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IS INJURY A TORTIOUS ACT?: INTERPRETING FLORIDA’S LONG-ARM STATUTE

Cole Barnett*

Abstract

Florida Statute § 48.193 enumerates several acts that grant Florida courts personal jurisdiction over nonresident defendants. Under Florida Statute § 48.193(1)(a)(2), nonresident defendants may become subject to personal jurisdiction in Florida by “committing a tortious act within this state.” The Florida district courts of appeal are split over the correct interpretation of this phrase. Along with the federal courts that sit in Florida, the state’s First and Third District Courts of Appeal broadly interpret the phrase to reach nonresident defendants whose out-of-state acts cause injury in Florida. In contrast, the state’s Second, Fourth, and Fifth District Courts of Appeal narrowly interpret the same language to exclude personal jurisdiction over nonresident defendants who cause injury in Florida by acting outside of the state. The Florida Supreme Court and the Florida Legislature have declined to resolve this split, providing the opportunity for forum shopping when it is advantageous for plaintiffs to avoid the narrow interpretation by filing in federal court. This Note argues that the broad interpretation is preferable based upon canons of statutory interpretation, the policy of providing Florida residents with an appropriate forum to redress their harms, and the expansive reach of Florida’s personal jurisdiction statutory scheme.

INTRODUCTION .................................................................................................................................................. 2302

I. PERSONAL JURISDICTION IN FLORIDA AND THE SPLIT OVER § 48.193(1)(A)(2)......................................................................................................................................... 2304

II. OTHER STATES’ INTERPRETATIONS OF “COMMITTING A TORTIOUS ACT WITHIN THIS STATE” ................................................................................................................................. 2308

III. THE BROAD INTERPRETATION IS PREFERABLE .......................................................... 2310

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INTRODUCTION

Statutory interpretation begins with the text itself, but sometimes seemingly clear text proves ambiguous. For example, § 48.193(1)(a)(2) of the Florida Statutes confers specific personal jurisdiction over nonresident defendants based upon their ‘‘[c]ommitting a tortious act within this state.’’ However, the phrase, ‘‘committing a tortious act within this state,’’ is more ambiguous than it appears. Indeed, two of Florida’s District Courts of Appeal (DCA)—the First and Third—as well as the United States District Courts for the Northern, Middle, and Southern Districts of Florida and the United States Court of Appeals for the Eleventh Circuit have interpreted the phrase broadly in ruling that an injury within Florida caused by an out-of-state act suffices to confer jurisdiction. In contrast, the state’s Second, Fourth, and Fifth DCAs have interpreted the phrase narrowly. These courts require the actions of nonresident defendants to occur within

2. The word ‘‘ambiguity’’ can be used to describe semantic ambiguity, syntactic ambiguity, or used as ‘‘a catch-all phrase, referring to any uncertainty in statutory meaning.’’ See WILLIAM D. POPKIN, A DICTIONARY OF STATUTORY INTERPRETATION 11 (2007).
4. See infra Section III.A (explaining that ‘‘tortious act’’ is a legal term of art that is ambiguous and noting that multiple definitions of ‘‘tortious act’’ have been asserted including: a substantial aspect of a tort; where the tort is completed; or where an injury occurs).
5. See infra Part I.
6. See infra Part I.
7. See, e.g., Posner v. Essex Ins. Co., 178 F.3d 1209, 1216 (11th Cir. 1999) (holding that in-state injury alone is enough under Florida Statutes § 48.193(1)(a)(2)).
8. See infra Part I.
Florida’s state boundaries in order to confer personal jurisdiction under § 48.193(1)(a)(2). The Florida Supreme Court has avoided the issue by merely noting the split in footnotes.

Resolving this split is important because the split incentivizes plaintiffs to avoid the Second, Fourth, and Fifth DCAs by forum shopping and filing in federal, rather than state court. For example, assume a nonresident defendant commits an act outside Florida that injures a resident of Florida’s Fourth District. Because Florida’s Fourth DCA applies § 48.193(1)(a)(2) narrowly, the court will find that it does not have jurisdiction over the dispute. However, if the plaintiff meets the amount-in-controversy requirement of 28 U.S.C. § 1332, the plaintiff can file the claim in the United States District Court for the Southern District of Florida. The Southern District will likely find that jurisdiction is proper under § 48.193(1)(a)(2) because the court applies the broad interpretation.

Part I of this Note introduces the two-step process that Florida courts use to determine personal jurisdiction and describes the circuit split regarding § 48.193(1)(a)(2). Part II provides a brief survey of other states that have interpreted language similar to § 48.193(1)(a)(2) as a useful comparison. Part III argues that, for three reasons, in-state injury alone is sufficient to confer jurisdiction under § 48.193(1)(a)(2). First, the legal term of art “tortious act” includes not only the act element of a tort but also the injury element. Second, strong policy arguments favor interpreting § 48.193(1)(a)(2) broadly. Third, the broad interpretation is consistent with the expansive reach of § 48.193 and Florida’s overall personal jurisdiction statutory scheme. Part IV concludes that the Florida Legislature should

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9. For example, the Second District Court of Appeal held that “[a]lthough the fact that an injury occurs in Florida is crucial to a determination of when a cause of action accrued, the occurrence of the injury alone in the forum state does not satisfy . . . [§] 48.193((1)(a)(2)).” Phillips v. Orange Co., 522 So. 2d 64, 66 (Fla. Dist. Ct. App. 2d 1988).

10. See, e.g., Internet Solutions Corp. v. Marshall, 39 So. 3d 1201, 1206 n.6 (Fla. 2010); Wendt v. Horowitz, 822 So. 2d 1252, 1253 n.2 (Fla. 2002).


13. See id. (stating that § 48.193(1)(a)(2) “should not be read to reach conduct in another state that causes injury to someone in Florida”).

14. See 28 U.S.C. § 1332 (the case must involve a claim in excess of $75,000 to meet the amount in controversy requirement).

15. By definition, because § 48.193(1)(a)(2) is only applicable when a Florida resident sues a nonresident defendant, 28 U.S.C. § 1332’s diversity requirement will always be satisfied. See id.


17. There are seven other “two-step” states that have interpreted either the same or functionally equivalent language. Four of these states have interpreted such language broadly and the other three states have interpreted it narrowly. This Note will provide data for states that use a two-step process for determining personal jurisdiction. See infra Part II.
redraft the provision using unambiguous language that clearly confers jurisdiction when nonresident defendants commit extraterritorial acts that cause injury in Florida.18

I. PERSONAL JURISDICTION IN FLORIDA AND THE SPLIT OVER § 48.193(1)(A)(2)

Section 48.193 of the Florida Statutes enumerates acts that confer jurisdiction over nonresident defendants.19 The Florida Supreme Court has held that Florida courts must engage in a “two-step” process when applying § 48.193.20 In the first step, courts determine whether there are “sufficient jurisdictional facts” alleged “to bring the action within the ambit of [Florida’s long-arm] statute.”21 If this threshold is met, the court then determines in the second step whether the defendant has sufficient “minimum contacts” with Florida to satisfy the Fourteenth Amendment’s due process requirements.22

Like other states that have an enumerated-act statute, Florida has created two distinct categories of personal jurisdiction—“specific” and “general.”24 Section 48.193(1)(a) contains Florida’s “specific” jurisdiction provisions. These provisions are satisfied when a nonresident defendant personally or through an agent commits one of the enumerated acts in § 48.193(1)(a) and a cause of action arises out of that act. Section 48.193(2), Florida’s “general” jurisdiction provision, provides that a nonresident “defendant who is engaged in substantial and not isolated activity within this state . . . is subject to the [general] jurisdiction of the courts of this state, whether or not the claim arises from that activity.” Because § 48.193(1)(a)(2) is a specific jurisdiction provision, this Note focuses on the specific jurisdiction context.

