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In Personam Jurisdiction--Due Process and Florida's Short "Long-Arm"

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IN PERSONAM JURISDICTION – DUE PROCESS AND FLORIDA'S SHORT "LONG-ARM"

Possibly no single decision has had as important an impact on American civil jurisprudence and precipitated as many disparate interpretations as *International Shoe Co. v. Washington.*[1] Prior to *International Shoe,* questions of in personam jurisdiction were generally treated mechanically by determining whether the state had physical power over the defendant.[2] If the defendant were not a domiciliary of the state nor served while physically present within the state, the state could not effect in personam jurisdiction.[3] This concept of equating in personam jurisdiction with physical power over the defendant became an aspect of due process of law when applied to nonresidents.[4]

Development of the corporate form of business as the common method of conducting economic activity necessitated modification of the "physical power" concept of jurisdiction. Since it was believed that an artificial person could not be present outside the state of its incorporation,[5] the fictions of "implied consent"[6] and "presence"[7] were created. Although the influence of these doctrines is still reflected in the language of some state statutes,[8] both theories proved to be unsatisfactory[9] and have been obviated by *International Shoe.*

The Court in *International Shoe* attempted to bring principles of state jurisdiction into consonance with the demands of an expanding economy and technology by promulgating new criteria for perfecting in personam jurisdiction over nonresident corporations and individuals.[10] The extent of state court jurisdiction was limited only by the nebulous standards of "minimum contracts" and "substantial justice." This note will briefly analyze the permissible scope of state juricdiction as it evolved from *International Shoe.*[11] In this context, present Florida statutory and case law will be evaluated and attempts will be made to define the standards applied by Florida courts in determining jurisdiction over nonresidents.

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1. 326 U.S. 310 (1945).
2. McDonald v. Mabee, 243 U.S. 90 (1917); *see* Elliott v. Cabeen, 224 F. Supp. 50 (D. Colo. 1963) for discussion of common law requirements for in personam jurisdiction.
3. Bayitch, *Conflict of Law,* 22 U. MIAMI L. REV. 509, 514 (1968).
4. *See* Pennoyer v. Neff, 95 U.S. 714 (1877).
5. *See* Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 519 (1839).
6. Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404 (1855).
7. Philadelphia & Reading R.R. v. McKibbin, 243 U.S. 264 (1917).
8. *E.g.,* FLA. STAT. §48.181 (1969).
9. *See* Hutchinson v. Case & Gilbert, 45 F.2d 139 (2d Cir. 1930).
10. See discussion in McGee v. International Life Ins. Co., 355 U.S. 220, 222-23 (1957).
11. It is beyond the scope of this note to proceed with an in-depth analysis of the principles established in *International Shoe* and their consequences. General jurisdictional concepts will be discussed only to the degree ncessary to outline the permissible areas of state court jurisdiction. For a more involved discussion of in personam jurisdiction over nonresidents, see Seidelson, *Jurisdiction over Nonresident Defendants: Beyond "Minimum Contracts" and the Long-Arm Statutes,* 6 DUQUESNE L. REV. 221 (1967-68); Von Mehren & Trautmen, *Jurisdiction to Adjudicate: A Suggested Analysis,* 79 HARV. L. REV. 1121 (1966); Note, *Developments in the Law: State-Court Jurisdiction,* 73 HARV. L. REV. 909 (1960).

International Shoe AND EXPANDED JURISDICTION

International Shoe established that: "[D]ue process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."[12]

The principle established in *International Shoe* is dichotomous, requiring not only the presence of "minimum contacts", but also that jurisdiction not offend "fair play and substantial justice." Consequently, jurisdiction to adjudicate an action brought against a nonresident cannot be determined solely by mechanical or quantitative tests for minimum contacts. Considerations of qualitative factors must also be made in order to assure substantial justice.[13]

Whether minimum contacts sufficient to satisfy the due process requirement are present is determined by balancing pertinent interests.[14] Some

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12. 326 U.S. 310, 316 (1945).

13. *Id.* at 318; Note, *In Personam Jurisdiction over Foreign Corporations: An Interest-Balancing Test,* 20 U. FLA. L. REV. 33, 43 (1967).

14. A good example of the "balancing of interest" approach is Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966). "Due process of law" has been recognized as the principal limiting factor of state court jurisdiction. U.S. CONST. amend. XIV, §1. *Cf.* Jackson, *Full Faith and Credit — the Lawyers Clause of the Constitution,* 45 COLUM. L. REV. 1 (1945). Basically, due process of law exacts two requirements in order that a state may constitutionally perfect jurisdiction over a nonresident. The threshold requirement is that "the particular form of substituted service adopted . . . [must give] reasonable assurance that the notice will be actual." International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945). This requirement presents little difficulty and may be satisfied by service within the state upon an agent, *e.g.,* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), or by mailing notice of suit to a defendant by registered mail, *e.g.,* Hess v. Pawloski, 274 U.S. 352 (1927). Consequently, the only significant limitation on the exercise of state court jurisdiction over nonresident defendants is that the defendant must have sufficient minimum contacts with the state such that the suit is not offensive to "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). *See also* McDonald v. Mabee, 243 U.S. 90 (1916). Other than the due process clause of the 14th amendment, the only constitutional provisions that would appear to limit state jurisdiction are the privileges and immunities clause, U.S. CONST. amend. XIV, §1, and the interstate commerce clause, U.S. CONST. art. 1, §8(3). *See generally* Cardozo, *The Reach of the Legislature and the Grasp of Jurisdiction,* 43 CORNELL L.Q. 210 (1957); Sobeloff, *Jurisdiction of State Courts over Nonresidents in Our Federal System,* 43 CORNELL L.Q. 196 (1957). The privileges and immunities clause is inapplicable to corporations and, except in special circumstances, does not appear to limit treatment of natural nonresident defendants. Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404 (1855), *cited with approval in* Washington *ex rel.* Bond v. Superior Court of Washington, 289 U.S. 361 (1933). *See also* Flexner v. Farson, 248 U.S. 289 (1919). If the forum state affords the nonresident individual the same treatment afforded residents, its actions will not offend constitutionally guaranteed privileges and immunities. *E.g.,* Hess v. Pawloski, 274 U.S. 352, 356 (1927). It is also doubtful whether the commerce clause could be invoked to prohibit a distant forum from extending jurisdiction over a nonresident. *See, e.g.,* United Barge Co. v. Logan Charter Serv., Inc., 237 F. Supp. 624 (D. Minn. 1964). The requirement of *International Shoe* that a defendant have such minimum contacts with the forum that the suit not offend "traditional notions of fair play and substantial justice" would generally appear to guarantee sufficient state interest to outweigh any burden on interstate

of the primary factors that have been utilized in determining the adequacy of the nonresident's contacts with the forum state are: quantity of the contacts, [15] the nature of the contacts,[16] source and connection of the cause of action with the contacts,[17] convenience of the parties and the court,[18] and the interests of the forum state.[19] The emergence of these factors primarily stems from a desire to assure an opportunity to be heard and adequate notice to the nonresident defendant,[20] while providing to the plaintiff the most convenient forum possible.[21] Of the several cases that have defined these considerations, *McGee v. International Life Insurance Co.*,[22] *Perkins v. Benguet Consolidated Mining Co.*,[23] and *Hanson v. Denckla*[24] are of primary significance in explicating the permissible limits of state court jurisdiction.

Expansive state court jurisdiction was upheld in *McGee v. International Life Insurance Co.*[25] In *McGee,* very minimal contacts were required to justify jurisdiction over the defendant foreign insurance corporation; the existence of an insurance contract with a single California resident was deemed sufficient to extend California jurisdiction over the Texas corporation. In determining that the insurance company had sufficient contact with California to satisfy due process, the Court considered the interest of the state, convenience to

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commerce. International Shoe Co. v. Washington, 326 U.S. 310, 315 (1945). Furthermore, the growing influence of the doctrine of *forum non conveniens* tends to negate arbitrary extension of state jurisdiction and reemphasizes due process of law as the principal factor in determining state court jurisdiction over nonresidents. *See* Ehrenzweig, *Pennoyer is Dead—Long Live Pennoyer,* 30 ROCKY MT. L. REV. 285 (1958).

15. *E.g.,* Milliken v. Meyer, 311 U.S. 457 (1940).

16. McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

17. Hanson v. Denckla, 357 U.S. 235 (1958); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

18. Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950). *See also* Hutchinson v. Chase & Gilbert, Inc., 45 F.2d 139 (2d Cir. 1930).

19. *E.g.,* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Hess v. Pawloski, 274 U.S. 352 (1927).

20. Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

21. Consideration of these various factors and the balancing of interests required to do substantial justice suggests the following summary:

"Based as they are on notions of fairness and reasonableness, the Supreme Court decisions do not permit a simple generalization of the rule pertaining to in personam jurisdiction over foreign corporations. If there are substantial contacts with the state, for example a substantial and continuing business, and if the cause of action arises [out] of the business done in the state, jurisdiction will be sustained. If there are substantial contacts with the state, but the cause of action does not arise out of these contacts, jurisdiction may be sustained. If there is a minimum of contacts, and the cause of action arises out of the contacts, it will normally be fair and reasonable to sustain jurisdiction. If there is a minimum of contacts and the cause of action does not arise out of the contacts, there will normally be no basis of jurisdiction, since it is difficult to establish the factors necessary to meet the fair and reasonable test." Aftanase v. Economy Baler Co., 343 F.2d 187, 196 n.2 (8th Cir. 1965).

