that the use of the word "Zippo" in their domain names "zippo.com," "zippo.net" and "zipponews.com" as well newsgroup messages that were posted by Dot Com subscribers. However, Dot Com argued for dismissal of the case on the ground of lack of personal jurisdiction in Pennsylvania State.

Sliding Scale Test

In Zippo case, the court created a three pronged test called the *Sliding Scale* test to determine if a court has a personal jurisdiction over a website and stated that "*the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of the commercial activity that an entity conducts over the internet*". It classified websites into three different categories namely, *passive*, *interactive* and *integral* to the defendant's business. The *passive* website can be compared to a newspaper advert where the owner advertises a service which is generally accessible to any audience but who has no ability to respond to the information posted on the website. In such a case, courts do not have the authority to exert personal jurisdiction as this would be inconsistent with the traditional personal jurisdiction law. An *integral website* is that which the owner uses to conduct business and exchange information with users. People place online orders and receive confirmation messages from the website. In such cases, the court in the forum state will exercise personal jurisdiction. The third classification is an *interactive website* which grants a user in a foreign forum jurisdiction to interact with the site, either by telephone, ordinary mail or electronic mail. In this case, exercising personal jurisdiction would be dictated by scrutinizing the degree of interactivity and the business aspects of information exchange that goes back and forth between website and the user.

It was held by the court that because Dot Com had contracts with almost 3,000 subscribers and 7 internet service providers who were residents of Pennsylvania, there was a high level of interactivity and hence jurisdiction. Dot Com dissolved afterwards and now zippo.com resolves to Zippo Manufacturing company website. This case law has played a very important role and has been referenced in many subsequent cases involving internet jurisdiction.

b) Calder v Jones

The plaintiff, Jones, sued the defendants, the National Enquirer, its distributor, the writer of the article, and Calder, the editor-in-chief of the magazine, over an article in which the Enquirer alleged that Jones was an alcoholic. Jones was a resident of California while the writing and editing of the defamation article was done in Florida. Jones brought an action in a California state court and argued that because The Enquirer enjoyed large circulation in California, with sales above 600,000 copies per week, the court had personal jurisdiction over the defendant. The case was dismissed by the trial court on the grounds that it lacked personal jurisdiction over the defendant and based on the First Amendment, the concern was that permitting such jurisdiction would curtail free speech. The California Court of Appeal reversed the ruling and the Supreme Court of California affirmed the appellate court ruling.

It was held unanimously that the California courts could exercise jurisdiction over the defendant. The court stated that it could be sufficiently established that the actions of the defendants were aimed at California considering the circumstances under which the defamatory articles were published and the defendants knew the potential devastating effects and brunt of injury the plaintiff would suffer given that she was a resident of California.

There was a greater degree of reasonable foreseeability by the defendants that the plaintiff would likely bring an action against them in a Californian court.

Effects Test

In a prior case of *World-Wide Volkswagen Corp. v. Woodson*, the Supreme Court stated that a mere foreseeability that an act may have an effect in a forum state could not suffice for personal jurisdiction over a defendant. The Calder judgment was therefore not based on a mere foreseeability of the effect or mere occurrence of an effect. The court saw that there was a malicious and specifically intended effect caused to the plaintiff within California State. The important aspect in Calder's case and its effects test is also because the case involved defamation which is an intentional tort rather than negligence. Defamation is arguably a good candidate for the effects test since the act of defamation can only occur if the defamatory substance is recognized by a third party. The court found that the pronounced effect of the defendants' action occurred in California where the plaintiff resided and worked. Quantitative test also plays a role in when determining intention to create an effect within that particular forum state. In Calder's case, the offending publication occurred in California where the Enquirer arguably enjoyed the largest circulation. Based on the defendants' Internet activities, it was found that their action was purposefully directed to California and therefore the court could assert personal jurisdiction on the defendants.

c) The Cybersell Case

The case was about trademark infringement regarding the use of internet service mark and the court was asked to determine if infringement of service mark on a website page was sufficient to pass for a personal jurisdiction in a state where the owner of the service mark has his primary location of business. This case demonstrated that passive websites (i.e. sites that only to publicize information for user consumption, instead of engaging in transactional activities or collecting personal data) cannot create personal jurisdiction outside the state from which they operate.

