DePaul Law Review

Volume 32
Issue 3 *Spring 1983*

Article 6

Illinois Long Arm Jurisdiction: The Implications of a "Fixed Meaning"

Barbara S. Farrar

COMMENT

ILLINOIS LONG ARM JURISDICTION: THE IMPLICATIONS OF A "FIXED MEANING"

Since its enactment in 1955, the Illinois long arm statute[1] has been construed as coterminous with the requirements of due process.[2] Therefore, in personam jurisdiction under the long arm statute traditionally has been upheld

---

1. ILL. REV. STAT. ch. 110, § 17 (1981), *repealed by* Illinois Code of Civil Procedure, ILL. REV. STAT. ch. 110, § 2-209 (1981). Long arm or single-act statutes authorize a state to assert jurisdiction over nonresidents whose actions have caused an injury within the state. Jurisdiction, however, is limited to claims arising from the in-state injuries and may be exercised only if the injury resulted from conduct specified in the statute. *See generally* M. GREEN, BASIC CIVIL PROCEDURE 37 (2d ed. 1979) (discussing the historical development of jurisdiction over parties in state court litigation); F. JAMES & G. HAZARD, CIVIL PROCEDURE § 12.14 (2d ed. 1977) (discussing the necessary basis for exercising personal jurisdiction under long arm statutes).

The Illinois Code of Civil Procedure, ILL. REV. STAT. ch. 110, § 2-209 (1981), which became effective on July 1, 1982, repealed the Illinois Civil Practice Act, ILL. REV. STAT. ch. 110, § 17 (1981). Although the provisions of the long arm statute have been numbered differently under § 2-209, the identical language of its predecessor, § 17, has been retained. Section 2-209 provides as follows:

> Act submitting to jurisdiction—Process
>
> (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:
>
> (1) The transaction of any business within this State;
>
> (2) The commission of a tortious act within this State;
>
> (3) The ownership, use, or possession of any real estate situated in this State;
>
> (4) Contracting to insure any person, property or risk located within this State at the time of contracting;
>
> (5) With respect to actions of dissolution of marriage and legal separation, the maintenance in this State of a matrimonial domicile at the time this cause of action arose or the commission in this state of any act giving rise to the cause of action.
>
> (b) Service of process upon any person who is subject to the jurisdicton of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.
>
> (c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this Section.
>
> (d) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.

ILL. REV. STAT. ch. 110, § 2-209 (1981).

2. *See, e.g.*, Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 436, 176 N.E.2d 761, 763 (1961) (section 17 jurisdiction should be exerted to limits allowed by due

by Illinois courts if minimum contacts with the state were established voluntarily by the nonresident defendant, the state had an interest in providing the plaintiff with a forum for litigation, and it was not fundamentally unfair to assert jurisdiction.[3] Consequently, Illinois courts have been able to exercise long arm jurisdiction even when a defendant's activities did not fall within a literal definition of the statutory language.[4]

Recently, however, the Illinois Supreme Court rendered two decisions which have prompted lower courts to speculate as to whether the long arm statute must be interpreted more restrictively than concepts of due process. In *Green v. Advance Ross Electronics Corp.*[5] and *Cook Associates, Inc. v. Lexington United Corp.*,[6] the court refused to exercise in personam jurisdiction, holding that the acts of the nonresident defendants did not fall within the scope of the statutory language.[7] In so holding, the court directed that the scope of the Illinois long arm statute was not to be equated with the due process test of minimum contacts.[8] The court maintained that due process merely represents the outer limits to which a state may exert in personam jurisdiction.[9]

---

process); Nelson v. Miller, 11 Ill. 2d 378, 389, 143 N.E.2d 673, 679 (1957) (purpose of § 17 is to extend jurisdiction to constitutionally permissible limits); *see also* ILL. ANN. STAT. ch. 110, § 17, *Constitutionality and Scope* at 166 (Smith-Hurd 1968) (long arm statute and due process are coterminous); Clearly & Seder, *Extended Jurisdictional Basis for the Illinois Court*, 50 NW. U.L. REV. 599, 607 (1955) (transaction of business provision of § 17 was intended to reach to constitutional boundaries); Comment, *Jurisdiction Over Nonresidents Under Section 17 of the Illinois Civil Practice Act*, 53 NW. U.L. REV. 79, 80 (1958) (Illinois long arm statute intended to extend jurisdiction to limits of due process) [hereinafter cited as Comment, *Jurisdiction Over Nonresidents*].

3. *See, e.g.*, Koplin v. Thomas, Haab & Botts, 73 Ill. App. 2d 242, 249, 219 N.E.2d 646, 649 (1st Dist. 1966); *see also* Royce & Mason, *Nonresident Jurisdiction in Business Litigation—Part II*, 53 CHI. B. REC. 161, 162 (1972) (Illinois courts will examine a defendant's contacts with the forum state, the effects of a defendant's activities within the state, and the fairness of permitting Illinois to be the forum).

4. *See, e.g.*, Hutter Northern Trust v. Door County Chamber of Commerce, 403 F.2d 481, 485 (7th Cir. 1968) (based on functional approach, solicitation of business found sufficient to confer long arm jurisdiction); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 436, 176 N.E.2d 761, 763 (1961) (jurisdictional test should be concerned with fairness and justice); Woodfield Ford, Inc. v. Akins Ford Corp., 77 Ill. App. 3d 343, 346, 395 N.E.2d 1131, 1134 (1st Dist. 1979) (exercise of long arm jurisdiction based on reasonableness); Ziegler v. Hodges, 80 Ill. App. 2d 210, 214, 224 N.E.2d 12, 14 (2d Dist. 1967) (long arm jurisdiction is not limited to situations in which the statutory language literally describes a defendant's activities); Koplin v. Thomas, Haab & Botts, 73 Ill. App. 2d 242, 248, 219 N.E.2d 646, 649 (1st Dist. 1966) (jurisdiction may be exercised even though a defendant's activities are not described literally by statutory language).

5. 86 Ill. 2d 431, 427 N.E.2d 1203 (1981).

6. 87 Ill. 2d 190, 429 N.E.2d 847 (1981).

7. *Id.* at 198, 429 N.E.2d at 850; *Green*, 86 Ill. 2d at 440-41, 427 N.E.2d at 1208.

8. In *Green*, the court proclaimed that the Illinois long arm statute "should have a fixed meaning without regard to changing concepts of due process." 86 Ill. 2d at 436, 427 N.E.2d at 1206. This concept was reiterated in *Cook* when the court stated that the limits of the Illinois statute "are not to be equated with the 'minimum contacts' test under the due process clause." 87 Ill. 2d at 197, 429 N.E.2d at 850.

9. *Cook*, 87 Ill. 2d at 197, 429 N.E.2d at 850; *Green*, 86 Ill. 2d at 436, 427 N.E.2d at 1206.

Neither *Green* nor *Cook* expressly mandates a more restrictive interpretation of the long arm statute. Rather, the decisions decree that a fixed meaning, independent of due process, must be developed for the statutory provisions.[10] This decree reflects the court's skepticism regarding use of the due process standard as a basis for interpreting the statutory language. Moreover, the significance of the decree is its acknowledgement that the guidelines necessary to assist both practitioners and the courts in ascertaining the viability of long arm jurisdiction challenges must be derived from the statutory provisions. Nevertheless, by recognizing that a state statute may be narrower than due process, the supreme court seemingly has empowered Illinois courts to interpret the long arm statute more restrictively than required by the due process minimum contacts test.

In order to comprehend the implications of a narrower interpretation of the long arm statute, it is necessary to examine both the context in which the Illinois statute evolved, and the scope of long arm jurisdiction decisions prior to *Green* and *Cook*. Thereafter, a review of the decisions in *Green* and *Cook* reveals that the court, in enunciating its fixed meaning directive, failed to state whether formulation of the fixed meaning should be governed by a broad, narrow, or intermediate interpretation of the statutory language. An analysis of decisions rendered after *Green* and *Cook* demonstrates that the present uncertainty surrounding the scope of the long arm statute was fostered by the vagueness of the supreme court's directive. Notwithstanding the language in *Green* and *Cook,* which seemingly requires a more restrictive interpretation, this Comment concludes that the broad interpretation historically accorded to the Illinois long arm statute will remain intact.

BACKGROUND

Emergence of the Illinois Long Arm Statute

The due process clause of the fourteenth amendment limits a state's power to exercise in personam jurisdiction over nonresident defendants.[11] As origin-

---

10. *See supra* note 8.

11. In personam jurisdiction is jurisdiction over the parties. The ability of a court to enter a legally binding judgment is predicated on the existence of jurisdiction over both the parties and the subject matter of the lawsuit. *See, e.g.,* Scoville Mfg. Co. v. Dateline Elec. Co., 461 F.2d 897, 900 (7th Cir. 1972) (it is essential that a court have jurisdiction over both subject matter and parties); Tamari v. Bache & Co., 431 F. Supp. 1226, 1228 (N.D. Ill.) (jurisdiction over both subject matter and parties is required), *aff'd,* 565 F.2d 1194 (7th Cir. 1977), *cert. denied,* 435 U.S. 905 (1978).

The due process clause of the fourteenth amendment, which limits the ability of a court to exercise personal jurisdiction, mandates that no state shall "deprive any person of life, liberty or property without due process of law. . . ." U.S. CONST. amend. XIV, § 1. If a court exceeds the due process limitations when asserting personal jurisdiction, the judgment will be rendered void in that state and will not be entitled to full faith and credit in other states. F. JAMES & G. HAZARD, *supra* note 1, § 12.13; Hazard, *A General Theory of State Court Jurisdiction,* 1965 SUP. CT. REV. 241, 256-58.

The United States Supreme Court has attempted to define the limits imposed by the due process clause on the power of a state to assert personal jurisdiction over nonresident defen-

ally interpreted in *Pennoyer v. Neff,*[12] the due process limitation encompassed concepts of federalism[13] and prohibited states from asserting personal jurisdiction over nonresident defendants, unless those defendants voluntarily appeared before the court[14] or were physically present within the state.[15] In 1945, however, the United States Supreme Court de-emphasized the notions of federalism articulated in *Pennoyer* and focused on whether the exercise of personal jurisdiction would be fair to the defendant. In *International Shoe Co. v. Washington,*[16] the Court transformed the presence and consent theories of due process into the minimum contacts doctrine.[17] The *International Shoe*

---

dants. *See, e.g.*, Rush v. Savchuk, 444 U.S. 320, 327 (1980) (a plaintiff's rights and connections with a forum are irrelevant if a defendant has no contacts); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (a defendant's contacts with the state must be such that he would have reason to anticipate having to defend a lawsuit there); Kulko v. Superior Court, 436 U.S. 84, 96-98 (1978) (courts must consider a defendant's conduct in the forum state, not only the effects of his conduct); Shaffer v. Heitner, 433 U.S. 186, 204 (1977) (the primary focus should be on the nexus between the forum, the defendant, and the litigation); Hanson v. Denckla, 357 U.S. 235, 253 (1958) (a defendant's acts must show purposeful availment of the benefits and protections of the laws of the forum state); McGee v. International Life Ins. Co., 355 U.S. 220, 223-24 (1957) (if the state has a manifest interest in providing redress, jurisdiction may be upheld despite the fact that the corporate defendant never sent its agent into the state); International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (to ensure fairness, the defendant must have minimum contacts with the state); Pennoyer v. Neff, 95 U.S. 714, 722 (1878) (a defendant must be within the territorial boundaries of the state, otherwise the state lacks in personam jurisdiction). For further discussion of the constitutional limits on state long arm jurisdiction, see Comment, *Federalism, Due Process and Minimum Contacts:* World-Wide Volkswagen Corp. v. Woodson, 80 COLUM. L. REV. 1341 (1980) (discussing the role of federalism in jurisdictional due process); Comment, *Constitutional Limitations on State Long Arm Jurisdiction,* 49 U. CHI. L. REV. 156 (1982) (setting forth the rules and principles that define the constitutional limits of state long arm jurisdiction) [hereinafter cited as Comment, *Constitutional Limitations*]; Note, World-Wide Volkswagen Corp. v. Woodson: *A Limit to the Expansion of Long-Arm Jurisdiction,* 69 CALIF. L. REV. 611 (1981) (critically analyzing *World-Wide Volkswagen* and its possible effects on state court assertions of jurisdiction over nonresidents) [hereinafter cited as Note, *World-Wide Volkswagen*].