22. 355 U.S. 220 (1957).

23. 342 U.S. 437 (1952).

24. 357 U.S. 235 (1958).

25. 355 U.S. 220 (1957).

the plaintiff and the defendant, the availability of witnesses, and the adequacy of notice.[26] Although some courts have suggested that *McGee* should be limited in application to the particular area of insurance contacts,[27] the Court in *McGee* cited with approval cases upholding single act jurisdiction outside the insurance context.[28] Single act long-arm statutes base in personam jurisdiction upon the existence of a specified contact, such as commission of a tort or contracting within the forum.[29] Although the Supreme Court has not specifically ruled upon the validity of such statutes,[30] single act jurisdiction appears to satisfy the requirements of due process of law, especially when a serious state interest[31] is involved.

Perkins v. Benguet Consolidated Mining Co.[32] appears to touch the limits of permissible state court jurisdiction by obviating the necessity of linking "contacts" with the cause of action. The case involved a foreign corporation not licensed to do business in Ohio but which carried on a limited part of its general business in that state. The president of the defendant corporation was served in Ohio with notice of a cause of action that neither arose in that state nor was related to the defendant's activity there. After discussing some of the factors relevant to a determination of proper state court jurisdiction,[33] the Supreme Court stated:[34]

> The instant case takes us . . . to a proceeding *in personam* to enforce a cause of action not arising out of . . . activities in the state of the forum. . . . [W]e find no requirement of federal due process that either *prohibits* Ohio from opening its courts to the cause of action here presented or *compels* Ohio to do so.

Thus, given requisites of "general fairness"[35] due process does not prohibit a state from taking jurisdiction over a nonresident corporation to adjudicate

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26. *Id.* at 223-24.

27. *E.g.*, Agrashell, Inc. v. Bernard Sirotta, Co., 344 F.2d 583 (2d Cir. 1965).

28. 355 U.S. at 223 n.2 (1957). The court cited *Compania de Astral., S.A. v. Boston Metals Co.*, 205 Md. 237, 107 A.2d 357, 108 A.2d 372 (1954), *cert. denied*, 348 U.S. 943 (1955), which upheld jurisdiction based upon the making of a single contract within the state, and *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664 (1951), which upheld jurisdiction based on a single tort.

29. *E.g.*, VA. CODE ANN. §8-81.2 (Supp. 1970) (causing tortious injury, doing business, breaching warranty, contracting to supply services or things, et cetera).

30. In refusing to grant a stay under the New York long-arm statute, however, then United States Supreme Court Justice Goldberg observed: "The logic of this Court's decisions in *International Shoe* . . . and *McGee* . . . supports the validity of state 'long-arm' statutes . . . which based *in personam* jurisdiction upon commission of a 'tortious act' in the forum State." Rosenblatt v. American Cyanamid Co., 86 S. Ct. 1, 3 (1965).

31. *See, e.g.*, Hess v. Pawloski, 274 U.S. 352 (1937). Long-arm nonresident motorist statutes (*e.g.*, FLA. STAT. §48.171 (1969)) are in effect single act statutes. Such statutes have been almost uniformly upheld as a proper expression of state police power. *Cf.* Wuchter v. Pizzutti, 276 U.S. 13 (1928).

32. 342 U.S. 437 (1952).

33. *Id.* at 445.

34. *Id.* at 446.

35. *Id.* at 445.

causes of action that arise outside the physical boundaries of the state. In addition, the cause of action need not be specifically related to the corporate activity that establishes the necessary contact with the forum.[36] This principle may have special significance in bridging the jurisdictional gap in some products-liability cases. The often difficult problem of determining where the cause of action arose[37] becomes less significant when emphasis is placed upon determining if the defendant has sufficient *contact* with the forum.

Despite the broad jurisdictional concepts expressed in *McGee* and *Perkins,* the minimum contacts requirements of due process must still be satisfied. In *Hanson v. Denckla*[38] the Supreme Court emphasized the necessity of minimum contacts and required that there be "some act by which the defendant purposely avails itself of the privileges of conducting activities within the forum state."[39] *Hanson* involved a Delaware trust company that held securities in trust for a Delaware resident who subsequently became a Florida domicilliary. Upon the demise of the settlor, an attempt was made in Florida to obtain jurisdiction over the nonresident trust company, even though the company had no contact with the state other than correspondence with the settlor. The Supreme Court found insufficient "minimum contacts to justify extension" of jurisdiction over the nonresident trustee.

The Court's concern that a defendant "purposely" avail himself of the privilege of conducting activities in a state suggests that the defendant's contacts with the foreign state must be such that jurisdicion over him is foreseeable or can be reasonably anticipated. By interposing considerations of foreseeability, the "weak"[40] nonresident defendant whose product is taken from his forum state, or the individual who is solicited through the mails, would not find himself subject to a binding judgment in an inconvenient forum. However, a national corporation that purposefully puts its products in the mainstream of interstate commerce may be constitutionally subject to jurisdiction in the forum where an injury results from the corporate activity.[41] The "strong"

36. *Contra* Illinois Central R.R. v. Simari, 191 So. 2d 427 (Fla. 1966). However, FLA. STAT. §48.081 (5) (1969) appears to provide for jurisdiction of causes arising outside the state in limited situations.

37. The question of where a tort occurs for jurisdictional purposes does not appear to be as difficult to resolve under Florida practice as in some jurisdictions. Generally, the cause of action is considered to arise "where the last element (be it an act or failure to act) giving rise to the cause of action occurs." FLORIDA CIVIL PRACTICE BEFORE TRIAL ch. 11, §7.16, at 197 (Florida Bar Continuing Legal Educ. Practice Manual No. 1, 1965).

38. 357 U.S. 235 (1958).

39. *Id.*

40. When speaking of a "strong" or "weak" defendant, this note is referring primarily to whether the defendant is a corporation with broad interstate interests or a smaller, less economically established defendant.

41. FLA. STAT. §48.182 (Supp. 1970) apparently adopts this approach in extending jurisdiction to nonresidents who send goods into the state through interstate commerce and wrongfully cause an injury within the state. For case discussion of this jurisdictional concept, *see* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Ehelers v. United States Heating & Cooling Mfg. Corp., 267 Minn. 56, 124 N.W.2d 824 (1963). *Cf.* Golden Gate Hop Ranch, Inc. v. Velsicol Chem. Corp., 66 Wash. 2d 469, 403 P.2d 351 (1965), *cert. denied,* 382 U.S. 1025 (1966).

nonresident defendant that engages in national commerce can readily anticipate defending in distant forums and may protect itself by acquiring adequate insurance and passing costs of litigation along to consumers.[42] Thus, *Hanson v. Denckla* reiterates the importance of considering qualitative factors in addition to establishing the existence of quantitative contacts with the forum state.

Expanded Jurisdiction and Substantial Justice

The jurisdictional principles established in *International Shoe* and explicated by subsequent cases have offered new dimensions in state court jurisdiction and may have created the potential for limited nationwide jurisdiction.[43] Subject to the due process restriction expressed in *International Shoe*,[44] the extent of state court jurisdiction is presently a matter of state discretion. Whether the particular state chooses to exercise its jurisdictional power will depend upon an evaluation of the relative fairness of expanded jurisdiction, the particular needs of the state, and often the imagination and awareness of state legislators.

While failure to fully utilize existent state power appears in some cases to be the result of legislative inertia or inefficiency, there are definite liabilities inherent in expansive state court jurisdiction.[45] One primary problem is that, while expanded jurisdiction increases the number of available courts, it also encourages forum-shopping.[46] In addition, the probability of two-step litigation is increased as jurisdiction over distant nonresident defendants is broadened to make litigation more convenient for the plaintiff.[47] Present trends for perfecting in personam jurisdiction may also have the deleterious effect of favoring the plaintiff to the degree that default judgments are encouraged;[48] adjudication on the merits may be unfeasible for the nonresident with insufficient funds to defend in a distant forum.[49] These possible inequities are

42. The idea of spreading costs of doing business to consumers and holding the party most able to bear costs liable for injury has been an accepted approach in products liability cases. *See* W. Prosser, Torts §97 (3d ed. 1964).

43. *See* A. Ehrenzweig & D. Louisell, Jurisdiction in a Nutshell 32 (2d ed. 1968).

44. *See* Perkins v. Benquet Consol. Mining Co., 342 U.S. 437, 446 (1952); Note, *supra* note 11 at 1014-17.

45. *See* Note, *A Reconsideration of "Long Arm" Jurisdiction*, 37 Ind. L.J. 333 (1962).

46. *See* Ehrenzweig, note 14 *supra*.

47. Although the plaintiff may receive a judgment in the forum state, he may still have to travel to the residence of the defendant to enforce the judgment. This result, to a degree, negates the convenience rationale of allowing the plaintiff to sue in his home forum. However, by having earned an in personam judgment, the plaintiff is generally assured a full recovery and will not have to relitigate the issues in the foreign forum. If the statutory basis of jurisdiction in the first action is constitutional and has been properly complied with, the plaintiff or his assignee may execute the judgment with relatively slight inconvenience.