Under § 48.193(1)(a)(2), a nonresident defendant satisfies Florida’s

18. This Note leaves open the question of whether the provision should be limited to intentional torts. See Ohio Rev. Code Ann. § 2307.382(6) (West 2013) (conferring jurisdiction when a nonresident intentionally causes harm in Ohio by an act outside the state).


20. See Venetian Salami Co. v. Parthenais, 544 So. 2d 499, 502 (Fla. 1989) (“The mere proof of any one of the several circumstances enumerated in section 48.193 as the basis for obtaining jurisdiction of nonresidents does not automatically satisfy the due process requirement of minimum contacts. We do recognize, however, that implicit within several of the enumerated circumstances are sufficient facts which if proven, without more, would suffice to meet the requirements of International Shoe Co.”).

21. Id.

22. Id. (internal quotation marks omitted).

23. See Fla. Stat. § 48.193(1) for the list of enumerated acts that may satisfy the first step in obtaining specific jurisdiction over nonresident defendants. See id. at § 48.193(2) for enumerated acts that may satisfy the first step in obtaining general jurisdiction over nonresident defendants.

long-arm statute by "[c]ommitting a tortious act within this state." Florida's DCAs are split over the correct interpretation of § 48.193(1)(a)(2). The First and Third DCAs have held that an act or omission outside Florida that causes an injury in Florida satisfies § 48.193(1)(a)(2). Florida's federal courts—the Eleventh Circuit and the District Courts for the Northern, Middle, and Southern Districts—have also held that an injury-causing act within Florida's physical boundaries to satisfy § 48.193(1)(a)(2). This Note labels this view the "broad interpretation." In contrast, Florida's Second, Fourth, and Fifth DCAs require the nonresident defendant to commit the injury-causing act within Florida's physical boundaries to satisfy § 48.193(1)(a)(2). This Note labels this view the "narrow interpretation."

Florida's First DCA initially embraced the narrow interpretation, but subsequently adopted the broad interpretation in International Harvester Co. v. Mann. In International Harvester, a stockholder from Florida sued a nonresident for breach of fiduciary duty. The First DCA reasoned that


26. E.g., Int'l Harvester Co. v. Mann, 460 So. 2d 580, 581 (Fla. Dist. Ct. App. 1st 1984) (holding that the plaintiff needs to merely assert that an injury occurred in Florida; Wood v. Wall, 666 So. 2d 984, 986 (Fla. Dist. Ct. App. 3d 1996) ("Because [defendants] are alleged to have committed purposeful, non fortuitous, intentional tortious acts on [the plaintiff] located in Florida, [the defendants] are deemed to have subjected themselves to the long-arm jurisdiction of Florida courts . . . .").

27. See Posner, 178 F.3d at 1216.


31. See Phillips v. Orange Co., 522 So. 2d 64, 66 (Fla. Dist. Ct. App. 2d 1988) ("Although the fact that an injury occurs in Florida is crucial to a determination of when a cause of action accrued, the occurrence of the injury alone in the forum state does not satisfy . . . § 48.193(1)(a)(2)].").


34. Jack Pickard Dodge, Inc. v. Yarbrough, 352 So. 2d 130, 134 (Fla. Dist. Ct. App. 1st 1977) (rejecting the broad interpretation in a negligence case where the nonresident defendant "committed no act in Florida").


36. Id.
the plaintiff had asserted an injury that "occurred within Florida."\textsuperscript{37} The court held that "[i]t is well-established that the commission of a tort for purposes of establishing long-arm jurisdiction does not require physical entry into the state, but merely requires that the place of injury be within Florida."\textsuperscript{38}

Florida’s Third DCA has also espoused the broad interpretation. In \textit{Wood v. Wall},\textsuperscript{39} a Florida attorney entered into a partnership with nonresidents to purchase property in Pennsylvania.\textsuperscript{40} The Florida attorney filed suit when two nonresident partners “personally purchased property and ultimately transferred it to the established partnership at an undisclosed profit.”\textsuperscript{41} The Third DCA upheld personal jurisdiction under § 48.193(1)(a)(2) even though the defendants did not commit an act within Florida.\textsuperscript{42}

The Eleventh Circuit Court of Appeals has also adopted the broad interpretation of § 48.193(1)(a)(2), following the lead of the U.S. Court of Appeals for the Fifth Circuit before it split to form the Eleventh Circuit.\textsuperscript{43} Florida’s Northern, Middle, and Southern Districts followed the Eleventh Circuit’s interpretation.\textsuperscript{44} These federal courts have applied the broad interpretation in various contexts: negligent estate planning,\textsuperscript{45} shareholder

\begin{itemize}
  \item \textsuperscript{37} \textit{Id.}
  \item \textsuperscript{38} \textit{Id.} at 582. For an intentional tort example, see Allerton v. State Dept. of Ins., 635 So. 2d 36, 40 (Fla. Dist. Ct. App. 1st 1994).
  \item \textsuperscript{39} 666 So. 2d 984 (Fla. Dist. Ct. App. 3d 1996).
  \item \textsuperscript{40} \textit{Id.} at 985.
  \item \textsuperscript{41} \textit{Id.}
  \item \textsuperscript{42} \textit{Id.} at 986 (citing \textit{Int’l Harvester}, 460 So. 2d at 581). \textit{But see} Casita, L.P. v. Maplewood Equity Partners L.P., 960 So. 2d 854, 857 (Fla. Dist. Ct. App. 3d 2007) ("[Section 48.193(1)(a)(2)] expressly requires that the tort [of defamation] be committed in Florida. Under Florida law, the tort of defamation is committed in the place where it is published.").
  \item \textsuperscript{43} "[T]his court’s predecessor held that jurisdiction under § 48.193[(1)(a)(2)] was not limited to a situation where an act in Florida caused an injury in Florida but also . . . reached the situation where a foreign tortious act caused injury in Florida." Sun Bank, N.A. v. E.F. Hutton & Co., 926 F.2d 1030, 1033–34 (11th Cir. 1991) (quoting Bangor Punta Operations, Inc. v. Universal Marine Co., 543 F.2d 1107, 1109 (5th Cir. 1976) (citing Rebozo v. Washington Post Co., 515 F.2d 1208, 1212–13 (5th Cir. 1975))); \textit{see also} Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (ruling that the new Eleventh Circuit will follow the precedents established by the Fifth Circuit in order to create a stable and predictable new circuit court). The Eleventh Circuit has been inconsistent, but perhaps the application of personal jurisdiction is different when the act occurs in a foreign country. \textit{Compare} Oriental Imports & Exports, Inc. v. Maduro & Curiel’s Bank, N.V., 701 F.2d 889, 894 (11th Cir. 1983) (denying personal jurisdiction over a nonresident defendant where the alleged actions occurred in the Netherlands), \textit{with} Posner v. Essex Ins. Co., 178 F.3d 1209, 1216 (11th Cir. 1999) (holding that in-state injury alone is sufficient).
  \item \textsuperscript{45} \textit{See} Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253, 255–56 (11th Cir. 1996) (involving a will that was negligently prepared in Michigan).
\end{itemize}
suits, professional negligence and breach of contract, breach of fiduciary duty, trademark infringement and unfair competition, and tortious interference with business.