12. 95 U.S. 714 (1878).

13. In *Pennoyer,* Justice Field stated that "[t]he several states are of equal dignity and authority, and the independence of one implies the exclusion of power from all others." *Id.* at 722. Because each state possesses its own independent authority, Justice Field concluded that each state had exclusive jurisdiction over all persons and property within its territory, but had no direct jurisdiction over persons or property outside its boundaries. *Id.*

14. *Id.* at 720.

15. *Id.*

16. 326 U.S. 310 (1945).

17. The theory of territorialism articulated in *Pennoyer* had begun to erode prior to *International Shoe.* This doctrinal erosion was caused by the judicial creation of the fictional concepts of consent and presence, and by the statutory creation of agents upon whom service of process could be effectuated if the defendant was not found within the state. *See, e.g.*, Henry L. Doherty & Co. v. Goodman, 294 U.S. 623 (1935) (upholding a statute allowing service on agents of nonresident individuals doing business in the state); Hess v. Pawloski, 274 U.S. 352 (1927) (under a nonresident motorist statute, consent was implied by use of highways and service of process could be effected on a state official as an agent); Barrow S.S. Co. v. Kane, 170 U.S. 100 (1898) (a nonresident corporation doing business within the state was deemed present); Lafayette Ins. Co. v. French, 59 U.S.(How.) 404 (1855) (the ability of a

Court determined that due process would be satisfied if the nonresident defendant had minimum contacts with the state so that maintenance of the suit would not offend "traditional notions of fair play and substantial justice."[18]

Application of a mechanical rule, however, is inapposite in assessing whether specific activities are sufficient to satisfy the minimum contacts test.[19] Instead, satisfaction of due process is dependent upon the "quality and nature of the activity in relation to the fair and orderly administration of the laws."[20] Consequently, judicial adoption of the broad and flexible constitutional standard of minimum contacts vested in the states a wide latitude to assert personal jurisdiction.[21] Many states, including Illinois, responded to this expanded view of due process by enacting long arm statutes.[22]

The Illinois long arm statute[23] provides that any resident or nonresident

---

nonresident corporation to conduct business in a state could be conditioned on its consent to be sued there).

In *International Shoe,* however, the Court expressly rejected physical presence as a prerequisite to obtaining an in personam judgment. 326 U.S. at 316. Indeed, the Court recognized that by conducting activities in the state, nonresidents often invoke the benefits and protections of that state's laws without ever being physically present. When obligations arise from such activities or contacts a defendant can be required to appear in court without violating the due process safeguards. *Id.* at 319.

18. 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

19. *Id.* at 319. The *International Shoe* Court stated that "[t]he boundary line between those activities which justify the subjection of a [defendant] to suit, and those which do not, cannot be simply mechanical or quantitative. . . ." *Id.* Whether minimum contacts exist will depend on the facts of each case. *Id.*

Since its decision in *International Shoe,* the United States Supreme Court has articulated a framework for analyzing minimum contacts questions. First, the primary focus should be on "the relationship between the defendant, the forum and the litigation." Shaffer v. Heitner, 433 U.S. 186, 204 (1977). Regardless of the plaintiff's right and connection with the forum, jurisdiction may not be asserted if the nonresident defendant does have contacts with the forum state. Rush v. Savchuk, 444 U.S. 320, 327 (1980). Second, a defendant's contact with the state must be such that the defendant would have reason to anticipate "being haled into court" in the forum state. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). This requirement is satisfied when there exists "some act by which defendant purposefully avails itself of the privilege of conducting activities within the State. . . ." Hanson v. Denckla, 357 U.S. 235, 253 (1958). The rationale underlying this principle is that a defendant, having accepted the benefits and protections conferred by a state's laws, cannot object to the legal obligations which accompany those benefits.

Within this framework, the minimum contacts requirements must be satisified as to each defendant. Contacts of one defendant may not be attributed to another merely because the defendants have common interests. Rush v. Savchuk, 444 U.S. 320, 332 (1980).

20. International Shoe v. Washington, 326 U.S. at 319.

21. *See* Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois,* 1963 U. ILL. L.F. 533, 536.

22. Illinois was the first state to adopt a long arm statute. *See* M. GREEN, *supra* note 1, at 37; Currie, *supra* note 21, at 537. A number of states have used the Illinois statute as a model when enacting their long arm statutes. *See, e.g.,* IDAHO CODE § 5-514 (1979); ME. REV. STAT. ANN. tit. 14, § 704-A (1980); N.M. STAT. ANN. § 38-1-16 (1978); N.Y. CIV. PRAC. LAW § 302 (McKinney 1972 & Supp. 1982); WASH. REV. CODE ANN. § 4.28.185 (1962 & Supp. 1982).

23. The Illinois long arm statute was adopted in 1955. Illinois Civil Practice Act, ILL. REV.

who, in person or through an agent,[24] engages in any of the enumerated acts within the state, submits to the jurisdiction of Illinois courts for any cause of action arising therefrom.[25] The enumerated acts include the transaction of business; the commission of a tortious act; the ownership, use, or possession of real estate; the formation of a contract to insure any person, property, or risk; and the maintenance of a matrimonial domicile.[26] Both resident and nonresident plaintiffs may invoke the statute as a means to subject a defendant to the jurisdiction of an Illinois court.[27]

The long arm statute is designed to expand the jurisdictional reach of Illinois state courts,[28] and it accomplishes this by permitting extraterritorial

---

STAT. ch. 110, § 17 (1981), *repealed by* Illinois Code of Civil Procedure, ILL. REV. STAT. ch. 110, § 2-209 (1981).

24. By using the term *any person*, the statute eliminates any distinction between nonresident individuals and corporations. *Id.; see, e.g.*, Nelson v. Miller, 11 Ill. 2d 378, 385, 143 N.E.2d 673, 677 (1957) (minimum contacts principle applies to individuals and corporations); Sunday v. Donovan, 16 Ill. App. 2d 116, 119-20, 147 N.E.2d 401, 403 (1st Dist. 1958) (citing *Nelson v. Miller* to support the proposition that the Illinois long arm statute reaches both individuals and corporations); *see also* Currie, *supra* note 21, at 561 (noting that § 17 of the Civil Practice Act provides jurisdiction over corporations as well as persons).

25. ILL. REV. STAT. ch. 110, § 2-209(a), (c) (1981). Jurisdiction may not be exercised unless a close relationship exists between the cause of action and the jurisdictional acts of the nonresident defendant. Volkswagen Ins. Co. v. Whittington, 58 Ill. App. 3d 621, 624, 374 N.E.2d 954, 957 (1st Dist. 1978). Moreover, any cause of action must "be one which lies in the wake of activities by which defendant submitted to jurisdiction of Illinois courts." Bodine's, Inc. v. Sunno-O, Inc., 494 F. Supp. 1297, 1285 (N.D. Ill. 1980); Volkswagen Ins. Co. v. Whittington, 58 Ill. App. 2d at 624, 374 N.E.2d at 957.

Although the long arm statute may not be invoked to confer jurisdiction when a cause of action does not arise from the enumerated acts, jurisdiction may be maintained pursuant to preexisting common law methods. For example, under the common law doing business doctrine a state may assert personal jurisdiction even though the cause of action did not arise from the defendant's conduct within the state. *See, e.g.*, Perkins v. Beguet Consol. Mining Co., 342 U.S. 437, 446-48 (1952) (when a defendant conducts substantial business in a state, federal due process is not violated if that state exercises jurisdiction over matter arising outside of the state); St. Louis-San Francisco Ry. v. Gitchoff, 68 Ill. 2d 38, 44, 369 N.E.2d 52, 54 (1977) (a state may assert jurisdiction over "out-of-state activities" when a corporate defendant engages in substantial in-state business). For further discussion of the doing business doctrine, see *infra* note 47.

26. *See supra* note 1.

27. *See, e.g.*, Scoville Mfg. Co. v. Dateline Elec. Co., 461 F.2d 897, 900 (7th Cir. 1972) (for purposes of long arm jurisdiction it is irrelevant that neither party is an Illinois resident); Tamari v. Bache & Co., 431 F. Supp. 1226, 1228 (N.D. Ill.) (long arm jurisdiction sustained although neither party was an Illinois resident), *aff'd*, 565 F.2d 1194 (7th Cir. 1977), *cert. denied*, 435 U.S. 905 (1978).

28. In effect, long arm statutes also have expanded the jurisdictional reach of the federal courts. Under rules 4(d)(7) and 4(e) of the Federal Rules of Civil Procedure, federal courts are authorized to follow state rules regarding the service of process on nonresidents. FED. R. CIV. P. 4(d)(7), 4(e); *see also* O'Hare Int'l Bank v. Hampton, 437 F.2d 1173, 1174 (7th Cir. 1971) (under Rule 4(d)(7), service on a nonresident is effectuated in accord with state rules); Forty-Eight Insulations, Inc. v. Johns-Manville Prods. Corp., 472 F. Supp. 385, 389 (N.D. Ill. 1979) (in a diversity action, Rule 4(d)(7) requires compliance with state rules); Rosenthal & Co. v. Dodick, 365 F. Supp. 847, 849 (N.D. Ill. 1967) (state rules regarding personal jurisdiction must be followed under Rule 4(e)).

service of process on nonresidents who possess the requisite nexus with the state.[29] The effect of the statute has been to alleviate many of the hardships and inequities imposed upon Illinois residents by the strict physical presence requirements of the jurisdictional statute previously in effect in Illinois.[30] Prior to the enactment of the long arm statute, an Illinois resident was unable to obtain redress in an Illinois court unless the nonresident defendant consented to jurisdiction, was served with process while physically present, was doing business within the state, or had an agent conducting such business.[31] Thus, if a person or corporation voluntarily came to Illinois, entered into a contract with an Illinois resident, departed from the state, and then breached the contract, the Illinois resident was compelled either to suffer the inconvenience and expense of litigating in a foreign state, or to forego pursuing the legal claim.

Soon after its enactment, the long arm statute was sustained as constitutional by the Illinois Supreme Court in *Nelson v. Miller*.[32] The *Nelson* court declared that the statute reflected a "conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due process clause."[33] Recognition of the legislative intent to expand the in personam jurisdiction of Illinois courts to the limits permitted by the due process clause prompted a broad statutory construction.

Gray v. American Radiator & Standard Sanitary Corp.,[34] a decision of national importance in the jurisprudence of long arm jurisdiction, exemplifies the liberal interpretation accorded to the Illinois statute.[35] In *Gray*, a nonresi-

---

29. ILL. REV. STAT. ch. 110, § 2-209(b) (1981). For the text of § 2-209(b), see *supra* note 1.

30. The long arm statute was preceded by a jurisdictional statute which was enacted in 1933. Under the earlier statute, a corporation could be subjected to the jurisdiction of Illinois courts only if an officer or agent of the corporation could be served with process within the state. Illinois Civil Practice Act § 17, 1933 Ill. Laws 784, 798 (repealed 1955).

31. For a discussion of the consent, physical presence, and agency theories of jurisdiction, see *supra* note 17. For a discussion of the doing business doctrine, see *supra* note 25 and *infra* note 47. When jurisdiction does not exist under the Illinois long arm statute, these theories remain viable alternatives for obtaining jurisdiction. *See* Comment, *Jurisdiction Over Nonresidents*, *supra* note 2, at 82; *see also* ILL. REV. STAT. ch. 110, § 2-209(d) (1981).