48. Note, *supra* note 45, at 334-43.

49. Although *International Shoe* applies to individuals as well as to corporations, the nature of the balancing of interests formula, which is utilized to determine if there are sufficient contacts, requires the natural nonresident defendant to have a more substantial

salient when considered in the context of a strong plaintiff bringing suit against a weak nonresident, a situation often only casually considered when long-arm jurisdiction is being justified.[50]

Some of the adverse effects possibly incident to expanded jurisdiction can be negated by carefully drawn statutes and judicial utilization of the doctrine of *forum non conveniens*.[51] Recognizing this doctrine as a necessary adjunct to expanded jurisdiction, some states have made legislative provision for its utilization.[52] Wisconsin, for example, has provided for a stay of proceedings on motion of any party when it is found that another forum can more fairly decide the case.[53] The movant must consent to suit on the cause in the more convenient forum, and the court retains jurisdiction should further local action be necessary. Wisconsin has also sought to deter plaintiffs with questionable causes of action from utilizing the state's liberal "long-arm" to obtain default judgments. A Wisconsin statute allows the court to order the plaintiff to pay the defendant's expenses resulting from appearing and obtaining an order either dismissing the action for lack of jurisdiction or securing a stay of proceedings under the *forum non conveniens* statute.[54] Many states, including Florida, have incorporated into their long-arm statutes exacting requirements for guaranteeing notice to nonresident defendants.[55] Utilization of such measures may provide the advantages of broad jurisdictional power to the plaintiff and the state while assuring adequate notice and minimizing spurious suits.

Legislative enactment of the doctrine of *forum non conveniens* appears to be beneficial in encouraging its application by state courts. Rather than being regarded as a discretionary adjunct to the minimum contacts standard of *International Shoe, forum non conveniens* should be an integral part of the

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connection with the state to justify jurisdiction over him. The focus of the minimum contacts formula is to determine whether the inconvenience to the defendant is relatively greater than the interests of the plaintiff and the state. Thus, there must be a greater degree of adverse interest to justify allowing suit against a natural person, who is generally less prepared or less financially able to defend in the plaintiff's forum than a corporation. *See generally* Note, *supra* note 11, at 935-48.

50. The principal cases that have expanded state court jurisdiction have generally been concerned with the "weak" resident plaintiff attempting to recover from a "strong" nonresident corporate defendant. In this context, fairness to the defendant appears often not to have been emphasized. *E.g.*, McGee v. International Life Ins. Co., 355 U.S. 220 (1957) (insurance company defendant); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952) (corporate manufacturer-processor defendant). *Contra* Hanson v. Denckla, 357 U.S. 235 (1958) (Court limited jurisdiction over the nonresident defendant trustee).

51. *See* Barrett, *The Doctrine of* Forum Non Conveniens, 35 CALIF. L. REV. 380 (1947). *Forum non conveniens* has been defined as "the discretionary power of a court to decline to exercise a possessed jurisdiction whenever it appears that the cause before it may be more appropriately tried elsewhere." Note, *supra* note 45, at 346. *See also* Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COLUM. L. REV. 1 (1929).

52. *E.g.*, MD. ANN. CODE art. 75, §98 (Supp. 1969); WIS. STAT. ANN. §262.19 (Supp. 1969).

53. WIS. STAT. ANN. §262.19 (Supp. 1969).

54. Under Wisconsin law the defendant may recover up to $500 of the cost of appearing and defending. WIS. STAT. ANN. §262.20 (Supp. 1969).

55. *E.g.*, FLA. STAT. §48.171 (1969); VA. CODE ANN. §8-81.3 (b) (Supp. 1970).

formula utilized in determining if the court, as a matter of law, has jurisdiction over the case. One of the qualitative factors discussed in *International Shoe* is an "estimate of the 'inconveniences' which would result . . . from a trial away from [the defendant's] home."[56] Such a consideration applies equally to binding an in personam judgment against a natural person or a corporation and is necessary if the requirement of substantial justice, as well as the more mechanical minimum contacts requirement, is to be properly satisfied.[57]

Although broad state court jurisdiction may in some instances place a disproportionate burden upon the defendant, overriding considerations of judicial economy and a desire to provide citizens an available forum in which to litigate claims at a minimum expense has led most states to expand the scope of in personam jurisdiction over nonresidents.[58] Such extension has generally been considered a necessary development in a modern society, compelled by advances in technology and the transformation of the national economy.[59] By providing for in personam jurisdiction, the state assures the plaintiff a recovery if he can successfully prove his cause. Futhermore, he will be saved the added inconvenience and often incomplete satisfaction of a quasi in rem action.[60]

State Implementation of Minimum Contacts

Because of the perceived advantages of expanding state in personam jurisdiction, the broad principles of *International Shoe* have been adopted in

56. 326 U.S. at 317; *see* Hutchinson v. Chase & Gilbert, 45 F.2d 139 (2d Cir. 1930).

57. 326 U.S. at 317; *see* Calagaz v. Calhoun, 309 F.2d 248, 254 (5th Cir. 1962). It appears that too often the courts and authors of articles dealing with expanded in personam jurisdiction concern themselves with "minimum contacts" to the degree that the second aspect of the dichotomous *International Shoe* formula is overlooked. Just as the necessary mechanical contacts are required to satisfy due process, so also must qualitative considerations be made to assure substantial justice and fair play. Consequently, the considerations that are the basis of the doctrine of *forum non conveniens* are also an integral part of the *International Shoe* formula.

58. For examples of some early statutes expanding state court jurisdiction *see* Note, *Recent Interpretation of "Doing Business" Statutes,* 44 IOWA L. REV. 345, 346 n.7 (1959). *See also* Seidelson, note 11 *supra* for a discussion of the relative merits in favor of preferring the plaintiff over the nonresident defendant.

59. *See* McGee v. International Life Ins. Co., 355 U.S. 220 (1957). "Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend . . . ." *Id.* at 222-23.

60. Without statutory provision for in personam jurisdiction, many plaintiffs are unable to realize any recovery. Often the nonresident, especially if he is a natural person, has no property within the state that may be attached in a quasi in rem action. If there is property present, it may be insufficient to satisfy the plaintiff's action or be exempt from attachment. In addition, questions concerning the location of property (especially intangible assets), the added inconvenience of attachment or garnishment, and the avail-

varying degrees by the states.[61] Most states initially reacted to *International Shoe* by utilizing the "doing business" or "transacting business" terminology, which had been the basis for obtaining jurisdiction over foreign corporations under the old "presence" and "consent" doctrines.[62] As courts began to apply the minimum contacts test to individuals as well as to corporations, a number of states discarded the unwieldy "doing business" language and adopted broader provisions that incorporated the single act concept of *McGee*.[63] Illinois apparently became the first state to recognize fully the possibilities for a comprehensive statute expanding state jurisdiction to its constitutional limits. The Illinois statute[64] provided for jurisdiction to adjudicate any cause of action arising out of the transaction of business within the state; commission of a tortious act within the state; ownership, possession, or use of real estate situated in the state; or contracting to insure any person, property, or risk located within the state at the time of contracting.

Obtaining jurisdiction over nonresidents by enumerating specified contacts with the forum state offers residents an easily available forum at a minimum of expense and inconvenience. Such single act statutes have become prevalent in many states,[65] and when applied in a manner conducive to "substantial justice and fair play," they can fully implement the principles of *International Shoe*. The primary difficulty with such statutes is that enumeration of particular fact situations may result in excessive attention to mechanical contacts and discourage proper evaluation of qualitative considerations. However, judicial utilization of *forum non conveniens* and clarity of legislative intent can provide the necessary flexibility to assure fairness to all litigants. Also, by specifying particular acts, such as ownership of property, entering into a local contract, or committing a tort against a resident of the forum,

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ability in some jurisdictions of the limited appearance, make quasi in rem action much less advantageous to the plaintiff than an in personam action.

61. Other than the general interests of the state in affording judicial protection to its citizens, a state also has an important interest in effectuating its protective and regulatory policies. *See, e.g.*, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Doherty & Co. v. Goodman, 294 U.S. 623 (1935); Hess v. Pawloski, 274 U.S. 352 (1927).

62. *See, e.g.*, Fla. Laws 1951, ch. 26657, §1.

63. *See, e.g.*, UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT §1.03. Section 1.03 (1) of the Act bases jurisdiction on transacting any business in the state, §1.03 (2) on contracting to supply goods or services in the state, and §1.03 (3) on commission of any tortious act in the state, et cetera.

64. Law of July 19, 1955, Ill. Laws 1955, §1, at 2238 (now incorporated in ILL. REV. STAT. ch. 110, §17 (Supp. 1968). *See* Note, *Expanded In Personam Jurisdiction—Due Process and the Tennessee Long Arm Statute*, 33 TENN. L. REV. 371, 379 (1966).

