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Jurisdiction in Personam Over the Nonresident Tortfeasor

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JURISDICTION IN PERSONAM OVER THE NONRESIDENT TORTFEASOR

With respect to nonresident tortfeasors, Louisiana's Personal Jurisdiction over Nonresidents Statute provides that a court may exercise personal jurisdiction over a nonresident who, acting directly or through an agent, causes injury or damage by an offense or quasi offense committed within the state or by an offense or quasi offense committed outside of this state; provided that, in the latter instance, the nonresident 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 this state.[1] Enacted in 1964 to enable Louisiana courts to expand their jurisdiction in personam over nonresidents to the fullest extent permitted by the requirements of due process under recent decisions of the Supreme Court, this statute has not as yet been tested in Louisiana courts. The purpose of this Comment is to examine the validity of this statute and to explore its possibilities.

ACT OR OMISSION IN THE STATE

This particular provision of the statute rests on the assumption that the commission of an offense or quasi offense by act or omission within the state is a sufficient basis to enable courts to acquire jurisdiction in personam over the nonresident defendant on causes of action arising from the single act within the state. The extent of a state court's jurisdiction is a constitutional question to be decided under principles of due process.[2] In *Pennoyer v. Neff* the Supreme Court stated that "since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such [state court] judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law."[3] The traditional basis of jurisdiction at common law, the physical power concept, was maintained in *Pennoyer*, thereby making it

1. LA. R.S. 13:3201(c), (d) (Supp. 1964).
2. Pennoyer v. Neff, 95 U.S. 714 (1878).
3. *Id.* at 733.

necessary for the defendant to be served with process within the state.[4]

The Supreme Court was still relying on the concept of physical power as the basis for jurisdiction when called upon to adjudge the constitutionality of a state statute which provided that a single act by the defendant within the state, the operation of a motor vehicle on state highways and streets, was deemed to be the appointment of the Secretary of State as the motorist's agent for service of process in actions arising from the operation of the motor vehicle within the state.[5] The theory of the statute was "implied consent," which was similar to the fiction employed with respect to foreign corporations, namely, that doing business in the state is consent to the appointment of Secretary of State as agent for service of process in actions arising from doing business in the state. The Nonresident Motorist Statute was upheld, but the court based its decision on the fact that "motor vehicles are dangerous machines . . . . In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of . . . [those] who use its highways . . . as well as to provide for a claimant a convenient method by which he may sue to enforce his rights."[6] The Supreme Court made it clear, in a later case, that jurisdiction in the nonresident motorist cases was not based on consent, but rather on the great potential for damage and injury possessed by the motor vehicle.[7]

In *Doherty v. Goodman*,[8] the Supreme Court upheld jurisdiction of an Iowa court over a New York resident, who maintained a local office in Iowa, on a cause of action arising from a sale of stock in the state. The theory of implied consent to service of process on the resident agent[9] was advanced, but the decision rested on the ground that corporate securities were exceptional and could be subjected to special regulation.[10]

In these cases the Supreme Court had upheld statutes which based jurisdiction on a single act by nonresidents within the state, operation of motor vehicle,[11] sale of stock,[12] but had done

4. *Id.* at 714.
5. Hess v. Pawloski, 274 U.S. 352 (1927).
6. *Id.* at 356.
7. Olberding v. Illinois Central R.R., 346 U.S. 338 (1953).
8. 294 U.S. 623 (1935).
9. *Id.* at 627.
10. *Ibid.*
11. Hess v. Pawloski, 274 U.S. 352 (1927).
12. Doherty v. Goodman, 294 U.S. 623 (1935).

so by creating exceptions which confused the entire area of jurisdiction in personam over nonresidents. The general rule was that jurisdiction must be based on the physical power of the court over the defendant, which in turn necessitated service of process within the state.[13] The theory that the nonresident impliedly consented to service on a designated resident of the state had been the basis for the nonresident motorist acts[14] and for the Iowa statute governing sales of corporate securities.[15] Consent was implied from certain acts of the nonresident, for example, operating a motor vehicle on state highways or sale of securities.[16] But the Supreme Court sidestepped this position and based its decisions on the exceptional nature of the activities.[17] The court reasoned that in the public interest the state could provide a convenient method of redress for its citizens on a cause of action arising from the activities of the nonresident defendant. The point of focus had shifted from consent to service of process to the nature of the nonresident's activities within the state.

