

XVIII. FOREIGN CORPORATIONS

A. IN GENERAL

§ 883. Definition and General Considerations

A foreign corporation is one that derives its existence solely from the laws of another state, government, or country.

Library References

Corporations ⇨631, 632.

A foreign corporation is one that derives its existence solely from the laws of another state, government, or country, and the term is used indiscriminately, sometimes in statutes, to designate either a corporation created by or under the laws of another state or a corporation created by or under the laws of a foreign country.⁴⁵

At common law a corporation may be deemed a person,⁴⁶ and statutes providing that corporations shall be deemed persons include foreign corporations.⁴⁷

Generally, the status of a corporation as either foreign or domestic is determined solely by the place of its origin, without reference to the residence of its stockholders,⁴⁸ or incorporators,⁴⁹ or the place where its business is transacted.⁵⁰

However, by express enactment, a corporation, a majority of whose stock is held by aliens, is, for some purposes, deemed to be a foreign corpora-

tion.⁵¹ A domestic corporation does not become a foreign corporation merely by accepting from another state a grant of the right to own property and to transact business in such other state.⁵² *Federal corporations.*

A federal corporation operating within a state is considered a domestic corporation rather than a foreign corporation.⁵³ The United States government is a foreign corporation with respect to a state.⁵⁴

§ 884. Status

A corporation exists only in contemplation, and by force, of the law, and where that law ceases to operate the corporation can have no existence.

Library References

Corporations ⇨631.

A corporation exists only in contemplation of law and by force of the law, and where that law ceases to operate, the corporation can have no existence.⁵⁵ A state cannot impose one of its artificial creatures on another sovereignty nor confer on its corporators powers which they can lawfully exercise beyond its jurisdiction.⁵⁶ Rather, it must dwell in the place of its creation, and cannot migrate to another sovereignty.⁵⁷

45. N.Y.—Home Owners' Loan Corp. v. Barone, 298 N.Y.S. 531, 164 Misc. 187.

Okl.—Magna Oil & Refining Co. v. Uncle Sam Oil Co., 196 P. 142, 81 Okl. 8.

46. U.S.—Magna Oil & Refining Co. v. White Star Refining Co., C.C.A.Del., 280 F. 52.

47. W.Va.—Quesenberry v. People's Bldg. Loan & Sav. Assoc., 30 S.E. 73, 44 W.Va. 512.

48. U.S.—Philippine Sugar Estates Development Co. v. U.S., 39 Ct.Cl. 225.

Wash.—Hastings v. Anacortes Packing Co., 69 P. 776, 29 Wash. 224.

49. Ga.—Rogers v. Toccoa Electric Power Co., 137 S.E. 272, 163 Ga. 919.

50. Okl.—Magna Oil & Refining Co. v. Uncle Sam Oil Co., 196 P. 142, 81 Okl. 8.

Administrative offices

Location of corporate administrative offices in particular jurisdiction was not the same as being created or organized within that jurisdiction for purposes of establishing nationality of the corporation.

U.S.—Compagnie Financiere De Suez et de L'Union Parisienne v. U.S., 492 F.2d 798, 203 Ct.Cl. 605.

51. Wash.—Hastings v. Anacortes Packing Co., 69 P. 776, 29 Wash. 224.

52. U.S.—Philippine Sugar Estates Development Co. v. U.S., 39 Ct.Cl. 225.

Ohio—Lander v. Burke, 63 N.E. 69, 65 Ohio St. 532.

53. Ala.—Ex parte First Alabama Bank of Montgomery, N.A., 461 So.2d 1315.

Pa.—Commonwealth v. First Pennsylvania Overseas Finance Corp., 229 A.2d 896, 425 Pa. 143.

54. N.Y.—In re Merriam's Estate, 36 N.E. 505, 141 N.Y. 479, affirmed U.S. v. Perkins, 16 S.Ct. 1073, 163 U.S. 625, 41 L.Ed. 287.

55. U.S.—Magna Oil & Refining Co. v. White Star Refining Co., C.C.A.Del., 280 F. 52.

Cal.—People v. Alaska Pac. S.S. Co., 187 P. 742, 182 C. 202.

Ill.—Joseph T. Ryerson & Son v. Shaw, 115 N.E. 650, 277 Ill. 524.

56. Ala.—State v. Atlantic Coast Line R. Co., 81 So. 60, 202 Ala. 558, certiorari denied Atlantic Coast Line R. Co. v. State of Alabama, 40 S.Ct. 485, 253 U.S. 489, 64 L.Ed. 1027.

Ill.—Joseph T. Ryerson & Son v. Shaw, 115 N.E. 650, 277 Ill. 524.

Pa.—F.E. Nugent Funeral Home v. Beamish, 173 A. 177, 315 Pa. 345.

57. U.S.—Cream of Wheat Co. v. Grand Forks County, N.D., 40 S.Ct. 558, 253 U.S. 325, 64 L.Ed. 931.

Ky.—American Barge Line Co. v. Board of Sup'rs of Tax of Jefferson County, 55 S.W.2d 416, 246 Ky. 573.

