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I. INTRODUCTION

Prior to 1968, jurisdiction of Massachusetts courts over nonresidents was minimal,[1] resulting in a limited forum to which residents could bring their grievances against nonresidents. In 1968, the Mas-

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1. A patchwork statutory scheme established this limited jurisdiction. MASS. ANN. LAWS ch. 90 (Michie/Law. Co-op 1967) (jurisdiction over nonresident motorists who cause injury while operating motor vehicles on the state's highways); *id.* ch. 223, §§ 37-38 (1955) (jurisdiction over nonresident corporations doing or soliciting business in the state); *id.* ch. 227, § 5 (1955) (jurisdiction over a nonresident who, without a usual place of business within the state, engages in the construction or repair of buildings in the state). Zabin, *The Long Arm Statute: International Shoe Comes to Massachusetts*, 54 MASS. L.Q. 101, 101-02 (1969). The Massachusetts Supreme Judicial Court, furthermore, was reluctant to give a broad construction to the jurisdictional statutes. *See* Wyshak v. Anaconda Copper Mining Co., 328 Mass. 219, 223, 103 N.E.2d 230, 232 (1952) (mere solicitation of business insufficient to establish jurisdiction over foreign corporations); Gulda v. Second Nat'l Bank, 323 Mass. 100, 104, 80 N.E.2d 12, 15 (1948) (personal liability of a nonresident defendant cannot be established unless either personal service is made upon him within the Commonwealth or he voluntarily enters a personal appearance); Rosenthal v. Maletz, 322 Mass. 586, 590, 78 N.E.2d 652, 655 (1948) (court has no jurisdiction to proceed in personam against promissory note payees and endorsers who are not residents of Commonwealth).

sachusetts legislature enacted chapter 223A of the Massachusetts General Laws (Long Arm Statute).[2] The United States District Court for the District of Massachusetts construed the purpose of the Long Arm Statute as the provision of a forum in which citizens of the Commonwealth can pursue causes of action arising from a nonresident's activities within the Commonwealth.[3] This article will describe the present state of the Long Arm Statute's interpretative case law in a business litigation context.

Although the Long Arm Statute theoretically expanded the limited forum noted above, the first several cases to reach the Massachusetts appeals courts deal not with the Act's substantive provisions but rather with the issue of retroactivity.[4] In 1972, the Massachusetts Supreme Judicial Court decided *"Automatic" Sprinkler Corp. of America v. Seneca Foods Corp.*[5] *"Automatic" Sprinkler*, a contract action for the unpaid balance due on a palletizing machine sold to a nonresident, provided the basis for the substantive application of the Long Arm Statute. The court noted that the Long Arm Statute permits assertion of state court jurisdiction over a nonresident within the limits established by the United States Constitution.[6] After some major United States Supreme Court refinements to the constitutional dimensions of long arm jurisdiction,[7] the Massachusetts Supreme Judicial Court, in *Good Hope Industries, Inc. v. Ryder Scott Co.*,[8] enunciated a two-step approach for the analysis of jurisdiction over a nonresident defendant. First, the activities of the defendant must invoke jurisdiction under the language of the Long Arm Statute. Second, the assertion of long arm jurisdiction over the defendant must be consistent with the basic due process requirements of the United States Constitution.[9]

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2. MASS. ANN. LAWS ch. 223A (Michie/Law. Co-op 1974).

3. Mark v. Obear & Sons, 313 F. Supp. 373, 376 (D. Mass. 1970); deLeo v. Childs, 304 F. Supp. 593, 595 (D. Mass. 1969).

4. The courts validated retroactive application of the Act on the basis of the Act's remedial nature. Diamond Crystal Salt Co. v. P.J. Ritter Co., 419 F.2d 147, 148 (1st Cir. 1969); Kagan v. United Vacuum Appliance Corp., 357 Mass. 680, 684, 260 N.E.2d 208, 210-11 (1970).

5. 361 Mass. 441, 280 N.E.2d 423 (1972).

6. *Id.* at 443, 280 N.E.2d at 424. The court reiterated this principle in Ross v. Ross, 371 Mass. 439, 441, 358 N.E.2d 437, 438 (1976).

7. *See* notes 59-75 *infra* and accompanying text.

8. 378 Mass. 1, 389 N.E.2d 76 (1979).

