Jurisdiction in Personam Over Contracts with Nonresidents

Alex Williams Rankin

Repository Citation
Alex Williams Rankin, Jurisdiction in Personam Over Contracts with Nonresidents, 26 La. L. Rev. (1966)
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol26/iss2/13

This Comment is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.
Since these two provisions are the most indefinite of the five included in the statute, and because of their novelty, it is impossible to determine at this time what scope will be given to them. The other three provisions will cover most of the cases requiring jurisdiction over nonresidents. It is with these situations — causes of action arising from contracts, and causes of action arising from in-state and out-of-state tort — that the two comments following are concerned.

David E. Soileau

JURISDICTION IN PERSONAM OVER CONTRACTS WITH NONRESIDENTS

INTRODUCTION

The Louisiana State Law Institute, in drafting Louisiana's "long-arm" statute, included three subsections which will affect the in personam jurisdiction of Louisiana courts over causes of action arising from contracts entered into by nonresidents. These subsections relate to: the transacting of any business in this state; contracting to supply services and things in this state; and having an interest in, using, or possessing a real right or immovable property in this state.1 A subsection pertaining to contracts of insurance was not included in the Louisiana statute because the Louisiana Insurance Code2 gives adequate coverage.3 Both nonresident individuals and non-licensed foreign corporations are included in the coverage of the statute.4 Nonresident individuals have been held subject to local jurisdiction on the same basis as corporations by state courts and lower federal courts, and the position has been approved by the American Law Institute.5

3. See notes 74-77 infra, and accompanying text.
4. Those corporations which have licenses to do business in the state are not covered by this "long-arm" statute because, being licensed, they are subject to the jurisdiction of Louisiana courts. See Comment (b) under LA. R.S. 13:3206 (Supp. 1964).
The purpose of this Comment is to point out how other states have implemented their “long-arm” statutes with respect to contracts. The constitutionality and applicability of the Louisiana statute will be governed primarily by what has occurred in other states. In addition, it may be possible to ascertain prospectively the effect of Louisiana’s statute on Louisiana citizens. There will be, of course, advantages and disadvantages which will become evident only in the future, but many of the positive and negative aspects of the statute can be found by examining the cumulative effect of decisions involving the several long-arm statutes enacted over the past decade.

TRANSACTING ANY BUSINESS IN THIS STATE

Nearly all of the states which have enacted “long-arm” statutes have made “the transaction of any business” one of the bases for jurisdiction in personam. This basis has been held constitutional in several of those states which include it in their act.6 The decisions handed down in the last few years clearly indicate that the transaction of any business in the state is an adequate basis for the assertion of personal jurisdiction by the state, at least as to causes of action connected with that business. The Illinois statute,7 which has been used frequently as a model act by other state legislatures, has been construed to be an attempt to make the “transaction of any business” coextensive in scope with the constitutional bounds of due process.8 It appears settled, after the McGee decision,9 that a single business transaction may be the basis for assertion of jurisdiction in personam over a nonresident defendant. In McGee, the Supreme Court upheld the jurisdiction of California over a nonresident insurance company after service was made by registered mail at the defendant’s Texas office, in a claim involving a single life insur-

8. Green v. Bluff Creek Oil Co., 287 F.2d 66 (5th Cir. 1961). In Nelson v. Miller, 11 Ill. 2d 378, 389, 143 N.E.2d 673, 679 (1957), the court said the Illinois long-arm statute reflects a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due process clause.
ance policy with a California resident. Service was based on a California law which subjected nonresident corporations to suit in California on insurance contracts with California residents. The mailing of a policy to plaintiff in California was the defendant company's only contact with that state. In addition, the premiums were mailed by plaintiff from California. The Court held that the suit in California did not "offend the traditional notions of fair play and substantial justice," and that California had a manifest interest in providing for redress against insurers refusing to pay valid claims. Thus, the *International Shoe* requirement of "minimum contacts" may be satisfied by a single, isolated business transaction. However, a difficult problem for the courts is what amount and kind of activity will constitute minimum contacts and not "offend the traditional notions of fair play and substantial justice." Prior to the enactment of a long-arm statute, many courts had rendered decisions holding that mere solicitation and negotiation by a nonresident in the state was not sufficient contact on which to base jurisdiction. After passage of long-arm statutes, courts felt able to hold otherwise. Today it is correct to say that the amount and

---


13. This, of course, does not mean all single business transactions are sufficient. However, the transaction must be "business" according to the decision of Koplin v. Saul Lerner Co., 52 Ill. App. 2d 97, 201 N.E.2d 763 (1964). There the court said the fact that the nonresident defendants registered with the Illinois Secretary of State did not bring them within Illinois' long-arm jurisdiction, because there was no showing of any business transaction. See generally Ganz, "Doing Business" in Illinois as a Basis of a Jurisdiction over Nonresidents — Due Process and Contacts, 1 *Ill. Continuing Legal Ed.* 75 (1963), for an excellent discussion of jurisdiction over single business transactions, especially in regard to the Illinois statute.

14. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). This standard for due process was reiterated by the Court in *McGee* and is now the criterion for decisions involving jurisdiction in personam over nonresidents.

15. See, e.g., *G. W. Bull & Co. v. Boston & Me. R.R.*, 344 Ill. 11, 175 N.E. 837 (1931). The state courts were simply following the rule pronounced in *Green v. Chicago, B & Q. Ry.*, 205 U.S. 530, 533-34 (1907) that "mere solicitation" of orders to be accepted and filled from outside the state was not "doing business" for due process purposes.

16. These state statutes were enacted in response to the Supreme Court decisions of *International Shoe* and *McGee* and were in effect codifications of the standards set down in these landmark cases.

17. See, e.g., *Berleumann v. Superior Distrib. Co.*, 17 Ill. App. 2d 522, 151 N.E. 2d 116 (1958), which illustrates the change brought about by the new, far-reaching statutes. There, in an action by a buyer for breach of warranty, the court held that the Illinois statute was applicable because the defendant had transacted business in Illinois. Defendant had, through an agent in Illinois, solicited two orders from the plaintiff and had also agreed to send an employee to train the plaintiff in the operation of the machines ordered. The machines
kind of activities which must be carried on by a nonresident in the forum state, to make it just and reasonable to subject him to jurisdiction in personam, must be determined according to the facts of each case.\footnote{18} For the most part, it is the “kind” of activity, or the nature or quality of the act or business, which controls the jurisdictional question, not the quantity of business carried on by the nonresident.\footnote{19}

The phrase “transaction of any business in the state” appears quite similar in meaning to “doing business.”\footnote{20} However, the

proved defective; plaintiff sued in an Illinois court and personal service was made on defendant in Colorado. There had been the transaction of some business in Illinois, and the cause of action arose out of defendant’s activities in the forum state. Accord, National Gas Appliance Corp. v. AB Electrolux, 270 F.2d 472 (7th Cir. 1959); Wisconsin Metal & Chemical Corp. v. DeZurik Corp., 222 F. Supp. 119 (E.D. Wis. 1963); Kropp Forge Co. v. Jawitz, 37 Ill. App. 2d 475, 186 N.E.2d 76 (1962); S. Hawes Co. v. W. P. Milling Co., 277 F.2d 665 (Okla. 1964). But see Tripple Mfg. Co. v. Spencer Gifts, 270 F.2d 821 (7th Cir. 1959); Kaye-Martin v. Brooks, 267 F.2d 394 (7th Cir. 1959); Orton v. Woods Oil & Gas Co., 249 F.2d 198 (7th Cir. 1957); Agrashell, Inc. v. Bernard Sirota Co., 229 F. Supp. 98 (E.D.N.Y. 1964); Grobark v. Addo Machine Co., 18 Ill. 2d 426, 158 N.E.2d 73 (1959); Irngang v. Feltone & Crane Co., 42 Misc. 2d 70, 247 N.Y.S.2d 743 (1964); Jump v. Duplex Vending Corp., 44 Misc. 2d 950, 246 N.Y.S.2d 364 (1964). But see, e.g., State v. Knapp, 131 S.E.2d 81, 90 (W.Va. 1963). In Schroeder v. Loomis, 46 Misc. 2d 184, 186, 259 N.Y.S.2d 42, 46 (1965), the court said: “Whether the type of activity conducted within the State is adequate to satisfy the requirement depends upon the facts in the particular case. The question cannot be answered by applying a mechanical formula or rule of thumb but by ascertaining what is fair and reasonable in the circumstances. In the application of this flexible test the relevant inquiry is whether defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the law of the forum.”

19. In Kropp Forge Co. v. Jawitz, 37 Ill. App. 2d 475, 186 N.E.2d 76 (1962), which involved a single business transaction without continuing obligations, the test was held to be the “substance” of the act, not the quantity. In International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945), the Court stressed that the criteria “cannot be simply mechanical or quantitative. . . . Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.” This does not mean that quantity is not considered, but only that it is not the controlling factor.