A corporation can exercise none of the functions and privileges conferred by its charter in any other state or country as a legal or constitutional right, but only by the comity and consent of such state or country.⁵⁸

Migratory or tramp corporations.

Organizations composed of persons who have incorporated under the laws of a state other than that of their residence for the purpose of doing all or the greater part of their business in the state of the residence of such persons, or in another state than that of the creation of the corporation, are known as migratory or "tramp" corporations.⁵⁹ The courts of a state will not recognize the existence as a valid corporation of a corporation of another state which is in fraud and evasion of the laws of the state where organized.⁶⁰

A domestic court can go behind the charter of a foreign corporation for the purpose of inquiring under what circumstances and for what purpose outside the charter it was incorporated only on the ground that the charter was obtained in fraud or evasion of the laws of the state that granted it, or for the purpose of evading the provisions of the local laws.⁶¹

The mere fact that citizens of one state have gone into another and become incorporated there under the laws of that state for the purpose of doing business as a corporation within the state of their residence, or elsewhere than in the state of incorporation, will not prevent such corporation from acting and being recognized as a valid foreign corporation in states other than that of its creation.⁶²

§ 885. — Recognition by Comity

Under principles of comity, and except as otherwise provided by statutory or constitutional provisions, a corporation created in one state or nation is permitted to exercise its powers in another state where not prohibited by public policy.

Library References

Corporations ⇐631, 654.

Under principles of comity, and except as otherwise provided by constitutional or statutory provisions, a corporation created by any state or nation is permitted to enter other states, and there to exercise all legitimate powers conferred on it and to carry on as a corporation any business not prohibited by the local laws or against the local public policy.⁶³

The rules of comity are subject to local modification by the law-making power,⁶⁴ but until so modified they have the controlling force of legal obligation, and it is the duty of the courts to observe and enforce them until the sovereign otherwise directs.⁶⁵

The comity involved is the comity of the state, not of the courts, and the judiciary must be guided by the principles and policy adopted by the legislature.⁶⁶ This comity must be presumed to exist, and does exist, until a state expresses an intention to the contrary in some affirmative way,⁶⁷ that is, by direct enactments on the subject, or by its public policy deduced from the general course of legislation or the settled adjudications of its courts of last resort.⁶⁸ Legislative silence on the subject is equivalent to permission.⁶⁹

Limitations on comity.

A foreign corporation will not be recognized as

Mont.—Allen v. Montana Refining Co., 227 P. 582, 71 Mont. 105.
 58. U.S.—Hemphill v. Orloff, 48 S.Ct. 577, 277 U.S. 537, 72 L.Ed. 978.
 Cal.—Boteler v. Conway, 56 P.2d 587, 13 C.A.2d 79.
 Ill.—Hall v. Woods, 156 N.E. 258, 325 Ill. 114.
 S.D.—Thomson v. Meridian Life Ins. Co., Indianapolis, Indiana, 162 N.W. 373, 38 S.D. 570.
 Wis.—State v. Dammann, 224 N.W. 139, 198 Wis. 265.
 59. Ky.—Cumberland Tel. & Tel. Co. v. Louisville Home Tel. Co., 72 S.W. 4, 114 Ky. 892, 24 Ky.L. 1676.
 60. N.Y.—Demarest v. Grant, 28 N.E. 645, 128 N.Y. 205.
 Tex.—Empire Mills v. Alston Grocery Co., 15 S.W. 200, affirmed on rehearing 15 S.W. 505.
 61. N.Y.—Demarest v. Grant, 28 N.E. 645, 128 N.Y. 205.
 62. Ark.—Boyington v. Van Etten, 35 S.W. 622, 62 Ark. 63.
 N.C.—Troy & North Carolina Gold Min. Co. v. Snow Lumber Co., 92 S.E. 494, 173 N.C. 593.

63. U.S.—National Carbon Co. v. Bankers' Mortg. Co. of Topeka, Kan., C.C.A.Kan., 77 F.2d 614.
 Cal.—Commonwealth Acceptance Corp. v. Jordan, 246 P. 796, 198 C. 618.
 Fla.—Herbert H. Pape, Inc. v. Finch, 136 So. 496, 102 Fla. 425.
 Miss.—Springfield Grocery Co. v. Devitt, 88 So. 497, 126 Miss. 169.
 64. Tex.—Scharbauer v. Lampasas County, Com.App., 235 S.W. 533.
 65. Cal.—Commonwealth Acceptance Corp. v. Jordan, 246 P. 796, 198 C. 618.
 66. Tex.—Scharbauer v. Lampasas County, Com.App., 235 S.W. 533.
 67. Ill.—People v. New York Title & Mortgage Co., 178 N.E. 661, 346 Ill. 278.
 Tex.—Scharbauer v. Lampasas County, Com.App., 235 S.W. 533.
 68. Cal.—Commonwealth Acceptance Corp. v. Jordan, 246 P. 796, 198 C. 618.
 69. N.H.—U.S. Fidelity & Guar. Co. v. Linehan, 58 A. 956, 73 N.H. 41.

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