9. *Id.* at 5-6, 389 N.E.2d at 79. The court reiterated this two step approach in Carlson Corp. v. University of Vermont, [1980] Mass. Adv. Sh. 659, 662, 402 N.E.2d 483, 485. *See also* Campbell v. Frontier Fishing & Hunting, Ltd., [1980] Mass. App. Ct. Adv. Sh. 1145, 1147, 405 N.E.2d 989, 990.

Before proceeding to a description of the Long Arm Statute's interpretative case law, some background discussion is necessary. This background discussion, because of the two-step analytical approach promulgated by the supreme judicial court in *Good Hope Industries*, focuses on the development of jurisdictional concepts under the United States Constitution. The discussion will trace the constitutional history of in personam and quasi in rem jurisdiction.

II. BACKGROUND

A. *In Personam Jurisdiction*

The traditional test for the exercise of extraterritorial, in personam jurisdiction[10] over a nonresident has been minimum contacts, as promulgated by the Supreme Court in *International Shoe Co. v. Washington*.[11] In *International Shoe*, a Delaware corporation with a principal place of business in Missouri had several salesmen within the state of Washington, but neither maintained an office nor engaged in intrastate deliveries of goods in Washington. The salesmen were Washington residents. The principal sales activities, selling shoes from a company providing a line of samples, took place in Washington.[12] The state brought an action to compel the corporation to contribute to the state unemployment tax fund, against which the Washington salesmen could draw should their employment cease with the International Shoe Corporation.[13] The Court held that the corporation's intrastate activities were continuous and systematic and demonstrated sufficient contact with the state to grant the Washington court jurisdiction over defendant. Assertion of jurisdiction under such circumstances would be commensurate with the fourteenth amendment standards of due process.[14] In dicta the Court noted that, in this area, due process means compliance with the traditional notions of "fair play and substantial justice."[15] Satisfaction of these notions depends on the quality and nature of the non-

10. In personam jurisdiction is the power of a court to compel the parties in an action to appear and to submit to the court's orders and decisions based upon the parties' actions within the court's geographical boundaries. Pennoyer v. Neff, 95 U.S. 714, 724 (1877).

11. 326 U.S. 310, 316 (1945). Prior to *International Shoe*, the basis for the exercise of personal jurisdiction had been the state's power over persons within its territory as set forth in Pennoyer v. Neff, 95 U.S. 714, 733-34 (1877). *International Shoe* expanded the territorial power doctrine. 326 U.S. at 316.

12. 326 U.S. at 313-14.

13. *Id.* at 311.

14. *Id.* at 320.

15. *Id.* at 316.

residents' intrastate activities in light of the fair and orderly administration of the laws of the forum state.[16] A defendant who exercises the privilege of conducting activities within the forum state is not suffering any undue hardship when he is required to respond to lawsuits that arise from those activities.[17] *International Shoe* set the stage for a series of cases that measured the intrastate activities of defendants against the constitutional mandates of the fourteenth amendment due process clause.

McGee v. International Life Insurance Co.[18] represents the high water mark in the expansion of personal jurisdiction over nonresidents. *McGee* was an action brought in a Texas state court by the beneficiary of a life insurance policy to enforce a California court judgment against the Texas company on the policy.[19] The Supreme Court held that delivery of an insurance contract in California, mailing of premiums from California, and the insured's California residency were sufficient contacts with California to require the Texas insurance company to defend a California lawsuit on the policy.[20] *McGee* represents the lowest level of contacts acceptable to confer in personam jurisdiction over a nonresident. Later in the same term the Court clarified its concept of minimum contacts in *Hanson v. Denckla*.[21] In *Hanson*, two competing groups of heirs sought to establish a right to a portion of the corpus of a trust settled in Delaware by a former Delaware resident who moved to Florida. The parties each had obtained judgments, one in Florida and one in Delaware, supporting their respective positions.[22] The Court held the Florida judgment invalid for want of personal jurisdiction over the Delaware trustee, a Delaware bank.[23] The Court supported this holding by noting that restrictions on jurisdiction are more than a guarantee of immunity from distant or inconvenient litigation; they are the consequence of territorial limitation on the jurisdictional

16. *Id.* at 319.