20. In Rock-Ola Mfg. Corp. v. Wertz, 249 F.2d 813 (4th Cir. 1957), the court construed the term “transacting business” to mean “doing business.” Contra, Steele v. DeLeeuw, 40 Misc. 2d 807, 244 N.Y.S.2d 97 (1963); of, Developments in the law—State-Court Jurisdiction, 73 Harv. L. Rev. 909, 1002 (1960). In this exhaustive symposium, in discussing the change in the “doing business” statutes, it was stated that “the effect of such a change varies from state to state, but generally a departure from the traditional ‘doing business’ language in this manner will lead state courts to accept a lesser degree of activity than was formerly required.” See LA. R.S. 13:3201, Comment (d) (Supp. 1964): “‘Transacting business,’ as used in Subdivision (a), is a term which is much broader than ‘doing business’ as defined by earlier Louisiana cases, and the phrase ‘does . . . business’ of Subdivision (d) conferring personal jurisdiction over a nonresident on a cause of action arising ex delicto or quasi ex delicto. It is intended to mean a single transaction of either interstate or intrastate business, and to be as broad as the phrase ‘engaged in a business activity’ of R.S. 13:3471(1).”
two phrases are not necessarily synonymous, since “doing business” as used in older statutes means a continuous course of business within the state.21 Under those statutes, a single contract or mere solicitation would not be a sufficient basis for jurisdiction in personam.22 Thus, it would seem that “the transaction of any business” is meant to be broader in scope than “doing business.”23

A consideration in determining sufficient contacts for purposes of jurisdiction is the amount of regulation which the state has placed on residents engaged in the same business.24 Another factor given considerable weight is the place where the contractual relationship was made binding.25 This is particularly

21. In Haas v. Fancher Furniture Co., 156 F. Supp. 564, 567 (N.D. Ill. 1957), involving an action for breach of an employment contract, the court declared that the “transaction of any business within the state” should not be given the restrictive interpretation that was given “doing business.” See e.g., Taylor Laundry Co. v. District Court, 102 Mont. 274, 279, 57 P.2d 772, 775 (1936). Cf. Worley Beverages, Inc. v. Bubble Up Corp., 167 F. Supp. 498, 504 (E.D.N.C. 1958), where it was held that “doing business” as used in the North Carolina statute means exercising in North Carolina some of the functions for which the corporation was created. The nonresident corporation was held subject to North Carolina’s jurisdiction because it was promoting its soft drink concentrate and assisting its distributors in sales of the bottled drink. The court also stated that “it is generally considered that changing the statute from ‘doing business’ to ‘transacting business’ only had the effect of liberalizing the statute.” Id. at 504.

22. But see Huck v. Chicago, St. P., M. & O. Ry., 4 Wis. 2d 132, 90 N.W.2d 154 (1958), where under an old statute, the court held solicitation to be “doing business.” It appears that the Wisconsin court adopted the expanded concept of “doing business” for the purpose of jurisdiction before the revised long-arm statute became effective, particularly since the court said it was immaterial to its decision whether the defendant corporation extended its activities beyond mere solicitation.

23. Developments in the Law — State-Court Jurisdiction, 73 HARV. L. REV. 909, 1002 (1960). LA. R.S. 13:3201(a) (Supp. 1964) requires some activity within the state. Subsections (b) and (d) do not. Subsection (c) does require activity within the state, but not necessarily transaction of business.

24. Generally, if the business is of a nature that is subject to considerable state regulation, the nonresident will be held subject to the in personam jurisdiction of the state. The best example is the insurance business. Also, dangerous businesses usually fall in this category.

25. See, e.g., Compania de Astral, S.A. v. Boston Metals Co., 205 Md. 237, 107 A.2d 357 (1954), where Maryland jurisdiction over a Panamanian company was upheld on the basis of a contract with a Maryland resident negotiated by mail. The contract for the sale of three ships was to be completed on the foreign purchaser’s inspection and approval of the ships. Thus, the contract was deemed “made” in Maryland. In connection with this, see Comment, 38 WASH. L. REV. 560, 565 (1963). Compare McMenomy v. Wonder Bldg. Corp. of America, 188 F. Supp. 213 (D. Minn. 1960), where Minnesota was held to have jurisdiction, although the contract was completed in Illinois. Many states have been denied jurisdiction in personam because the contract was not “made” in the state. See, e.g., Rosenberg v. Andrew Weir Ins. Co., 154 F. Supp. 6 (D. Md. 1957), in which plaintiff’s offer to render services had been accepted and the contract made outside of the United States; and Chesapeake Supply & Equip. Co. v. Mani-
important, since it is often difficult to ascertain where and when the breach occurred, thus making time and place of breach impractical as controlling factors. 26 In contrast, the place and time of commission of a tortious act is more readily determined, and therefore is often controlling. 27

Because it has been in effect only two years, the New York long-arm statute 28 and cases construing it should be of interest to Louisiana, primarily because New York had ample opportunity to observe the effects of construction given the pioneer long-arm statutes, and could, therefore, profit by the experience of other states. Hopefully, Louisiana courts will find their position even more advantageous. The New York statute has the broad "transacting any business" subsection, and there have already been many cases under that provision. Jurisdiction was upheld where a majority stockholder of a Netherlands corporation entered into a contract to purchase stock on behalf of the corporation. 29 In another case there were extensive negotiations, followed by execution of a supplemental contract, and installation by the defendant corporation in New York. Here the court found sufficient contact to support New York jurisdiction. 30 That the initial contract was made in Illinois and the goods delivered f.o.b. Illinois was not controlling. Jurisdiction was not upheld in a case where the only contact was solicitation by the traveling salesmen of a foreign corporation and insertion of the

26. Patrick Ellam, Inc. v. Nieves, 41 Misc. 2d 186, 245 N.Y.S.2d 545 (1963), where the contract was made in New York, the breach occurred in the Atlantic Ocean, and the court held the making of the contract in New York was sufficient contact.