The court applied the so called "*minimum contacts*" test to establish if the court could exercise specific personal jurisdiction over a nonresident defendant: "(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections; (2) the claim must be one which arises out of or results from the defendant's forum-related activities and (3) exercise of jurisdiction must be reasonable".

By applying the above three principles, the Ninth Circuit determined that Cybersell Florida only used their website for passive advertisements on the internet using the name "*Cybersell*" and did not intentionally focus merchandising efforts towards residents of Arizona. Cybersell Florida did not in any way lure users in Arizona to visit its website and no Arizona resident subscribed to its services and neither was there any sales, telephone calls, email messages, sales nor "*website hits*" from residents of Arizona. Furthermore there was no any consummation of transaction or performance of any act by which Cybersell Florida deliberately employed in conducting its activities that could invoke benefits and protection of Arizona law. Cybersell Florida had no adequate minimum contacts with Arizona to warrant any personal jurisdiction and therefore the motion to dismiss lack of personal jurisdiction was properly granted.

d) The Yahoo! Case

This lawsuit was brought by the International League Against Racism and Anti-Semitism and the Union of French Law Students against Yahoo!, (*Yahoo! Inc., v La Ligue Contre Le Racisme Et L'Antisemitisme, 169 F.Supp 2d 1181, 2001*)(Yahoo!) and it generated huge interest with the press. This case exhibited the gaps that still exist in resolving both the prescriptive and administrative jurisdictional matters in cyberspace.

Yahoo! was accused hosting an auction site that sold and displayed Nazi memorabilia. This auction site, Yahoo.com was only accessible in English language while the French version Yahoo.fr was directly inaccessible and Yahoo argued in French Court that it did not have jurisdiction on it. The plea was rejected and the court held that Yahoo! must implement systems to block users residing in France from accessing part of the website where the Nazi goods are exhibited or pay \$13,000 per day in fines. There was very minimal version of the effects test and since France was not targeted by Yahoo, a requirement of which is essential element in the effects test, asserting jurisdiction potentially violated the due process prerequisite in United States law.

Yahoo! declined to appeal the French court's decision but instead disputed the imposition of that judgment in the United States and sought a declaratory judgment by filing a lawsuit in the California District Court that judgment of the French Court could not be implemented in the United States. Before the California court could address the merits of the case, the French defendants appealed the California court to discard the declaratory judgment case citing lack of jurisdiction but the U.S. court rejected the plea to dismiss the motion and argued that their jurisdiction was based upon the effects theory. The court held that the activities of the defendant were intended to have an effect on the citizens of the United States and the French citizens deliberately availed themselves of the benefits of the United States.

The Court rule in favor of Yahoo! in their declaratory judgment request and held that the French order was in violation of the First Amendment and was a threat to constitutional rights and therefore unenforceable. This case demonstrated the limitations of perspective jurisdiction and exhibited the conflicts that continue to subsist among nations on issues of jurisdiction.

6. Jurisdiction and e-Commerce Taxation

E-commerce has led to a phenomenon contribution to economic growth in the world today but e-commerce transactions can also subject businesses and consumers to tax liabilities that become trickier with multi-jurisdictions and cross-border transactions. Various issues such as determination of whether a tax payer has connection to the particular taxing jurisdiction, how to split tax payer's income among the multiple jurisdictions and finally, dealing with other administrative issues that result from e-commerce activities are some of the challenges facing many tax authorities worldwide.