65. *E.g.*, ILL. REV. STAT. ch. 110, §17 (Supp. 1968); KY. REV. STAT. §454.210 (Supp. 1968); MD. ANN. CODE art. 75, §96 (1969); MINN. STAT. ANN. §543.19 (Supp. 1970); MO. REV. STAT. §506.500 (Supp. 1969); N.Y. CIV. PRAC. §302 (McKinney Supp. 1969); OHIO REV. CODE ANN. §2307.382 (Page Supp. 1969); TENN. CODE ANN. §20-235 (Supp. 1969); VA. CODE ANN. §8-81.2 (Supp. 1970); WIS. STAT. ANN. §262.05 (Supp. 1969). Some states have adopted the single act concept but have refused to dispose of the consent language previously utilized, generally equating commission of a tort or impairment of a contract with consenting to suit in the forum and designating a state official as an agent for purposes of receiving process. *E.g.*, IOWA CODE ANN. §617.3 (Supp. 1970); MISS. CODE ANN. §1437 (Supp. 1968).

greater predictability in the application of single act statutes can be attained.[66]

Single act statutes are especially advantageous to the plaintiff who attempts to bring an action against a nonresident manufacturer.[67] As goods increasingly are shipped through interstate commerce, it has become necessary that plaintiffs be compensated by distant manufacturers who have sent the injurious products, directly[68] or indirectly,[69] into the forum state.[70] Also, as ownership of property in distant jurisdictions has become commonplace, the nonresident owner is now amenable to suit in real property actions under most single act statutes.[71] Nonresident owners or possessors of real property receive the benefits and protection of the state. Consequently, in many states the nonresident property owner is subject to jurisdiction in actions reasonably related to his enjoyment of the land.[72]

A few states have also extended single act jurisdiction to include causes of action arising out of matrimonial relations.[73] Serious difficulties are inherent in matrimonial jurisdiction, especially in determining where the cause of action arose.[74] However, such statutes allow the plaintiff to obtain a judgment for support or determination of property rights against the nonresident spouse. Without statutory authority, courts are generally unable to provide an adequate remedy unless the defendant spouse has property within the state.[75]

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66. *But see* Note, *supra* note 13, at 48-52.

67. *See, e.g.,* Consolidated Labs., Inc. v. Shandon Scientific Co., 384 F.2d 797 (7th Cir. 1967); Tate v. Renault, Inc., 278 F. Supp. 457 (E.D. Tenn. 1967); Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357, 108 A.2d 372, *cert. denied,* 348 U.S. 943 (1954).

68. *E.g.,* Federal Ins. Co. v. Michigan Wheel Co., 267 F. Supp. 639 (S.D. Fla. 1967).

69. *E.g.,* DiGiovanni v. Gittelson, 181 So. 2d 195 (3d D.C.A. Fla. 1965).

70. Aftanase v. Economy Baler Co., 343 F.2d 187 (8th Cir. 1965); Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

71. *See, e.g.,* Porter v. Nahas, 35 Ill. App. 2d 360, 182 N.E.2d 915 (1st Dist. Ct. App. 1962); Dubin v. City of Philadelphia, 34 Pa. D. & C. 61 (C.P. 1938). *Contra* James v. Kush, 157 So. 2d 203 (2d D.C.A. Fla. 1963).

72. *E.g.,* KY. REV. STAT. §454.210 (Supp. 1968); N.Y. CIV. PRAC. §302 (McKinney Supp. 1969); TENN. CODE ANN. §20-235 (Supp. 1969); *see* VA. CODE ANN. §8-81.2(6) (Supp. 1970).

73. ILL. REV. STAT. ch. 110, §§16, 17 (1967); KAN. STAT. ANN. §60-308 (Supp. 1964).

74. *See* Friedman, *Extension of the Illinois Long Arm Statute: Divorce and Separate Maintenance,* 16 DE PAUL L. REV. 45 (1966).

75. For example, if a couple were domiciled within the state and the husband abandoned his wife and could not be served within the state, jurisdiction could not be taken to adjudicate rights in property outside the state, child support, or alimony. Although in many cases the Uniform Reciprocal Enforcement of Support Act, *e.g.,* FLA. STAT. ch. 88 (1969), may be available, the practical limitations of this statute may make it less advantageous than receipt of an in personam judgment. *See* Friedman, *supra* note 74, at 47. The only other method of determining the plaintiff spouse's rights is by bringing an action in the state of the defendant's residence. This alternative is usually unsatisfactory since those most in need of support can usually least afford litigation in a foreign state.

INTERPRETATION OF THE FLORIDA LONG-ARM

Because of its rapidly expanding population, commerce, and tourism, Florida would be expected to lead in providing its residents with the advantages of modern state jurisdictional principles. Indeed, the legislature and courts of Florida have expressed the intent that Florida long-arm jurisdiction be extended as far as constitutionally permissible.[76] However, present statutory authority falls far short of the limits established in *International Shoe*. Rather than working within the guidelines of a single act statute, or simply being limited by due process when attempting to adjudicate actions against nonresidents, Florida courts must function within the restrictive jurisdictional concept of "doing business."[77]

The principal statutory provision for achieving jurisdiction over nonresident defendants is Florida Statutes, section 48.181. This "doing business" statute is directed to: "[A]ny person, individually, or associated together as a copartnership or any other form or type of association . . . [who accepts] the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state . . . ."

In addition, jurisdiction to adjudicate a cause of action against a nonresident within the state may be taken when the defendant is a motor vehicle owner whose vehicle, while under his control, causes an accident in the state[78] or when a nonresident, who has operated, navigated, or maintained an aircraft or a watercraft within the state and either in person or through others, causes an accident by such activity.[79]

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76. *See* Delray Beach Aviation Corp. v. Mooney Aircraft, Inc., 332 F.2d 135 (5th Cir. 1964). Fla. Laws 1970, ch. 70-90 states, *inter alia*: "Whereas, the expanding volume of interstate and international commerce transacted in Florida has greatly increased the possibility that Florida residents or those visiting Florida as well as their property may receive injury, loss, or damage in Florida as the result of compensable wrongful acts committed outside the state by nonresidents or their agents who derive substantial revenue from interstate or international commerce and who should reasonably expect that such wrongful acts might have some injurious consequences in this state, and

"Whereas, Florida residents or visitors should be able to obtain compensation in the courts of Florida from such nonresidents or their agents for injuries, losses, and damages so inflicted, and

"Whereas, the legislature intends that the courts of this state shall have personal jurisdiction over such nonresidents for wrongful acts committed outside the state which cause injury, loss, or damage to persons within Florida to the extent due process considerations permit . . . ."

77. FLA. STAT. §48.181 (1) (1969): "The acceptance by any person or persons . . . of the privilege . . . to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the secretary of state of the state as their agent on whom all process in any action of [sic] proceeding against them, or any of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served." FLA. STAT. §48.181 was previously §47.16 until 1967 when the section was transferred and amended.

78. FLA. STAT. §48.171 (1969).

79. FLA. STAT. §48.19 (1969). This section was amended in the 1970 legislative session to encompass aircraft. Fla. Laws 1970, ch. 70-90. Previously only watercraft had been provided for.

Whenever a defendant who has had one or more of the prescribed contacts with the state is a nonresident or conceals himself, substituted service of process can be made upon the secretary of state. Substituted service is justified upon the basis of the defendant's having "[accepted] the privilege extended by the laws of [the] state"[80] or, having relied upon the "protection of the laws of [the] state."[81] If the defendant can be found, he must be given actual notice, usually by registered or certified mail with proof of service required.[82]

Florida Statutes, sections 48.171[83] and 48.19[84] may be considered single act statutes in that only the designated action is necessary to effectuate state court jurisdiction. Florida Statutes, section 48.181 requires a greater degree of in-state participation and encompasses only actions arising from a "commercial" setting. This "doing business" statute is the most frequently utilized method of gaining in personam jurisdiction over nonresidents. In recent years many states have enacted broad, single act long-arm statutes;[85] however, Florida's primary instrument for obtaining in personam jurisdiction over nonresidents has remained couched in the fifty-year-old business terminology of Florida Statutes, section 48.181.

Florida reacted to *International Shoe* by amending previous section 47.16, to make it applicable to individuals as well as to business entities.[86] Such statutory expansion of jurisdiction has been relatively infrequent and generally appears to have been initiated only when the courts have refused to stretch existing statutes.[87] Courts have primarily achieved expansion of jurisdiction through case construction, resorting in some instances to considerable judicial gymnastics to attain the necessary flexibility. Broadening the application of the long-arm statute was initially accomplished by distinguishing between "business" and "business venture." In 1953 the Florida supreme court stated:[88]

> [T]here is a vast difference between the words "a business" and the words "business venture" as used in [Florida Statutes, section 47.16]. One may engage in a "business venture" without operating, conducting, engaging in or carrying on "a business."

Utilization of the broader "business venture" concept was sometimes accomplished by circuitous reasoning. In *Strasser Construction Corp. v. Linn*[89]

80. FLA. STAT. §48.171 (1969).
81. FLA. STAT. §48.19 (1969).
82. FLA. STAT. §48.161 (1) (1967).
83. FLA. STAT. §48.171 (1969) is the nonresident motorist statute.
84. FLA. STAT. §48.19 (1969), *as amended,* Fla. Laws 1970, ch. 70-90, is the nonresident aircraft and watercraft statute.
85. *See* authorities cited note 65 *supra.*
86. Fla. Laws 1951, ch. 26657, §1 (now incorporated into FLA. STAT. §48.181 (1) (1969).
87. *E.g.,* in 1957 FLA. STAT. §47.16 was amended to include acts of distributors and jobbers after the United States Court of Appeals, Second Circuit, dismissed process against a nonresident "parent" corporation in a suit arising from the activities of the subsidiary. Berkman v. Ann Lewis Shops, Inc., 246 F.2d 44 (2d Cir. 1957).
88. State *ex rel.* Weber v. Register, 67 So. 2d 619, 620 (Fla. 1953).
89. 97 So. 2d 458 (Fla. 1957).

a sufficient business venture was found to enable the court to adjudicate a claim for breach of contract against a resident of Japan. Through his agent in New York, the nonresident had engaged the plaintiff to construct an apartment building in Florida. The court reasoned that if the building had been completed and rents taken there would have been a business venture. The construction contract was said to amount to the "first substantial steps" in the venture and thus was sufficient to allow jurisdiction over the nonresident defendant.[90]

Jurisdiction was also extended through a broadened interpretation of "business venture" in *Matthews v. Matthews*,[91] in which the court held:[92]

> Although certain of the individual acts of the defendant as related to each separate property involved may or may not be classified as a business venture when considered collectively her activities show a general course of . . . conduct of carrying on her own personal business activity in this state for her own pecuniary benefit or livelihood.