In contrast, Florida's Second, Fourth, and Fifth DCAs have held that in-state injury alone does not satisfy § 48.193(1)(a)(2). Comparing a Fifth DCA case with a similar case from the Middle District of Florida exemplifies this split. In Freedom Savings & Loan Ass'n v. Ormandy & Associates, Inc., the Fifth DCA held that a tortious interference with business claim was not a "tortious act" within Florida because the defendant's act of wrongfully revoking a letter of credit "occurred in Pennsylvania." Contrarily, in Enviracarbon, Inc. v. Couch, the Middle District held that a nonresident's alleged tortious interference "with an advantageous business relationship" by soliciting—outside the state—

46. See, e.g., Posner, 178 F.3d 1213, 1216 (describing a shareholder suit involving defendant corporations from Maryland and Pennsylvania and minority shareholders from Florida). However, this suit was dismissed for lack of injury. Id. at 1219–20.

47. See Kim v. Keenan, 71 F. Supp. 2d 1228, 1233–34 (M.D. Fla. 1999) (upholding personal jurisdiction over Georgia lawyers in Florida court when the alleged negligent misrepresentation and breach of contract between the lawyers and the plaintiff occurred in Georgia).

48. See Mehlenbacher ex rel. Asconi Corp. v. Jitaru, 6:04CV1118ORL-22KRS, 2005 WL 4585859, at *1, *11 (M.D. Fla. June 6, 2005) (finding the court could assert jurisdiction where the shareholders injured were Florida residents, the directors were from other states or foreign countries, and the alleged fiduciary breaches occurred outside of Florida).

49. See Promex, LLC v. Perez Distrib. Fresno, Inc., 09-22285-CIV, 2010 WL 3452341, at *1, *5 (S.D. Fla. Sept. 1, 2010) ("The alleged injury of consumer confusion occurs in Florida, when customers buy Defendant's products under the mistaken belief that they are buying Plaintiff's product. Thus . . . Defendant allegedly committed a tortious act outside the state that causes injury in Florida and is, therefore, subject to Florida's Long-Arm Statute under Section 48.193(1)(a)(2).")


51. E.g., Phillips v. Orange Co., 522 So. 2d 64, 66 (Fla. Dist. Ct. App. 2d 1988) ("Although the fact that an injury occurs in Florida is crucial to a determination of when a cause of action accrued, the occurrence of the injury alone in the forum state does not satisfy . . . section 48.193((1)(a)(2)).")


53. Compare Judy A. Clausen, Beware—Florida's Long Arms Can Reach Through Cyberspace and Grab Unsuspecting Professionals: □Personal Jurisdiction in Professional Malpractice Cases, 10 FLA. COASTAL L.J. 505, 512–13 (2009) (stating that the Fifth DCA embraces the broad interpretation by citing to Deloitte & Touche v. Gencor Industries, Inc., 929 So. 2d 678, 680–81, 683 (Fla. Dist. Ct. App. 5th 2006)), with Deloitte, 929 So. 2d at 682 (stating that "in order for jurisdiction to be based on the commission of a tortious act in Florida, Florida law does require, at a minimum, that the misrepresentation was made in the State of Florida").

54. 479 So. 2d 316 (Fla. Dist. Ct. App. 5th 1985).

55. Id. at 316–17.

potential clients for his own benefit satisfied § 48.193(1)(a)(2).\textsuperscript{57} The \textit{Enviracarbon} court noted that it had "consistently applied a broad construction of this statutory provision."\textsuperscript{58}

II. OTHER STATES' INTERPRETATIONS OF "COMMITTING A TORTIOUS ACT WITHIN THIS STATE"

Seventeen other states—like Florida—have enacted enumerated-act long-arm statutes and embraced a two-step approach to determine personal jurisdiction.\textsuperscript{59} Seven of these seventeen two-step states use the same language or a functional equivalent to the language used in § 48.193(1)(a)(2).\textsuperscript{60} For the purposes of this Note, a provision will be considered functionally equivalent only if it deviates from § 48.193(1)(a)(2)'s exact wording in a manner that does not affect whether the broad or narrow interpretation is controlling.\textsuperscript{61} The table below displays how these seven states with functionally equivalent language have interpreted their provisions. Four of the states with functionally equivalent language have adopted a broad interpretation while the other three states have adopted a narrow interpretation.\textsuperscript{62}

\begin{footnotesize}
\begin{enumerate}
\item[57.] Id. at *1–3.
\item[58.] Id. at *2.
\item[59.] The states are Connecticut, Delaware, Georgia, Hawaii, Idaho, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, North Carolina, New Mexico, New York, Ohio, West Virginia, and Wisconsin. See Douglas D. McFarland, \textit{Dictum Run Wild: How Long-Arm Statutes Extended to the Limits of Due Process}, 84 B.U. L. REV. 491, 525–26 (2004) (documenting the current personal jurisdiction landscape by citing both the long-arm statutes and supreme court cases of these states).
\item[60.] Seven of the seventeen two-step states avoided Florida's problem by not using the "tortious act" language. They do not have a provision that is the same or functionally equivalent to § 48.193(1)(a)(2). These states are Delaware, Maryland, Massachusetts, North Carolina, Ohio, West Virginia, and Wisconsin. See, e.g., N. C. GEN. STAT. § 1-75.4(4) (2013). Montana, Michigan, and Mississippi have provisions that seem to invite the broad interpretation. See, e.g., MONT. R. CIV. P 4(b)(1)(B) (2013) (stating that Montana courts will have jurisdiction over the "commission of any act resulting in accrual within Montana of a tort action"). All three statutes have been interpreted broadly. See, e.g., Jackson v. Kroll, Pomerantz & Cammeron, 724 P.2d 717, 721 (Mont. 1986) (adopting the broad interpretation approach). Ohio is an outlier with a provision that explicitly allows in-state injury to suffice in three specific circumstances. See OHIO REV. CODE ANN. § 2307.382(4), (6)–(7) (West 2013).
\item[61.] One example of a functionally equivalent provision is when a statute contains the same language as § 48.193(1)(a)(2), but then adds a limited defamation exception. E.g., N.Y. C.P.L.R § 302(a)(2). Also functionally equivalent are provisions that assert jurisdiction based on "a tortious act or omission within this state." E.g., GA. CODE ANN. § 9-10-91(2) (2013) (emphasis added). Provisions are not functionally equivalent if they omit "committing a tortious act within this state" entirely, or if the word "act" is separated from the word "tortious." See, e.g., OHIO REV. CODE ANN. § 2307.382(6)–(7); § 2307.382(3) ("Causing tortious injury by an act or omission in this state . . .").
\item[62.] The states with a broad interpretation are Hawaii, Idaho, Missouri, and New Mexico. The states with a narrow interpretation are Connecticut, Georgia, and New York. See Table \textit{infra}.
\end{enumerate}
\end{footnotesize}
### Narrow v. Broad

Other States’ Interpretations of “Committing a Tortious Act Within this State”

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<th>State</th>
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III. The Broad Interpretation Is Preferable

This Part proposes that § 48.193(1)(a)(2) should be interpreted broadly for three reasons. First, “tortious act” is a legal term of art that encompasses an injury caused by a physical act. Second, the broad interpretation provides Florida residents and businesses with an appropriate forum to redress their injuries. In contrast, the narrow interpretation extends more due process protection to defendants than the U.S. Constitution requires, though there is no evidence the legislature intended § 48.193(1)(a)(2) to create this result. Third, the broad interpretation is consistent with Florida’s broad personal jurisdiction statutory scheme. This Part also addresses the following two lingering arguments used to support the narrow interpretation: (1) that the Florida Supreme Court has already resolved this issue in favor of the narrow interpretation; and (2) that a strict construction rule supports the narrow interpretation.