28. N.Y. Civ. Prac. L. & Rules § 302 (1963). The subsection on transaction of any business was held constitutional in Totero v. World Telegram Corp., 41 Misc. 2d 594, 245 N.Y.S.2d 870 (1963), wherein a writer's articles, distributed by a syndicate to New York, were held to be a business transaction within the state.

29. Steele v. DeLeeuw, 40 Misc. 2d 807, 244 N.Y.S.2d 97 (1963). The court explained that the term "transacts any business" does not mean "doing business" as that term has been traditionally understood in New York. The court also held that the 1963 statute was controlling although the cause of action commenced prior to the effective date of the statute.

foreign corporation's name in the New York City phone book.\textsuperscript{81} Jurisdiction was also denied where the foreign corporation had no offices, telephone listing, or agents in New York, but sold $200,000 worth of washing machines to a New York resident;\textsuperscript{32} the orders for the machines were accepted and filled out of state, and shipment on sight draft was made to a New York warehouse. From these cases it is apparent that there is no mechanical test in New York courts to determine what constitutes a transaction of business.\textsuperscript{33} Like most states, New York decides the cases on the facts and circumstances, with reasonableness and due process as the guides.

The major argument against allowance of jurisdiction in personam on the basis of the transaction of any business is that it would be a denial of due process. Over the years there have been several tests devised to decide the due process question.\textsuperscript{34} These tests are all essentially the same as the “minimum contacts” test of \textit{International Shoe}, elaborated on by \textit{McGee},\textsuperscript{85} and modified by \textit{Hanson v. Denckla}.\textsuperscript{36} The latter case involved the attempted assertion of jurisdiction by the Florida courts over a Delaware trustee. The validity of the trust agreement was at issue, and the Court held that even though the settlor and most of the beneficiaries were domiciled in Florida, the Florida courts

\textsuperscript{31} Irgang v. Pelton & Crane Co., 42 Misc. 2d 70, 247 N.Y.S.2d 743 (1964). The court in this case apparently did not desire to go to the outer edges of constitutional limitations by stretching judicially the legislative intent. See also National Gas Appliance Corp. v. AB Electrolux, 270 F.2d 472 (7th Cir. 1959); Grobark v. Addo Machine Co., 16 N.Y.2d 426, 158 N.E.2d 73 (1959).

\textsuperscript{32} Jump v. Duplex Vending Corp., 44 Misc. 2d 950, 246 N.Y.S.2d 864 (1964); \textit{cf.} Perlmutter v. Standard Roofing & Tin Smith Supply Co., 43 Misc. 2d 885, 252 N.Y.S.2d 583 (1964), where personal jurisdiction was denied although the defendant had sent bills into the state and conducted limited negotiations regarding complaints about alleged defective materials. \textit{Contra}, Donley v. Whirlpool Corp., 234 F. Supp. 869 (E.D. Mich. 1964), where the court seemed to base its decision on the fact that the defendant made $270,000 in sales in Michigan, which constituted six per cent of defendant's total sales.

\textsuperscript{33} A discussion of the policy behind the New York long-arm statute, and some pertinent questions which should be asked when a court is considering whether the state should have jurisdiction in personam are found in Home Crafts Inc. v. Gramercy Homes, Inc., 41 Misc. 2d 591, 246 N.Y.S.2d 153 (1964). For a recent federal court decision which lists several factors to be considered in determining whether sufficient business transactions based on sales exist, see Velandra v. Regie Nationale Des Usines Renault, 336 F.2d 292 (6th Cir. 1964).


\textsuperscript{35} See notes 9-13 \textit{supra}, and accompanying text.

\textsuperscript{36} \textit{Hanson v. Denckla}, 357 U.S. 235 (1957). The tests of these three cases, \textit{McGee}, \textit{International Shoe}, and \textit{Hanson}, are given in the form of three rules in L.D. Reeder Contractors v. Higgins Indus., Inc., 265 F.2d 768, 773 (9th Cir. 1959).
could not exercise jurisdiction over the nonresident trustee because the nonresident trustee did not have sufficient minimum contacts with Florida. Since the trustee was an indispensable party, the Florida courts could not adjudicate validity of the trust.