In the United States alone, multi-jurisdiction is a big issue facing e-commerce vendors. Currently, there are over 30,000 tax authorities of which about 7,000 of them are state and local tax dominions covering all goods and services which renders sales tax burden from multiple jurisdictions very costly. Therefore taxing online transactions would require traders to identify all relevant taxing jurisdictions, calculate the tax to charge, submit relevant forms, and make payments to the myriad taxing authorities. It becomes more complex and challenging to establish a tax system that span multiple jurisdictions, taking into consideration different tax rates, product definitions as well as types of products that are subject to taxation. This can seriously harm the ability of large and small online businesses to generate revenue or even to operate successfully.

The other challenging aspect is the complexity of multiplicity within taxing jurisdictions. Taxing e-commerce transactions introduces multifaceted issues that span multiple cities, countries as well as different tax types. This therefore means that same product or service may be subjected to different tax rules in different jurisdictions making taxing e-commerce more complicated for many vendors. For instance, in the case of disintermediation, that is, where a remote or foreign vendor sells directly to other jurisdictions without wholesale or retail outlets, the vendor will have to contend with multiple tax jurisdictions for the first time. This multiplicity and diversity of taxing jurisdictions makes tax compliance by remote e-commerce vendors unduly burdensome.

Countries generally exercise jurisdiction to tax income based on residence or source. In e-commerce these two concepts can prove to be elusive. In the case of residency, whether in terms of domicile, place of incorporation or place of management bears little resemblance to

e-commerce in which a tax payer may get involved with. As much as jurisdiction would rely on residence principle as the basis for taxation, e-commerce can enhance the tax payer's opportunities to move income from a high tax jurisdiction to a low tax or no tax jurisdictions with the assumption that the tax payer is treated as a proper resident of such jurisdiction. Even though such opportunities existed in conventional commerce long before e-commerce, they are much magnified in an environment where human and legal actors involved are largely insulated from electronic aspects of the relevant transactions.

7. Jurisdiction and Intellectual Property

Intellectual property refers to copyright and associated rights and comprises of industrial designs, patents, trade secrets just to name a few. Intellectual property is an asset just which is valuable just like the physical asset. Intellectual property and e-commerce are complimentary to each other. E-commerce provide platform for selling goods and services based on IP and its licensing including photos, software, training and etcetera in which IP is the main component of value in the transaction. This value needs to be protected using technology and security systems as well as intellectual property laws otherwise they could be stolen or pirated resulting in business loss. On the other hand, intellectual property is instrumental to the workings of e-commerce since systems that allow the internet to function like computer software and programs, computer networks, architectural designs, programming interface and etcetera are forms of intellectual property and always fall under the protection intellectual property rights. More often intellectual property rights are by nature territorial and the concept of territoriality cannot be separated from jurisdiction. This means that intellectual property rights are limited to the territory that granted it and therefore its infringement will be limited to the legal system within that particular jurisdiction.

Protecting intellectual property in the global markets in the wake of e-commerce poses serious challenges as infringements may span multiple jurisdictions. The infringement may have been committed in a different jurisdiction from where the right holder is located and in such as situation, it becomes difficult to determine which courts have jurisdiction over the case. As provided in the Hallsbury's Law of England, "*By jurisdiction is meant the authority by which a court has to decide matters that are litigated before it or to or to take cognizance of matters presented to it in a formal way for its decision*". In a multi-jurisdiction environment, what may be considered as infringement by the legal system of one jurisdiction may not be considered illegal in other jurisdictions.

8. EU Approach to Cyber Jurisdiction

In the EU, the Electronic Commerce Directive 2000/13/EU does not embrace internet jurisdiction and therefore Brussels I Regulation steps in the absence of relevant legislation. However, it is only Article 23(2) of the regulation that clearly recognizes electronic contracts. It states that "*any communication by electronic means which provides a durable record of the agreement shall be equivalent to writing*". This therefore means that a contract that is digitally stored as secure read-only document with a protection password or negotiated by email or a clickwrap contract falls within the purview of the Brussels I regulation. Determination of jurisdiction of online contract in Brussels I Regulation therefore falls under three categories: general jurisdiction, special jurisdiction and exclusive jurisdiction. Generally speaking, a well drafted contract between parties domiciled in different countries will always contain a choice of jurisdiction or court to preside over any disputes and Article 23 of the Regulation allows parties that enter into a contract to designate the court or courts with the jurisdiction to resolve any arising disputes.