In *International Shoe Co. v. Washington*[18] the Supreme Court re-examined the entire question of the due process requirements for in personam jurisdiction over nonresidents and announced the broad and honest rule that due process "requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[19] The court emphasized that this test was not mechanical or quantitative, but rather concentrated on the "quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure."[20] That clause did not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.[21] By stating that criteria for due

13. Pennoyer v. Neff, 95 U.S. 714 (1878).
14. Hess v. Pawloski, 274 U.S. 352 (1927).
15. Doherty v. Goodman, 294 U.S. 623, 627 (1935).
16. Hess v. Pawloski, 274 U.S. 352 (1927); Doherty v. Goodman, 294 U.S. 623 (1935).
17. See cases cited note 16 *supra*.
18. 326 U.S. 310 (1945).
19. *Id.* at 316.
20. *Id.* at 319.
21. *Ibid.*

process were not to be applied quantitatively, but rather in terms of the nature and quality of the activity, the Court indicated that under the new rule a single act by the defendant in the state could be sufficient to support jurisdiction over the nonresident defendant.[22]

Under the *Pennoyer*-physical power rule, the Supreme Court recognized exceptions based on the special need for states to regulate certain activities within their borders — the operation of motor vehicles and sale of securities are two examples[23] — and allowed states to exercise personal jurisdiction over nonresidents based on these activities. The need for the exercise of jurisdiction in certain instances was likewise recognized under the *International Shoe* rule as one of the factors to be considered in determining whether the exercise of jurisdiction over a nonresident in a particular case violated due process. In *Mullane v. Central Hanover Bank & Trust Co.*[24] the Court upheld a New York statute which authorized local courts to adjudicate a suit for accounting by a New York trustee in a trust established under a New York law against nonresident trust beneficiaries on the ground that the interest of each state in providing means to close trusts created under its laws and supervised by its courts is so insistent that its courts have the right to determine the interests of all claimants, resident and nonresident.[25]

In *McGee v. International Life Ins. Co.*[26] a California statute[27] which subjected foreign corporations to suit in California courts on insurance contracts issued or delivered to California residents was upheld. The defendant insurer's chief contact with California had been the issuance of a re-insurance policy to a California resident. The Court found, in addition, that the contract was delivered in California, premiums were mailed from there, and the insured was a resident of California when he died.[28] The manifest interest California had in providing a forum of redress for its residents against insurers who refuse to settle their claims was also emphasized.[29] The Court remarked

22. *Id.* at 318.
23. Doherty v. Goodman, 294 U.S. 623, 627 (1935); Hess v. Pawloski, 274 U.S. 352, 356 (1927).
24. 339 U.S. 306 (1950).
25. *Id.* at 313.
26. 355 U.S. 220 (1957).
27. CAL. INS. CODE § 1611.
28. McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957).
29. *Ibid.*

that the severe economic disadvantages of forcing a claimant, especially one with a small claim, to pursue the insurer to its home state would deprive the claimant of a legal remedy, and, further, that crucial witnesses were in the claimant's area.[30] The inconvenience to the insurer was discussed, but it was not held to constitute a denial of due process.[31]

The Court stated that "the suit was based on a contract which had substantial connection with that State,"[32] and, if a single contract can be a "substantial connection" sufficient to satisfy due process requirements, it can be strongly argued that an act or omission within the state which amounts to a tort should likewise be the "substantial connection" or minimum contacts with the state sufficient to satisfy the requirements of due process. Although the Court talked of "substantial connection," it concentrated on other factors — manifest interest of the state to provide a forum for its citizens, the economic disadvantage of a plaintiff forced to bring suit in the defendant's state, the presence of key witnesses in the plaintiff's area.[33] In a tort action these factors would be equally compelling, if not more so. If the state has a manifest interest in protecting the contract rights of its citizens, it clearly has a manifest interest in providing a forum for citizens who have suffered personal injury or property damage through the tortious behavior of another, and in almost every case witnesses to the events and circumstances of the injury will be in the plaintiff's state, and the economic disadvantage of suit in defendant's state could be equally disadvantageous. The reasoning in *McGee* lends great support to statutes which grant courts jurisdiction over nonresidents on the basis of a tort committed within the state.

In *Hanson v. Denckla*,[34] the latest Supreme Court ruling in this area, a Pennsylvania resident had created an inter vivos trust with a Delaware trust company and subsequently moved to Florida. The settlor executed an instrument providing for the distribution of funds after her death. For several years she continued to receive income checks and communications from the Delaware trustee. After her death, some of the beneficiaries brought suit to set aside the trust agreement, and the issue was

30. *Ibid.*
31. *Id.* at 224.
32. *Id.* at 223.
33. *Ibid.*
34. 357 U.S. 235 (1958).

raised whether the Florida courts had jurisdiction over the trustee. The majority held that they did not, pointing out that the standards of *International Shoe* sprang from the territorial limitations of states and were not merely guarantees against inconvenient litigation.[35] Even if the burdens of defending were minimal, the defendant must have the requisite minimal contacts.[36] The Court found that these contacts were lacking because the defendant maintained no office in Florida, transacted no business in Florida, and the cause of action did not arise out of an act or transaction within the state.[37] The Court emphasized that a relationship or connection with a nonresident is not sufficient to establish the minimum contacts; "it is essential . . . that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the . . . State, thus invoking the benefits and protections of its laws."[38] This is the factor which seems to distinguish *Denckla* from *McGee*. In *McGee* the defendant initiated in California the transaction which gave rise to the cause of action, and thereby invoked the benefit and protection of California laws. In *Denckla* the transaction was completed before the settlor moved to Florida and, therefore, the Court reasoned, the defendant had not invoked the protection of its laws. In so reasoning the Court added a new dimension to the "minimum contact" rule: the defendant must deliberately avail himself of the privilege of acting with the state; merely carrying out transactions consummated in another state will not be sufficient.[39]