A. “Tortious Act” is a Legal Term of Art

The correct reading of the term “tortious act” is a technical reading, not a “plain reading.” Normally, when engaging in statutory interpretation, courts should give words “their ordinary, everyday meanings.” But the term “tortious act” is ambiguous. The adjectival modifier “tortious” creates the ambiguity. Without the modifier “tortious,” the noun “act” clearly means “[s]omething done or performed” or “[t]he process of doing or performing.” Yet, when the adjective “tortious” is added to the word “act,” readers have reason to disagree as to whether the phrase means a substantial aspect of a tort, where the tort is

63. The word “tortious” is an adjective defined as either “[c]onstituting a tort; wrongful” or “[i]n the nature of a tort.” BLACK’S LAW DICTIONARY 1627 (9th ed. 2009). The word “act” is a noun defined as “[s]omething done or performed” or “[t]he process of doing or performing; an occurrence that results from a person’s will being exerted on the external world.” Id. at 27. The term “tortious act” is defined as “[a]n act that subjects the actor to liability under the principles of tort law.” Id. at 28.

64. Contra Thomas Jefferson Univ. v. Romer, 710 So. 2d 67, 70–71 (Fla. Dist. Ct. App. 4th 1998) (Farmer, J., concurring and dissenting) (reasoning that the plain reading of § 48.193(1)(a)(2) points to the narrow interpretation “[a]s the statutory text of [(1)][(a)(2)] itself indicates, jurisdiction turns on the commission of a tortious act within this state” (internal quotation marks omitted)).

65. See generally SCALIA & GARNER, supra note 1, at 69–77.

66. Most likely, the term is semantically ambiguous. See POPKIN, supra note 2, at 238–39 (“Semantic ambiguity occurs when a word [or phrase has] two clearly divergent meanings, based on different contexts. For example, a monarch can be a ruler or a butterfly; a ruler can be a measuring device or a monarch.”).


68. See BLACK’S LAW DICTIONARY, supra note 63, at 27.

69. See New Lenox Indus., Inc. v. Fenton, 510 F. Supp. 2d 893, 902 (M.D. Fla. 2007).
completed, where an injury occurs, or performing an act that results in a tort.

To determine whether a technical or a plain interpretation is appropriate, "context [may] indicate[] that a technical meaning applies" when an ordinary phrase is used as a term of art. While the word "act" has an obvious everyday meaning, when combined with the adjective "tortious," the words create the legal term of art "tortious act." When dealing with terms of art, the ordinary legal meaning trumps the ordinary everyday meaning: "[T]he technical [legal] meaning should be favored because that was probably what the legislature had in mind."

Because the word "tortious" significantly alters the meaning of the word "act," "tortious act" is a legal term of art that has a far different meaning than a mere physical act or omission. Indeed, torts are often broken down into multiple elements. For example, negligence-based torts generally require the plaintiff to prove duty, breach, cause, and injury. To demonstrate how a tort can be broken down into elements, assume a Georgia resident stands on the Georgia side of the Florida–Georgia border. The Georgia resident then throws a ball over the border committing a battery when the ball hits a Florida resident. The act element of the battery is the physical act of throwing the ball. Because a battery also requires a harmful contact or injury, the injury suffered by the plaintiff is a necessary part of the action that triggers legal liability. In fact, a algorithm

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70. See State ex. rel. William Ranni Assocs., Inc. v. Hartenbach, 742 S.W.2d 134, 139 (Mo. 1987).
72. SCALIA & GARNER, supra note 1, at 73. See City of Tampa v. Thatcher Glass Corp., 445 So. 2d 578, 579 n.2 (Fla. 1984); ANNE RUTLEDGE, BASIC LEGAL DRAFTING 20 (2012) ("A legal term of art is a word or phrase that has a very specific, particular, sometimes technical meaning. . . ."). We must look past the plain reading and use other methods of interpretation to determine the proper meaning of an ambiguous phrase like "tortious act." See Weber v. Dobbins, 616 So. 2d 956, 958 (Fla. 1993); RONALD BENTON BROWN & SHARON JACOBS BROWN, STATUTORY INTERPRETATION: THE SEARCH FOR LEGISLATIVE INTENT 104–05 (2d ed. 2011).
73. See BLACK'S LAW DICTIONARY, supra note 63 and accompanying text (defining the words "act," "tortious," and the term "tortious act").
74. SCALIA & GARNER, supra note 1, at 73 (stating that legal terms of art should be expected to have technical meaning and using the legal term "person" as an example where the ordinary meaning differs from the "technical-meaning exception").
75. BROWN & BROWN, supra note 72, at 109.
76. E.g., RESTATEMENT (THIRD) OF TORTS: PHYSICAL AND EMOTIONAL HARM § 6 cmt. b, at 67–68 (2010) (discussing the five elements of negligence: duty, failure to exercise reasonable care, factual cause, physical harm, and harm within the scope of liability).
77. See RESTATEMENT (SECOND) OF TORTS § 13, at 25 (1965) (defining the elements of battery).
78. See id.
79. See id. § 13(a), at 25 (a battery requires "a harmful or offensive contact").
80. See id.
physical act does not become "tortious" until the act causes an injury. Therefore, because "tortious act" has a broader meaning than the word "act," the injury element—just like the physical act of throwing the ball—should be considered part of a "tortious act." Indeed, four other states have correctly reasoned that the term "tortious act" encompasses the injury element.

In contrast, under the narrow interpretation, courts have reasoned that "tortious" only means wrongful and that "act" is the operative word in § 48.193(1)(a)(2). But the adjective "tortious" modifies the noun "act" by requiring the plaintiff to plead all of the elements of a tort to confer jurisdiction. Therefore, § 48.193(1)(a)(2) is distinguishable from other provisions that do not use the modifier "tortious." Moreover, focusing on the word "act" is improper because many cases are more complex than the battery-across-the-state-line illustration used above. Separating the defendant's act from the injury element in the realms of business interference, trademark infringement, and breach of fiduciary duty

81. See, e.g., id. § 13(b), at 25 (noting that a physical act becomes a battery if there is "a harmful contact with the person").
82. See, e.g., New Lenox Indus., Inc. v. Fenton, 510 F. Supp. 2d 893, 902 (M.D. Fla 1993) ("[T]he plaintiff must demonstrate that the nonresident defendant committed a substantial aspect of the alleged tort in Florida . . . . The tortious act does not have to take place in Florida, but a substantial aspect would include the situation in which a foreign tortious act causes injury within the forum." (internal quotation marks omitted)).
84. See Thomas Jefferson Univ. v. Romer, 710 So. 2d 67, 71 (Fla. Dist. Ct. App. 4th 1998) (Farmer, J., concurring and dissenting) (emphasizing the word "act" in the term "tortious act").
85. See id. at 71 ("[T]he person invoking jurisdiction under such statutes has the burden of proving facts which clearly justify the use of that method of service of process.").
86. E.g., Fla. STAT. § 48.193(1)(a)(6) (2013) (using the word "act" without the word "tortious").
87. For example, even a simple negligence claim includes the complex element of foreseeability. See RESTATEMENT (THIRD) of TORTS § 3, at 25 (1965).
suits is more difficult than in a simple battery where the physical act and the injury are easily discernible by the naked eye. For example, a defamatory internet posting made outside of Florida is not considered a "tortious act" within the state until the website is accessed in Florida, the location where the injury occurs. For another example, consider that trademark infringement, which causes consumer confusion in Florida, may not be an "act" in Florida. But the infringement is still considered a "tortious act" because the infringement causes injury in Florida. Due to the difficulty of locating the defendant's act in complex cases and then distinguishing that act from the injury, courts should adopt the broad interpretation and read § 48.193(1)(a)(2) to encompass in-state injuries caused by out-of-state acts.