32. 11 Ill. 2d 378, 143 N.E.2d 673 (1957). In *Nelson*, the Illinois long arm statute was held to be consistent with both the fourteenth amendment of the United States Constitution and Article II, § 2 of the Illinois Constitution. *Id.* Article II, § 2 was the due process provision of the Illinois Constitution. *See* ILL. CONST. of 1870 art. II, § 2.

33. 11 Ill. 2d at 389, 143 N.E.2d at 679.

34. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

35. A number of the states that enacted statutes which were modeled after the Illinois long arm statute found the liberality of the Illinois interpretation unacceptable, and therefore refused to follow the holding of *Gray*. *See* O'Neal Steel, Inc. v. Smith, 120 Ga. App. 106, 111-12, 169 S.E.2d 827, 832, (jurisdiction denied when an act outside the state caused an injury within the state), *aff'd*, 225 Ga. 778, 171 S.E.2d 519 (1969); Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 460, 209 N.E.2d 68, 77, 261 N.Y.S.2d 8, 21, *cert. denied*, 382 U.S. 905 (1965) (a mere injury in the state does not fall within the meaning of the statute; a court must focus on whether an act occurred within the state). It is interesting to note that soon after these decisions were rendered, both the Georgia and the New York legislatures amended their long arm statutes to provide for jurisdiction when a tortious act committed outside the

dent defendant negligently manufactured a safety valve in Ohio and sold it to another company outside Illinois.[36] The valve was installed in a water heater in Pennsylvania and sold to an Illinois resident who was injured when the water heater exploded.[37] The Illinois Supreme Court found that because the injury had occurred in Illinois, a tortious act had been committed within the state.[38] In reaching this conclusion, the *Gray* court proclaimed that the construction of the long arm statute should be based not on technical definitions but, rather, on the general purposes of convenience and justice which underlie the statute.[39]

In evaluating the jurisdictional question, the *Gray* court acknowledged that when a long arm statute enumerates specific acts upon which jurisdiction must be predicated, there are two relevant inquiries in ascertaining whether jurisdiction is appropriate.[40] First, it must be determined whether the transaction or act of the nonresident falls within the language of the statute.[41] Second, even if jurisdiction would be permissible under the statute, the exercise of jurisdiction must be consonant with due process.[42] Because the Illinois statute has been viewed as expanding in personam jurisdiction to the limits permitted by the due process clause, courts repeatedly have construed the statute as based on the due process test of minimum contacts.[43] As a result, the two step analysis acknowledged in *Gray* has been merged into a single prong—minimum contacts.

---

state caused an injury within the state. *See* GA. CODE § 24-113.1(c) (1981); N.Y. CIV. PRAC. LAW § 302(3) (McKinney 1972).

36. 22 Ill. 2d at 438, 176 N.E.2d at 764.

37. *Id.*

38. The *Gray* court stated that "[i]n law the place of wrong is where the last event takes place which is necessary to render the actor liable." *Id.* at 435, 176 N.E.2d at 762-63 (citing the RESTATEMENT OF CONFLICTS OF LAWS § 377). The court reasoned that the defendant's negligence outside the state could not be separated from the injury that it caused within the state. *Id.* at 435, 176 N.E.2d at 763. *See generally* Currie, *supra* note 21, at 552-53. Professor Currie cautions that strict application of the Restatement of Conflicts principle may lead to unfortunate results because a strict application would be in direct conflict with the *International Shoe* Court's admonition against application of a mechanical rule. *Id.*

39. 22 Ill. 2d at 435, 176 N.E.2d at 763.

40. *Id.* at 433, 176 N.E.2d at 762; *see also* Chancellor v. Lawrence, 501 F. Supp. 997, 1000 (N.D. Ill. 1980) (a bifurcated analysis is required under the Illinois long arm statute); Southeast Guar. Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001, 1008-09 (N.D. Ill. 1973) (both statutory and constitutional questions are involved in long arm analysis); Koplin v. Thomas, Haab & Botts, 73 Ill. App. 2d 242, 246, 219 N.E.2d 646, 648 (lst Dist. 1966) (long arm jurisdiction is proper when a defendant's activities fall within the ambit of the statutory language and the exercise of jurisdiction comports with due process); F. JAMES & G. HAZARD, *supra* note 1, § 12.14. *But cf.* CAL. CIV. PROC. CODE § 410.10 (West 1973) (the sole inquiry is whether due process has been satisfied).

41. *See* cases and treatises cited *supra* note 40.

42. *Id.*

43. *See, e.g.*, Chancellor v. Lawrence, 501 F. Supp. 997, 1000 (N.D. Ill. 1980); Wisconsin Can Co. v. Banite, Inc., 88 F.R.D. 597, 600 (N.D. Ill. 1980); *accord* Scoville Mfg. Co. v. Dateline Elec. Co., 461 F.2d 897, 900 (7th Cir. 1972) (the defendant's acts fulfilled the minimum contacts test which underlies the definition of transaction of business); O'Hare Int'l Bank v.

Long Arm Jurisdiction Prior to Green *and* Cook

Prior to *Green* and *Cook,* Illinois courts focused on the specific contacts that nonresident defendants had with the state, rather than whether those contacts fell within the technical meaning of the statute.[44] The majority of the decisions concerning the Illinois long arm statute involved the transaction of business and tortious act components. Thus, analysis of decisions construing those particular provisions is beneficial in illustrating the types of activities which have been deemed sufficient to give an Illinois court in personam jurisdiction over a nonresident defendant.

a. Section 17(1)(a) Transaction of Business

Section 17(1)(a) applies to both individuals and corporations,[45] and provides that any nonresident who transacts business within the state is subject to the jurisdiction of Illinois courts for any cause of action arising from that transaction.[46] The section 17(1)(a) standards are less stringent than the general jurisdiction doing business standard[47] which requires continuous and

---

Hampton, 437 F.2d 1173, 1177 (7th Cir. 1971) (section 17 jurisdiction existed because minimum contacts were satisfied); Chicago Silver Exch. v. United Refinery, Inc., 394 F. Supp. 1332, 1337 (N.D. Ill. 1975) (the defendant's minimum contacts were sufficient to invoke § 17 jurisdiction); Johnston v. United Presbyterian Church, 103 Ill. App. 3d 869, 873, 431 N.E.2d 1275, 1278 (1st Dist. 1981) (both the minimum contacts requirement of § 17 and due process must be satisfied); Morton v. Environmental Land Sys., Ltd., 55 Ill. App. 3d 369, 372, 370 N.E.2d 1106, 1109 (1st Dist. 1977) (the defendant's minimum contacts satisfied the requirements of both § 17 and due process); Koplin v. Thomas, Haab & Botts, 73 Ill. App. 2d 242, 249, 219 N.E.2d 646, 649 (1st Dist. 1966) (Illinois courts examine long arm jurisdiction based on due process considerations).

44. *See supra* notes 3-4 and accompanying text.

45. *See supra* note 24. Nevertheless, there are limits on the imputation of jurisdiction. Jurisdiction over a corporation may not be transferred or imputed to agents of the corporation who personally have not engaged in activities that independently support jurisdiction. *See, e.g.,* Burwood Prods. Co. v. Marsel Mirror & Glass Prods., Inc., 468 F. Supp. 1215 (N.D. Ill. 1979); Mergenthaler Linotype Co. v. Leonard Storch Enter., 66 Ill. App. 3d 789, 383 N.E.2d 1379 (1st Dist. 1979). Further, jurisdiction over an individual acting outside his capacity as an agent may not be imputed to the corporation. *See* Chicago Silver Exch. v. United Refinery, Inc., 394 F. Supp. 1332 (N.D. Ill. 1975). *But see* Chancellor v. Lawrence, 501 F. Supp. 997, 1003 (N.D. Ill. 1980) (contrary to precedent, jurisdiction was exercised over two individual defendants on the basis of acts consummated in their capacity as managing agents).

46. ILL. REV. STAT. ch. 110, § 17(1)(a) (1981). The corresponding provision as reenacted in the Illinois Code of Civil Procedure is § 2-209(a)(1). *See supra* note 1.

47. In Haas v. Fancher Furniture Co., 156 F. Supp. 564 (N.D. Ill. 1957), the court stated in dictum that "the words of subsection (a) of Section 17 cannot be given a restrictive interpretation based on the old Illinois 'doing business' cases. The subsection speaks of 'transaction of business within the State' not of 'doing business' here." *Id.* at 567.

Under the doing business doctrine a state may exert personal jurisdiction over a foreign corporation on the theory that the corporation is constructively present, and has given its implied consent to have its agent served. In order to satisfy the doing business standard, the business conducted must be "of such a character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served and in which it is bound to appear when a proper agent has been served with process." Pembleton

substantial business activity within the state. Under the transaction of business provision of the long arm statute, an isolated transaction may be sufficient to confer in personam jurisdiction.[48] In situations where a single transaction is involved, however, there are two pertinent inquiries.

The first inquiry involves ascertaining which party initiated the transaction. When the nonresident defendant, or his agent, has entered the state to initiate a business transaction with the plaintiff, jurisdiction has been upheld consistently.[49] On the other hand, when the plaintiff's agent seeks out the defendant in a foreign state, jurisdiction has been denied unless other significant contacts between the defendant and the state were established.[50]

---

v. Illinois Commercial Men's Ass'n, 289 Ill. 99, 104, 124 N.E. 355, 358 (1919), *appeal dismissed,* 253 U.S. 499 (1920). Thus, the term *doing business* has been construed as requiring that a defendant conduct systematic and substantial business in the state. *See, e.g.,* St. Louis-San Francisco Ry. v. Gitchoff, 68 Ill. 2d 38, 45, 369 N.E.2d 52, 55 (1977) (railroad's activities held sufficiently substantial to constitute doing business); Hertz Corp. v. Taylor, 15 Ill. 2d 552, 554, 155 N.E.2d 610, 612 (1959) (sufficient course of business conferred jurisdicton); Note, *Jurisdiction Over Foreign Corporations "Doing Business" in Another State,* 38 ILL. L. REV. 424, 427 (1945) (isolated business activity does not constitute doing business).

48. *E.g.,* Cook Assoc., Inc. v. Colonial Broach & Mach. Co., 14 Ill. App. 3d 965, 969, 304 N.E.2d 27, 30 (1st Dist. 1973) (single business transaction held sufficient to confer jurisdiction); *see also* Johnston v. United Presbyterian Church, 103 Ill. App. 3d 869, 874, 431 N.E.2d 1275, 1279 (1st Dist. 1981) (citing *Cook Assoc., Inc. v. Colonial Broach & Mach. Co.* to support the proposition that a single business transaction can be sufficient to confer jurisdiction). *But see* Woodfield Ford, Inc. v. Akins Ford Corp., 7 Ill. App. 3d 343, 348, 395 N.E.2d 1131, 1135 (1st Dist. 1979) (jurisdiction is not supported by an isolated business transaction when the defendant did not avail himself voluntarily of the benefits of Illinois law).

49. *See, e.g.,* Scoville Mfg. Co. v. Dateline Elec. Co., 461 F.2d 897, 900 (7th Cir. 1972) (to promote business, the defendant attended three meetings held at the Chicago Housewares Show; thus, the defendant was subject to Illinois long arm jurisdiction); Consolidated Laboratories v. Shandon Scientific Co., 384 F.2d 797, 801 (7th Cir. 1967) (negotiations in Illinois regarding an original contract and its modification held to be within the ambit of § 17(1)(a)); United Air Lines v. Conductron Corp., 69 Ill. App. 3d 847, 853, 387 N.E.2d 1272, 1276 (1st Dist. 1979) (a single meeting in Chicago, regarding a purchase contract, subjected the defendant to Illinois long arm jurisdiction); Morton v. Environmental Land Sys., 55 Ill. App. 3d 369, 372-73, 370 N.E.2d 1106, 1110 (1st Dist. 1977) (solicitation within Illinois supported jurisdiction even though formal acceptance of the contract occurred outside the state and Illinois law was not to govern the agreement).