17. *Id.* The Court clarified these principles in Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952). *Perkins* permitted the exercise of personal jurisdiction over a foreign corporation, even though the cause of action did not arise in the forum state and did not relate to the corporate activities there. The fact that the corporation engaged in systematic and continuous activity within the state was sufficient grounds for the Court to hold that requiring the defendant to defend an action in the state was not violative of due process. *Id.* at 448.

18. 355 U.S. 220 (1957).

19. *Id.* at 221.

20. *Id.* at 223.

21. 357 U.S. 235 (1958).

22. *Id.* at 238.

23. *Id.* at 251, 254-55.

power of the several states.[24] The retreat from the *McGee* high water mark came in the *Hanson* Court's statement that, however minimal the defendant's burden may be to defend in a foreign forum, the defendant cannot be compelled to do so unless he has had minimum contacts with the state so as to validate the exercise of jurisdiction over him.[25] The Court noted that the nature of those minimum contacts would be determined case-by-case, but they generally are defined as "act[s] by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."[26] The Court reinforced its retreat from *McGee* by stating that "the flexible standard of *International Shoe* does not herald the eventual demise of all restrictions on personal jurisdiction in the state courts."[27] The Court reconciled its holding with *McGee* on two grounds. First, the cause of action in *Hanson* did not arise from an act or transaction in Florida.[28] Second, in *McGee*, California had enacted special legislation to exercise its "manifest interest" in providing redress for state citizens injured by nonresidents engaging in activity that the state deemed exceptional.[29] Despite the admonition in *Hanson*, state courts and legislatures continued the trend of expanding state court jurisdiction.[30]

In *World-Wide Volkswagen Corp. v. Woodson*,[31] the Supreme Court slowed that trend. *World-Wide Volkswagen* was an automobile products liability action brought in an Oklahoma state court. Plaintiff, a New York resident at the time of purchase, bought an automobile in New York and subsequently was involved in an accident in Oklahoma while traveling to a new residence in Arizona.[32] Plaintiff brought suit against four defendants: The manufacturer; the importer; the New York based regional distributor; and the New York retail dealer.[33] Despite the paucity of contacts with Oklahoma,[34] the Oklahoma court sustained jurisdiction over all de-

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24. *Id.* at 251.
25. *Id.*
26. *Id.* at 253.
27. *Id.* at 251.
28. *Id.*
29. *Id.* at 252.
30. *See, e.g.*, Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 442-44, 176 N.E.2d 761, 766-67 (1961).
31. 444 U.S. 286 (1980).
32. *Id.* at 288.
33. *Id.*
34. *Id.* at 289. The only contact with Oklahoma was the fortuitous fact that the accident occurred there.

fendants on the ground that use of the automobile in Oklahoma was foreseeable within defendants' contemplation at sale.[35] The manufacturer and the importer did not pursue the jurisdictional issue and remained as defendants.[36] The retailer and the regional distributor appealed to the United States Supreme Court. The Court held that foreseeability of tortious injury resulting from a product's use within a state, without any other contacts with the state by the defendant, is an insufficient ground for the assertion of jurisdiction over the defendant manufacturer.[37] The Court supported its holding by citing the principle that the relation between corporate defendants and the forum state must be such that it is reasonable to require corporations to defend where the suit is brought.[38] Such a requirement is reasonable when the defendants have purposefully availed themselves of the forum's benefits and protections.[39] The requirement becomes unreasonable when based solely on the possibility that the defendants' acts may have an impact on the forum.[40] The defendants must have anticipated that their acts would have an effect on the forum.[41] Even a plaintiff's unilateral act of bringing goods into a state combined with the defendants' ability to reasonably foresee that the plaintiff would do so are insufficient grounds for assertion of jurisdiction over the defendants.[42]

In summary, the constitutional trend in state court personal jurisdiction is one of vast expansion beyond the territorial restrictions of *Pennoyer v. Neff*.[43] The courts, however, are slowing that trend in decisions like *World-Wide Volkswagen*.[44]