The decision, however, was by a divided Court. The dissent reasoned that it was not fundamentally unfair to require the defendant trustee to answer in Florida because the trustee had communicated with the settlor in Florida regularly and had carried on business relations with her for eight years.[40] It also noted that Florida had a real interest because the appointment had been made in Florida by a Florida domiciliary, the primary beneficiaries lived in Florida, and the will was being administered in Florida.[41] In addition, it would prevent "multitple liti-

35. *Id.* at 250.
36. *Ibid.*
37. *Id.* at 251.
38. *Id.* at 253.
39. *Ibid.*
40. *Id.* at 259.
41. *Id.* at 258.

gation with its accompanying waste and possibility of inconsistent results."[42]

In *Denckla* the Court faced a choice of emphasis. The majority, emphasizing minimum contacts, denied jurisdiction with the stern remark that the standards set forth in *International Shoe* were not merely an attempt to protect litigants from inconvenient suits, but rather sprang from the territorial limitations on state judicial power, and the defendants' minimum contacts were a prerequisite to the exercise of that power. The minority emphasized the interest of the state, the need to eliminate multiple litigation, and the danger of inconsistent decisions, but also noted the continuous contacts in the form of communications and payments. Justice Black, who wrote the dissent in *Denckla*, had written the majority opinion in *McGee*, which had likewise emphasized the contacts in the form of regular payments of premiums, the convenience of suit in California, the presence of important witnesses, and the interest of the state in providing a forum for its residents with claims against foreign insurers.[43] *Denckla* appears to be a deliberate limitation on *McGee* and an attempt to assert the paramount importance of the "minimum contacts" over factors such as state interest, avoidance of multiple litigation with the possibility of conflicting decisions, and availability of evidence. It must be remembered, however, that this decision was by a divided court, and, therefore, that there is still some uncertainty in this area. It is possible that today a case similar to *Denckla* might sustain jurisdiction. But until this happens, jurisdiction must be determined in the light of the contacts which the defendant had with the state; and factors such as convenience of the parties, prevention of multiple litigation, and the state's manifest interest in safeguarding its citizens by providing a forum to adjudicate their rights and to redress their injuries are important and relevant, but are not controlling. Under this rule, it seems clear that the commission of a tort through an act or omission in the state could be "sufficient minimum contact" to provide a basis for personal jurisdiction over the nonresident tortfeasor. Although this question has not been settled by the Supreme Court, it has been adjudicated by several state and federal courts.

42. *Id.* at 261.
43. McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957).

In *Smyth v. Twin State Improvement Corp.*,[44] a foreign corporation negligently damaged plaintiff's home in attempting to re-roof it. The Vermont Supreme Court upheld the validity of service of process on the Secretary of State under a Vermont statute which provided that if a foreign corporation commits a tort in whole or in part in the state it shall be deemed to be doing business in Vermont and to have appointed the Secretary of State agent for service of process in actions arising out of the tort.[45] The court held that it did not violate due process to require a defendant who had committed a tort within the state to submit to jurisdiction of the courts of that state on a cause of action arising from that tort.[46]

This case was decided after the *International Shoe* decision, but prior to *McGee*, and it is significant that the opinion concentrated on the fundamental fairness of requiring the defendant to answer in Vermont.[47] He had chosen to enter Vermont and had enjoyed the protection of Vermont laws, and should be answerable under them as well. Since the tort was committed in Vermont, its law would govern the liability. Most of the necessary witnesses were in Vermont, and to require the plaintiff to pursue his action in defendant's home state would be prohibitively expensive. The defendant's only contact had been the commission of the tort within the state, and this had been held sufficient.

A similar result was reached in Illinois in a case[48] which arose after *McGee* and under a statute[49] which provided that the commission of a tortious act within the state subjects the tortfeasor to the jurisdiction of the Illinois courts on a cause of action arising from the tortious act. The defendant, a Wisconsin resident, sent his employees into Illinois to deliver a stove. The plaintiff was negligently injured by the employees while he was assisting them in unloading the stove. The court stated that the jurisdictional requirements are met when the defendant is the author of acts or omissions within the state and the complaint alleges a cause of action in tort arising from the con-

44. 116 Vt. 569, 80 A.2d 664 (1951).
45. VT. STAT. ANN. tit. 12, § 855 (1947).
46. Smyth v. Twin State Improvement Corp., 116 Vt. 569, 575, 80 A.2d 664, 668 (1951).
47. *Ibid.*
48. Nelson v. Miller, 11 Ill.2d 378, 143 N.E.2d 673 (1957).
49. ILL. REV. STAT. ch. 110, § 17(1)(b) (1961).