50. *See, e.g.,* Telco Leasing, Inc. v. Marshall County Hosp., 586 F.2d 49, 51 (7th Cir. 1978) (no jurisdiction exists when a nonresident lessee was brought into contract with an Illinois lessor through acts of a nonresident agent of the lessor); Wessel Co. v. Yoffee & Beitman Management Corp., 457 F. Supp. 939, 941 (N.D. Ill. 1978) (when the plaintiff's nonresident agent submitted a bid to the defendant, subsequent telephone calls by the defendant to Illinois did not confer jurisdicton); Geneva Indus. v. Copeland Constr. Corp., 312 F. Supp. 186, 188 (N.D. Ill. 1970) (because a contractual relationship was initiated by the out-of-state agent of an Illinois corporation, jurisdiction could not be conferred on the basis of negotiations conducted by telephone and letter).

The stated rationale for denying jurisdiction when the plaintiff has initiated the business transaction is that the plaintiff should not be allowed to lure a nonresident into the state. Chicago Film Enter. v. Jablanow, 5 Ill. App. 3d 739, 742, 371 N.E.2d 161, 164 (1st Dist. 1977). Because the long arm statute is concerned with a defendant's actions, the unilateral acts of the plaintiff are insufficient to confer jurisdiction. *Id.*

The second inquiry involves determining where the transaction of business took place. The alleged facts must establish either that the defendant performed, or should have performed, the contractual obligations in Illinois,[51] or that the parties intended that the plaintiff would perform the contractual obligations in Illinois for the benefit of the defendant.[52] Therefore, when an isolated business transaction is the basis of the lawsuit, personal jurisdiction exists only if evidence establishes that the defendant initiated the transaction by coming to Illinois, or that the contract required at least partial performance in Illinois.

Section 17(1)(a) has also been interpreted to permit Illinois courts to assert in personam jurisdiction irrespective of whether the defendant or his agent ever was physically present in Illinois.[53] Nevertheless, cases that sustain personal jurisdiction in the absence of the defendant's physical presence indicate that at least part of the contract was, or should have been, performed in Illinois, that Illinois law governed the contract, or that the defendant solicited

---

51. *See, e.g.,* Mergenthaler Linotype Co. v. Leonard Storch Enter., 66 Ill. App. 3d 789, 798, 383 N.E.2d 1379, 1386 (lst Dist. 1978) (in a lawsuit by a purchaser, the defendant's shipment of, or agreement to ship, goods to Illinois is sufficient to establish jurisdiction); Tabor & Co. v. McNall, 30 Ill. App. 3d 593, 595, 333 N.E.2d 562, 563 (4th Dist.) (section 17(1)(a) was satisfied because the contract required that the defendant perform in Illinois by delivering grain), *appeal denied,* 61 Ill. 2d 600 (1975).

52. *See, e.g.,* Ward v. Formex, Inc., 27 Ill. App. 3d 22, 25, 325 N.E.2d 812, 815 (2d Dist. 1975) (jurisdiction upheld when a contract required the plaintiff to process the defendant's film in Illinois); Colony Press, Inc. v. Fleeman, 17 Ill. App. 3d 14, 18, 308 N.E.2d 78, 80 (lst Dist. 1974) (jurisdiction sustained when the defendant ordered advertising materials by telephone and the plaintiff printed the advertisements in Illinois after receiving the defendant's approval); Cook Assocs., Inc. v. Colonial Broach & Mach. Co., 14 Ill. App. 3d 965, 970, 304 N.E.2d 27, 31 (lst Dist. 1973) (jurisdiction upheld when an Illinois employment agency recommended potential employees upon the defendant's request); Ziegler v. Hodges, 80 Ill. App. 2d 210, 217, 224 N.E.2d 12, 15 (2d Dist. 1967) (personal jurisdiction existed because the defendant intended that the plaintiff would write part of a textbook in Illinois).

53. In Koplin v. Thomas, Haab & Botts, 73 Ill. App. 2d 242, 254, 219 N.E.2d 646, 652 (1st Dist. 1966), noting that the Illinois Supreme Court had rejected a physical presence requirement under the tortious act provision of the long arm statute, the appellate court concluded that presence should not be a controlling factor under the transaction of business provision. The *Koplin* court declared: "To employ different tests for subsection (a) and (b) is not to implement the intended effect of section 17, for when jurisdiction is based on a contract rather than on a tort the interest of the State is not less, nor is the burden on the defendant more." *Id.; see also* O'Hare Int'l Bank v. Hampton, 437 F.2d 1173, 1175 (7th Cir. 1971) (the nonresident defendant's physical presence within the state is not required in order to assert personal jurisdiction if the act or transaction at issue is substantially connected with the forum state); Woodfield Ford, Inc. v. Akins Ford Corp., 77 Ill. App. 3d 343, 348, 395 N.E.2d 1131, 1135 (lst Dist. 1979) (it is not necessary to find that the corporate defendant was physically present in the state to conclude that it was transacting business in the state under the long arm statute).

While physical presence is not a prerequisite to the exercise of jurisdiction, the mere fact that a nonresident was present is not always sufficient to satisfy the statutory requirements. *See* E. Walters & Co. v. Interastra, S.A., 67 F.R.D. 410, 411 (N.D. Ill. 1975) (because the cause of action was not based on acts committed by the defendant within the state, no jurisdiction existed despite the defendant's physical presence).

the contract.[54] Thus, under the transaction of business provision of the Illinois long arm statute, a defendant may be compelled to appear in court despite the lack of a technical transaction of business within the state.

b. Section 17(1)(b) Tortious Act

Section 17(1)(b) provides that a nonresident defendant will be subject to the jurisdiction of an Illinois court for the commission of a tortious act within the state. The term *tortious act,* as contained in section 17(1)(b), refers to any breach of duty which leads to liability for damages.[55] The term encompasses an isolated tort[56] and is applicable to conduct resulting in economic as well as physical injury.[57] Thus, negligence,[58] libel,[59] breach of an implied

54. *See, e.g.,* O'Hare Int'l Bank v. Hampton, 437 F.2d 1173, 1177 (7th Cir. 1973) (jurisdiction sustained because a guaranty was governed by Illinois law and its performance was to occur in Illinois); Tamari v. Bache & Co., 431 F. Supp. 1226, 1227-28 (N.D. Ill. 1977) (jurisdiction held proper when the defendant transmitted commodities orders from Lebanon for execution on the Chicago exchange); Morton v. Environmental Land Sys., 55 Ill. App. 3d 369, 372-73, 370 N.E.2d 1106, 1110 (lst Dist. 1977) (solicitation within Illinois supported jurisdiction even though formal acceptance of the contract occurred outside the state and Illinois law did not govern the agreement); Ziegler v. Hodges, 80 Ill. App. 2d 210, 217, 224 N.E.2d 12, 15 (2d Dist. 1967) (a contract to prepare a textbook which was solicited by the defendant, performed in Illinois and governed by Illinois law was held sufficient to confer jurisdiction).

55. *E.g.,* Florendo v. Pan Hemisphere Transp., 419 F. Supp. 16, 17 (N.D. Ill. 1976); Poindexter v. Willis, 87 Ill. App. 2d 213, 217-18, 231 N.E.2d 1, 3 (5th Dist. 1967). For a discussion of the ramifications of a narrower interpretation of the term *tortious act,* see Comment, *Jurisdiction Over Nonresidents, supra* note 2, at 85-86.

The allegations appearing in the complaint will determine whether a tortious act exists for purposes of exercising personal jurisdiction. First Nat'l Bank v. Screen Gems, Inc., 40 Ill. App. 3d 427, 433, 352 N.E.2d 285, 290 (lst Dist.), *appeal denied,* 64 Ill. 2d 595 (1976); *accord* Estate of Wrigley v. Wrigley, 104 Ill. App. 3d 1008, 1020, 433 N.E.2d 995, 1005 (lst Dist. 1982) (personal jurisdiction was denied because the petition failed to establish either a duty or an activity constituting a breach of duty).

56. *See, e.g.,* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (section 17(1)(b) jurisdiction held proper when a water heater, manufactured in a foreign state, exploded and caused injury in Illinois); Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957) (the negligent act of the defendant in unloading a truck in Illinois held sufficient to confer jurisdiction).

57. *E.g.,* Bodine's Inc. v. Sunny-O, Inc., 494 F. Supp. 1279, 1282-83 (N.D. Ill. 1980); *see also* Ragold v. Ferrero, U.S.A., Inc., 506 F. Supp. 117, 120 (N.D. Ill. 1980) (unfair competition is within the ambit of § 17(1)(b)); Southeast Guar. Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001, 1009 (N.D. Ill. 1973) (fraudulent misrepresentation is indistinguishable from a physical injury tort under § 17(1)(b)).

58. *See, e.g.,* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (long arm jurisdiction held proper when the negligent manufacture of a water heater safety valve injured an Illinois resident); Nelson v. Miller, 11 Ill. 2d 378, 143 N.E.2d 673 (1957) (negligence in unloading a stove from a truck in Illinois was governed by § 17(1)(b)).

59. *See, e.g.,* Process Church of Final Judgment v. Sanders, 338 F. Supp. 1396 (N.D. Ill. 1972) (*Gray* contemplation test applied to a libel action); Novel v. Garrison, 204 F. Supp. 825 (N.D. Ill. 1969) (holding that a defendant who gave an interview to a Chicago-based publication in New Orleans committed libel in Illinois).

warranty,[60] conspiracy,[61] fraud,[62] patent infringement,[63] and unfair competition[64] have been recognized as falling within the scope of section 17(1)(b).

In order for a tortious act to be committed in the state, it has not been essential that all the elements of the tort occur in Illinois.[65] Rather, section 17(1)(b) has been deemed to confer jurisdiction when either the wrongful act, or the injury caused by the wrongful act, occurred within the state.[66] Consequently, jurisdiction has been exercised under section 17(1)(b) even when a defendant never was physically present within the state, and, in fact, committed the wrongful act outside Illinois.[67]

In cases in which the nonresident defendant committed a tortious act outside of Illinois, which has an injurious effect in Illinois, two factors have been considered relevant in determining whether the exercise of jurisdiction is proper. First, courts have attempted to ascertain whether the defendant had reason to anticipate that his actions would cause effects in Illinois,[68]

---

60. *See, e.g.,* Keckler v. Brookwood Country Club, 248 F. Supp. 645, 647 (N.D. Ill. 1965) (breach of implied warranty is within the "tortious act" language of § 17(1)(b)).

61. *See, e.g.,* Payne v. AHFI Netherlands, B.V., 482 F. Supp. 1158 (N.D. Ill. 1980) (a conspiracy to convert property and funds constituted a tortious act); Jack O'Donnell Chevrolet, Inc., v. Shankles, 276 F. Supp. 998 (N.D. Ill. 1967) (a conspiracy between a bank and an automobile purchaser was a tortious act subject to § 17(1)(b)).

62. *See, e.g.,* Bodine's, Inc. v. Sunny-O, Inc., 494 F. Supp. 1279 (N.D. Ill. 1980) (tortious fraud in the sale of inferior quality orange juice concentrate supported Illinois jurisdiction); Southeast Guar. Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001 (N.D. Ill. 1973) (the transfer of misinformation regarding the validity of bonds constituted a tortious act under § 17(1)(b)).

63. *See, e.g.,* Honeywell, Inc. v. Metz Apparatewerke, 509 F.2d 1137 (7th Cir. 1975) (section 17(1)(b) jurisdiction exercised in a patent infringement action); Welch Scientific Co. v. Human Eng'g Inst., Inc., 416 F.2d 32 (7th Cir. 1969) (alleged patent infringement constituted a tortious act), *cert. denied,* 396 U.S. 1003 (1970); *cf.* Burwood Prods. Co. v. Marsel Mirror & Glass Prods., Inc., 468 F. Supp. 1215 (N.D. Ill. 1979) (copyright infringement constituted a tortious act).

64. *See, e.g.,* Ragold, Inc. v. Ferrero, U.S.A., Inc., 506 F. Supp. 117 (N.D. Ill. 1980) (violations of the Lanham Act constitute the tort of unfair competition under § 17(1)(b)); Chromium Indust. v. Mirror Polishing & Plating Co., 448 F. Supp. 544 (N.D. Ill. 1978) (antitrust claims are within the scope of the tortious act provision of the long arm statute).