The concept of "pecuniary benefit" remained obscure for several years, although Florida courts readily viewed the individual's activities as a whole rather than "compartmentalizing" them.[93] However, the pecuniary benefit approach was recently revitalized in *McCarthy v. Little River Bank & Trust Co.*[94] The court assumed in personam jurisdiction over a nonresident who entered Florida to settle his uncle's estate. The defendant had come into the state under the mistaken assumption that he was the decendent's primary beneficiary. His activities in settling the estate were thus considered a business venture. This approach was adopted by the Florida supreme court in *DeVaney v. Rumsch*[95] in which the court overturned precedent by holding that the Florida long-arm extended to any corporation or individual carrying on activities or practicing a profession in anticipation of profit.[96] The commercial nexus required to establish a business venture was greatly diminished. "The determinative question is whether goods, property, or services are dealt with within the state for the pecuniary benefit of the person providing or otherwise dealing in those goods, property or services."[97]

The commercial requirements of the Florida long-arm statute have traditionally been liberally construed.[98] By utilizing pecuniary benefit to

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90. *Id.* at 460.

91. 122 So. 2d 571 (2d D.C.A. Fla. 1960).

92. *Id.* at 573. *See also* Strasser Constr. Corp. v. Linn, 97 So. 2d 458, 460 (Fla. 1957).

93. *See, e.g.*, O'Connell v. Loach, 203 So. 2d 350 (2d D.C.A. Fla. 1967); Odell v. Signer, 169 So. 2d 851 (3d D.C.A. Fla. 1964); Oxley v. Zmistowski, 128 So. 2d 186 (2d D.C.A. Fla. 1961).

94. 224 So. 2d 338 (3d D.C.A. Fla. 1969).

95. 228 So. 2d 904 (Fla. 1969).

96. Doctors and professionals had previously been considered outside the long-arm statute since they were not considered to be "doing business." Williams v. Duval County Hosp. Auth., 199 So. 2d 299, 302 (1st D.C.A. Fla. 1967). *But see* Fine v. Snyder, 207 So. 2d 695 (3d D.C.A. Fla. 1968).

97. Devaney v. Rumsch, 228 So. 2d 904, 906 (Fla. 1969).

98. *See* Delray Beach Aviation Corp. v. Mooney Aircraft, Inc., 332 F.2d 135 (5th Cir.

define "doing business," the court appears to have taken another step toward ameliorating some of the difficulties of attempting to fit modern concepts of due process into the "doing business" formula. As greater emphasis is placed upon the nature of the activity, Florida courts may less often be forced to resort to tortured reasoning in order to find sufficient business contacts. This broadened concept of "doing business" should allow jurisdiction over most nonresident defendants if the complaint can set forth some profit-motivated intent of the defendant from which the action arises.[99] However, this basis for assuming in personam jurisdiction over nonresidents is legally unnecessary. Since 1945 the sole constitutional requirement has been that the defendant must "have certain minimum contacts with [the state] . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[100] There is no constitutional necessity that the contacts be made in anticipation of pecuniary benefit so long as the defendant has minimum contacts with the state.

Although the concept of "minimum contacts" has clearly been accepted and applied in Florida, [101] the method of perfecting in personam jurisdiction that has evolved is a strange hybrid of "minimum contact" principles and "doing business" rhetoric. Florida courts have concerned themselves with the mechanical search for business contacts while apparently ignoring the qualitative considerations of *International Shoe.* The Florida Legislature has failed to provide an adequate vehicle for implementation of modern jurisdictional concepts.[102] Although a broadly construed definition of "doing business" has lessened many of the difficulties inherent in the present law, many tort and contract situations still result in cumbersome, and often unpredictable, application of Florida long-arm jurisdiction.

1964); State *ex rel.* Weber v. Register, 67 So. 2d 619 (Fla. 1953). However, Florida courts have occasionally reasserted the necessity of strictly applying FLA. STAT. §48.181 (1969). *E.g.,* Kaston v. Kaston, 222 So. 2d 55 (3d D.C.A. Fla. 1969); Williams v. Duval County Hosp. Auth., 199 So. 2d 299 (1st D.C.A. Fla. 1967).

99. *See* McCarthy v. Little River Bank & Trust Co., 224 So. 2d 338 (3d D.C.A. Fla. 1969).

100. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

101. Phillips v. Hooker Chem. Corp., 375 F.2d 189 (5th Cir. 1967); State *ex rel.* Guardian Credit Indem. Corp. v. Harrison, 74 So. 2d 371 (Fla. 1954); Fawcett Publications, Inc. v. Rand, 144 So. 2d 512 (3d D.C.A. Fla. 1962).

102. The failure of the legislature to provide for broader jurisdiction over nonresidents is especially frustrating since such a condition does not appear to be the result of a conscious policy. Present judicial impotency appears to be the result of legislative inefficacy rather than legislative disinterest. *See* note 76 *supra.* One of the liabilities inherent in present Florida law is sharply pointed out by San Juan Hotel Corp. v. Lefkowitz, 277 F. Supp. 28 (D.P.R. 1967). In that case, a nonresident defendant was found amenable to in personam jurisdiction in an action for payment of hotel, food, liquor, and lodging bills he had "run up" while a tourist visiting the Commonwealth. Such an action would probably have been impossible under present Florida law in absence of a commercial purpose behind the activities. This case raises the question of how many thousands of dollars are lost in Florida each year in similar situations,

APPLICATION OF FLORIDA LONG-ARM JURISDICTION

Contracts

Florida courts presently must predicate jurisdiction in actions involving contracts for the sale of land upon the type of land being sold or the purpose of making the contract. The status of the parties, their relationship with the forum state, and the interests of the state and the parties appear to receive little consideration. Generally, the isolated action of selling a house by one who moves to another state is not a sufficient business venture by the defendant to obtain jurisdiction to adjudicate the broker's claim for his unpaid fee.[103] In addition, jurisdiction may not be obtained over a nonresident who is sued for misrepresentation of fact in the sale of Florida land when the papers of transfer are prepared by the plaintiff in Florida but signed by the defendant at his foreign residence.[104]

In contract actions involving property used for obvious commercial purposes, such as orange groves, the contacts required for in personam jurisdiction over the defendant need not be as extensive as in cases involving residential property.[105] In most situations, however, the plaintiff must clearly establish a commercial nexus if he sues in a Florida forum. In *O'Connell v. Loach*[106] the resident plaintiff's original action to recover real estate commissions was dismissed for lack of jurisdiction of the nonresident defendant. However, an amended complaint showing that the defendant had previously utilized plaintiff's services to purchase several other properties conveyed as security on loans was found sufficient to establish a business venture by the nonresident defendant and jurisdiction was taken. Establishing that land was actually conveyed to secure loans,[107] or proof of some ultimate commercial purpose behind property acquisition,[108] has frequently led the courts to find business ventures. These cases exemplify the importance of establishing in the complaint some real or probable commercial purpose from which the cause of action has arisen.[109]

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103. Hayes v. Greenwald, 149 So. 2d 586 (3d D.C.A. Fla. 1963).

104. Toffel v. Baugher, 125 So. 2d 321 (2d D.C.A. Fla. 1960).

105. Weber v. Register, 67 So. 2d 619 (Fla. 1953).

106. 203 So. 2d 350 (2d D.C.A. Fla. 1967).

107. *E.g.*, Oxley v. Zmistowski, 128 So. 2d 186 (2d D.C.A. Fla. 1961); Matthews v. Matthews, 122 So. 2d 571 (2d D.C.A. Fla. 1960).

108. *E.g.*, Strasser Constr. Corp. v. Linn, 97 So. 2d 458 (Fla. 1957).

109. In a state such as Florida, which is undergoing extensive land development, it is imperative that the courts be able to fully utilize jurisdictional power over transactions involving real property. Florida's attraction to tourists and nonresidents would appear to necessitate jurisdiction over persons entering into contracts that have a sufficient connection with the state. It has been observed in regard to the California long-arm statute that it seems ludicrous that a nonresident automobile driver involved in an automobile accident is amenable to suit, while the same person, were he to enter a contract with a resident of the state could escape all liability for the transaction. Note, *Personal Jurisdiction over Nonresident Individuals: A Long-Arm Statute Proposed for California*, 9 SANTA CLARA L. REV. 313 (1969). To a limited extent, this evaluation is applicable to present Florida law. The limited extent depends upon whether the contract has sufficient "business" overtones or is sufficiently profit-oriented to satisfy the requirements of FLA. STAT. §48.181 (1969).