duct.[50] That the defendants had enjoyed the protection of Illinois law, that most of the important witnesses were in Illinois, and that Illinois substantive law governed were given considerable weight.[51] In this regard the reasoning of the Illinois court was similar to that of the Vermont Court[52] and of the Supreme Court in *McGee*,[53] but the court also emphasized that jurisdiction was based on the legitimate interest of the state in providing redress against those who have substantial contacts with the state and incur obligations to its residents.[54] The legitimate interest concept was an important factor in the *McGee* case,[55] but the danger of such reasoning is that it can easily lead to an over-emphasis of "legitimate interest," thereby overshadowing the most important element — the substantial contacts. As pointed out in *Denckla*, jurisdiction is governed by the territorial limitations on the power of the states and is not controlled by the legitimate interests of the states.[56] It follows that since the basis is territorial power, the defendant must have contact and connection with the territory over which the state has power,[57] and the most important question is how much contact is necessary. The nature of the contact is more important than the quantity; at this point the legitimate interests of the state become relevant. If the nature of the contact is of such importance to the welfare of its citizens that the state control and regulate the activity, then the state has power to regulate it directly or by providing redress in its courts. Therefore, when the defendant's activity or contact falls within the ambit of the state's legitimate or manifest interest, such as operating a motor vehicle[58] or committing a tort,[59] then a single act would be sufficient.

In the light of the rulings of the Supreme Court[60] and the decisions in other jurisdictions,[61] the provisions of the Louisiana

50. Nelson v. Miller, 11 Ill.2d 378, 393, 143 N.E.2d 673, 681 (1957).
51. *Id.* at 391, 143 N.E.2d at 680.
52. Smyth v. Twin State Improvement Corp., 116 Vt. 569, 575, 80 A.2d 664, 668 (1951).
53. 355 U.S. 220, 223 (1957).
54. Nelson v. Miller, 11 Ill.2d 379, 389, 143 N.E.2d 673, 679 (1957).
55. 355 U.S. 220, 223 (1957).
56. 357 U.S. 235, 250 (1958).
57. *Id.* at 253.
58. Hess v. Pawloski, 274 U.S. 352 (1927).
59. See Nelson v. Miller, 11 Ill.2d 378, 143 N.E.2d 673 (1957); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951).
60. International Shoe Co. v. Washington, 326 U.S. 310 (1945); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Hanson v. Denckla, 357 U.S. 235 (1958).
61. See note 59 *supra*.

statute granting the courts jurisdiction over a nonresident on a cause of action based on the commission of an offense or quasi-offense through an act or omission in Louisiana appears to be a valid exercise of power and does not violate the requirements of due process.

ACT OR OMISSION OUTSIDE THE STATE

If a nonresident commits an offense or quasi offense through an act or omission outside the state and causes injury or damage in Louisiana, would the Louisiana courts have jurisdiction over the nonresident? There are no Supreme Court rulings directly in point; the only relevant decisions are the *International Shoe, McGee,* and *Denckla* cases, which have been discussed earlier. The rule established by these decisions, especially *Denckla,* is that jurisdiction is restricted by the territorial limitations on the states' power, and, therefore, the defendant must have sufficient and deliberate contact with the states so that the exercise of jurisdiction is not offensive to principles of fairness and justice.

Various forms have been used in the drafting of statutes establishing jurisdiction over nonresident tortfeasors. The purpose of this section is to examine these forms through the jurisprudence arising under these statutes and then to evaluate the Louisiana statute in light of the experience of other jurisdictions.

Five states have adopted statutes which provide that any person committing a tortious act within the state is subject to jurisdiction of the state in causes of action arising from the tortious act.[62] The use of the phrase "tortious act within the state" raised the initial question whether this statute could apply where the negligent act or omission occurred outside the state. In *Nelson v. Miller,* discussed earlier, the Illinois Supreme Court held that the jurisdictional requirements were met when the defendant is the author of acts or omissions within the state and the cause of action arises from the conduct.[63] But since the negligence in *Nelson* had occurred in Illinois, the court was not confronted with the question of out-of-state negligence. This

62. ILL. REV. STAT. ch. 110, § 17 (1961); ME. REV. STAT. ANN. tit. 14, § 704 (1964); N.M. REV. CODES ANN. § 21-3-16 (Supp. 1965); N.Y. CIV. PRAC. ACT 302(a)(1); WASH. REV. CODE ANN. 4.28.185 (1959).