B. The Broad Interpretation Provides Florida Residents and Businesses with an Appropriate Forum

Like most two-step states, Florida initially adopted a version of the Uniform Interstate and International Procedure Act § 1.03, which was embodied in Florida Statutes § 48.182 and later replaced by § 48.193. Section 48.182 was Florida's first general service of process statute regarding nonresident defendants. The statute responded to the increased possibility of "compensable wrongful acts committed outside [Florida] by nonresidents." The Florida Legislature structured the language of

91. See Internet Solutions Corp. v. Marshall, 39 So. 3d 1201, 1216 (Fla. 2010).
93. See id.
95. See W.C. Gentry, In Personam Jurisdiction—Due Process and Florida’s Short “Long-Arm,” 23 U. Fla. L. Rev. 336, 343-44 & n.63 (1971) (discussing how states implemented the "commission of a tortious act within the state" language borrowed from § 1.03(3) of the Uniform Interstate and International Procedure Act).
99. Id.
§ 48.182 similar to that of § 48.193(1)(a)(6).\textsuperscript{100} The drafters geared § 48.182 toward the product liability context,\textsuperscript{101} and there is evidence that the legislature intended § 48.182 to reach the limits of due process.\textsuperscript{102} Section 48.193(1)(a)(2) repealed § 48.182 in 1973.\textsuperscript{103}

This small amount of legislative history for § 48.182 is not useful in determining the legislative intent behind § 48.193(1)(a)(2). The relevant senate bills, house bills, and session laws provide no further guidance for interpreting § 48.193(1)(a)(2).\textsuperscript{104} In addition, scholars have questioned statutory interpretation’s value as a tool for discovering legislative intent because statutes are often “drafted by multiple persons, often with conflicting objectives.”\textsuperscript{105}

Still, some courts have suggested that the legislature intended § 48.193(1)(a)(2) to be interpreted narrowly.\textsuperscript{106} First, these courts reason that because the legislature did not draft § 48.193(1)(a)(2) to read “commission of a tort in this state,” the legislature intended the narrow interpretation.\textsuperscript{107} However, when statutory language is ambiguous, the “plain language of a statute is not the ‘best evidence’ of legislative intent.”\textsuperscript{108} Indeed, one court has reasoned that the broad interpretation is correct based on a plain reading of “commission of a tortious act.”\textsuperscript{109}

Implicit in the reasoning behind the narrow interpretation is that the


\textsuperscript{101} See Gentry, supra note 95, at 357 (noting that “enunciated legislative intent suggests that [§ 48.182] aims primarily at providing in personam jurisdiction in product liability suits” (footnote omitted).

\textsuperscript{102} See S.B. 255, 1970 Leg., Reg. Sess. (Fla. 1970) (Senator de la Parte) (“[T]he legislature intends that the courts of this state shall have personal jurisdiction over nonresidents for wrongful acts committed outside the state which causes injury, loss, or damage to persons within Florida to the extent due process considerations permit . . . .”) (emphasis added).


\textsuperscript{104} See S.B. 886, 1973 Leg., Reg. Sess. (Fla. 1973) (stating § 48.193 provides “for personal service of process outside the state under certain circumstances; repealing § 48.182” and provides a new long arm statute dealing with acts committed by resident or nonresidents within or outside the state); H.B. 1486, 1973 Leg., Reg. Sess. (Fla. 1973) (same).


\textsuperscript{107} Id. (internal quotation marks omitted).

\textsuperscript{108} Scalia & Garner, supra note 1, at 397.


https://scholarship.law.ufl.edu/flr/vol66/iss6/2
Florida Legislature intended the narrow interpretation because the legislature adopted an enumerated-act statute without a provision that extends the statute to the limits of due process. \textsuperscript{110} Yet, in the context of an out-of-state act that causes in-state injury, the legislature’s adoption of an enumerated-act long-arm statute—not interpreted to the limits of due process—does not prove that the legislature intended to offer nonresident defendants more constitutional protection than required.\textsuperscript{111}

Therefore, absent clear legislative intent to the contrary, the broad interpretation is preferable on policy grounds because Florida’s “long-arm statutes [should] protect its residents and allow them to seek redress against nonresidents who do them harm.” \textsuperscript{112} Thus, courts should broadly interpret § 48.193(1)(a)(2) so all Florida residents and businesses harmed by a tortious act can file suit in Florida.

Under the narrow interpretation, some courts will dismiss cases in the first step even though those cases may be constitutional. For example, in the intentional tort context, under the \textit{Calder v. Jones} \textsuperscript{113} “effects test,” the U.S. Constitution may permit courts to assert personal jurisdiction over

\textsuperscript{110} For a discussion of the states that have an enumerated-act statute or court rule with a “to the limits” provision, see McFarland, \textit{supra} note 59, at 529–31.

\textsuperscript{111} A survey of states that have both an enumerated-act statute and a “to the limits” clause shows that the choice to allow in-state injury alone, caused by an out-of-state act, to be a basis for personal jurisdiction is independent from the choice to add a “to the limits” provision. Maine explicitly allows in-state injury to suffice along with adopting a “to the limits” provision. \textit{See ME. REV. STAT.} tit. 14, § 704-A(2)(b) (2013). In contrast, Alaska and Nebraska both have a “to the limits” provision, yet neither provide room for the broad interpretation. \textit{See ALASKA STAT.} § 09.05.015(a)(3), (c) (2013); \textit{NEB. REV. STAT.} § 25-536(1)(c), (2) (2013). In further contrast, Illinois, South Dakota, and Tennessee use ambiguous language that could be interpreted broadly or narrowly, but still have a “to the limits” provision. \textit{See 735 ILL. COMP. STAT.} 5/2-209 (a)(2), (c) (2013); \textit{S.D. CODIFIED LAWS} § 15-7-2(2), (14) (2003); \textit{TENN. CODE ANN.} § 20-2-214(a)(2), (6) (2013).

\textsuperscript{112} Jeffrey A. Van Detta & Shiv K. Kapoor, \textit{Extraterritorial Personal Jurisdiction for the Twenty-First Century: A Case Study Reconceptualizing the Typical Long-Arm Statute to Codify and Refine International Shoe After Its First Sixty Years}, \texti3 SETON HALL CIR. REV. 339, 347 (2007). For a discussion of the ability of long-arm statutes to protect a state’s residents and businesses, see \textit{id}. In their Article, Professors Detta and Kapoor note that:

In addition to wanting such long-arm statutes, states need them in order to protect their residents and allow them to seek redress against nonresidents who do them harm . . . . ‘[T]he foundations of jurisdiction include the interest that a State has in providing redress in its own courts against persons who inflict injuries upon, or otherwise incur obligations to, those within the ambit of the State’s legitimate protective policy.’ Such a long-arm statute can also create a better environment for businesses (especially smaller businesses) in the state as they tend to minimize costs from having to pursue out-of-state legal actions that could otherwise be pursued within the state.