65. *See generally* Comment, *Jurisdiction Over Nonresidents, supra* note 2, at 85-87 (noting that if the statute required that all the elements of the tort must occur in Illinois, jurisdiction would be restricted severely, thus defeating the intention of the legislature).

66. *See* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 435-36, 176 N.E.2d 761, 762-63 (1961) (citing RESTATEMENT OF CONFLICTS OF LAW § 377).

67. *Id. Compare* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961), *with* O'Neal Steel, Inc. v. Smith, 120 Ga. App. 106, 169 S.E.2d 827, *aff'd,* 225 Ga. 778, 171 S.E.2d 519 (1969), and Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8, *cert. denied,* 382 U.S. 905 (1965). Although the facts of *O'Neal Steel* and *Longines* were similar to the facts of *Gray,* jurisdiction was denied under the Georgia and New York long arm statutes, respectively, because only the injury caused by the wrongful act had occurred within the state.

68. *E.g.,* Jack O'Donnell Chevrolet, Inc. v. Shankles, 276 F. Supp. 998, 1002 (N.D. Ill. 1967); Anderson v. Penncraft Tool Co., 200 F. Supp. 145, 146 (N.D. Ill. 1961); *see also* Payne

or that one of his products would be used within the state.[69] Second, courts have attempted to determine whether the defendant invoked the benefits and protections of Illinois laws in connection with the allegedly tortious activity.[70] If either of these factors was found to exist, then personal jurisdiction could be asserted under section 17(1)(b). The rationale underlying this exercise of jurisdiction was that a defendant who knowingly engaged in acts which caused effects in Illinois, or who accepted the benefits and protections conferred by the laws of the state, could not object to the obligations that resulted from his acts.[71] Thus, similar to the transaction of business provision of the long arm statute, judicial construction of section 17(1)(b) in decisions rendered prior to *Green* and *Cook* was guided by due process minimum contacts considerations, rather than by the literal meaning of the statutory language.

THE CONTROVERSIES PRESENTED IN *GREEN* AND *COOK*

Green v. Advance Ross Electronics Corp.

The controversy in *Green* involved four parties: Advance Ross Corporation ("Advance Ross"), a parent corporation headquartered in Illinois; Advance Ross Electronics Corporation ("Electronics"), a wholly-owned subsidiary incorporated in Illinois but conducting business in Texas; and two Texas residents, Roy W. Green, Jr., and Roy W. Green, Sr.[72] During the period from 1970 to 1975, Green, Sr., was the president of Electronics and Advance Ross Steel Corporation ("Steel").[73] Steel also was a subsidiary of Advance Ross but was incorporated and doing business in Texas.[74] In 1975,

---

v. AHFI Netherlands, B.V., 482 F. Supp. 1158, 1161 (N.D. Ill. 1980) (the counterdefendant reasonably should have known that the alleged conversion would have injurious effect in Illinois).

69. *See, e.g.*, Keckler v. Brookwood Country Club, 248 F. Supp. 645, 649 (N.D. Ill. 1965) (the defendant reasonably could anticipate that a product sold from dealer to dealer ultimately would arrive in Illinois); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 442, 176 N.E.2d 761, 766 (1961) (exercise of jurisdiction was not unfair when the defendant had contemplated that its product would be used in Illinois).

70. *See, e.g.*, Florendo v. Pan Hemisphere Transp., 419 F. Supp. 16, 19 (N.D. Ill. 1976) (jurisdiction upheld because the defendant invoked benefits of Illinois law by selling securities to an Illinois resident); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 442, 176 N.E.2d 761, 766 (1961) (even an indirect benefit from Illinois laws will support jurisdiction when a defective product causes an injury in Illinois).

71. This rationale was articulated by the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945). The same rationale was applied by the Illinois Supreme Court in Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961). The *Gray* court stated: "As a general proposition, if a corporation elects to sell its products for ultimate use in another State, it is not unjust to hold it answerable there for any damage caused by defects in those products." *Id.* at 442, 176 N.E.2d at 766.

72. Green v. Advance Ross Elecs. Corp., 87 Ill. App. 3d 279, 280-81, 408 N.E.2d 1007, 1008 (1st Dist. 1980), *aff'd*, 86 Ill. 2d 431, 427 N.E.2d 1203 (1981).

73. 86 Ill. 2d at 433, 427 N.E.2d at 1205. In 1970, Green, Sr., conveyed his business to Advance Ross and that business became a part of Steel. *Id.*

74. *Id.* at 433, 427 N.E.2d at 1204.

Green, Sr., was replaced as president of the two corporations by his son. Nevertheless, Green, Sr., was retained as a consultant to Steel until 1978.[75] At that time, the parent corporation instructed Green, Jr., to terminate his father as a consultant.[76] Although Green, Jr., complied with this instruction, he also provided his father with severance pay in an amount equal to six months salary.[77] Advance Ross requested that Green, Jr., obtain and return the money.[78] Green, Jr., was discharged when he failed to comply with this request.[79]

Subsequently, Green, Jr., instituted an action against Advance Ross and Electronics in an Illinois state court, asserting that his employment contract had been breached.[80] The corporate defendants filed a counterclaim and also moved to join Green, Sr., as an additional counterdefendant.[81] The counterclaim alleged that the payment made by Green, Jr., to Green, Sr., constituted a misappropriation of corporate assets.[82] The defendants further claimed that both the father and son, in their former employment capacities, had engaged in other acts by which they had breached their fiduciary duty to the corporation.[83]

---

75. *Id.* at 433, 427 N.E.2d at 1205. The record showed that Green, Sr., in his capacity as a consultant, retained a significant amount of control over Electronics and Steel. Specifically, Green, Sr., maintained control over all construction being handled by Electronics and Steel, and made all decisions concerning which bidders would receive contracts. *Id.*

76. *Id.* at 434, 427 N.E.2d at 1205.

77. At the time of Green, Sr.'s discharge, Green, Jr. paid him $26,500 from Steel's corporate assets. *Id.*

78. *Id.*

79. *Id.*

80. Suit was brought against Electronics in the Circuit Court of Cook County. Advance Ross was included as a defendant because it had guaranteed all amounts payable under Green, Jr.'s employment contract with Electronics. *Id.*

81. *Id.* The claim against Green, Sr., asserted that he had directly, and as a coconspirator with his son, misappropriated and improperly converted funds of Advance Ross and Electronics. *Id.* The *Green* court rejected the contention that because one conspirator, Green, Jr., was subject to Illinois jurisdiction, the other conspirator, Green, Sr., also would be amenable. The court declared:

> [T]he theory of jurisdiction based on the acts of a co-conspirator must be that co-conspirators are each others' agent; thus the argument would be that when a conspirator commits a tortious act within Illinois he does so as agent for his co-conspirators, who thereby also becomes subject to this State's jurisdiction.

Id. at 440-41, 427 N.E.2d at 1208. Because Green, Jr., had not committed a tortious act in Illinois, the court held that the conspiracy claim had to fail. *Id.* at 441, 427 N.E.2d at 1208.

82. *Id.* at 434, 427 N.E.2d at 1205.

83. The other alleged breaches of their fiduciary duties included the following acts:

> improperly charging defendants for personal expenses of Green, Sr.; using defendants' employees to perform personal work for Green, Sr., on defendants' time; using defendants' premises and facilities for personal work for Green, Sr., without payment to defendants for such use; . . . receipt of improper salary payments by Green, Sr., in a month when he received disability pay from defendants' disability insurer; entering on behalf of defendants into an improper retainer agreement with a Texas law firm in which a son of Green, Sr., was a partner and which represented Green, Sr., at the time the firm represented defendants.

Id. at 434-35, 427 N.E.2d at 1205.

The jurisdictional basis alleged in the joinder motion was section 17(1)(b), the tortious act component of the Illinois long arm statute.[84] The defendants argued that the ultimate effect of the misappropriation of funds and other breaches of fiduciary duties was the depletion of Advance Ross's assets in Illinois.[85] Thus, because an adverse financial effect had occurred in Illinois, the corporate defendants claimed that a tortious act had been committed within the state.[86] The trial court found no merit in this argument and denied the motion to join Green, Sr., as a counterdefendant.[87]

On appeal, both the appellate court and the supreme court held that a breach of corporate fiduciary duties by a Texas citizen in Texas, which indirectly caused a decrease in the assets of a corporation organized and headquartered in Illinois, did not constitute the commission of a tortious act in Illinois.[88] Although both courts concluded that Illinois lacked personal jurisdiction under section 17(1)(b), different analyses were employed to reach that conclusion.

The Illinois appellate court analyzed the jurisdictional question by focusing on whether Green, Sr., had sufficient minimum contacts with Illinois.[89] Acknowledging that a breach of fiduciary duty could be characterized as tortious,[90] the court found that the resulting financial injury had occurred primarily in Texas.[91] The court ruled that although Steel received funding from Advance Ross, an Illinois corporation,[92] the actual payment to Green, Sr., came from the account of Steel, a Texas corporation.[93] Therefore, the immediate decrease in assets occurred in Steel's Texas account, not in Illinois. Any indirect impact experienced by Advance Ross in Illinois was held insufficient, in and of itself, to establish the requisite minimum contacts.[94]

The analysis of the Illinois Supreme Court, on the other hand, focused on whether the conduct of Green, Sr., fell within the ambit of section 17(1)(b).[95] Again, because there was no question that breaches of a fiduciary

---

84. The joinder motion alleged jurisdiction under both § 17(1)(a) and § 17(1)(b) of the long arm statute; however, only § 17(1)(b) was at issue on appeal to the Illinois Supreme Court. *Id.* at 435, 427 N.E.2d at 1206.

85. The Texas operations, including the bank account from which the severance pay was drawn, were funded by the assets of the parent corporation which was located in Illinois. *Id.* at 438, 427 N.E.2d at 1207.

86. *Id.*

87. 87 Ill. App. 3d 279, 280, 408 N.E.2d 1007, 1008 (lst Dist. 1980).

88. 86 Ill. 2d at 440, 427 N.E.2d at 1208; 87 Ill. App. 3d at 286, 408 N.E.2d at 1012.

89. 87 Ill. App. 3d at 282, 408 N.E.2d at 1009.

90. *Id.* at 284, 408 N.E.2d at 1010.

91. *Id.*

92. *Id.* at 284, 408 N.E.2d at 1011.

93. *Id.* at 284, 408 N.E.2d at 1010.

94. *Id.*

95. 86 Ill. 2d at 436, 427 N.E.2d at 1206. The supreme court declared that it "prefer[red] to resolve this appeal by looking to the meaning of our own statute." *Id.* Therefore, the court sought to determine whether the statute could be construed to embrace the claim against Green, Sr. *Id.*

duty constituted tortious acts,[96] the sole issue for resolution was whether the tortious acts had been "committed within the state."[97] The supreme court recognized that physical presence was not necessary for a tortious act to be committed in the state.[98] Nevertheless, the court found that in the absence of physical presence, the injury at least had to occur in Illinois.[99] Further, the court refused to differentiate between physical and economic injury, and rejected the corporations' argument that for the purposes of financial torts, jurisdiction should be exercised at the injured party's headquarters.[100] The supreme court reasoned that the connection between the tortious acts and Illinois was too tenuous, and that allowing long arm jurisdiction to be exercised would create an undesirable precedent.[101] Specifically, the court stated that if jurisdiction were exercised, the rationale could be extended so that an Illinois resident, who suffered a physical injury anywhere in the country, would be able to maintain an action in Illinois as long as he had an Illinois bank account which was depleted by the payment of medical bills.[102] Consequently, even though the ultimate depletion of assets would occur in Illinois, where the parent corporation was located, the *Green* court held that the alleged tortious acts of Green, Sr., had occurred in Texas.

Cook Associates, Inc. v. Lexington United Corp.