63. See text accompanying notes 48-54 *supra.*

issue was raised, however, in *Hellriegel v. Sears Roebuck & Co.*[64] An Illinois resident had been injured by a lawnmower manufactured in part by a Wisconsin corporation and assembled by an Ohio corporation which had shipped it to the Illinois corporation from which plaintiff had purchased it. The Wisconsin defendant's only contact with Illinois had been the presence of the lawnmowers. The Ohio defendant, in addition to shipping the machines into Illinois, had sent representatives to discuss sales with Sears Roebuck and to enter into oral contracts for the shipment and sales of the mowers. The federal district court in Illinois held that the statute could not support jurisdiction where the cause of action arises out of local injuries caused by acts or omissions outside Illinois. The act must be committed in Illinois. The Illinois Supreme Court repudiated this interpretation in a later case. In *Gray v. American Radiator & Standard Corp.*,[65] a defective safety valve, negligently manufactured by an Ohio corporation and installed in a water heater by a Pennsylvania corportion, caused the water heater to explode in Illinois, injuring the Illinois purchaser. The court held that the statute was applicable where the negligent act or omission occurred outside Illinois and the injury was sustained in Illinois by reasoning that to be "tortious" an act must cause injury, and, therefore, it was impossible to separate the act from the consequences.[66] Having ruled that the statute applied, the court considered whether there was sufficient contact with the state to satisfy requirements of due process. There was no showing whether either defendant had transacted any business in Illinois other than the sale involved in the case, but the court found that it was reasonable to infer that the defendants' commercial transactions probably resulted in substantial use and consumption in Illinois and that the defendants derived considerable benefit from the sale of appliances in Illinois and had enjoyed the protection of Illinois law.[67] The court concluded that, in the light of the defendants' contacts with Illinois, it was fair and in accord with the principles of due process to require them to answer in Illinois courts for damage caused by their products. In addition, the court found that it would be convenient from the standpoint of investigating the accident and the availability of witnesses to try the case in Illinois, and, further, that Illinois

64. 157 F. Supp. 718 (N.D. Ill. 1957).
65. 22 Ill.2d 432, 176 N.E.2d 761 (1961).
66. *Id.* at 435, 176 N.E.2d at 763.
67. *Id.* at 442, 176 N.E.2d at 766.

substantive law would be applied.[68] The *Gray* decision is important in several respects. By interpreting the phrase "tortious act within the state" to encompass situations where only the injury occurred within the state, the court expanded considerably the jurisdiction of Illinois courts in in personam actions. In a later case,[69] the federal district court in Illinois reiterated the interpretation of the *Hellriegel* and *Nelson* cases that "tortious act" refers to the act or conduct and not to the consequences, and that therefore there must be acts or omissions in Illinois; the occurrence of the injury in Illinois would not be sufficient. But since the Illinois Supreme Court had interpreted "tortious act" to apply where the injury was sustained in Illinois, but the negligent act had occurred outside the state, the federal court was compelled to follow this interpretation and upheld jurisdiction where the plaintiff, a stewardess, was injured in Illinois as a result of negligent design and construction of defendant's airplane.

In this case the court seems to have misinterpreted the *Gray* decision. It is true that, as interpreted by *Gray*, the Illinois statute is applicable where the negligent acts or omissions occur outside the state and the injury is sustained within the state. But *Gray* does not hold that this fact alone is sufficient to sustain jurisdiction. The defendants were subjected to the jurisdiction of the Illinois courts because the court found it reasonable to infer that there had been substantial use and consumption of their products in Illinois and that because they had derived substantial benefit from this consumption, it was just that they answer for injuries sustained in Illinois from the use and consumption of their products.[70]

In *Nixon v. Cohen*[71] jurisdiction was upheld under the "tortious act within the state" provision of the Washington statute where plaintiffs were injured while riding an amusement machine at a fair. The court found that the defendant, an Oregon corporation, knew that the machine was to be used in Washington and has installed special lights for that purpose. The defendant had retained property interest in the machine and had agreed to service it whenever necessary. The defendant had

68. *Ibid.*
69. McMahon v. Boeing Airplane Co., 199 F. Supp. 908 (N.D. Ill. 1961). *But see* Anderson v. Penncraft Tool Co., 200 F. Supp. 145 (N.D. Ill. 1961).
70. 22 Ill.2d 432, 442, 176 N.E.2d 761, 766 (1961).
71. 62 Wash.2d 987, 385 P.2d 305 (1963).

visited the fair to discuss lighting and other factors. In holding that the defendant had committed a tortious act within Washington, the court relied on the reasoning in *Gray* because the Washington statute had been copied from Illinois. In sustaining jurisdiction the court considered the interest of a state in protecting its citizens from inherently dangerous machines, the inconvenience of suit in defendant's state, the defendant's activities in connection with the operation of the machine, and the availability of witnesses in Washington, and the fact that the defendant had retained a property interest in the machine.[72] It is significant that although the court mentioned the minimum or sufficient contacts, it preferred to concentrate on the factors of state interest, inconvenience to the plaintiff, availability of witnesses, and protection of state laws afforded the defendant. This case was decided after *Denckla* and indicates a persistent tendency of courts to concentrate on factors other than the defendant's contacts with the state in determining jurisdiction. The result was correct because the defendant had the requisite minimum contacts, but it seems that the reasoning of the court fails to place proper emphasis on the fundamental requirement for jurisdiction — sufficient contacts with the forum state.