\textit{id.} (footnote omitted) (quoting Nelson v. Miller, 143 N.E.2d 673, 676 (Ill. 1957)).

nonresident defendants for out-of-state acts (at least with intentional torts like defamation) that cause a foreseeable injury in the forum state. While some courts have criticized and narrowly construed the “effects test,” the test’s use is common and growing. Section III.A’s ball-throwing hypothetical—where a resident of Georgia stands in Georgia and throws a ball at a victim in Florida—exemplifies an intentional-tort effects-test case. Under the narrow interpretation, courts would dismiss the suit in the first step because the nonresident defendant did not commit an act in Florida. Yet, under the effects test, personal jurisdiction would likely be constitutional as the nonresident “targeted” a Florida resident, “intended” harmful effects to occur in Florida, and therefore, “purposefully availed” himself of the forum. The narrow interpretation prevents Florida courts from conferring jurisdiction over nonresident defendants who harm Florida residents and businesses. Thus, the broad interpretation is preferable on policy grounds.

114. Id. at 788–90 (holding that personal jurisdiction based on an intentional tort not performed in the state is constitutional where the harm is foreseeable); see C. Douglas Floyd & Shima Baradaran-Robison, Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects, 81 IND. L.J. 601, 615 (2006) (“[C]ourts have applied Calder to cases alleging intentional torts other than defamation . . . . includ[ing] trademark infringement, RICO violations, misappropriation of trade secrets, unfair competition, trademark dilution, tortious interference with contract, fraud, and breach of fiduciary duty.”).

115. See, e.g., J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2788 (2011) (plurality opinion) (requiring defendant to “target” the forum in question under the stream-of-commerce theory to satisfy the effects test); Sabados v. Planned Parenthood of Greater Ind., 882 N.E.2d 121, 127 n.4 (Ill. App. Ct. 2007) (“Calder is limited by its facts and has been consistently criticized.”).

116. See Cassandra Burke Robertson, The Inextricable Merits Problem in Personal Jurisdiction, 45 U.C. DAVIS L. REV. 1301, 1304 n.9 (2012) (comparing the growth of stream-of-commerce cases to the growth of effects-test cases and finding that “there were approximately 94 stream-of-commerce cases between 1997 and 2000, as compared to 77 effects-test cases,” and that “[a] decade later, between 2007 and 2010, the number of stream-of-commerce cases had grown to 167—but the number of effects-test cases had grown to 294”).

117. Assuming just these limited facts, there are no other provisions under § 48.193 that cover this type of act. See FLA. STAT. § 48.193(1)(a) (2013).

118. While the “targeted” language was used under the stream-of-commerce theory in J. McIntyre, the tort in this example was not “mere untargeted negligence” but “[r]ather . . . intentional, and allegedly tortious, action . . . expressly aimed . . . “ at a Florida resident. See Calder, 465 U.S. at 789.

119. We can assume this defendant intended to harm the victim for the purposes of the hypothetical. This is probably a step beyond the facts in Calder. In Calder, the defendants themselves had not placed the libelous article in circulation in California. Id. In this hypothetical, the defendant is directly responsible for the harmful effects in Florida; he placed the harm-causing instrument (the ball) into Florida himself. Thus, the defendant is the “primary participant[] in an alleged wrongdoing intentionally directed” at the Florida resident. See id. at 790.

120. See Hanson v. Denckla, 357 U.S. 235, 253 (1958) (setting forth the purposeful availment requirement); Floyd & Baradaran-Robison, supra note 114, at 612 (“[S]ome post-Calder personal jurisdiction cases have treated the effects test as an alternative way to establish purposeful availment.”).
C. The Whole-Text Canon Supports the Broad Interpretation

When taken as a whole,121 Florida’s long-arm statutes create a tight personal-jurisdiction mesh with several overlapping provisions.122 In addition to § 48.193(1)(a)(2), Florida Statutes § 48.193 contains other specific personal jurisdiction provisions.123 For example, § 48.193(1)(a)(8) confers jurisdiction in paternity proceedings if the person engaged in intercourse while in Florida. In addition to § 48.193, Florida has other long-arm statutes that cover nonresidents.124 For example, § 48.171 confers jurisdiction over nonresident motorists. Therefore, Florida’s long-arm statutes provide Florida residents and businesses with a forum to litigate their harms in numerous contexts.125 However, while overlaps may exist,126 some jurisdictional gaps remain.

Importantly, § 48.193(1)(a)(2) serves to close one substantial gap left open by § 48.193(1)(a)(6). Section 48.193(1)(a)(6) provides specific jurisdiction over nonresident defendants for causes of action arising from their out-of-state acts that cause injury to persons or property in Florida in two circumstances. Section 48.193(1)(a)(6)(a) is satisfied if, at or around the time of injury, “[t]he defendant was engaged in solicitation or service activities within this state”127 or if “[p]roduct, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or

121. The whole-text canon “requires the interpreter to consider the whole text of a statute in order to determine statutory meaning.” POPKIN, supra note 2, at 281. “The point of [the whole statute] maxim is that no part of the statute should be interpreted in isolation from the rest of the statute.” BROWN & BROWN, supra note 72, at 104–05.


123. These provisions provide personal jurisdiction for various acts, such as: business ventures; mortgaging real property in Florida; insuring a person or property located in Florida at the time of contracting; marriage dissolution regarding actions for alimony, child support, or division of property; injuries to persons or property in Florida for acts or omissions outside of Florida if certain conditions are met; breach of contract within Florida or failure to perform contracted acts within Florida; and, forming a contract where Florida is the chosen forum. See FLA. STAT. § 48.193(1)(a) (2013).

124. Other sections cover nonresidents who engage in business in the state and who operate aircraft or watercraft in Florida. Id. §§ 48.181, 48.19.

125. For a general discussion of how long-arm statutes can protect a forum’s residents and businesses, see supra note 112.

126. Plaintiffs usually plead that jurisdiction is proper under several provisions and overlap is common. See, e.g., Promex, LLC v. Perez Distrib. Fresno, Inc., 09-22285-CIV, 2010 WL 3452341, at *3 (S.D. Fla. Sept. 1, 2010) (“Plaintiff alleges personal jurisdiction against Defendant based on Florida Statute Sections 48.193(1)(a), (b), and (2) arguing for both specific and general jurisdiction.”); Rohr, supra note 122, at 371 (noting the “substantial[] overlapping coverage of § 48.193”).

use. 128 Section 48.193(1)(a)(6)(b) enumerates product liability actions, just as its predecessor § 48.182 did. 129 Section 48.193(1)(a)(6) reserves to § 48.193(1)(a)(2) all specific personal jurisdiction where the nonresident defendant does not engage in any business or does not perform services in Florida. 130 Given § 48.193(1)(a)(6)’s broad context covering any injury to people or property arising out of a party’s solicitation, service, or supply of products in Florida, 131 the narrow interpretation of § 48.193(1)(a)(2) is inconsistent with § 48.193(1)(a)(6)’s expansive reach.