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35. *Id.* at 290-91.
36. *Id.* at 288 n.3.
37. *Id.* at 298-99.
38. *Id.* at 292.
39. *Id.* at 295, 297.
40. *Id.* at 297-98.
41. *Id.* at 297.
42. *Id.* at 298.
43. 95 U.S. 714 (1877). *See* notes 10 & 11 *supra*.
44. Various circuits of the federal court of appeals have applied *World-Wide Volkswagen* in a manner which continues to restrict a state's assertion of jurisdiction over a nonresident defendant. *See* Bankhead Enterprises, Inc. v. Norfolk & W. Ry., 642 F.2d 802, 806 (5th Cir. 1981); Plant Food Co-op v. Wolfkill Feed & Fertilizer, 633 F.2d 155, 158 (9th Cir. 1980); Puerto Rico v. S.S. Zoe Colocotroni, 628 F.2d 652, 667 (1st Cir. 1980), *cert. denied*, 450 U.S. 912 (1981); Standard Fittings Co. v. Sapag, S.A., 625 F.2d 630, 641-42 (5th Cir. 1980), *cert. denied*, 451 U.S. 910 (1981); Neiman v. Rudolf Wolff & Co., 619 F.2d 1189, 1193 (7th Cir. 1980), *cert. denied*, 449 U.S. 920 (1980); Poyner v. Erma Werke GMBH, 618 F.2d 1186, 1191 (6th Cir. 1980), *cert. denied*, 449 U.S. 841 (1980); Oswalt v. Scripto, Inc., 616 F.2d 191, 199 (5th Cir. 1980). *But see* Shanks v. Westland Equip. & Parts Co., 668 F.2d 1165 (10th Cir. 1982).

B. *Quasi In Rem Jurisdiction*

The constitutional history of quasi in rem jurisdiction[45] evinces a similar trend that the Supreme Court has retarded in recent decisions.

Pennoyer established the principle that the due process clause limits a state's jurisdiction, not only to persons,[46] but also to property physically within its territory.[47] This territorial limitation on quasi in rem jurisdiction began to erode in *Harris v. Balk*.[48]

In *Harris*, one North Carolina resident, Harris, owed a debt to another North Carolina resident, Balk. Balk, in turn, owed a debt to a Maryland resident, Epstein. Harris paid Balk's debt to Epstein under a Maryland court judgment rendered in favor of Epstein against Harris while he was temporarily in Maryland. The Maryland court had established jurisdiction by attaching the debt and personally serving Harris in Maryland. Balk sued Harris on his debt, alleging that the satisfied Maryland judgment was not a bar to recovery.[49] The Court noted that a debt follows the debtor[50] and held that jurisdiction with regard to a nonresident debtor could be validly established by attachment of a debt owed to the nonresident debtor if the second debt, in the form of the person of the second debtor, was present within the forum state and the court established personal jurisdiction over the second debtor.[51] This concept of quasi in rem jurisdiction reached its zenith in a 1966 New York Court of Appeals case, *Seider v. Roth*.[52]

In *Seider*, plaintiffs were New York residents involved in an automobile accident in Vermont with a Canadian citizen. Plaintiffs initiated an action in the New York courts, establishing jurisdiction over defendant by attachment of defendant's insurance policy as a debt owed to the insured by the insurer and by personally serving

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45. Proceedings quasi in rem are of two kinds. The first kind, involving actions to recover possession of land, quiet title or foreclose a mortgage, is inapplicable to the present jurisdictional discussion. In the second kind, the plaintiff does not assert an interest in the object but asserts a claim against the defendant personally and through attachment or garnishment seeks to apply the object to satisfy the plaintiff's claim. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 56-68, at 191, Introductory Note (1971). Quasi in rem proceedings of the second kind allow the defendant's property to be used as both the basis for jurisdiction over the defendant and for satisfaction of the plaintiff's claim.

46. *See* note 10 *supra* for a brief discussion of *Pennoyer v. Neff*.

47. 95 U.S. at 723-24.

48. 198 U.S. 215 (1905).

49. *Id.* at 216-17.

50. *Id.* at 222.

51. *Id.*

52. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

defendant in Quebec.[53] The court held that quasi in rem jurisdiction was validly established through the attachment of the insurance policy, construing the policy as a debt owed to defendant by the insurer.[54] Although the New York courts[55] and the United States Court of Appeals for the Second Circuit[56] subsequently validated the *Seider* doctrine, it has received a great deal of criticism from both courts[57] and commentators.[58] Two recent Supreme Court decisions have combined to invalidate *Seider* and thereby inhibit the expansion of quasi in rem jurisdiction.