The source of the controversy in *Cook* was an alleged breach of contract.[103] Cook Associates, Inc., an Illinois corporation, was an employment agency with its main office in Chicago, Illinois.[104] During the period from July 1973 through July 1976, Cook Associates also maintained a branch office in Massachusetts.[105] The defendant, Lexington United Corporation ("Lexington"), maintained its principal place of business in St. Louis, Missouri.[106]

In May 1976, Lexington contacted Cook Associates's Massachusetts branch office, requesting information on prospective employees for a field sales managerial position.[107] Resumes were transmitted with an attached fee schedule on the letterhead of the Chicago office.[108] The schedule required Lexington to pay a fee if, within two years, it hired any applicant referred

96. *Id.* at 437, 427 N.E.2d at 1206.
97. *Id.*
98. *Id.* at 437, 427 N.E.2d at 1207.
99. *Id.* at 438, 427 N.E.2d at 1207.
100. *Id.* at 438-39, 427 N.E.2d 1207-08.
101. *Id.* at 439-40, 427 N.E.2d at 1208.
102. *Id.* at 439, 427 N.E.2d at 1207-08.
103. Cook Assocs., Inc. v. Lexington United Corp., 87 Ill. 2d 190, 429 N.E.2d 847 (1981).
104. *Id.* at 192-93, 429 N.E.2d at 848.
105. *Id.* at 193, 429 N.E.2d at 848.
106. *Id.* at 192, 429 N.E.2d at 848.
107. The record was unclear as to the specific type of manager requested by Lexington. Nevertheless, the *Cook* court found that the position, though originally described as "national sales manager," later had been changed to "field sales manager." *Id.* at 193, 429 N.E.2d at 848.
108. A fee of 20% was assessed for positions with salaries paying at least $15,000 annually. *Id.*

by Cook Associates.[109] A Lexington executive interviewed one of the applicants in Chicago, but the applicant refused Lexington's employment offer.[110]

In July 1976, Cook Associates closed the Massachusetts branch office.[111] Within a few months, the woman who had operated that office, Edith McIntosh, opened her own employment service.[112] Lexington contacted the woman, again requesting applicants for a managerial position. This time, however, the position was described as national sales manager, rather than field sales manager.[113] McIntosh forwarded to Lexington a resume for the same applicant that Lexington had interviewed during its previous search through Cook Associates.[114] After several interviews, the applicant was hired and McIntosh received a $5,000 fee.[115]

Cook Associates instituted an action against Lexington for breach of contract. The complaint sought to recover the $5,000 fee allegedly due because Lexington hired an applicant originally referred by Cook Associates.[116] Cook Associates asserted that Lexington had transacted business in Illinois, and, therefore, was subject to jurisdiction under section 17(1)(a) of the Illinois long arm statute.[117] The trial court denied Lexington's motion to dismiss for lack of personal jurisdiction and granted Cook Associates's motion for summary judgment.[118] The appellate court reversed, holding that the trial court lacked personal jurisdiction over Lexington.[119] The Illinois Supreme Court affirmed this reversal.[120]

As in *Green,* the appellate court and the supreme court applied different

---

109. The fee schedule transmitted by Cook Associates to Lexington stated that "[a] fee will be due from you as to any applicant you hire within two years of our disclosure of his identity, or of our submission or referral of him, to you." *Id.*

110. The applicant resided in Missouri and it appears that the meeting was held in Chicago because the applicant was, at the time of the interview, a regional manager for a Chicago manufacturer. *Id.* During the meeting the applicant was offered $22,000 annually for the position of "field sales manager." *Id.*

111. 86 Ill. App. 3d at 911, 407 N.E.2d at 945.

112. 87 Ill. 2d at 194, 429 N.E.2d at 848; 86 Ill. App. 3d at 911, 407 N.E.2d at 945.

113. 87 Ill. 2d at 194, 429 N.E.2d at 848.

114. *Id.*

115. The applicant was offered and accepted the position as "national sales manager" for an annual salary of $25,000. *Id.* McIntosh was paid $5,000; this figure represented 20% of the applicant's salary. *Id.*

116. *Id.*

117. Cook Associates also alleged that personal jurisdiction could be exercised under the common law doing business standard. *Id.* at 196, 429 N.E.2d at 849. The *Cook* court, however, found that the activities of Lexington in Illinois, which consisted of one unsuccessful interview and an exhibit at three trade shows in Chicago, did not constitute the regularity of business activity required under the doing business doctrine. *Id.* at 202-03, 429 N.E.2d at 852-53. For a discussion of the doing business standard, see *supra* note 47.

118. 86 Ill. App. 3d at 910, 407 N.E.2d at 945.

119. *Id.*

120. 87 Ill. 2d at 204, 429 N.E.2d at 853.

modes of analysis to reach identical conclusions. Applying the test of minimum contacts, the appellate court held that insufficient contacts existed between Lexington, the State of Illinois, and the litigation to establish that Lexington could have anticipated defending a lawsuit in an Illinois court.[121] A chance meeting in Illinois between Lexington and the applicant, and the receipt of a fee schedule on a Chicago letterhead, were found insufficient to satisfy the due process requirements.[122]

In contrast, the supreme court examined the facts of the case in light of the statutory language and determined that Lexington had not transacted business within the state.[123] Because Lexington's interview of the applicant in Illinois involved a different managerial position than was involved in the later interviews, the court concluded that the Illinois negotiations were unrelated to the subsequent hiring which was the subject matter of the litigation.[124] Additionally, since the applicant had rejected Lexington's initial offer, the court determined that a contract had not been formed between Cook Associates and Lexington.[125] Because the cause of action did not arise from a transaction of business in Illinois, Lexington's acts were not encompassed within the statutory language of section 17(1)(a). Consequently, the supreme court held that jurisdiction could not be maintained under the long arm statute.

ANALYSIS

In an effort to clarify when nonresident defendants become subject to the jurisdiction of Illinois courts under the long arm statute, the supreme court, in *Green* and *Cook,* considered the two prong test that generally is applicable to long arm statutes which enumerate specific acts that must occur within the state.[126] Under that test, a court must determine whether the nonresident's contacts fall within the meaning of the statute and, if so, whether the state's exercise of personal jurisdiction is constitutionally permissible.[127] In restating that test, however, the Illinois Supreme Court cautioned that the parameters of the Illinois long arm statute were not to

---

121. 86 Ill. App. 3d at 913, 407 N.E.2d at 947.

122. *Id.* at 913-14, 407 N.E.2d at 947.

123. 87 Ill. 2d at 198, 429 N.E.2d at 850.

124. *Id.* at 198, 429 N.E.2d at 851.

125. *Id.* at 198-99, 429 N.E.2d at 851.

126. Cook Assocs., Inc. v. Lexington United Corp., 87 Ill. 2d at 197-98, 429 N.E.2d at 850; Green v. Advance Ross Elecs. Corp., 86 Ill. 2d at 436, 427 N.E.2d at 1206.

127. The *Green* court stated:

> We determine first whether it should be construed in a way which embraces defendants' claim against Green, Sr. If the answer is negative . . . applying the tests the Supreme Court has fashioned . . . to determine whether the assertion of jurisdiction by a State over a nonresident is prohibited by due process safeguards is unnecessary.

86 Ill. 2d at 436-37, 427 N.E.2d at 1206.

be equated with minimum contacts.[128] Instead, stressing a statutory construction independent of the minimum contacts test, the court declared that "[a] statute worded in the way ours is should have a *fixed meaning* without regard to changing concepts of due process. . . ."[129]

The court's concern with developing a fixed meaning for the long arm statute is commendable. Scholars have long recognized that minimum contacts is a vague and unpredictable standard that provides few adequate guidelines.[130] The minimum contacts analysis prescribed by the United States Supreme Court requires an examination of the competing interests encompassed by fairness and federalism limitations.[131] Thus, the defendant's interest in not being unfairly summoned to appear in a foreign court must

---

128. In *Green,* the supreme court determined that the construction of the tortious act subsection of the long arm statute need not "depend entirely upon decisions determining in what circumstances due process requirements would permit long-arm jurisdiction." *Id.* at 436, 427 N.E.2d at 1206. In *Cook,* the court applied this determination to the transaction of business provision. 87 Ill. 2d at 197-98, 429 N.E.2d at 850. Moreover, rearticulating the *Green* pronouncement, the *Cook* court stated: "We recently stressed that the boundaries or limits under our statute are not to be equated with the 'minimum contacts' test under the due process clause." *Id.* at 197, 429 N.E.2d at 850. On the other hand, the appellate court had declared that the standards for analysis under § 17, due process, or doing business, are probably all the same—minimum contacts. 86 Ill. App. 3d at 912, 407 N.E.2d at 946.

129. *Cook,* 87 Ill. 2d at 198, 429 N.E.2d at 850 (quoting *Green v. Advance Ross Elecs. Corp.*) (emphasis added); *Green,* 86 Ill. 2d at 436, 427 N.E.2d at 1206 (emphasis added).

130. *See, e.g.,* Royce & Mason, *Nonresident Jurisdiction in Business Litigation—Part I,* 53 CHI. B. REC. 100 (1971) (a "judicial crazy quilt" has resulted from attempts to fill interstices between pronouncements regarding factors central to the minimum contacts analysis); Comment, *Constitutional Limitations, supra* note 11, at 158-64 (the balancing test typically employed to determine if a state constitutionally may assert long arm jurisdiction has two fundamental flaws); Note, *World-Wide Volkswagen Corp., supra* note 11, at 626-27 (the vagueness of interstate federalism justification enunciated in *World-Wide Volkswagen* is likely to result in lower court confusion).

131. As articulated in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-92 (1980), the due process concept of minimum contacts provides two distinct functions. *Id.* "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* at 292. *But see* Redish, *Due Process, Federalism, and Personal Jurisdiction: A Theoretical Evaluation,* 75 NW. U.L. REV. 1112 (1981). Professor Redish posits that the Court's assumption that the due process clause encompasses notions of federalism lacks foundation in either the language, history, or policy of the clause. *Id.* at 1114. Rather, Professor Redish asserts that the sole concern of the due process clause is to protect private parties from unjust action by the state. *Id.* at 1113. This proposition was recently acknowledged in Insurance Corp. v. Campagnie des Bauxites de Guinea, 102 S. Ct. 2099 (1982). In that case, the Supreme Court attempted to redefine the notion of federalism expressed in *World-Wide Volkswagen* by declaring:

> It is true that we have stated that the requirement of personal jurisdiction, as applied to state courts, reflects an element of federalism and the character of state sovereignty vis-a-vis other states. . . . The restriction on state sovereign power described in *World-Wide Volkswagen Corp.,* however, must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That clause is the only source of the personal jurisdiction requirement and the clause itself makes no mention of federalism concerns. . . . Individual actions cannot

be balanced against the state's interest in having the case adjudicated in the forum state and the plaintiff's interest in the selected forum.[132] Because the weight attributed to each of these concerns is subject to the discretion of individual judges, and because equitable considerations may be appraised—such as a party's indigency or physical inability to travel—inconsistent results often are reached.[133] These inconsistent results necessarily impede the development of any predictable standards.

The uncertain nature of long arm jurisdiction will not dissipate until the United States Supreme Court clarifies the minimum contacts standard. Therefore, the Illinois Supreme Court was warranted in rejecting due process as the critical inquiry under the long arm statute. By requiring Illinois courts to ascertain a fixed meaning through independent statutory construction, the supreme court in *Green* and *Cook* has effectuated a means to develop static and predictable guidelines for both practitioners and the courts.