Other statutes provide for jurisdiction over foreign corporations by specifying that the commission of a tort in whole or in part is doing business in the state, and making the Secretary of State the agent for service of process in actions arising out of the tort.[73] This type of statute is restricted in scope to foreign corporations and in flexibility by employing the concepts of "doing business." This concept arose prior to the *International Shoe* case and was originally more restrictive than the "minimum contacts" test.

In *Mueller v. Steelcase*,[74] jurisdiction was denied by the federal district court where a Minnesota resident was injured by a defective chair manufactured by a foreign corporation and sold through a local retailer. The court noted that Minnesota law would apply, that all of plaintiff's witnesses were in Minnesota though all evidence of negligence in manufacture was in

72. *Id.* at 998-99, 385 P.2d at 312.

73. IOWA CODE ANN. § 617.3 (1962); MINN. STAT. ANN. § 303.13(3) (1957); N.H. REV. STAT. ANN. § 300:14 (Supp. 1961); TEX. REV. CIV. STAT. ANN. art. 2031(b) (1959); VT. STAT. ANN. tit. 12, § 855 (1959); W. VA. CODE ANN. § 3083 (1957).

74. 172 F. Supp. 416 (D. Minn. 1959).

defendant corporation's state; but held that defendant's contacts with Minnesota were insufficient to sustain jurisdiction.[75] The defendant owned no property in Minnesota, was not licensed to do business there, and its only representative was a salesman living in Iowa who received only ten percent of the orders. The majority of orders were sent directly to the defendant. The court found that the defendant had performed no tortious act in Minnesota and concluded that it violated due process to hold that the mere fact of injury in Minnesota from a tortious act committed outside the state constituted doing business and subjected the defendants to jurisdiction of Minnesota.[76] To hold otherwise would mean that a Minnesota resident who bought a chair in defendant's home state, returned to Minnesota, and was subsequently injured could subject the defendant to the jurisdiction of Minnesota courts.[77] This argument seems unanswerable and supports the rule that the defendant must have sufficient connection with the state apart from the fact of injury in the state. The court was concerned over the possible implications of expanding the jurisdiction. The Supreme Court in *Denckla* voiced a similar concern when it stated that the defendant must purposefully avail himself of the privilege of conducting activities within the state.[78]

In *Atkins v. Jones & Laughlin Steel Corp.*[79] plaintiff was injured while unloading the defendant's product. The defendant manufactured acid and shipped it in containers produced by co-defendant Jones & Laughlin. It maintained no offices, and no agents or employees were present, in Minnesota. All sales were made in the New York office and all payments were made to the New York office. The Minnesota Supreme Court relied on the principle that the place of injury is where the legal wrong occurs and held that the defendant had committed a tort in Minnesota and was subject to its jurisdiction.[80] The court noted the concern expressed in *Mueller* that, if jurisdiction were upheld where the injury occurred in the state from out-of-state negligence, minimum contacts requirements would be swept away, but reasoned that this concern was outweighed by the interest of Minnesota in providing redress in its courts for its

75. *Id.* at 418.
76. *Id.* at 419.
77. *Ibid.*
78. 357 U.S. 235, 253 (1958). See text accompanying note 38 *supra.*
79. 258 Minn. 571, 104 N.W.2d 888 (1960).
80. *Id.* at 578, 104 N.W.2d at 893.

citizens injured by use of products from out of state.[81] Although the *Atkins* case appears to hold that the single fact of injury within the state is sufficient minimum contact to support jurisdiction, a careful reading of the opinion reveals that the defendant had been shipping its acid into Minnesota for fifty years, and this would certainly fulfill the minimum contacts requirement of due process. In addition, the shipment of acid is such a potentially dangerous activity that the court could be justified in exercising jurisdiction based on a single shipment because of the state's interest in regulating dangerous activities. Exceptions have always been recognized where a high degree of risk is created by the activity, *e.g.*, the nonresident motorist statutes.

In a subsequent case, *Pendzimas v. Eastern Metal Prod. Corp.*,[82] a Minnesota citizen was injured by a deep fat fryer manufactured by a New York corporation. The defendant's only contact with the state was the presence of the product. The federal district court refused to follow the reasoning of the *Atkins* decision on the issue whether defendant's activity constituted the commission of a tort in whole or in part in Minnesota. *Atkins* held that negligence out of state which causes injury in Minnesota constitutes the commission of a tort in whole or in part in Minnesota. The federal court held that the act or omission must be performed in Minnesota and that under the facts the defendant lacked the requisite contacts.[83]