Probably the best discussion of the results of the “minimum contacts” test was given by Justice Traynor of the California Supreme Court in a much cited decision.\(^{37}\) The decision is of considerable value today, particularly since it was written subsequent to the above-mentioned Supreme Court decisions. Justice Traynor pointed out that regular sales solicitation alone can render a foreign corporation amenable to process in actions connected with such activities.\(^{38}\) Also, there is no distinction, for jurisdictional purposes, between regular selling and regular buying.\(^{39}\) In some circumstances there can be adequate basis for jurisdiction where defendant has dealt with plaintiff only by mail,\(^{40}\) or where the cause of action arose out of breach of a contract made and to be performed in the state,\(^{41}\) or even out of a mere isolated act in the state by defendant or his agent.\(^{42}\)

**Contracting To Supply Services or Things in This State**

This subsection is not found in several long-arm statutes because “transaction of any business” has been considered to include contracts for supplying goods and services.\(^{43}\) However,

---

37. Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal. 2d 855, 323 P.2d 437 (1958). This case indicates that a court can reconstrue traditional “doing business” statutes to be coextensive with the limits of due process in the light of International Shoe, without any change in the jurisdictional “doing business” statutes.


43. Of the fifteen states upon whose statutes the Uniform Interstate and International Procedure Act was based, only seven have a provision comparable
the "transacting any business" subsection should not include the "contracting" subsection because the latter would give jurisdiction in personam in an action based on a wholly executory contract and on an action against foreign manufacturers or suppliers for defects in things supplied, whereas the "transacting any business" subsection would not. Moreover, the transacting business subsection requires some activity in the state, while the contracting subsection does not. Thus, taken together, the two subsections would have as broad a coverage as is permissible over economic activity that has some connection with the state.

Several state statutes require that the contract be performed "in whole or in part" in the state in order for the state to assume jurisdiction. The courts in these states must first define what is performance in part in order to determine whether the statute is applicable. The next issue is whether the application of the statute offends due process. In effect, the courts in such a situation are examining the part performance to see if the requirement of sufficient contacts by the nonresident defendant has been satisfied. In a 1965 case involving the Minnesota "performance in part" statute, where the nonresident seller agreed to supply the buyer with seller's product, the contract was held to be sufficient contact. The court stated that the statute required only that a portion of the contract be performed by either of the parties in the state. Therefore, it was irrelevant whether delivery of the goods be considered part of plaintiff's, or defendant's, performance under the contract. Regardless of how

...
substantial the performance under these part performance statutes may be, it is necessary that the cause of action arise out of the contract. 50

Another broad requirement for jurisdiction found in the statutes of some states is that the contract be "made" in the state. Maryland, one of the states which pioneered the long-arm statute, had this requirement until recently. 51 Because the "place of making" of a contract can be defined in several ways, the courts have understandable difficulties. The leading case in this area, Compania de Astral, S.A. v. Boston Metals Co., 52 best exemplifies the problem. An action for the breach of a contract for the sale of three ships was brought against a Panamanian corporation whose only contact with the forum state was in connection with the contract in issue. The defendant corporation conducted negotiations in Maryland, and sent agents to inspect the ships in that state. These activities, along with the fact that the contract was technically completed in Maryland, sustained jurisdiction. 53 In later cases, where the contract was not "made" in the state, jurisdiction was denied. Some cases have held that either the making of the contract or activity in furtherance of it by the nonresident physically present in the state of the forum constituted the minimum contacts necessary to subject the non-


50. See Dahlberg Co. v. American Sound Prod. Inc., 179 F. Supp. 928 (D. Minn. 1959), where the foreign corporation entered into contracts which were to be performed in Minnesota, but the cause of action did not arise from those contracts. The court ruled that the plaintiff-resident could not bring an action against the defendant without personal service in Minnesota. In dictum, the court said that service on the Secretary of State would have been sufficient had the cause of action arisen out of the contract. Cf. Williams v. Connolly, 227 F. Supp. 539 (D. Minn. 1964), which held in a breach of warranty action that jurisdiction over a foreign corporation could not be sustained where there was no showing of privity of contract between plaintiff and defendant. However, in dictum the court indicated that the privity requirement was on the way out in Minnesota. Accord, preamble to LA. R.S. 13:3201 (Supp. 1964).

51. See Md. Code Ann. art. 23, § 92(d) (1957). In June 1964 an amended long-arm statute, very similar to Louisiana's, became effective in Maryland.

52. 205 Md. 257, 108 A.2d 372 (1954). This case has been the subject of numerous law review notes and comments, particularly since it concerned an isolated contract and was an early test of the "single-act" or "long-arm" statutes. See, e. g., Developments in the Law — State-Court Jurisdiction, 73 HARV. L. REV. 909, 926 (1960); Note, 42 MINN. L. REV. 909, 918 (1958).

resident to personal jurisdiction. A 1965 case construing the Maryland statute apparently expanded its application by holding a nonresident corporation subject to suit under a contract which the corporation did not join in making. However, the decision appears sound, since the defendant corporation had come into existence through a series of mergers after the contract had been made by its predecessor. The court pointed out that the Maryland statute subjects a foreign corporation to suit in Maryland "on any cause of action arising out of a contract made within this State." There is no qualification that the contract be made by the foreign corporation itself. Allowing such qualification would mean that foreign corporations could easily avoid the statute by having one corporation execute the contract in the state and another foreign corporation outside the state undertake or assume the performance of the contract.

