

# Vanderbilt Journal of Transnational Law

---

Volume 12  
Issue 1 *Winter 1979*

Article 8

---

1979

## Case Digest

Journal Staff

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Constitutional Law Commons](#), [Property Law and Real Estate Commons](#), and the [Transnational Law Commons](#)

---

### Recommended Citation

Journal Staff, Case Digest, 12 *Vanderbilt Law Review* 205 (2021)  
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol12/iss1/8>

This Comment is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

# CASE DIGEST

This *Case Digest* provides brief analyses of cases that represent current aspects of transnational law. The digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

## TABLE OF CONTENTS

1. ADMIRALTY .....	205
2. ALIEN'S RIGHTS .....	207
3. CUSTOMS .....	208
4. INTERNATIONAL TAXATION .....	208
5. JURISDICTION AND PROCEDURE .....	209

### 1. ADMIRALTY

#### THE CONSTITUTIONALITY OF OBTAINING QUASI IN REM JURISDICTION BY MARITIME ATTACHMENT IS NOT LIMITED BY *Shaffer v. Heitner*

Amoco, after depositing full payment for an oil shipment, alleged a shortage in the amount of oil delivered and brought suit against an agency and a vessel of the Republic of Algeria to recover the value of the missing oil and unearned freight. Amoco commenced the suit quasi in rem by attaching the deposited funds pursuant to New York's Rule B(1) of the Supplemental Rules for Certain Admiralty Maritime Claims. Unaware that the attachment was void because it had not been perfected by seizure of the res within the New York rule's prescribed 90 day period, the district court entered a default judgment for Amoco. The garnishee refused to release funds to Amoco because the attachment was void. Amoco reattached and returned to district court for an extension nunc pro tunc to perfect the original state attachment. The court granted the order since Amoco could have relied solely on Rule B(1) attachment, which does not require possession for perfection, and because Amoco believed Rule B(1) attachment had been accomplished. Defendants motioned the court to vacate the default judgment over a year from its entry, contending that the nunc pro tunc extension was not authorized by New York procedures. Defendants also alleged that the Foreign Sovereign Immunities Act, which became effective before the nunc pro tunc order was entered, prohibits attachment to obtain jurisdiction over foreign states or their agencies, thus barring the nunc pro tunc exten-

sion of the state attachment and the Rule B(1) attachment. In addition, defendants contended that *Shaffer v. Heitner*, 433 U.S. 186 (1977), renders Rule B(1) attachment unconstitutional. The court denied defendants' motion, holding that the nunc pro tunc extension was valid. Thus, there was jurisdictional lapse within which the Foreign Sovereign Immunities Act could become applicable, and the court declined to apply the Act retroactively. The court followed *Grand Bahama Petroleum Co., Ltd. v. Canadian Transportation Agencies, Ltd.*, 450 F. Supp. 447 (W.D. Wash. 1978), in holding Rule B(1) constitutional because *Shaffer* did not apply to maritime attachments. *Significance*—The court granted the nunc pro tunc extension because Amoco could have relied solely on the pre-judgment attachment provisions of Rule B(1). The court followed *Grand Bahama* in holding *Shaffer* inapplicable to Rule B(1) attachment. However, in relying on Rule B(1) the District Court ignored the part of the *Grand Bahama* decision that held the Rule B(1) procedure unconstitutional as insufficient to protect defendants from the mistaken deprivation of their property. *Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne De Navigation*, 459 F. Supp. 1242 (S.D.N.Y. 1978).

#### MAXIMUM LIMITS ON DISABILITY BENEFITS ARE NOT APPLICABLE TO DEATH BENEFITS PAYABLE UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

A hydrologist was fatally injured during the course of his employment with a company under contract with the United States to perform work in South Vietnam. The employment was within the coverage of the Defense Base Act, which incorporates the provisions of the Longshoremen's and Harbor Workers' Compensation Act. Prior to the amendments of the Longshoremen's and Harbor-workers' Act in 1972, both disability and death benefits were subject to the same maximum and minimum limitations. After the 1972 amendments, the Act's section on disability benefits included a maximum limitation, but the section on death benefits did not. The employer, its insurance carrier, and petitioner, the Director of the Department of Labor's Office of Workers' Compensation Programs, contended that Congress had intended that the limitation on disability payments apply to death benefits as well. An administrative decision in favor of respondents, the surviving widow and son, was affirmed by the Court of Appeals. The Supreme Court affirmed, holding that death benefits payable under the Act are not subject to the maximum limitations placed on disability payments. Consulting the legislative history, the Court found both the

language of the Act and the legislative history of the 1972 amendments demonstrated that Congress' omission of a maximum limitation on death benefits was intentional. The legislative history also suggested that the distinction was a rational one since Congress might have retained maximum benefit limitations to discourage fraudulent claims for disability, "a consideration wholly inapplicable to death benefits." *Significance*—Death benefits payable under the Longshoremen's and Harbor Worker's Compensation Act are not subject to the maximum limitations applicable to disability benefits under that Act. *Director, Office of Workers' Compensation Programs, United States Dept. of Labor v. Rasmussen*, 47 U.S.L.W. 4159 (1979).