It is important to note that *Mueller-Pendzimas* decisions differ with the *Atkins* decision initially on the construction to be given to the phrase "a tort in whole or in part." *Atkins* construed it to apply where the negligence occurred outside Minnesota but the injury was sustained within the state. *Mueller-Pendzimas* hold that the statute is to be applied only where the negligent act or omission is performed in Minnesota. *Atkins* cannot be used as support for the broad rule that the single fact of injury caused by out-of-state negligence is sufficient contact to support jurisdiction, even though loose language in the opinion might indicate that it could. It cannot, because in *Atkins* the defendant had sufficient contacts apart from the injury in the fact that it had been shipping acid into Minnesota for fifty

81. *Id.* at 580, 104 N.W.2d at 894.
82. 218 F. Supp. 524 (D. Minn. 1961).
83. *Id.* at 527.

years. In addition, *Atkins* concerned an inherently dangerous substance, and jurisdiction could be upheld on the basis of the state's power to regulate dangerous activities either directly or indirectly by subjecting them to suit in its courts.

In the latest Minnesota Supreme Court case, *Ehlers v. United States Heating & Cooling Mfg. Corp.*,[84] jurisdiction was sustained where the foreign corporation's only contact with Minnesota was the presence of the boiler which caused the fire. The court reasoned that the defendant had manufactured the product for general use and that sales to Minnesota buyers in the ordinary course of business was to be anticipated.[85] Jurisdiction was apparently based on defendants' contacts through the presence of his products in the ordinary course of trade which was to be anticipated by defendant.[86] Because the defendant would derive substantial benefit from sale of his product and the protection afforded by Minnesota law, it is fair that he answer in Minnesota courts for injuries caused by his products.

Iowa's "long-arm" statute is similar to that of Minnesota in providing for the exercise of jurisdiction if the foreign corporation commits a tort in whole or in part.[87] In *Anderson v. National Presto Industries, Inc.*,[88] a Wisconsin corporation had manufactured a coffee-maker which had been obtained by plaintiff from an Iowa stamp-redemption store. The court construed the statute to apply where injury but not the negligent act or omission occurred within the state by relying on the principle that the place of wrong is the state where the last event necessary to make an actor liable for tort takes place. Having ruled that the statute applied, the court considered the defendant's contacts to determine whether the application of the statute would offend the principles of due process. The court held that the defendant had the required contacts by reasoning that the defendant had sold his product for general use wherever markets could be found. Defendant had placed his products in the stream of commerce and they were protected by the laws of the states

84. 267 Minn. 56, 124 N.W.2d 824 (1963). See also Aftanase v. Economy Baler Co., 343 F.2d 187 (8th Cir. 1965); Williams v. Connolly, 227 F. Supp. 539 (D. Minn. 1964); Adamek v. Michigan Door Co., 260 Minn. 54, 108 N.W.2d 607 (1961).

85. Ehlers v. United States Heating & Cooling Mfg. Corp., 267 Minn. 56, 61, 124 N.W.2d 824, 827 (1963).

86. *Ibid.*

87. IOWA CODE ANN. § 617.3 (1962).

88. 135 N.W.2d 639 (Iowa 1965).

into which they passed. Defendant, therefore, should assume the burden of defending suits in states where his products caused injury as well as enjoy the benefits. The court relied on the *Gray* and *Ehlers* cases. The dissent argued that the plaintiff must prove substantial use and consumption in this state in order to support jurisdiction because the premise for jurisdiction is that defendant by act or conduct invokes the benefit and protection of the laws of the forum.

Under a similar statute,[89] the Vermont Supreme Court in *O'Brien v. Comstock*[90] refused to sustain jurisdiction on the basis of the plaintiff's allegation that the defendant had placed his product into the stream of commerce, because it was insufficient to show a voluntary contact or intentional participation in Vermont. One of the defendant's cans of food offered for sale in Vermont had contained glass and plaintiff suffered injury from consuming the contents. The court stated that the vital factor in the Vermont statute is the intentional and affirmative action within the state on the part of the nonresident defendant in pursuit of its corporate activities.[91] A single act purposefully performed in Vermont would subject the actor to jurisdiction of Vermont courts,[92] as would active participation in the Vermont market, either by direct shipment or by transmission through regular distributors serving Vermont. The prerequisite is the defendant's intentional participation. Jurisdiction failed in this case because the plaintiff failed to prove that the defendant intended that his product reach Vermont or that by his present or past commercial activity he should have realized that his packages could cause harm in Vermont. The mere presence of the cans was not sufficient.