The prior physical presence of the defendant or his agents within the state also appears to have considerable influence upon whether the courts will assume jurisdiction over nonresidents. Franchise agreements,[110] land transactions,[111] and other contracts involving nonresident defendants who executed agreements outside the state have been found insufficient to support long-arm jurisdiction.[112] However, similar agreements involving defendants who had personally or through an agent been physically present have been found sufficient to allow jurisdiction.[113] The recent emphasis upon pecuniary benefit in the interpretation of "business venture" may now enable assumption of jurisdiction in some of the marginal contract situations proviously outside Florida long-arm jurisdiction. The present statutory basis of gaining in personam jurisdiction over nonresidents will, however, remain insufficient in most cases involving a single contract or a personal transaction with a nonresident.[114]

Torts and Products Liability

In personam jurisdiction over nonresidents is difficult to obtain in many tort situations because of the lack of a sufficient commercial setting from which the cause arises.[115] A case that dramatically demonstrates the insufficiency of Florida's present long-arm jurisdiction over nonresident tortfeasors and property owners is *James v. Kush*.[116] The plaintiff in that case was a minor child who was injured by a limb falling from the defendant's property onto adjoining property where she stood. The nonresident defendant had employed an agent to destory deteriorated buildings and trees on his property pursuant to municipal directive. However, since the property had not been recently used for rental or business purposes, the court was unable to take jurisdiction over the nonresident tortfeasor. Although noting that other jurisdictions would permit the action, the court held it could not take in personam jurisdiction under Florida law.[117]

In products liability cases, the required commercial nexus is easier to establish since the injurious product is usually transferred for pecuniary benefit. However, the plaintiff still must prove the defendant had a series of dealings within the state, thereby availing himself of the privilege of doing

110. Kastan v. Kastan, 222 So. 2d 55 (3d D.C.A. Fla. 1969).

111. Toffell v. Baugher, 125 So. 2d 321 (2d D.C.A. Fla. 1960).

112. Sausman Diversified Invest., Inc. v. Cobbs Co., 208 So. 2d 873 (3d D.C.A. Fla. 1968); Lomas & Nettleton Fin. Corp. v. All Coverage Underwriters, Inc., 200 So. 2d 564 (4th D.C.A. Fla. 1967).

113. *E.g.*, Phillips v. Hooker Chem. Corp., 375 F.2d 189 (5th Cir. 1967); Bradbery v. Frank L. Savage, Inc., 190 So. 2d 183 (4th D.C.A. Fla. 1966); Odell v. Singer, 169 So. 2d 851 (3d D.C.A. Fla. 1965).

114. *Cf.* Uible v. Land Street, 392 F.2d 467 (5th Cir. 1968); Hayes v. Greenwald, 149 So. 2d 586 (3d D.C.A. Fla. 1963).

115. *E.g.*, Talcott v. Midnight Publishing Corp., 427 F.2d 1277 (5th Cir. 1970).

116. 157 So. 2d 203 (2d D.C.A. Fla. 1963).

117. *Id.* at 205.

business in Florida.[118] Being licensed in the state, leasing or owning property, having telephone listings, paying taxes, or having salesmen or agents frequently visit the state have been utilized as indicia of the necessary business contacts.[119] Moreover, in order to be found amenable to in personam jurisdiction the nonresident defendant generally must have either sent a substantial number of products into Florida[120] or spent a substantial amount of time engaged in business activities[121] in the state. Newly adopted Florida Statutes, section 48.182, may have obviated these judicially imposed requirements. However, the statute is almost totally incomprehensible and may be unconstitutional.[122] It would therefore be prudent to anticipate that Florida courts will continue to utilize the same general criteria utilized in the past.

Although recent decisions have adopted a much broader concept of "doing business," Florida's in personam jurisdiction over nonresidents remains contingent upon the defendant's engaging in "a series of similar acts done for the purpose of realizing a pecuniary benefit within the state. . . ."[123] This requirement probably continues to preclude jurisdiction over manufacturers whose products occasionally are sent into Florida,[124] although this jurisdiction exists by statute in many other states.[125]

Attempts to expand jurisdiction in products liability cases must also take into consideration possible limitations of the "control" doctrine,[126] which holds that, in order to extend jurisdiction over the nonresident manufacturer whose product injures a resident within the state:[127]

> [T]he party attempting to perfect such service must demonstrate either (1) that the foreign corporation has some degree of control over the personal property referred to . . . in the hands of the "brokers, jobbers, wholesalers or distributors" selling or distributing the personal property in this State or (2) that the foreign corporation has some degree of control over the "brokers, jobbers, wholesalers or distributors" selling or distributing the personal property in this State.

The control test has been almost uniformly adopted and is applicable in all proceedings in which there has been an intervening party, whether the action

118. *Cf.* McCarthy v. Little River Bank & Trust Co., 224 So. 2d 338 (3d D.C.A. Fla. 1969).

119. *E.g.*, Federal Ins. Co. v. Michigan Wheel Co., 267 F. Supp. 639 (S.D. Fla. 1967); Young Spring & Wire Corp. v. Smith, 176 So. 2d 903 (Fla. 1965); Deere & Co. v. Watts. 148 So. 2d 529 (3d D.C.A. Fla. 1963).

120. *E.g.*, Lake Erie Chem. Co. v. Stinson, 181 So. 2d 587 (2d D.C.A. Fla. 1966).

121. *E.g.*, Phillips v. Hooker Chem. Corp., 375 F.2d 189 (5th Cir. 1967).

122. *See* text accompanying notes 166-169 *infra.*

123. McCarthy v. Little River Bank & Trust Co., 224 So. 2d 338, 341 (3d D.C.A. Fla. 1969).

124. *E.g.*, Newark Ladder & Bracket Co. v. Eadie, 125 So. 2d 915 (3d D.C.A. Fla. 1961).

125. *See* authorities cited note 65 *supra; e.g.*, Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

126. *See* Fawcett Publications, Inc. v. Rand, 144 So. 2d 512 (3d D.C.A. Fla. 1962). It is interesting to note that this doctrine, which has been applied primarily in contract and products liability actions, evolved from a case brought for libel.

127. *Id.* at 514.

be for breach of implied warranty,[128] negligence,[129] or breach of contract.[130] Consequently, in cases of products liability involving a "middleman," the plaintiff must satisfy the court not only that the defendant manufacturer was doing business in Florida but also that he had control over the product or the middleman.[131] Although the courts have usually been liberal in their search for a degree of control,[132] this ambiguous requirement adds an even greater degree of unpredictability to the already amorphous "doing business" requirements. By liberally defining "doing business" in terms of pecuniary benefit, most products liability actions will satisfy the threshold "doing business" requirement. However, so long as the control test is utilized, many manufacturers will not be subject to suit for injury caused by products passing indirectly to the consumer.[133]

"Arising Out Of" Requirements and Florida Statutes, Section 48.081

If a resident of Florida is injured by the wrongful act of a nonresident, present case law requires that an action may be brought only if it is established that the defendant engaged in a number of similar acts for the purpose of realizing a pecuniary benefit within the state. If the defendant caused the damage indirectly, the plaintiff must also show that the defendant had substantial control over the product, agent, or property causing the damage. The Florida supreme court has also held that long-arm jurisdiction applies "only to obligations or causes of action which [arise] out of the activities of the corporation in the State."[134] Apparently prompted by the reversal of a district court decision sustaining jurisdiction over a cause of action that arose outside the state, the Florida Legislature attempted to ameliorate this restriction by amending former Florida Statutes, section 47.17, to provide:[135]

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128. *E.g.*, Federal Ins. Co. v. Michigan Wheel Co., 267 F. Supp. 639 (S.D. Fla. 1967).

129. *E.g.*, DiGiovanni v. Gittelson, 181 So. 2d 195 (3d D.C.A. Fla. 1965); *cf.* Cooke-Waite Labs., Inc. v. Napier, 166 So. 2d 675 (2d D.C.A. Fla. 1964).

130. *E.g.*, Lomas v. Nettleton Fin. Corp. v. All Coverage Underwriters, Inc., 200 So. 2d 564 (4th D.C.A. Fla. 1967). The "control" requirement is exacted although FLA. STAT. §48.181 (3) (1969) creates a presumption that the parent corporation is doing business in Florida. *See* Talcott v. Midnight Publishing Corp., 427 F.2d 1277 (5th Cir. 1970). *See also* Hermetic Seal Corp. v. Savoy Electronics, Inc., 290 F. Supp. 240 (S.D. Fla. 1967), *aff'd*, 401 F.2d 775 (5th Cir. 1968).

131. *E.g.*, Young Spring & Wire Corp. v. Smith, 176 So. 2d 903 (Fla. 1965); Deere & Co. v. Watts, 148 So. 2d 529 (3d D.C.A. Fla. 1963).

132. *See, e.g.*, DiGiovanni v. Gittleson, 181 So. 2d 195 (3d D.C.A. Fla. 1965).

133. Given the uncertainty of establishing sufficient business contacts (*see, e.g.*, Young Spring & Wire Corp. v. Smith, 176 So. 2d 903 (Fla. 1965); Service Station Aid, Inc. v. National Hose Co., 210 So. 2d 257 (3d D.C.A. Fla. 1968)) and possible difficulty in satisfying the "control" doctrine in applicable cases, a quasi in rem proceeding should be considered in the alternative. In "pure" tort cases this alternative assumes special significance, particularly when the action involves land or some other tangible asset of the defendant. *E.g.*, James v. Kush, 157 So. 2d 203 (2d D.C.A. Fla. 1963).