Under general jurisdiction, the Brussels Regulation provides that persons domiciled in a member state shall, whatever their nationality, be sued in the courts of that state. Article 60(1) also states that a company or a legal person or association of legal and natural person is domiciled at the place where it has its statutory seat or its central administration or its principal place of business. However, in an internet transaction, contract can be struck

between two people who are residents of different countries and it would therefore present difficulties when determining the central management office or place. For the purposes of Brussels regulation, if no location of business is specified, then the party's perpetual place of residence shall be considered in determining jurisdiction. This is also in line with the UN Convention on the Use of Electronic Communications in International Contacts as well as the UNCITRAL Model Law on Electronic Commerce. Also under UN Convention, should a party to a contract not specify his location of business or where he has more than one location of business, then the location of business will be taken to be that which is closely related to the specified contract. It provides that "*the closest connecting factors are those that occur before or at the conclusion of the contract*".

Special jurisdiction is more concerned with ascertaining the location of rendering the service in question. Article 5(1)(b) defines place of performance to be the location where goods are to be delivered or where the services should be rendered and because the place of delivery is closely linked to determining special jurisdiction, an electronic contract has no fundamental distinctions from an ink and paper agreement if the agreement itself entails actual conveyance of goods. The complication lies in the interpretation of Article 5(1) where there are multiple locations where goods are to be delivered. The other difficulty in interpretation of the clause arises in B2B electronic contract disputes where digitized goods or services are to be delivered or digital performance is to be rendered.

9. US Approach to Cyber Jurisdiction

The United States is at the forefront of internet technology and therefore e-commerce litigation is more advanced than anywhere else in the world. Two types of jurisdictions come into play. General jurisdiction is where jurisdiction is conferred over the defendant as a result of any action regardless of the defendant contacts with the forum state while specific jurisdiction arises out of the defendant's contacts with the forum state. The minimum contact test comes from the landmark case of *International Shoe Co. v. Washington* which has both general and specific jurisdictions components. This case brought about the issue of "minimum contacts" as an essential element that must be present in order for a defendant to be sued in any specific state. That is to say that for any case to proceed, the defendant must have some linkage with that specific state.

In the above case, it was held that the fact that *International Shoe Co.* engaged in interstate commerce did not relieve it from liability for payments to the state unemployment compensation fund. The activities in behalf of the corporation rendered it amenable to suit in courts of Washington State to recover payments due to the state unemployment compensation fund.

Specific jurisdiction is more often applied if one party's contacts fail to fulfill the general jurisdiction criteria, and allows the court to uphold jurisdiction over parties on disputes that result from the parties' contacts with that particular forum. Because of the necessity that the contacts must be "related" to the dispute, the contacts may well serve for jurisdiction in the case at hand but may not apply in another case connected to the defendant's actions in a different state. Therefore determination of specific jurisdiction in any lawsuit is dependent on two distinct considerations. First is there must be a relation between the contacts and the dispute and secondly, in case the contacts and dispute related to the dispute consideration move to whether contacts are "*constitutionally sufficient*".

Specific jurisdiction can also be explored from two angles: exercising jurisdiction in accordance with the requirements of "minimum contacts" and "fair play and substantial justice" In the *Zippo* case, the Court elaborated on the *International Shoe* "minimum contact test" by declaring that personal jurisdiction for e-commerce companies should be dispensed with on a "sliding scale". In other words "minimum contacts" test sets forth the necessary elements that a defendant, who is absent from the forum, must satisfy for him to be subjected to personal jurisdiction: "*he must have certain minimum contracts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice*".

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