## 2. ALIEN'S RIGHTS

### REFUSAL OF INS DISTRICT DIRECTOR TO GRANT NON-PRIORITY OR DEFERRED STATUS IS SUBJECT TO THE ARBITRARY AND CAPRICIOUS TEST AS AN ABUSE OF DISCRETION

Plaintiff alien was charged with deportability and requested non-priority or deferred status which was denied by the INS District Director. Following exhaustion of other remedies, plaintiff appealed to the Court of Appeals claiming that the Director's departure from established patterns in denying the requested status was arbitrary and capricious and thus subject to the abuse of discretion test. The INS claimed that the Director's authority was prosecutorial, did not affect substantive rights, and was completely discretionary. Decisions from other circuits supported both claims. The instant court stated that the Director's authority was not prosecutorial, did affect substantive rights since granting non-priority status effectively eliminated the risk of deportation, and was based upon humanitarian concerns for the possible victim. The court thus held that the Director's decision was subject to the arbitrary and capricious test if his actions departed from established norms or were based on an impermissible classification. *Significance*—This decision follows the recent judicial trend allowing challenges to the authority of INS District Directors in their determination of deferred status. *Nicholas v. Immigration and Naturalization Service*, 590 F.2d 802 (9th Cir. 1979).

### 3. CUSTOMS

#### UNITED STATES CUSTOMS CUSTODY AND CONTROL IS BROAD AND CONTINUES FROM TIME OF ARRIVAL IN PORT UNTIL FORMAL RELEASE OF MERCHANDISE BY CUSTOMS AUTHORITIES

Defendant, a dock foreman, appealed his convictions of willfully removing merchandise not yet released by the Customs Service from customs custody and control, in violation of 18 U.S.C. § 549. Defendant contended that he had never removed the goods from the actual possession of customs authorities. He argued that the statutory language "unlawfully removes any merchandise . . . in customs custody or control," should be given a restrictive reading. The trial court instructed the jury that "custody or control" was to be given a broad, constructive meaning and that the "removal" element of the crime was properly defined in terms of common law theft. The court of appeals affirmed the conviction, ruling that application of a broad, constructive custody concept was proper, and that common law concepts of theft could be used in interpreting the federal statute. The court relied in its decision upon *Mungo v. United States*, 423 F.2d 1351 (4th Cir. 1970), which held that imported goods are in customs custody from the moment of arrival in port until formal release by Customs Service. The court cited other statutory language as well, which manifests a general statutory scheme to "broadly protect the collection of customs duties." Recognition of a concept of constructive custody would help to further this scheme. *Significance*—This decision, although it does not deviate from existing law as set out in *Mungo v. United States*, provides needed reinforcement for the doctrine of constructive customs custody, an issue on which there is little direct authority in the federal courts. *United States v. Harold*, 588 F.2d 1136 (5th Cir. 1979).

### 4. INTERNATIONAL TAXATION

#### UNITED STATES PURCHASER OF FOREIGN MANUFACTURED PRODUCT IS DENIED FOREIGN INVESTMENT TAX CREDIT IF ORDER FOR PRODUCT WAS MADE DURING 1971 CONGRESSIONAL SUSPENSION OF INVESTMENT CREDIT

A United States corporation entered a preliminary agreement with a foreign manufacturer to produce a boat. The agreement was made between August 15, 1971 and December 20, 1971, a period during which Congress suspended the foreign investment tax credit. The suspending provision, § 48(a)(7), denied investment

tax credit to foreign goods made pursuant to an order placed after August 15, 1971. The Tax Court denied the taxpayer an investment credit of \$11,800 because it held that preliminary agreements constituted an order within § 48(a)(7). Citing House Reports on § 48(a)(7) and the Treasury Regulation interpreting the section, the court of appeals held that any directive reasonably designed to affect acquisition is an order within § 48(a)(7) and therefore the Tax Court properly denied taxpayer's claimed investment tax credit. *Significance*—This decision is the first interpretation of the word "order" as used in § 48(a)(7), suspending temporarily the foreign investment tax credit. *Maid of the Mist Corp. v. Commissioner of Internal Revenue*, No. 77-4213 (2d Cir. Mar. 20, 1979).

## 5. JURISDICTION AND PROCEDURE

**A FOREIGN STATE IS NOT IMMUNE FROM A SUIT FOR REAL PROPERTY TAXES WHEN SERVICE OF PROCESS HAS BEEN MADE ACCORDING TO ONE OF THE ALTERNATIVE PROCEDURES UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT, WHEN THE NATURE OF THE FOREIGN STATE'S COURSE OF CONDUCT IS COMMERCIAL, AND WHEN A LIEN, OR THE EQUIVALENT, IS FILED AGAINST THE FOREIGN STATE'S PROPERTY**

Plaintiff, County Board of Arlington County, Virginia, brought suit against defendant, Government of the German Democratic Republic, for 1977 county real estate taxes on an apartment building owned by defendant. Defendant moved to dismiss on the grounds that the court had no jurisdiction because, among other things, there had been no service of process as required under the Foreign Sovereign Immunities Act and because the defendant was immune from suit on the property under the Act. The district court denied the motion to dismiss, holding that there had been proper service of process and that the foreign state should not be granted immunity from suit as to this piece of real estate. Service of process had been made by mailing the documents certified as mailed by the appropriate court clerk and received by the Foreign Minister of the defendant government, as evidenced by the copy of the return receipt filed with the court. This method is the third of four alternatives under the Foreign Sovereign Immunities Act, and the court found it correctly executed and appropriate in this case. The court denied immunity as to the property on two grounds. First, the defendant government's conduct regarding the property was commercial in nature and therefore was excluded from a grant of immunity under § 1605(a)(2). Second, because the county requested a declaratory judgment that the real property was subject

to a tax lien on the property, the rights to immovable property situated in the United States were put in issue, a second exception to immunity. *Significance*—The filing of a tax lien on commercial real estate of a foreign state, or the equivalent thereof, places in issue the rights in immovable property situated in the United States, and thus renders the foreign state subject to the jurisdiction of United States courts in a suit regarding that property. *County Bd. of Arlington County v. Gov't. of the German Democratic Republic*, No. 78-293-A (E.D. Va., filed Sept. 6, 1978).