134. Illinois Central R.R. v. Simari, 191 So. 2d 427, 428 (Fla. 1966).

135. FLA. STAT. §48.081 (5) (1969).

> Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.

Just as improvident legislative action directed toward gaining jurisdiction over parent corporations for the wrongful acts of subsidiaries resulted in the unsatisfactory "control" doctrine,[136] Florida Statutes, section 48.081 (5), articulates ambiguous criteria that may aggravate rather than remedy past judicial confusion. The difficulty is that, in light of previous Florida decisions, the statement that the action need not arise from a "transaction or operation connected with or incidental to the business being transacted within the State" is subject to three different constructions. This prescription could be construed to obviate the necessity: (1) that the cause of action be related to the business the defendant nonresident is doing in the state; (2) that the cause of action arise within the state; or (3) that the cause of action arise within the state or be related to defendant's activities there.

Past Florida court interpretations notwithstanding,[137] it should be noted that none of these limitations possibly obviated by section 48.081 (5) appear to be constitutionally required if the corporation has sufficient minimum contacts with the state. *International Shoe* clearly stated that in some instances "corporate operations within a state [are] . . . of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities,"[138] and the Supreme Court has specifically held there is no due process requirement that *prohibits* a state from proceeding to enforce a cause of action arising outside the state.[139]

In *Illinois Central R.R. v. Simari*[140] the defendant railroad, a nonresident corporation, had sold the plaintiff a ticket at one of its two permanent Florida offices and plaintiff had begun her trip in Miami. Although the railroad had retained offices in Florida for twenty-five years and employed a number of persons in the state to solicit passengers and freight, the Florida supreme court dismissed the action, reasoning that since the alleged negligence causing plaintiff's injury occurred outside the state, no action could be brought in Florida.[141] The court thus interpreted the "arising out of" provision in the long-arm statute to mean that only causes of action arising *within* Florida

136. Note, *supra* note 13, at 43.

137. *See* Illinois Central R.R. v. Simari, 191 So. 2d 427 (Fla. 1966); Gianni Controls Corp. v. Eubanks, 190 So. 2d 171 (Fla. 1966).

138. International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945).

139. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 446 (1952). See text accompanying notes 32-37 *supra*.

140. 191 So. 2d 427 (Fla. 1966), *rev'g* Simari v .Illinois Central R.R., 179 So. 2d 220 (1st D.C.A. Fla. 1965).

141. 191 So. 2d at 428.

were within the state court's cognizance. In a companion case,[142] however, the court relied upon the same precedent[143] to establish the apparent further limitation that the cause of action be related to the particular activities of the defendant that established the business contacts. This relatedness requirement appears to be the effect given the Florida supreme court decisions in *Federal Insurance Co. v. Michigan Wheel Co.*[144] The federal district court made the following statement as it dismissed the action: "Although Florida may have . . . constitutional power to flex its jurisdictional muscles more strongly, it has chosen, by its legislature and its Supreme Court, not to do so. . . ."[145] Past decisions of the Florida supreme court thus indicate a requirement that the cause of action must be related to the corporation's business transactions on which long-arm jurisdiction is predicated *and* that the cause of action arise within the state.

In *Woodham v. North Western Steel & Wire Co.*[146] the United States Court of Appeals, Fifth Circuit, in effect ignored the requirement that the cause of action arise within the state. This was done by following an earlier Florida district appeals court decision[147] that distinguished between the requirements of the "doing business" statute[148] and the statutes that prescribe the method of service upon corporations.[149] The court of appeals reasoned that since the service of process statutes provided for service on corporate officers or agents, there was no need to require that the action arise from business transactions within the state. Thus, the court distinguished the situation where the defendant corporation was assured of adequate notice when service was made upon its agent from the substituted service provided under the "doing business" statute, indicating that since the latter was less adequate the requirement that the cause arise in-state was necessary.[150] This distinction is somewhat specious since the Florida supreme court, in its decision in *Simari,* addressed itself expressly to the statutes later relied upon by the federal court. However, the rationale used by the Fifth Circuit appears to be consistent with the intent of Florida Statutes, section 48.081 (5). Whether that statute is addressed to allowing suit on a cause of action arising outside the state or whether it obviates the need for relatedness when the contacts specified are present, or both, is still not completely answered. However, though the better view would suggest a broad construction of section 48.081 (5),[151] it would appear that even should the defendant fit the limited category of section

142. Gianni Controls Corp. v. Eubanks, 190 So. 2d 171 (Fla. 1966).

143. Zirin v. Charles Pfizer & Co., Inc., 128 So. 2d 594 (Fla. 1961).

144. 267 F. Supp. 639 (S.D. Fla. 1967).

145. *Id.* at 640.

146. 390 F.2d 27 (5th Cir. 1968).

147. H. Bell & Associates, Inc. v. Keasbey & Mattison Co., 140 So. 2d 125 (3d D.C.A. Fla. 1962).

148. Previously FLA. STAT. §§47.16 (1965), now FLA. STAT. §48.181 (1969).

149. Previously FLA. STAT. §§47.17, .171 (1965), now FLA. STAT. §48.081 (1969).

150. Woodham v. North Western Steel & Wire Co., 390 F.2d 27, 30 (5th Cir. 1968). *See also* Hoffman v. Air India, 393 F.2d 507 (5th Cir. 1968).

151. *See* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

48.081 (5), the cause of action must be significantly *related* to the nonresident's activities within the state if jurisdiction over him is to be taken.[152]

As exemplified by *Woodham,* federal courts often seem to construe Florida law more liberally than do the Florida courts.[153] Although the federal courts must apply Florida law in state matters arising in Florida, they appear more readily disposed to apply modern interpretations of minimum contacts than do the statute-bound state courts. Consequently, in actions against nonresidents involving substantial sums, recourse to the federal courts may be advantageous to the plaintiff. The plaintiff should also be cognizant of opportunities to utilize quasi in rem proceedings when an in personam proceeding in a state court does not appear feasible.[154]

Recent jurisdictional developments may indicate another means of convenient judicial recourse for the Florida resident. Although the right of direct action established in *Shingleton v. Bussy*[155] appears subsequently to have been partially emasculated,[156] the Florida supreme court's activity suggests another possible approach. Utilizing the policy established in *Shingleton,* and ostensibly unchanged by *Beta Eta House Corp. v. Gregory,*[157] it is only a short step to allowance of direct action against the insurance company doing business in Florida for the contingent liability of the nonresident defendant. Given the apparent desire of the Florida courts to extend jurisdiction as far as constitutionally permissible,[158] such a procedure may be feasible.[159]

The right of a plaintiff to garnish the debt of a resident who owes a debt to the absent defendant is clearly established.[160] If the insurer of a liability policy is present within the state, a quasi in rem action against the insurer for the contingent debt owed the nonresident defendant appears to be constitutionally acceptable. This approach has been allowed in New York, which

152. *See* Florida Towing Corp. v. Oliver J. Olson & Co., 426 F.2d 896 (5th Cir. 1970). Although the application of FLA. STAT. §48.081 (1969) was not raised in this case, the court held that the cause of action must arise from the activities of the defendant within the state if jurisdiction is to be taken over him. It is doubtful if this "relatedness" requirement would be abrogated even if a case should arise in which §48.081 (5) was clearly applicable. *Cf.* Zirin v. Charles Pfizer & Co., 128 So. 2d 594 (Fla. 1961). It should also be noted that §48.081 (5) is limited to corporations with active business offices within the state. Thus, nonresident individuals and many nonresident corporations would not be subject to its more liberal terms, regardless of how the statute is interpreted.

153. *E.g.,* Hoffman v. Air India, 393 F.2d 507 (5th Cir.) 1968); Woodham v. North Western Steel & Wire Co., 390 F. 2d 27 (5th Cir. 1968); Delray Beach Aviation Corp. v. Mooney Aircraft, Inc., 332 F.2d 135 (5th Cir. 1964). *But see* Talcott v. Midnight Publishing Corp., 427 F.2d 1277 (5th Cir. 1970); Hermetic Seal Corp. v. Savory Electronics, Inc., 290 F. Supp. 240 (S.D. Fla. 1967), *aff'd,* 401 F.2d 775 (5th Cir. 1968).

154. *See* note 133 *supra. But see* note 60 *supra.*

155. 223 So. 2d 713 (Fla. 1969).

156. Beta Eta House Corp. v. Gregory, 237 So. 2d 163 (Fla. 1970).

157. *Id.*

158. *See* Delray Beach Aviation Corp. v. Mooney Aircraft, Inc., 332 F.2d 135 (5th Cir. 1964).

159. Whether such an action would be possible depends primarily upon the scope of the *Beta Eta House Corp.* decision, which allowed severance of the insurance company upon its motion.

160. Harris v. Balk, 198 U.S. 215 (1905).

had not previously had the benefit of direct action.[161] In a New York action against a Connecticut tortfeasor to recover for injury sustained in Connecticut, the plaintiff was allowed to attach a liability policy issued to the Connecticut defendant by an insurance company doing business in New York.[162] However, the court restricted possible recovery in such proceedings to the face value of the insurance policy even if the insured defended on the merits.[163] A similar procedure may be possible under present Florida law.[164] Such a proceeding would allow recourse in situations where the nonresident defendant has a policy with an insurer doing business in Florida but does not have sufficient business contacts in the state to bring him personally before the courts.