In *Shaffer v. Heitner*,[59] decided in 1977, a Delaware court established quasi in rem jurisdiction over a shareholders' derivative action by attaching shares of stock and stock options owned by defendant corporate directors.[60] The Supreme Court expanded *International*

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53. *Id.* at 112, 216 N.E.2d at 313, 269 N.Y.S.2d at 100-01.

54. *Id.* at 114, 216 N.E.2d at 315, 269 N.Y.S.2d at 102.

55. Simpson v. Loehmann, 21 N.Y.2d 305, 310, 234 N.E.2d 669, 671, 287 N.Y.S.2d 633, 636-37 (1967), *aff'd*, 21 N.Y.2d 990, 990, 238 N.E.2d 319, 320, 290 N.Y.S.2d 914, 915-16 (1968) (per curiam).

56. Minichiello v. Rosenberg, 410 F.2d 106, 112-13 (1968), *cert. denied*, 396 U.S. 844 (1969).

57. In the eight years after denial of certiorari in *Minichiello*, a number of courts examined the *Seider* doctrine. All but two of these decisions rejected the doctrine. Tessier v. State Farm Mut. Ins. Co., 458 F.2d 1299, 1300 n.2 (1st Cir. 1972) (interpreting Massachusetts law); Kirchman v. Mikula, 443 F.2d 816, 817 (5th Cir. 1971); Sykes v. Beal, 392 F. Supp. 1089, 1096 (D. Conn. 1975); Ricker v. Lajoie, 314 F. Supp. 401, 403 (D. Vt. 1970); Javorek v. Superior Court, 17 Cal. 3d 629, 642, 552 P.2d 728, 738, 131 Cal. Rptr. 768, 778 (1976); Grinnell v. Garrett, 295 So. 2d 496, 499 (La. App.), *cert. denied*, 300 So. 2d 181 (La. 1974); State *ex rel.* Gov't Employees Ins. Co. v. Lasky, 454 S.W.2d 942, 949-50 (Mo. App. 1970); Hart v. Cote, 145 N.J. Super. 420, 426, 367 A.2d 1219, 1222 (1976); Johnson v. Farmers Alliance Mut. Ins. Co., 499 P.2d 1387, 1390 (Okla. 1972); DeRentiis v. Lewis, 106 R.I. 240, 245-46, 258 A.2d 464, 467 (1969); Howard v. Allen, 254 S.C. 455, 459-62, 176 S.E.2d 127, 128-30 (1970). The *Seider* doctrine was also unacceptable in federal maritime law. Robinson v. O. F. Shearer & Sons, 429 F.2d 83, 85-86 (3d Cir. 1970). The two courts which accepted *Seider* did so on a limited basis. Rintala v. Shoemaker, 362 F. Supp. 1044, 1053 (D. Minn. 1973); Forbes v. Boynton, 113 N.H. 617, 624, 313 A.2d 129, 133 (1973).

58. For a sampling of commentators' criticism of *Seider*, see Daynard, *The Use of Social Policy in Judicial Decision-Making*, 56 CORNELL L. REV. 919, 939-43 (1971); Martin, *Constitutional Limitations on Choice of Law*, 61 CORNELL L. REV. 185, 187 n.11 (1976); Reese, *The Expanding Scope of Jurisdiction Over Non-Residents—New York Goes Wild*, 35 INS. COUNSEL J. 118, 119 (1968); Comment, *Attachment of "Obligations"—A New Chapter in Long Arm Jurisdiction*, 16 BUFFALO L. REV. 769, 773-77 (1967); Comment, *Garnishment of Intangibles: Contingent Obligations and the Interstate Corporation*, 67 COLUM. L. REV. 550, 559-60 (1967); Note, *Attachment of Liability Insurance Policies*, 53 CORNELL L. REV. 1108, 1108 (1968); Note, Seider v. Roth: *The Constitutional Phase*, 43 ST. JOHN'S L. REV. 58, 81 (1968); Note, *Quasi in Rem Jurisdiction Based on Insurer's Obligations*, 19 STAN. L. REV. 654, 660 (1967).

59. 433 U.S. 186 (1977).

60. *Id.* at 189-94.