After *Green* and *Cook,* the activities of a nonresident defendant must fall within the ambit of the statutory language before long arm jurisdiction can be exercised.[134] Consequently, Illinois courts are required to focus on the specific terms appearing in each statutory provision, and to give substance to those terms. Once particular types of business conduct or tortious activity are determined to fall within the statutory meaning, future adjudicatory proceedings will be simplified to the extent that these prior principles will be reapplied.[135] For example, if precontract negotiations occurring in Illinois are deemed to constitute a transaction of business even though a formal contract was never executed, then this principle essentially becomes a rule of law applicable in future litigation involving similar types of conduct. Accordingly, judicial patterns will emerge through case-by-case adjudication. Because these patterns must be applied consistently to comply with the fixed meaning mandate, they eventually will become static rules which cannot be altered to accommodate the equities existing in a particular factual situation. By requiring a consistent application of long arm principles, *Green*

---

change the powers of sovereignty, although the individual can subject himself to powers from which he may otherwise be protected.

Id. at 2104 n.10 (citations omitted).

132. *See supra* note 11.

133. Comment, *Constitutional Limitations, supra* note 11, at 160-61.

134. *See supra* notes 126-28 and accompanying text.

135. By requiring a fixed meaning, the supreme court essentially has mandated the formulation of rules of law which will be applicable to prospective litigation. The advantages of such rules are two-fold. First, they provide certainty and predictability which afford guidance to a party seeking to develop future transactions, and, at the same time, avoid being subject to jurisdiction in a particular state. Second, they relieve the judiciary of the burden of making ad hoc determinations by weighing factors such as convenience and fairness and, instead, delegate to the judiciary the task of determining the proper rule and applying it. *See* Reese, *Choice of Law: Rules or Approach,* 57 CORNELL L. REV. 315, 315-16 (1976); *see also* Kennedy, *Form and Substance in Private Law Adjudication,* 89 HARV. L. REV. 1685, 1689 (1976) (while rules are arbitrary to the extent that they are both underinclusive and overinclusive, this type of arbitrariness is more acceptable than the arbitrariness of ad hoc subjective determinations).

and *Cook* have ensured a higher degree of uniformity and predictability in the area of Illinois long arm jurisdiction.

Although the Illinois Supreme Court's desire to develop a fixed meaning for the long arm statute was justified, the court's directive is ambiguous in two respects. First, the court failed to define the term *fixed meaning*.[136] This term clearly implies that the statutory meaning must remain constant, unsusceptible to change or variation.[137] Nevertheless, even a static concept may be initially subject to either a broad, narrow, or intermediate interpretation.[138] In both *Green* and *Cook,* the court failed to indicate the breadth of the fixed meaning. Omission of a clear expression regarding the appropriate breadth of interpretation effectively may defeat the predictability desired by the court in requiring a fixed meaning. Illinois courts retain the discretion to implement the fixed meaning directive based on their conception of its meaning. Although one court might view the term as mandating a restrictive interpretation of the long arm statute, another court might conclude that a broad interpretation is appropriate. Thus, in the absence of any elucidation as to the scope of the fixed meaning, Illinois courts must speculate as to its breadth. Indeed, decisions rendered subsequent to *Green* and *Cook* indicate that different courts have conflicting interpretations of the fixed meaning directive.[139]

Another ambiguous aspect of the Illinois Supreme Court's directive is its reiteration of the maxim that the boundaries of a state long arm statute may be narrower than due process.[140] Ambiguity arises because the court

---

136. The *Green* court emphasized that the meaning of the long arm statute should be construed independently of due process, and that the meaning attributed to the statute should be fixed; yet, the court failed to express whether the meaning should be literal, legal, express, or implied. For a general discussion of the concept of "meaning," see R. DICKERSON, THE INTERPRETATION AND APPLICATION OF STATUTES 34-42 (1975).

137. *See* BLACKS'S LAW DICTIONARY 573 (5th ed. 1979).

138. *See* R. DICKERSON, *supra* note 136, at 198-216.

139. *See, e.g.*, Caicos Petroleum Serv. Corp. v. Hunsaker, 551 F. Supp. 152, 154 (N.D. Ill. 1982) (the effect of *Green* and *Cook* is to contract the reach of the long arm statute); U.S. Reduction Co. v. Amalgament, Inc., 545 F. Supp. 401, 402 (N.D. Ill. 1982) (the state long arm statute is not to be equated with changing federal standards of due process); Vena v. Western Gen. Agency, Inc., 543 F. Supp. 779, 784 (N.D. Ill. 1982) (jurisdiction under the Illinois long arm statute is not coextensive with federal due process standards); State Sec. Ins. Co. v. Frank B. Hall & Co., 530 F. Supp. 94, 96-97 (N.D. Ill. 1982) (the correlation between the Illinois long arm statute and federal due process is "less than one-to-one"). *But see* Ronco, Inc. v. Plastics, Inc., 539 F. Supp. 391, 398 (N.D. Ill. 1982) (*Green* and *Cook* do not declare that the reach of the Illinois long arm statute is "necessarily narrower" than due process); *see also* Adden v. Middlebrooks, 688 F.2d 1147, 1155-56 (7th Cir. 1982). In *Adden,* the court determined that the defendants' negligence in permitting the escape of two prisoners constituted a tortious act under the Illinois long arm statute because the prisoners, after escaping, caused a death in Illinois. *Id.* at 1149, 1155. After determining that the defendants' acts were included within the meaning of the statutory language, the court decided that the exercise of personal jurisdiction would violate due process. *Id.* at 1156. The construction of the long arm statute in *Adden,* which exceeded the due process limits, conflicts with the view of other courts that the reach of the statute has been contracted.

140. *See Cook*, 87 Ill. 2d at 197, 429 N.E.2d at 850. The *Cook* court stated that "[a] state is free to set its own limits in acquiring this jurisdiction within the parameters allowed by

failed to explain whether the long arm statute *must* be construed more restrictively than due process, or whether the maxim was included merely to express a reality of statutory interpretation; specifically, words have inherent limitations irrespective of how broadly they are construed,[141] and these limitations *may,* in particular circumstances, necessitate a statutory interpretation less expansive than due process. The effect will be dramatically different depending upon which view is adopted.

If the statute must be construed more restrictively than due process, a retreat from the expansive interpretation historically accorded the long arm statute will be required. Thus, because the reach of the statute would be contracted, Illinois residents would encounter more difficulty in obtaining redress in an Illinois court. On the other hand, if the court's directive does not require the statute to be construed more restrictively than due process, a broad interpretation of the statute will continue to be applied. The extent to which that interpretation is not coextensive with due process will result from language limitations, rather than a change in the breadth of interpretation given to the long arm statute.

The court's intent in restating the maxim that state long arm statutes may be construed more narrowly than due process is complicated further by its statement that an unconstitutional interpretation of the statute should be avoided "if possible."[142] If the boundaries of the statute truly were meant to be contracted, it would seem unnecessary to include the words *if possible.* Indeed, there would be no possibility that the statutory interpretation could exceed the due process limits if the statute were construed more restrictively than required by minimum contacts.

Thus, in the absence of an unequivocal statement of the court's intent in formulating the fixed meaning directive, Illinois courts are forced to speculate as to the current scope of the long arm statute. This has resulted in contradictory conclusions regarding the breadth of the fixed meaning.[143] Should this trend continue, the intended goals of uniformity, predictability, and consistency will not be achieved.

RAMIFICATIONS OF THE FIXED MEANING DIRECTIVE

Decisions Rendered Subsequent to Green *and* Cook

A number of decisions rendered subsequent to *Green* and *Cook* have adopted the view that the supreme court's directive requires a more restrictive construction of the long arm statute. These decisions refer to the requirement of independent statutory construction as imposing a "higher

---

the due process clause." *Id.* This premise originally was articulated by the United States Supreme Court in Perkins v. Benquet Mining Co., 342 U.S. 437, 448 (1952).

141. *See* Note, *Intent, Clear Statements, and the Common Law: Statutory Interpretation in the Supreme Court,* 95 HARV. L. REV. 892, 899 (1982) ("[T]he limitations of language mean that, even when Congress formulates a specific intent, the words of the statute may not fully capture the congressional meaning.").

142. *Cook,* 87 Ill. 2d at 198, 429 N.E.2d at 850; *Green,* 86 Ill. 2d at 436, 427 N.E.2d at 1206.

143. *See supra* note 139.

threshold"[144] of activity in the state. In addition, they discuss the correlation between the long arm statute and due process as "less than one-to-one,"[145] or no longer "coextensive."[146]

Despite these conclusory statements, the results reached in these decisions do not indicate a more restrictive construction. For example, in the decisions in which jurisdiction was denied under the transaction of business provision, it is clear that the defendant would not have been amenable to jurisdiction even under the liberal analysis existing prior to *Green* and *Cook*. In *Caicos Petroleum Service Corp. v. Hunsaker,*[147] the court refused to exercise long arm jurisdiction. In that case, the initial meeting concerning the possible sale of an airplane by the defendant occurred in the West Indies, all subsequent negotiations were by long distance telephone conversations and telexes, and the only aspect of the contract performed in Illinois was the plaintiff's payment by a check drawn on an Illinois bank account.[148] In *U.S. Reduction Co. v. Amalgamet, Inc.,*[149] the court determined that the initiation of negotiations by unsolicited telephone calls to an Illinois company, and the mailing of a purchase contract from New York to Illinois, were insufficient to confer long arm jurisdiction.[150] Even under a liberal interpretation of the statute, however, negotiations conducted by telephone or through correspondence never have been sufficient to sustain personal jurisdiction absent other contacts with the state.[151] Thus, despite the fact that these decisions explicitly recognize that a more restrictive interpretation is necessary, the results reached do not reflect a narrower construction.

---

144. Caicos Petroleum Serv. Corp. v. Hunsaker, 551 F. Supp. 152 (N.D. Ill. 1982). The *Caicos* court noted "that the Illinois court now applies a higher threshold for asserting personal jurisdiction than the minimum contacts test established in *International Shoe*." *Id.* at 154 n.1.

145. State Sec. Ins. Co. v. Frank B. Hall & Co., 530 F. Supp. 94, 96 (N.D. Ill. 1981); *see also* U.S. Reduction Co. v. Amalgamet, Inc., 545 F. Supp. 401, 403 (N.D. Ill. 1982) (the interpretation of the Illinois long arm statute that extends it to due process limits no longer applies); People v. Holt, 91 Ill. 2d 480, 483, 440 N.E. 2d 102, 103 (1982) (referring to *Green,* the court noted that jurisdiction is not always asserted to the boundaries permitted by due process).

146. Vena v. Western Gen. Agency, Inc., 543 F. Supp. 779, 784 (N.D. Ill. 1982).

147. 551 F. Supp. 152 (N.D. Ill. 1982); *see also* Knorr Brake Corp. v. Harbil, Inc., 550 F. Supp. 476 (N.D. Ill. 1982) (court refused to exercise in personam jurisdiction when there was no suggestion that individuals either were involved in Illinois activities, or came to Illinois); State Sec. Ins. Co. v. Frank B. Hall & Co., Inc., 530 F. Supp. 94 (N.D. Ill. 1981) (jurisdiction denied when defendants had engaged in no purposeful availment of Illinois law).

148. 551 F. Supp. at 155-56.

149. 545 F. Supp. 401 (N.D. Ill. 1982).

150. *Id.* at 403.

151. *See, e.g.*, Colony Press, Inc., v. Fleeman, 17 Ill. App. 3d 14, 308 N.E.2d 78 (1st Dist. 1974) (long arm jurisdiction was exercised because in addition to the fact that the defendant initiated a transaction by an out-of-state telephone call, the contract was performed in Illinois); Cook Assocs., Inc. v. Colonial Broach & Mach. Co., 14 Ill. App. 3d 965, 304 N.E.2d 27 (1st Dist. 1973) (jurisdiction was exercised because of the defendant's telephone call requesting resumes for prospective employees and because the employment agency performed the contract in Illinois).