The North Carolina statute provides for jurisdiction over foreign corporations based on tortious conduct in the state, whether from repeated activity or a single act and also out of the production, manufacture, or distribution of goods with the reasonable expectation that the goods are to be used or consumed in the state and they are so used and consumed.[93] It is not important how or where the goods are produced or sold. Although the language is very broad, the courts have applied it

89. VT. STAT. ANN. tit. 12, § 855 (1959).
90. 123 Vt. 461, 194 A.2d 568 (1963).
91. *Id.* at 464, 194 A.2d at 570.
92. Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951).
93. N.C. GEN. STAT. § 55-145 (1955).

restrictively. Jurisdiction was denied by a federal court of appeals where the resident was injured when a tractor manufactured by a nonresident defendant overturned on him.[94] The tractor had been sold to the local dealer by defendant's wholly owned and controlled subsidiary. The corporations were considered separate entities and this barred jurisdiction over the defendant. Jurisdiction was also denied where a North Carolina corporation purchased yarn from a foreign corporation at the New York plant.[95] The goods were shipped to North Carolina, but this contact was held insufficient even though service had been made on defendant's manager while he was investigating the complaint in North Carolina. The North Carolina Supreme Court held that defendant had insufficient contacts where a defective lawn mower had been purchased from a local dealer who had received it from an out-of-state independent contractor.[96] The defendant was an Illinois corporation who distributed goods in North Carolina through out-of-state distributors and independent contractors. Jurisdiction was upheld on a cause of action based upon the explosion of a defective water heater where the defendant had regular orders through representatives, some of whom resided in North Carolina.[97] The defendant had done a substantial volume of business and, in turn, had purchased goods from local suppliers.

The Wisconsin and Maryland statutes are similar to Louisiana's[98] in that they require some contact in addition to the injury to person or property arising out of an act or omission outside the state. The Wisconsin statute[99] requires that solicitation or service activities have been carried on within the state by or on behalf of the defendant, or products, materials, or things processed, serviced or manufactured by defendant have been used or consumed within the state in the ordinary course of trade. Maryland requires that the defendant regularly do or solicit business, or engage in any other persistent course of con-

94. Harris v. Deere & Co., 223 F.2d 161 (4th Cir. 1955).
95. Erlanger Mills v. Cohoes Fiber Mills, 239 F.2d 502 (4th Cir. 1956).
96. Moss v. City of Winston-Salem, 254 N.C. 480, 119 S.E.2d 445 (1961).
97. Shepard v. Rheem Mfg. Co., 249 N.C. 454, 106 S.E.2d 704 (1959).
98. LA. R.S. 13:3201 (Supp. 1964): "A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from the nonresidents . . . (d) causing injury or damage in this state by an offense or quasi-offense committed through an act or omission outside of this state if he 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 this state."
99. WIS. STAT. ANN. § 262.05 (Supp. 1965).

duct, or derive substantial revenue from food or services used or consumed in the state.[100] These statutes are different from other statutes governing jurisdiction over nonresidents in several respects. Both statutes are clear that an injury sustained in the state from a negligent act outside the state in itself is not sufficient to support jurisdiction. This appears to be the position taken by the majority of courts and seems to be the position strongly implied by the majority opinion in *Denckla* that the defendant must purposefully avail himself of the privilege of carrying on business in the state. In these statutes the emphasis is placed on the defendant's connection with the state and this, in the final analysis, is the basis for jurisdiction. It is in spelling out the requisite contacts that the statutes differ from each other. The significance of these differences can only be revealed through judicial interpretation and experience.

In clearly defining the contacts which are necessary to support jurisdiction where the negligent act or omission occurred outside the state, Louisiana's long-arm statute appears to be the most accurate and the most workable expression of the due process requirements established by the Supreme Court in *International Shoe, McGee,* and *Denckla.* It is the most accurate because it clearly expresses the rule applied almost universally by other jurisdictions. The rule is that where the injury occurs within the state as a result of negligence outside the state, the nonresident defendant must have substantial contact with the state apart from the injury. The courts are liberal in the application of the substantial contact test and several follow the theory that if the defendant places his goods into interstate commerce he intends for them to be sold wherever there is a market. Since he derives benefit from the widespread distribution of his goods and enjoys the protection of the laws of the various states, he should bear the burden of answering in states where his products cause injury. But liberal as they may be, the overwhelming majority require substantial contacts and refuse to hold that the fact of injury alone is sufficient to support jurisdiction.

The Louisiana statute is the most workable because separate provisions for negligent acts within the state and without the state spare the courts the necessity of determining whether a tort was committed in whole or in part in this state or whether

100. MD. ANN. CODE art. 75, § 96(a) (Supp. 1964). See Gilliam v. Moog Industries Inc., 239 Md. 107, 210 A.2d 390 (1965).

"tortious act" refers to injury or to negligent acts. In addition, by prescribing in detail the contacts that are required where the negligent acts occur outside the state, the statute has saved the courts the confusing and perplexing problems of weighing factors such as manifest interest of the state, convenience to the parties, avoidance of multiple litigation, and the availability of witnesses. It has also placed the emphasis on the fundamental basis for jurisdiction over nonresidents — the nature and extent of their contact with the state.[101]

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101. The scope of this Comment has been restricted to an analysis of LA. R.S. 13:3201 (Supp. 1964), but many of the same results with respect to foreign corporations can be obtained under LA. R.S. 13:3471 (Supp. 1964).