Florida Statutes, Section 48.182 (Florida Laws 1970, Chapter 70-90)

Florida Statutes, section 48.182, is in itself sufficient to warrant considerable discussion. This statute well illustrates the frustrations of Florida lawyers and legislators in attempting to define state jurisdiction over nonresidents. Reference to the enunciated legislative intent[165] suggests that the statute aims primarily at providing in personam jurisdiction in products liability suits. Florida Statutes, section 48.182, states:

> Any nonresident person, firm, or corporation who in person or through an agent commits a wrongful act outside the state which causes injury, loss, or damage to persons or property within this state may be personally served in any action or proceeding against the nonresident arising from any such act in the same manner as a nonresident who in person or through an agent has committed a wrongful act within the state. If a nonresident expects or should reasonably expect the act to have consequences in this state or any other state or nation and derives substantial revenue from interstate or international commerce he may be served; provided that, if such nonresident is deceased, his executor or administrator shall be subject to personal service in the same manner as a nonresident; provided further that this section shall

161. *See* Seider v. Roth, 17 N.Y. 2d 111, 216 N.E.2d 312, 269 N.Y.S. 2d 99 (1966).

162. Simpson v. Loehmann, 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967).

163. *Id.* at 310, 234 N.E.2d at 671, 287 N.Y.S.2d at 636-37. *See* Stein, *Jurisdiction by Attachment of Liability Insurance*, 43 N.Y.U.L. REV. 1075 (1968). *See also* Minichiello v. Rosenberg, 410 F.2d 106 (2d Cir. 1968); Barker v. Smith, 290 F. Supp. 709 (S.D.N.Y. 1968); Nationwide Mutual Ins. Co. v. Vaage, 265 F. Supp. 556 (S.D.N.Y. 1967).

164. The major difficulty with such an action in Florida would be in attaching the contingent debt owed to the plaintiff. FLA. STAT. §77.02 (1969) prohibits the use of garnishment before judgment has been rendered against a defendant tortfeasor. However, utilizing the third party beneficiary policy espoused in *Shingleton*, an attachment proceeding under FLA. STAT. ch. 77 (1969) would probably be feasible. FLA. STAT. §76.04 (1969) may present some difficulty by requiring that the debt must be "actually due" for attachment to be permissible. However, that limitation appears to be directed to situations in which the right to collect an obligation has not yet vested, whereas the procedure here suggested concerns an existent right contingent upon proof of liability. As expressed in *Shingleton*: "It seems reasonable to view the cause of action against an insurer in favor of an injured third party as vesting in or accruing to the injured party at the same time he becomes entitled to sue the insured . . . ." 223 So. 2d at 716.

165. Fla. Laws 1970, ch. 70-90; see note 76 *supra*.

not apply to a cause of action for defamation of character arising from the act.

It is unclear whether the term, "wrongful act," as it appears in the new statute, connotes a tortious act or, more broadly, any legally unacceptable act, such as a breach of contract. The courts will likely construe this terminology to effectuate in personam jurisdiction in products liability cases, regardless of technical controversies concerning whether breaches of warranty sound in tort or contract. Beyond this, the potential to which this statute may be utilized by the courts to extend in personam jurisdiction over nonresidents is speculative. It should be noted, however, the statute provides that the nonresident who commits the act is to be served in the *same manner* as a nonresident who commits a wrongful act within the state. A nonresident who has committed a tort or breach of contract within the state must be "doing business" in the state to be subjected to in personam jurisdiction. Consequently, the first clause of section 48.182 may be construed to incorporate section 48.181 and, therefore, add nothing to present Florida law, except possibly to resolve the issue of where the cause of action occurred.

The second sentence in the new section is problematical and very possibly unconstitutional.[166] Although this sentence is probably an attempt merely to authorize long-arm jurisdiction to a constitutionally maximal extent,[167] some attorneys have suggested that, if read literally, it would allow Florida courts to adjudicate any action involving a person substantially engaged in interstate or international commerce regardless of the residence of the plaintiff or the situs of the injury.[168] More likely this sentence is intended to introduce a forseeability test and to write into the statute some requirement that will satisfy current due process standards. The effect unfortunately could be otherwise, if, as it could be, this provision is interpreted to require no contact with the State of Florida. However, following the maxim that statutes should be interpreted in a manner most conducive to an interpretation of constitutionality, the second sentence will probably be interpreted to refer only to acts causing injury within the state.[169]

166. The second provision of Fla. Laws 1970, ch. 70-90 may be literally read to provide for jurisdiction over any cause of action arising from an act perpetrated by anyone engaging in interstate or international commerce that could be expected to have some consequences within the state or any other state or nation. Such an expression of state court jurisdiction exceeds even the broadly construed due process limits of *International Shoe*. *See* note 21 *supra*.

167. *See* note 76 *supra* wherein this intent is quoted explicitly.

168. Telephone interview with Mr. Woodrow M. Melvin, Jr., of Mershon, Sawyer, Johnston, Dunwody & Cole, Miami, Florida, Aug. 18, 1970; *cf.* Letter from Karl B. Block, Jr. to the *University of Florida Law Review*, July 21, 1970, on file in office of the *University of Florida Law Review*.

169. *Cf.* text accompanying notes 119-123 *supra*. It is interesting to note, however, that the first clause of the second sentence of §48.182 states simply that the described nonresident who derives substantial revenue from interstate or international commerce "may be served." This terminology may indicate a different procedure from that required in the first sentence rather than simply providing an explanation of it. The defendant described in the first sentence, and executors of deceased nonresident defendants, are to be served "in the same manner as a nonresident." In utilizing different language to provide for service, the first

The utility of the foreseeability test that the nonresident expect or reasonably expect "the act to have consequences in this state or any other state or nation" will depend upon each case. Certainly the application of the statute would be of questionable constitutionality in a case where no expectation existed or reasonably should have existed concerning a "consequence" in Florida.

If Florida courts interpret the second provision of section 48.182 to refer to an act causing injury within the state and construe the service language of the first clause to establish in personam jurisdiction, the statute may constitutionally result in broadly expanded jurisdiction over the class of defendants described. However, the statute is so poorly drafted and easily given to abuse that any favorable interpretation should be made with caution. Failure to expurgate unwieldy jurisdictional concepts and insistence upon attempting to incorporate disparate ideas into one provision will probably result in the continued jurisdictional impotence of Florida courts.

Conclusion

Present Florida statutory provision for obtaining jurisdiction over nonresident defendants is inadequate to meet the needs of a modern state. The conflict between the need to expand jurisdiction and the vehicle that the legislature has provided has resulted in considerable unpredictability and inconsistency in actions against nonresidents. Present judicial procedure for effectuating jurisdiction over nonresidents emphasizes quantitative factors to the detriment of proper evaluation of the interests of the litigants and the state. This result is the natural consequence of legislative intransigence in failing to abrogate the conceptually restrictive criteria of "doing business" and "business venture."

Florida Statutes, section 48.182, is an exercise in legislative futility. The intent of the statute is to provide jurisdiction over nonresident wrongdoers "to the extent due process considerations permit."[170] The effect of the statute is to create a legislative morass from which the most discerning of courts will have difficulty retrieving intelligible criteria for defining its scope. Florida Statutes, section 48.182, should be repealed and a proper statutory vehicle designed to implement the purposes abortively attempted in that enactment.

Florida has both a duty and an important interest in providing its citizens with an available forum in which to litigate claims at a minimum of expense. As the law presently stands, Florida citizens may find themselves subject to in personam judgments in distant forums, but be unable to litigate similar claims in Florida. In a state highly oriented to tourism and with rapidly expanding industry and commerce, it becomes paramount that pro-

clause of the second sentence of §48.182 may, in fact, contemplate ubiquitous jurisdiction over the described nonresident. The nonresident defendant who derives substantial revenue through international commerce and who may reasonably expect his act to have consequences in any nation would thus be subject to Florida state court jurisdiction.

170. Fla. Laws 1970, ch. 70-90; note 76 *supra*.

vision be made for convenient avenues to litigate controversies that arise from those activities. A single act statute that incorporates jurisdictional concepts similar to those presently utilized in Illinois and Wisconsin law[171] offers the best alternative to the present inadequate basis of Florida long-arm jurisdiction.

By specifying actions such as tortious acts or omissions causing injury within the state; entering into a contract with a resident of the state; or ownership or possession of an interest in property within the state; much of the present inconsistency, unpredictability, and often injustice of Florida law can be alleviated. Although there may be liabilities inherent in single act jurisdiction, primarily in creating the potential for too pervasive jurisdiction over nonresidents, the advantages that accrue appear to heavily outweigh the possible prejudice. Legislative action, which proceeds from an understanding of modern jurisdictional concepts and cognizance of the experiences of other states, can fully implement the principles established in *International Shoe.* Careful draftmanship and utilization of equitable concepts such as *forum non conveniens* can provide Florida residents a convenient forum to litigate grievances and assure substantial justice and fair play to all parties.

W. C. GENTRY

171. ILL. REV. STAT. ch. 110, §17 (Supp. 1968); WIS. STAT. ANN. §§262.05, .20 (Supp. 1969).