The Louisiana subsection on contracts reads "contracting to supply services or things in this state." If this section is construed literally, it would seem that a railroad corporation, having no tracks or other property in the state, would not be amenable to process even though it has an office in the state staffed with agents for the purpose of soliciting business — with no transportation facilities, the corporation could supply no services. To

---

54. See, e.g., Kropp Forge Co. v. Jawitz, 37 Ill. App. 2d 475, 481, 186 N.E.2d 76, 79 (1962). The court said that "jurisdictional acts" by the nonresident individual physically present in Illinois were essential for the submission to the jurisdiction of the Illinois courts. This "jurisdictional act" must be determined by the substance of the act, not the quantity of the business activity. The defendant had sent a letter and a telegram to the plaintiff and had spent half a day in Illinois. This was held to be sufficient to give Illinois jurisdiction over the defendant.


56. The defendant corporation argued that activities of predecessor corporations should be disregarded. The court struck down this argument, reasoning that to follow it would mean reading the old requirement of "doing business" back into Md. Code Ann. art. 23, § 92(d) (1957), the long-arm statute. As was stated in Compania, "the sole test of the propriety of subjecting a foreign corporation to suit in Maryland is no longer whether or not the acts of the foreign corporation within the state amount to 'doing business.' The explicit wording of the statute points up the narrowness of the field in which such a corporation is subject to suit in Maryland — that is, only to a suit by a resident or a person having a regular place of business in Maryland on a cause of action arising out of a contract made in Maryland." Id. at 783.

57. Id. at 780. By reading the statute literally, the court was able to subject the defendant corporation, formed by mergers, to Maryland jurisdiction.

the contrary, a television corporation which had no stations in the
state but which sent program material into the state via common
carrier for use by independent affiliate stations was held to be
supplying services in the state and amenable to the state’s
process. Concerning sales of goods within a state, a recent
decision listed several factors to be considered in determining
whether minimum contacts are established by the sale. Those
factors included the number and value of sales within the state,
the ratio of sales to total market for like products within the
state, quantity of value of defendant’s production, percentage of
total output sold within the state, and the nature of the product
sold, particularly whether the thing sold is dangerous or not.

It is doubtful whether this subsection could be construed to
include contracts to purchase, since the wording is “contracting
to supply.” However, in the context of the entire section, par-
ticularly the “transaction of any business” phrase, it seems evi-
dent that such contracts are within the area intended to be cov-
ered by the long-arm statute. The other jurisdictions with this
provision consistently have held nonresident purchasers subject
to jurisdiction in personam, in actions for breach of contract to
purchase. Wisconsin’s long-arm statute, probably the broadest
and most detailed in effect today, specifically provides for juris-
diction over actions arising out of services performed by plain-
tiff for a nonresident defendant, and goods purchased by defendant from plaintiff. The wide coverage of the Wisconsin statute
was demonstrated in a case where the plaintiff and the defend-
ant contracted by mail, with defendant agreeing to purchase a
certain product from plaintiff over an extended period.

Here NBC had only an office and agents selling ads in the state. The NBC pro-
grams were brought into the state for use by independent affiliates of NBC.
In dictum, the court said if NBC did not send its programs into the state, as
where the railroads did not run transportation services in the state, then no
63. Wis. Stat. Ann. § 262.05(5), a, b, c, d (Supp. 1965).
fendant breached the contract by refusing to make further orders as agreed, after accepting and paying for some of the goods. Defendant was held subject to the jurisdiction of Wisconsin. Whether all the subsections of the Wisconsin statute are constitutional has not yet been determined, but the statute has been upheld, in general, by the lower federal courts. Louisiana's statute, while not as detailed as Wisconsin's, could easily be construed to cover most, if not all, situations provided for in the Wisconsin statute.

Louisiana has a specific provision that the cause of action must arise from the acts or omissions listed in R.S. 13:3201. This precludes an assertion of jurisdiction over a nonresident when the cause of action is unrelated to the nonresident's contacts with the state. However, some jurisdictions do allow assertion of jurisdiction under such circumstances, at least where the nonresident is a corporation. In a 1952 decision, *Perkins v. Benguet Consol. Mining Co.*, the Supreme Court held that jurisdiction could be asserted over the defendant Philippine corporation by Ohio although the cause of action was unrelated to defendant's activities in Ohio. The plaintiff was also a nonresident, but the Court held that Ohio did not violate due process by asserting jurisdiction, particularly since Ohio was the only available forum with which the defendant had any connection. The Court held that the Constitution did not compel Ohio to take the case, but it did not prohibit the assertion of jurisdiction. That

---

65. The court indicated that jurisdiction over the defendant could be predicated on several subsections of the statute, including defendant's promise to pay for plaintiff's services, and defendant's promise to pay for the goods to be manufactured by the plaintiff.