In contrast, narrow-interpretation courts have reasoned that the broad interpretation violates canons of statutory interpretation as it renders § 48.193(1)(a)(6) superfluous or redundant. 132 Yet, the broad interpretation does not eviscerate § 48.193(1)(a)(6). 133 First, as argued above, § 48.193(1)(a)(6) leaves a personal jurisdiction gap where any nonresident defendant commits a tort outside of Florida but does not solicit, engage in a service, or make or service a product used or consumed in Florida; thus, the broad interpretation does not merely replicate § 48.193(1)(a)(6). Second, the broad interpretation would not render § 48.193(1)(a)(6) unnecessary because the broad interpretation still leaves a gap for § 48.193(1)(a)(6) to fill: Section 48.193(1)(a)(2) is limited to tort-like claims because the adjectival modifier “tortious” is used. In contrast, § 48.193(1)(a)(6) does not use the modifier “tortious”; the word “act” stands alone, allowing § 48.193(1)(a)(6) to reach not only product liability claims, but also claims regarding solicitation and advertisement. 134

128. Id. § 48.193(1)(a)(6)(b).
129. See Gentry, supra note 95, at 357 (discussing that the legislature intended § 48.182 to provide personal jurisdiction “in product liability suits”).
131. See id. § 48.193(1)(a)(6).
132. Thomas Jefferson Univ. v. Romer, 710 So. 2d 67, 71 (Fla. Dist. Ct. App. 4th 1998) (Farmer, J., concurring and dissenting) ("As a fundamental rule of statutory interpretation, courts should avoid readings that would render part of a statute meaningless." (quoting Unruh v. State, 669 So. 2d 242, 245 (Fla.1996)). Additionally, "all parts of a statute must be read together in order to achieve a consistent whole. Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." Romer, 710 So. 2d at 71 (Farmer, J., concurring and dissenting) (quoting Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 455 (Fla. 1992) (citations omitted)).
133. An interpretation that renders § 48.193(1)(a)(6) superfluous and thus invalid should be avoided. See Scalia & Garner, supra note 1, at 66–68 (noting that statutes are presumed to be valid and "[a]n interpretation that validates outweighs one that invalidates").
D. The Narrow Interpretation is Based on Flawed Reasoning

Florida’s Second, Fourth, and Fifth DCAs have asserted five reasons for why courts should narrowly interpret § 48.193(1)(a)(2). This Note has addressed three of these reasons above. The other two reasons are as follows: First, these courts declare that the Florida Supreme Court has already resolved this split in favor of the narrow interpretation. Second, because courts should strictly construe Florida’s long-arm statutes, they posit that the narrow interpretation is correct.

The first reason is erroneous. The Florida Supreme Court has not provided any guidance on interpreting § 48.193(1)(a)(2). The Second, Fourth, and Fifth DCAs cite to Doe v. Thompson to support their proposition that the split has been resolved. In Doe, the court affirmed dismissal for lack of personal jurisdiction over a nonresident corporate officer under the corporate shield doctrine, which prevents the state from haling corporate officers to a forum if the officer’s only contacts with the Florida’s Second, Fourth, and Fifth DCAs have asserted five reasons for why courts should narrowly interpret § 48.193(1)(a)(2). This Note has addressed three of these reasons above. The other two reasons are as follows: First, these courts declare that the Florida Supreme Court has already resolved this split in favor of the narrow interpretation. Second, because courts should strictly construe Florida’s long-arm statutes, they posit that the narrow interpretation is correct.

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135. The Fourth District Court of Appeal has set out these reasons coherently and concisely in a concurrence. See Romer, 710 So. 2d at 70–71 (Farmer, J., concurring and dissenting). This Note will assume the Second and Fifth Districts also assert these reasons. But this Note will only cite to Romer because the Second and Fifth Districts do not articulate their reasoning in detail. See, e.g., Freedom Savs. & Loan Ass’n v. Ormandy & Assocs., Inc., 479 So. 2d 316, 317 (Fla. Dist. Ct. App. 5th 1985) (providing no reasoning for why § 48.193(1)(a)(2) should be interpreted narrowly).

136. First, these courts reason that § 48.193(1)(a)(2)’s plain meaning precludes the broad interpretation. See Romer, 710 So. 2d at 71. However, as shown above, it is improper to read § 48.193(1)(a)(2) plainly because “tortious act” is a legal term-of-art with a technical meaning that supports the broad interpretation. See supra Section III.A. Second, the narrow courts have argued that the legislative intent behind § 48.193(1)(a)(2) points to the narrow interpretation. See Romer, 710 So. 2d at 71. Yet, the drafters of § 48.193(1)(a)(2) left us with no clear evidence pointing to the narrow interpretation. See supra note 104 and accompanying text. Absent clear intent to the contrary, the broad interpretation should control because the narrow interpretation extends excessive due process protection to defendants. See supra Section III.B. Third, these courts reason that the broad interpretation violates canons of statutory interpretation by eviscerating § 48.193(1)(a)(6). See Romer, 710 So. 2d at 71. However, while § 48.193(1)(a)(2) and (1)(a)(6) may overlap, both provisions leave personal jurisdiction gaps that need to be filled by the other. See supra Section III.C.

137. The Eleventh Circuit has pointed out the split and its predetermined acceptance of the Florida Supreme Court’s interpretation if it ever issued. See Posner v. Essex Ins. Co., 178 F.3d 1209, 1216–17 (11th Cir. 1999). However, the Florida Supreme Court will probably not address this issue. See infra Part IV (noting the Court has denied certification to two cases that presented the issue and thus a certified question from the Eleventh Circuit is improper).

138. 620 So. 2d 1004 (Fla. 1993); see also 41 FLA. JUR. 2D PROCESS § 41 (2011) (erroneously citing Doe for the proposition that “the occurrence of an injury within the state is insufficient in itself to bring a defendant within the statute; some part of the tortious conduct must occur in Florida”).

139. E.g., Romer, 710 So. 2d at 70 (Farmer, J., concurring and dissenting) (arguing that courts like the First and Third DCA misread Doe and that Doe foreclosed any chance of in-state injury alone being enough to satisfy § 48.193(1)(a)(2) as the “intentional tort rationale” did not survive Doe).
forum are acts that solely benefited the corporation.\textsuperscript{140} By applying the corporate shield doctrine, the \textit{Doe} court held that the nonresident defendant “did not \textit{personally} do anything in Florida: he did not personally... commit a tortious act in Florida.”\textsuperscript{141}

In adopting this application of the corporate shield doctrine, the Florida Supreme Court overruled the First DCA’s decision in \textit{International Harvester Co. v. Mann}.\textsuperscript{142} However, the Florida Supreme Court did not address \textit{International Harvester’s} application of the broad interpretation; rather, it overruled \textit{International Harvester’s} misapplication of the corporate shield doctrine.\textsuperscript{143} Further, in a recent opinion, the Florida Supreme Court acknowledged the split’s continued existence, but did not resolve it.\textsuperscript{144} Finally, the Court denied certification to a Third DCA case that upheld the broad interpretation,\textsuperscript{145} which only shows the Court’s reluctance to address the issue.