Shoe and held that state jurisdiction over a nonresident, whether exerted in personam or quasi in rem, must be evaluated according to the *International Shoe* minimum contacts standards.[61] The Court defined the nature of minimum contacts required for quasi in rem jurisdiction by stating that the use of property which is neither the subject matter of the litigation nor related to the underlying cause of action as the basis for the assertion of jurisdiction is insufficient to meet the due process standard.[62]

Shaffer thus overruled both *Harris*[63] and *Seider* with regard to the assertion of quasi in rem jurisdiction.[64] The Court also noted that as the issue was not raised in *Shaffer*, the question whether the presence of a defendant's property in the state is a sufficient basis for jurisdiction when no other forum is available to the plaintiff was not considered.[65] In 1980, *Rush v. Savchuk*[66] invalidated the *Seider* doctrine[67] and responded to the question unanswered by *Shaffer*.

In *Rush*, plaintiff was a resident of Indiana at the time of his involvement, as a passenger, in an Indiana automobile accident. The Indiana guest statute barred plaintiff from suing the driver of the automobile in which he was a passenger.[68] Plaintiff subsequently moved to Minnesota with his parents and filed suit in the Minnesota

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61. *Id.* at 212.

62. *Id.* at 213. The United States District Court for the District of Massachusetts predated this portion of *Shaffer* by six years in Rivera v. Pocahontas S.S. Co., 340 F. Supp. 1307, 1310 (D. Mass. 1971) (defendant's interest in real property in Massachusetts does not confer, in and of itself, jurisdiction on the court when there is no demonstration that defendant's property interest is related to plaintiff's cause of action).

63. O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194, 199 (2d Cir.), *cert. denied*, 439 U.S. 1034 (1978) (citing *Shaffer*, 433 U.S. at 208-09). The property in *Harris*, the debt between the two North Carolina residents, was unrelated to the debt sued on between the North Carolina creditor and the Maryland creditor. 433 U.S. at 209. *See* notes 48-51 *supra* and accompanying text for a discussion of *Harris*.

64. O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194, 197 n.2. (2d Cir.), *cert. denied*, 439 U.S. 1034 (1978). The *O'Connor* court, however, upheld the *Seider* doctrine on the basis of its operation as a judicially created direct action against the insurer. *Id.* at 201-02.

65. 433 U.S. at 211 n.37.

66. 444 U.S. 320 (1980).

67. After the Supreme Court's decision in *Shaffer*, the New York Court of Appeals upheld *Seider* in an automobile tort case on grounds of stare decisis. Baden v. Staples, 45 N.Y.2d 889, 892-93, 383 N.E.2d 110, 112, 410 N.Y.S.2d 808, 810 (1978). After *Rush*, however, the New York Court of Appeals invalidated *Seider*. Erneta v. Princeton Hosp., 49 N.Y.2d 829, 830, 404 N.E.2d 1335, 1335, 427 N.Y.S.2d 794, 794 (1980) (mem.). The concurrence in *Erneta* characterized the decision as "an obligatory abandonment of the *Seider* doctrine upon constraint of *Rush v. Savchuk*. . . ." *Id.* at 830, 404 N.E.2d at 1335, 427 N.Y.S.2d at 794 (Jasen, J., concurring).

68. 444 U.S. at 322 (citing IND. CODE § 9-3-3-1 (1976)).

state court.[69] The Minnesota court obtained quasi in rem jurisdiction by garnishment of defendant's insurance obligation to defend and indemnify him in conjunction with such an action.[70] The Supreme Court held that a state violates due process by the exercise of quasi in rem jurisdiction over a defendant, who has no forum contacts, through attachment of the obligation of the insurer. Although the insurer may be licensed to do business in the state to defend and indemnify the defendant, the plaintiff has no direct right of action against the insurer.[71]

The Supreme Court explained the due process requirements associated with quasi in rem jurisdiction. If the defendant has certain judicially cognizable ties with the forum state which are related to the present cause of action, those ties may be relevant to determine compliance with due process standards of fair play and substantial justice.[72] While the parties' relations may be significant in evaluating the defendant's contacts with the forum, the touchstone for assertion of jurisdiction is due process in light of the defendant's contacts.[73] The Court further stated that a plaintiff's contacts with the forum are not decisive in determining whether a defendant's due process rights are violated by exercise of jurisdiction over him.[74] In making this statement, the Court answered the *Shaffer* question:[75] The lack of an available forum to a plaintiff is not decisive in obtaining jurisdiction over a defendant.[76]