67. It seems that the Louisiana statute might be more practical in that it permits the Louisiana courts to interpret the statute in light of decisions of the federal courts in the area of personal jurisdiction over nonresidents. None of the subsections of the Louisiana statutes is likely to be held unconstitutional, and amendments will be unnecessary because of the great leeway the courts will have in their interpretations of the statute.


69. 342 U.S. 437 (1952).

70. This factor of the only available forum, and the case in general, is succinctly discussed in *Developments in the Law—State-Court Jurisdiction*, 73 Harv. L. Rev. 909, 932 (1960).

71. 342 U.S. 437, 446 (1952).
Perkins should be distinguished on its facts has been suggested, but the decision has been followed many times without any limitations.

INSURANCE CONTRACTS

Insurance comprises the greater part of the litigation concerning nonresident contracts. The McGee case has for the most part settled any controversy in this area. Because the business involves contracts with multi-state effects, the states have traditionally put stringent regulations on insurance companies to afford protection to local interests. Nearly all of the state insurance codes have provisions aimed at acquiring jurisdiction over nonresident insurers who have minimum contacts with the state.

Louisiana's Insurance Code has sections which provide for direct action against foreign insurers. The Code also provides for jurisdiction over insurers which transact business in Louisiana, or issue or deliver a policy here, without being authorized to do business in Louisiana. Because of these provisions, the Law Institute did not consider it essential to include insurance contracts in Louisiana's long-arm statute.

---

72. See, e.g., L. D. Reeder Contractors v. Higgins, Indus., 265 F.2d 768, 775 (9th Cir. 1959).
74. These state codes also cover the "mail order" insurers who conduct activities through the mail, and therefore have no physical contact with the state. The first pertinent Supreme Court case concerning these insurers, with limited approval given to the exercise of personal jurisdiction, was Traveler's Health Ass'n v. Virginia, 339 U.S. 643 (1950). Seven years later McGee expressly approved the exercise of personal jurisdiction in such situations. See also Prudential Ins. Co. v. Benjamin, 328 U.S. 408 (1946), which pointed out that Congress by passage of the McCarran Act, 59 Stat. 33 (1945), 15 U.S.C. §§ 1011-1015 (1958), gave support to state regulation of the insurance business. Cf. Parmalee v. Iowa State Traveling Men's Ass'n, 206 F.2d 518 (5th Cir. 1953), where the Florida insurance statute was upheld as constitutional. For an extensive survey on this area, see Annot., 44 A.L.R.2d 416 (1955).
76. Id. 22:1253A, as amended, La. Acts 1958, No. 125. This section impliedly appoints the secretary of state as agent for service of process on any foreign insurer not authorized to do business in Louisiana.
77. See Comment (c) under id. 13:3201. Several states included an insurance subsection in their long-arm statutes, including Illinois, Maine, Michigan, Montana, Washington, and Wisconsin.
HAVING AN INTEREST IN, USING, OR POSSESSING A REAL RIGHT OR IMMOVABLE PROPERTY IN THIS STATE

The property subsection of the Louisiana statute is similar to that of several other states, except for the words "real right." The purpose of the inclusion was to obtain jurisdiction in personam over nonresidents on causes of action connected with mineral interests and with rights and obligations resulting from contracts to reduce oil, gas, and other minerals to possession. These rights are asserted and defended in the same manner as the ownership or possession of immovable property.

Pennsylvania was the pioneer state in using the "ownership, use, or possession of real estate" as a basis for in personam jurisdiction. Adopted in 1937, the Pennsylvania statute applies to tort actions only. The Illinois statute, adopted in 1955, applies to any actions arising from real property in Illinois. Most of the statutes apply only to real and not to personal property, but a few, including those of Montana, Nevada, Washington, and Wisconsin, include a provision for personal property.