Implicit in the argument that the split has already been resolved is that the Florida Supreme Court has rejected the broad interpretation by not interpreting \S\ 48.193 to the limits of due process. However, this view fails to grasp how courts should apply the two-step process.\textsuperscript{146} The first step turns on whether the defendant’s actions meet any of the long-arm statute’s enumerated acts.\textsuperscript{147} The second step turns on whether personal jurisdiction is constitutional.\textsuperscript{148} When interpreting an enumerated-act statute in two steps, “the inescapable conclusion [is] that an enumerated-acts long-arm statute should be interpreted by its own terms,” rather than with a constitutional gloss.\textsuperscript{149}

\textsuperscript{140} \textit{Doe}, 620 So. 2d at 1006.
\textsuperscript{141} \textit{Id.}
\textsuperscript{142} 460 So. 2d 580 (Fla. Dist. Ct. App. 1st 1984).
\textsuperscript{143} See Posner v. Essex Ins. Co., 178 F.3d 1209, 1217 n.9 (11th Cir. 1999); Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253, 257 (11th Cir. 1996). At least one court embracing the narrow interpretation has acknowledged that the \textit{Doe} court did not adopt the narrow interpretation. See Homeway Furniture Co. of Mount Airy, Inc. v. Horne, 822 So. 2d 533, 537 (Fla. Dist. Ct. App. 2d 2002) (noting that \textit{Doe} “disapproved \textit{International Harvester} on other grounds”).
\textsuperscript{144} See Internet Solutions Corp. v. Marshall, 39 So. 3d 1201, 1206 n.6 (Fla. 2010) (“We do not decide the broader issue of whether injury alone satisfies the requirement of section 48.193[(1)(a)(2)]. We do recognize that the federal courts have adopted this broad construction of section 48.193[(1)(a)(2)]...”); see also Wendt v. Horowitz, 822 So. 2d 1252, 1253 n.2 (Fla. 2002) (noting the split).
\textsuperscript{145} See, e.g., Allerton v. Dep’t of Ins., 639 So. 2d 975 (Fla. 1994) (denying certification of \textit{Allerton v. Dep’t of Ins.}, 635 So. 2d 36 (Fla. Dist. Ct. App. 1st 1994), about a year after \textit{Doe} was decided).
\textsuperscript{146} See McFarland, supra note 59, at 538–40 (arguing that enumerated-act statutes should be interpreted in two steps).
\textsuperscript{147} See Venetian Salami Co. v. Parthenais 554 So. 2d 499, 502 (Fla. 1989).
\textsuperscript{148} See id.
\textsuperscript{149} McFarland, supra note 59, at 538 (emphasis added).
Finally, the Second, Fourth, and Fifth DCAs have reasoned that the narrow interpretation controls because Florida long-arm statutes are “strictly construed, and the person invoking jurisdiction . . . has the burden of proving facts which clearly justify the use of that method of service of process.”¹⁵⁰ Florida’s federal courts¹⁵¹ and DCAs¹⁵² have held that personal jurisdiction statutes are strictly construed. However, numerous Florida courts have adopted the broad interpretation despite this strict-construction rule. In addition, there is no need to provide nonresident defendants the benefit of the doubt during this first step of analyzing personal jurisdiction; the appropriate time to weigh a nonresident defendant’s interest is during the second step when the court considers whether the defendant has sufficient minimum contacts with the state.¹⁵³

IV. HOW § 48.193(1)(a)(2) SHOULD BE AMENDED

The Florida Supreme Court has already denied certification to two cases addressing the split over the interpretation of § 48.193(1)(a)(2).¹⁵⁴ Because the state’s highest court has denied certification to cases presenting the split, it would be improper for the Eleventh Circuit to certify a question on the issue.¹⁵⁵ Therefore, acknowledgement of the split’s ongoing existence may be all the attention the Florida Supreme Court will grant the issue.¹⁵⁶

In 2013, the Florida Legislature missed a chance (or perhaps passed on the chance) to address the interpretative issue when it renumbered § 48.193 but did not modify § 48.193(1)(a)(2)’s language.¹⁵⁷ The legislature should

¹⁵⁰. Thomas Jefferson Univ. v. Romer, 710 So. 2d 67, 71 (Fla. Dist. Ct. App. 4th 1998) (Farmer, J., concurring and dissenting) (citation omitted). See also Clausen, supra note 53, at 513 (arguing for the narrow interpretation as Florida’s long-arm statutes are to be narrowly construed).

¹⁵¹. See Sculptchair, Inc. v. Century Arts, Ltd., 94 F.3d 623, 627 (11th Cir. 1996) (holding Florida’s long-arm statute shall be strictly construed).

¹⁵². See, e.g., Bank of Wessington v. Winters Gov’t Sec. Corp., 361 So. 2d 757, 759 (Fla. Dist. Ct. App. 4th 1978) (“[L]ong arm statutes are to be strictly construed; the person invoking jurisdiction under such statutes has the burden of proving facts which clearly justify the use of this method of service of process.”).

¹⁵³. See, e.g., Bookman v. KAH Inc., 614 So. 2d 1180, 1182 (Fla. Dist. Ct. App. 1st 1993) (setting out the second step and stating that nonresident defendants “must have certain minimum contacts with Florida such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice” and that “[i]t is essential that there be some act by which the defendants purposefully avail themselves of the privilege of conducting activities in Florida, thus reaping the benefit and protection of its laws”).


¹⁵⁵. See Posner v. Essex Ins. Co., 178 F.3d 1209, 1217 n.8 (11th Cir. 1999) (discussing why a certified question to the Florida Supreme Court would be inappropriate as the Court has already denied certification of two cases that raised the issue).

¹⁵⁶. See supra note 144 and accompanying text.

resolve the split by amending the provision to clearly confer jurisdiction when acts outside of Florida cause harm to persons or property in Florida. 158 Therefore, to ensure clarity, the Florida Legislature should couple “tortious” with “injury,” and use two restrictive clauses to replace § 48.193(1)(a)(2)’s current language with the following: “Committing an act or omission, inside or outside of Florida, that causes tortious injury, in Florida, to persons or property.” 159 The first restrictive clause, “inside or outside of Florida,” restricts the phrase “committing an act or omission,” thus clarifying that the tort’s act element can occur inside or outside of the state. The second restrictive clause, “in Florida,” follows the phrase “causes tortious injury.” This placement clarifies that the tort’s injury element must occur in Florida. Also, the provision should keep the gerund “committing” in the interest of consistency, as most of § 48.193’s specific jurisdiction provisions use similar gerunds. 160 The proposed language clearly codifies the broad interpretation of § 48.193(1)(a)(2).

CONCLUSION

Florida courts have split on the correct interpretation of “committing a tortious act within this state.” Along with § 48.193(1)(a)(2)’s statutory construction, strong policies support interpreting the provision broadly. First, enumerated-act statutes should provide a state’s residents and businesses with a proper forum to redress their harms. Allowing in-state injury to suffice under § 48.193(1)(a)(2) provides a proper forum for Florida’s residents. Moreover, considering both § 48.193’s expansive nature and Florida’s overall personal jurisdiction statutory structure, the narrow interpretation is too constricted.

Because the split creates uncertainty for nonresident defendants about whether Florida can assert personal jurisdiction over them for their out-of-state acts, resolving this issue is important. 161 Moreover, the split encourages plaintiffs to forum shop to avoid the Second, Fourth, and Fifth

158. For example, Ohio’s long-arm statute confers jurisdiction over nonresident defendants by their “[c]ausing tortious injury in this state to any person by an act outside this state.” OHIO REV. CODE ANN. § 2307.382(6) (West 2013).

159. This Note does not address whether the phrase “outside of Florida” includes foreign countries. See, e.g., Oriental Imports & Exports, Inc. v. Maduro & Curiel’s Bank, N.V., 701 F.2d 889, 894 (11th Cir. 1983) (denying personal jurisdiction over a nonresident defendant where the alleged actions occurred in the Netherlands).


161. The split undermines an important advantage of enumerated-act statutes: Providing nonresidents with notice of which acts will permit a state to assert personal jurisdiction over them. See McFarland, supra note 59, at 532.
DCAs. Given its denial of certification, the Florida Supreme Court is not the proper authoritative body to remedy this issue. Therefore, the Florida Legislature should redraft § 48.193(1)(a)(2) of the Florida Statutes to confer jurisdiction over nonresident defendants who act outside of Florida but cause harm in Florida.