Notwithstanding the decisions which interpret *Green* and *Cook* as signaling a retreat from the liberal interpretation previously afforded to the long arm statute, there is one federal district court decision that specifically rebuts this position. In *Ronco, Inc. v. Plastics, Inc.*,[152] the plaintiff sought damages for breach of contract and breach of warranty, and alleged jurisdiction pursuant to the transaction of business provision of the long arm statute.[153] The United States District Court for the Northern District of Illinois upheld jurisdiction, finding that the defendants had engaged in negotiations in Illinois, had voluntarily sought the benefits of Illinois laws, and had shipped a substantial volume of their products into Illinois.[154] In reaching this conclusion, the court maintained that neither *Green* nor *Cook* "state[s] or impl[ies] that the statute's reach is necessarily narrower than the due process clause, or that the court intended to retreat from the holding of *Nelson v. Miller*."[155] Rather, the *Ronco* court determined that *Green* and *Cook* supported the proposition that section 17 is a statute and that questions under it must be decided, at least initially, as a matter of statutory construction.[156] On this basis, the *Ronco* court rejected the premise that a fixed meaning requires that the reach of the statute be narrower than due process.[157]

Of the decisions rendered subsequent to *Green* and *Cook,* the *Ronco* court's interpretation of the supreme court's directive is the most logically sound. Unlike other decisions reached after *Green* and *Cook,* which equate the fixed meaning directive with requiring a narrower construction of the long arm statute, the *Ronco* court's interpretation does not frustrate the legislative purpose underlying the statute. The long arm statute is not a vacuous enactment; it is intended to provide redress to Illinois residents to the extent permitted by the due process clause.[158] As the *Ronco* court implicitly recognized, that purpose can be achieved only if the statutory language is interpreted liberally.

---

152. 539 F. Supp. 391 (N.D. Ill. 1982).

153. *Id.* at 394-95.

154. *Id.* at 395-97.

155. *Id.* at 398.

156. As the *Ronco* court accurately acknowledged, rather than adopt a long arm statute that conferred jurisdiction whenever the due process requirements were fulfilled, the Illinois General Assembly enacted a statute that provided jurisdiction only when specified tests were satisfied. *Id.* Thus, it is unlikely that the legislature intended the statutory requirements of the Illinois long arm statute to be supplanted by the federal due process standards; such an intention would render the express language meaningless. As recognized in *Green* and *Cook,* the meaning of the long arm statute is dependent upon the meaning of the separate provisions, and the language of these provisions must have a fixed meaning without reference to shifting notions of due process. *Cook,* 87 Ill. 2d at 198, 429 N.E.2d at 850; *Green,* 86 Ill. 2d at 436, 427 N.E.2d at 1206. *But cf.* CAL. CIV. PROC. CODE § 410.10 (West 1973) (the sole inquiry is whether due process has been satisfied).

157. The *Ronco* court stated that "[i]nsofar as their view of the reach of § 17 is concerned, we believe that *Green* and *Cook Associates* do not herald a drastic departure from prior Illinois law." 539 F. Supp. at 398.

158. *See supra* text accompanying note 33.

Fixed Meaning and Legislative Intent

The *Ronco* court's position—that the scope of the Illinois long arm statute is not necessarily narrower than due process—is supported by a recent Illinois Supreme Court opinion which made reference to the fixed meaning directive enunciated in *Green*. In *Illinois Bell Telephone Co. v. Allphin,*[159] the court attempted to clarify the scope of the Illinois Messages Tax Act.[160] Analogizing to the long arm statute, the court held that the Messages Tax Act had a fixed meaning when enacted.[161] Moreover, the court illuminated the manner in which a fixed meaning is determined by stating that "[t]he scope of a statute is fixed by the conditions which exist and the law which prevails at the time the statute is adopted."[162] Therefore, the breadth of the statutory interpretation accorded to a statute must depend on how it was intended to be construed at the time it was enacted.[163]

When the Illinois long arm statute was enacted in 1955, it was intended to expand the in personam jurisdiction of Illinois courts to the limits of due process.[164] The due process limits were demarcated by the minimum contacts test.[165] Because the scope of the long arm statute is fixed by the conditions that existed when it was enacted, and because only a liberal interpretation of the statutory language can expand Illinois long arm jurisdiction to the limits of due process, it is evident that the fixed meaning must be ascertained based on a broad construction of the statutory language. Thus, the requirement that a statute have a fixed meaning is not synonymous with the requirement that a statute be subjected to a narrower interpretation.

The proposition that the broad interpretation historically accorded to the long arm statute will remain unaffected by the *Green* and *Cook* directive is supported further by the fact that the Illinois General Assembly never attempted to limit the scope of the statute when reenacting it as part of the Illinois Code of Civil Procedure.[166] It is well established that when a

159. 93 Ill. 2d 241, 443 N.E.2d 580 (1982).

160. ILL. REV. STAT. ch. 120, § 467.1-.15 (1981 & Supp. 1982).

161. 93 Ill. 2d. at 256, 443 N.E.2d at 587. The *Illinois Bell Telephone* court stated:

> In *Green v. Advance Ross Electronics Corp.*, we decided that our long-arm statute was not in a state of vacillation, expanding or contracting such jurisdiction to the extent permitted by cases decided from time to time construing and applying the due process clause in determining when jurisdiction over a nonresident is proper. We held there that our long-arm statute had a fixed meaning without regard to changes in the concepts of due process. Similarly, we believe the Messages Tax Act had a fixed meaning when it was enacted regarding what revenues it taxed. . . .

Id. at 255-56, 443 N.E.2d at 587 (citation omitted).

162. *Id.* at 255, 443 N.E.2d at 587.

163. The *Illinois Bell Telephone* court rejected the argument that the scope of the statute "expands with removal of constitutional limitations on a state's right to tax interstate transactions. . . ." *Id.* Rather, the court found that "'statutes are to be construed as they were intended to be construed when they were passed.'" *Id.* (quoting People v. Boreman, 401 Ill. 566, 572, 82 N.E.2d 459, 463 (1948)).

164. *See supra* text accompanying note 33.

165. *See supra* note 19.

166. *See* Illinois Code of Civil Procedure, ILL. REV. STAT. ch. 110, § 2-209 (1981) (repealing

statute is reenacted without change, the legislature is presumed to have incorporated sub silentio any well-settled judicial interpretation of the statutory language.[167] Consonant with the intended purpose of the statute, the Illinois judiciary has assumed a very liberal attitude in construing the long arm statute.[168] The contention that this broad construction is well settled is supported by the fact that principles, such as those established in *Gray v. American Radiator & Standard Corp.*,[169] have remained unchanged for over twenty years[170] and have served as precedent for decisions rendered in other states.[171] Despite the liberal statutory construction, in adopting the Illinois Code of Civil Procedure, the legislature reenacted without change the long arm statute which existed in the Illinois Civil Practice Act.[172] The Illinois General Assembly's failure to repudiate the liberal interpretation found in existing Illinois decisions, by changing or refining the original statutory

---

Illinois Civil Practice Act, ILL. REV. STAT. ch. 110, § 17 (1981)).

167. The United States Supreme Court has declared that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change." Lorillard v. Pons, 434 U.S. 575, 580 (1978); *see also* Albemarle Paper Co. v. Moody, 422 U.S. 405, 414 n.8 (1975) (congressional enactment seen as ratification of judicial construction); NLRB v. Gullett Gin Co., 340 U.S. 361, 366 (1951) (when Congress reenacts a statute without modification it is a "fair assumption" that Congress accepted the judicial construction given to the statute). Commensurate with the United States Supreme Court's decree, the Illinois Supreme Court has stated, "[i]t is well established that the reenactment of a statute which has been judicially construed is in effect an adoption of that construction by the legislature unless a contrary intent appears." Union Elec. Co. v. Illinois Commerce Comm'n, 77 Ill. 2d 364, 380, 396 N.E.2d 510, 517 (1979). The court further stated that although mere "inaction by the legislature following a judicial construction does not of itself indicate acquiescence . . . the repeated restatement by this court of the statutory interpretation over an extended period of time strengthens the presumption of acquiescence in the face of inaction by the legislature." *Id.* at 380, 396 N.E.2d at 518; *see also* Stryker v. State Farm Mut. Auto. Ins. Co., 74 Ill. 2d 507, 513, 386 N.E.2d 36, 38 (1978) (it is axiomatic that reenactment of a statute is legislative adoption of judicial construction); Hupp v. Gray, 73 Ill. 2d 78, 86, 382 N.E.2d 1211, 1213 (1978) (the legislature is presumed to know the prior construction given to a statute and to adopt such a construction by reenactment).

168. *See supra* notes 34-39 and accompanying text.

169. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

170. The Illinois judiciary continues to apply the *Gray* principle that the situs of the tortious act is where the injury occurs. *See, e.g.*, Honeywell, Inc. v. Metz Apparatewerke, 509 F.2d 1137, 1142 (7th Cir. 1975) (facts analyzed in light of *Gray*); Unarco Indus., Inc. v. Frederick Mfg. Co., 109 Ill. App. 3d 189, 193, 440 N.E.2d 360, 362 (3d Dist. 1982) (rationale of *Gray* applied).

171. *See, e.g.*, Shanks v. Westland Equip. & Parts Co., 668 F.2d 1165, 1167-68 (10th Cir. 1982); Doggett v. Electronics Corp., 93 Idaho 26, 31, 454 P.2d 63, 67 (1969); *see also* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 298 (1980) (citing *Gray* with approval).

172. *Compare* Illinois Code of Civil Procedure, ILL. REV. STAT. ch. 110, § 2-209 (1981) (approved August 18, 1981, and effective July 1, 1982) *with* Illinois Civil Practice Act, ILL. REV. STAT. ch. 110, § 17 (1981). It might be argued that the Illinois General Assembly could not have adopted language any more restrictive than that already employed. The strength of that argument is weakened, however, by the fact that long arm statutes in other states have limited the breadth of their statutes by incorporating more limiting phraseology. *See, e.g.*, N.Y. CIV. PRAC. LAW § 302(a)(3) (McKinney 1972). Section 302(a)(3) provides that personal jurisdiction

language, is indicative of the legislature's acquiescence to the courts' broad interpretation of the long arm statute.

If *Green* and *Cook* were deemed to require a more restrictive construction of the long arm statute, then Illinois courts inevitably would have to retreat from the more expansive interpretations accorded to the statute. For example, because the *Gray* decision extended the Illinois long arm statute to the outermost limits of due process,[173] there is little possibility that its interpretation could remain good law under a narrower construction of the statute. Yet, because the judiciary's role is to construe the statute in accordance with its legislative purpose, and because the Illinois General Assembly implicitly approved the breadth of interpretation historically imparted to the long arm statute, the Illinois Supreme Court would have little authority for reverting to a narrower construction.

CONCLUSION

Despite the ambiguities in the fixed meaning directive, and the decisions rendered after *Green* and *Cook* which view the directive as requiring a narrower interpretation, it is doubtful that *Green* and *Cook* will have a profound impact on the reach of the long arm statute. The Illinois Supreme Court's rejection of the premise that the statute is coterminous with due process does not necessitate the conclusion that there will be a more restrictive construction. After *Green* and *Cook,* personal jurisdiction questions arising under the long arm statute must be examined based on the fixed meaning of the statutory language. That fixed meaning will be based on the legislative purpose underlying the statute. Because the General Assembly intended to expand long arm jurisdiction to the limits of due process, it is probable that the Illinois judiciary will continue to invoke as broad an interpretation of the statutory provisions as the language will allow. Therefore, if any reasonable construction of the statutory language can encompass the acts of a nonresident defendant, it is unlikely that Illinois courts will deny its residents redress by dismissing the case on the grounds that it is outside the scope of the long arm statute.

Barbara S. Farrar

---

may be exercised over a nonresident defendant in any cause of action arising from the commission of a tortious act outside the state which causes an injury to a person or property within the state, if the nonresident:

> (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or
>
> (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from the interstate or international commerce. . . .

Id. Thus, if the legislature had desired to contract the reach of the Illinois long arm statute, it easily could have done so by qualifying the types of acts which must occur in order to satisfy the transaction of business or tortious act provisions.

173. *See* Note, *Nonresident Corporation Subject to Extraterritorial Jurisdiction Under Illinois Civil Practice Act,* 1961 U. ILL. L.F. 750, 755 (the *Gray* rationale represents "one of the furthest extensions to date of the doctrine of *International Shoe*").