

INTRODUCTION

I. NY STATE LAW on JURISDICTION over DEFENDANT'S PERSON

- A. Traditional Bases: CPLR §301:** “A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.” (1963)
1. domicile in NY
 2. physical presence in NY at time of initiatory service.
 - a. natural persons.
 - b. general partners of a general partnerships or limited partnerships.
 - c. President or Treasurer of unincorporated associations.
 3. consent
 - a. express consent:
 - (i) forum selection agreements
 - (ii) formal designation of agent in NY for service of process under CPLR §318.
 - b. implied consent:
 - (i) foreign business enterprises authorized to do business in NY by mandatory designation of the NY Secretary of State as agent for service of process, e.g., Business Corporation Law §304.
 - (ii) non-resident, motorist statute: V&T Law §253.
 - (iii) commencement of action in NY by a foreign plaintiff under CPLR §303.
 4. foreign, unauthorized corporations: doing business in NY with “a fair measure of permanence and continuity”. Tauza v. Susquehanna Coal Co., 220 NY 259, 267 (1917) and progeny.
- B. Long Arm Statute: CPLR §302**
1. Defendant, or "through an agent", has alternative, statutory contacts with NY:
 - a. transacts any business in NY,
 - b. contracts to supply goods or services into NY,
 - c. commits tortious act in NY,
 - d. commits tortious act outside NY causing injury in NY, plus other contacts; OR
 - e. owns, possesses, or uses real property in NY; AND
 2. Plaintiff's cause of action must “arise out of” the NY jurisdictional contacts relied on.

II. FEDERAL LAW

- A. FRCP Rule 4(k)(1)(A):** permits service of process on a Defendant “subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.”
- B. US Const. Amendment XIV, §1:** “nor shall any State deprive any person of life, liberty, or property, without due process of law.”
1. “traditional notions of fair play and substantial justice”. Milliken v. Meyer, 311 US 457, 463 (1940).

2. Daimler, AG v. Bauman, ___ US ___, 134 S.Ct. 746 (2014).
For a claim unrelated to the activities of the defendant foreign corporation in the forum state, personal jurisdiction over the corporation violated Due Process where the defendant's activities in the forum state did not render the foreign corporation "ESSENTIALLY AT HOME" in the forum state.
In an 8-1 majority opinion, Justice Ginsberg provides only three examples when a corporation is "ESSENTIALLY AT HOME" in a forum state: (i) state of incorporation, (ii) state of principal place of business, and (iii) an "exceptional case", such as the Perkins Manufacturing Co. case during WWII.
3. The federal, Due Process limitation on personal jurisdiction requires that "general jurisdiction" be distinguished from "specific jurisdiction." Goodyear Dunlap Tires v. Brown, 131 Sup Ct 2846 (2011).

III. **Separating NY state law into the U.S. Supreme Court's Two Categories of Personal Jurisdiction**

- A. **Specific Jurisdiction** ("claim related" jurisdiction)
 1. long arm statute. CPLR §302.
 2. contractual consent – forum selection agreements.
 3. NY's non-resident motorist statute, Vehicle & Traffic Law, §253.
- B. **General Jurisdiction** ("all purpose" jurisdiction)
 1. defendant is a NY domiciliary.
 2. defendant's physical presence in NY.
 - a. NY's Tauza doing business = physical presence case law now almost certainly violates the federal Due Process limitation set forth in Daimler's "essentially at home" test. Sonera Holding v. Cukurova, 750 F3d 221, 225 (2d Cir. 2014)
 - b. physical presence of a natural person at the time of initiatory service?
 - c. physical presence of a general partner of general or limited partnerships?
 - d. physical presence of the President or Treasurer of unincorporated associations?
 - e. consent:
 - (i) foreign business enterprises impliedly consent to personal jurisdiction in NY by filing with the NY Secretary of State for authorization to do business in NY, e.g., BCL §304; Augsbury v. Petrokay Corp., 97 AD2d 173 (3d Dept. 1983)? optional designation of a registered human agent in NY under BCL §305?
 - (ii) formal designation of an agent in NY for service of process under CPLR §318?
 - (iii) commencement of action in NY by a foreign plaintiff under CPLR §303?

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