Obviously the presence of real property, owned, used, or possessed by nonresidents, should be sufficient contact to warrant acquisition of jurisdiction in personam in causes of action related to the property, because the nonresidents enjoy the protections and benefits of the state where their property is located. A case in point is Executive Properties Inc. v. Sherman, where


80. See Comment (e) under *id.* 13:3201.


84. See *Porter v. Nahas*, 35 Ill. App. 2d 360, 182 N.E.2d 915 (1962); cf. *People v. Western Tire Auto Stores, Inc.*, 32 Ill. 2d 527, 207 N.E.2d 474 (1965). The court in the latter case said that one who knowingly acquires, owns, or sells property situated in a foreign state has no cause to complain about being required to defend claims in the foreign state which arise out of his own dealings with it. See generally *Note, Ownership, Possession, or Use of Property As a Basis of In Personam Jurisdiction*, 44 *Iowa L. Rev.* 374 (1959).


the nonresident defendants made a brokerage contract with an Arizona corporation for the sale of Arizona land owned by the defendants. Defendants repudiated the contract, and the federal court held that there were sufficient contacts to render the defendants subject to jurisdiction in personam.87

A recent Texas case, Able Finance Co. v. Whitaker,88 appears to be the type of case envisioned by the drafters of Louisiana's property subsection. There nonresident purchasers of an interest in a mineral leasehold in Texas were held subject to the jurisdiction in personam of Texas in an action for breach of contract.

A problem which will surely arise in the future concerns the nonresident purchaser of immovable property, or any real right, who buys on credit. Whether this purchaser can be sued in Louisiana by the holder of the mortgage is as yet undecided. The very comprehensive Wisconsin statute has provisions which apparently cover such a situation,89 but no other statute deals with the problem in terms, and no case of the sort has yet arisen in Wisconsin.90 It would seem that Louisiana's property subsection could be interpreted to cover such a case.91

CONCLUSIONS

The advantages of the "long-arm" statutes are, for the most part, clearly evident. A state is enabled, by means of the statute, to protect its residents' interests. The old tests of "presence" and "domicile," which often produced unfair results, are discarded. The nonresident who enters a state to negotiate with a resident or solicit his business is choosing to deal commercially with a person in whose welfare the forum state has an interest. That a nonresident who expects to enjoy or actually enjoys profit should accept as a cost of doing business the expense of defending in the state is only right.92

87. The court stated that "modern concepts of the orderly administration of justice require of the person who comes or extends himself into a forum's territory and breaches a duty or incurs an obligation therein, that he himself return upon reasonable call and answer in personam." Id. at 1016.
88. 388 S.W.2d 437 (Texas 1965).
91. See note 97 supra.
There are possible disadvantages resulting from these statutes, and some are not readily discernible. There is the possibility of several available forums, and this could work adversely to the nonresident defendant, both in cost and inconvenience. Because of the lack of uniformity among the states, there is a problem of conflict of laws. The extension of state judicial power could produce injustice by creating a situation of unfairness and unreasonableness to the defendant. Another somewhat hidden disadvantage is that these statutes may have the effect of providing a convenient forum only to the plaintiff. Courts in interpreting the statutes may be tempted to set up technical rules for determining certain important factors, as, for example, where the contract was "made." The appropriate consideration, in those cases where the court has some discretion, should ultimately be the balance between the interest of the state in the case and the hardship to the defendant.

Alex Williams Rankin

LEGAL ED. 75, 111-14 (1963), where the author discusses the theories of proponents and opponents of expanded jurisdiction and opines that the key in this area is the effect that the transaction has on the forum state and its residents.

93. The nonresident defendant could be sued on a contract in the plaintiff's state, the defendant's state, a state where defendant might be found, and, through attachment, any state in which the defendant has property.

94. The courts often talk of applying the doctrine of forum non conveniens or "balancing the conveniences." At times it appears that the doctrine or the language is mentioned for effect, but is not always fairly applied. The discretionary aspects of the doctrine tend to encourage courts to limit the forum non conveniens principle, as was demonstrated in Hill v. Upper Mississippi Towing Corp., 89 N.W.2d 654 (Minn. 1958). There the more convenient forum was Tennessee, yet the Minnesota Supreme Court refused to allow the defendant to submit the case to the Tennessee court. The complete discretion in the court to apply the doctrine detracts considerably from its effectiveness. See Note, 37 IND. L.J. 333, 346 (1962).

95. See Note, 37 IND. L.J. 333 (1962), which is part of a student symposium on "long-arm" jurisdiction, and has a good discussion on the adverse effects of jurisdictional expansion. Id. at 340. There is also a section in the note devoted to present safeguards against adverse effects. Id. at 345. Among the safeguards discussed are the due process requirements, the doctrine of forum non conveniens, the commerce clause (undue burden on interstate commerce), and the use of detailed statutes. A possible solution to the problem, that of persuading the courts to think in terms of one "best" jurisdiction out of the several available, is presented. Id. at 348. Among the factors to determine a "best" jurisdiction would be relative hardships of the parties, location of witnesses and proof, the type of action involved, the problem of execution of judgments, defendant's expectations of possible suits in foreign forums. Another solution suggested was a wider use of the doctrine of forum non conveniens. This would make necessary the use of special appearances to litigate the question of jurisdiction, which would now be possible in all states. The threat of the use of forum non conveniens could have the beneficial effect of causing lawyers to consider seriously their choices of forums early in their preparation for suit.