In summary, the Constitution requires that the assertion of jurisdiction over a nonresident defendant must meet the due process standards of fair play and substantial justice. Due process, therefore, is the touchstone and overrides other considerations such as the plaintiff's relation to the forum, the relation between the defendant and the plaintiff, and the plaintiff's inability to avail himself of another forum. With this constitutional standard in mind, the discus-

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69. There is no indication in either the state court or the Supreme Court opinions of forum shopping by the plaintiff or that the move to Minnesota was anything other than one accomplished in the normal course of events. *See* Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 624 (1976), *vacated*, 433 U.S. 902 (1977), *on remand*, 311 Minn. 496, 272 N.W.2d 888 (1978), *rev'd*, 444 U.S. 320 (1980).

70. 444 U.S. at 323-24.

71. *Id.* at 328-32.

72. *Id.* at 332-33.

73. *Id.* at 331-32.

74. *Id.* at 332-33.

75. *See* note 65 *supra* and accompanying text.

76. 444 U.S. at 332-33.

sion now proceeds to analysis of the case law interpreting the Long Arm Statute.

III. ANALYSIS

This discussion will focus on the judicial interpretations of sections 2 and 3 of chapter 223A, the heart of the Long Arm Statute. Section 2 allows jurisdiction over a person, natural or corporate, based on continuing contact, such as maintaining a domicile or principal place of business in the Commonwealth or organization under its laws.[77] Under section 3 there are six specific kinds of activity which, in the context of business litigation,[78] may subject a nonresident defendant to the jurisdiction of the Commonwealth's courts. Each kind will be covered separately below. Throughout this discussion, the reader should keep in mind that, even though a nonresident defendant's activities literally may come within one of the section 2 or section 3 provisions, the assertion of jurisdiction over the nonresident still must pass constitutional muster.[79]

A. *Section 2: Continuing Contact with the Commonwealth*

Section 2 states: "A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, this commonwealth as to any cause of action."[80] The statutory language appears to be straightforward and not in need of judicial construction. Nevertheless, one interesting case, involving jurisdiction over a nonresident executor in a contract action against an estate, has arisen. In *Saporita v. Litner*,[81] the supreme judicial court noted that testator resided, practiced medicine, and performed portions of the disputed contract in the Commonwealth during his lifetime.[82] The court found that these facts would have evinced sufficient continuing contacts for jurisdiction over testator had he lived to defend the action. Jurisdiction was then imputable to testator's executor, regardless of

77. MASS. ANN. LAWS ch. 223A § 2 (Michie/Law. Co-op 1974).

78. *Id.* § 3. Subsection 3(g), added in 1976, deals with nonresidency in a divorce context, 1976 Mass. Acts 435, and is inapplicable to this discussion. This subsection is a codification of the holding in Wood v. Wood, 369 Mass. 665, 671-72, 342 N.E.2d 712, 716-17 (1976). *See generally* Kennedy v. Kennedy, [1980] Mass. App. Ct. Adv. Sh. 1211, 406 N.E.2d 409.

79. *See* notes 18-75 *supra* and accompanying text for a discussion of constitutional aspects of jurisdiction.

80. MASS. ANN. LAWS ch. 223A, § 2 (Michie/Law. Co-op 1976).

81. 371 Mass. 607, 358 N.E.2d 809 (1976).

82. *Id.*

executor's non-residency or his appointment by a foreign court.[83]

B. *Characteristics of Business Activity That Will Comply With Due Process Requirements in Application of Section 3*

The preamble of section 3 states that the courts may exercise jurisdiction over a person who acts directly, or by an agent, as to a cause of action at law or in equity arising from the acts enumerated in the subsections.[84] The supreme judicial court and the First Circuit, in a series of decisions over the past nine years, have indicated the characteristics such acts must manifest in order to pass constitutional muster.[85] Analysis of those decisions reveals two required characteristics: Active, as opposed to passive, involvement,[86] and systematic and continuous, rather than isolated, activity.[87]

In *Whittaker Corp. v. United Aircraft Corp.*,[88] a California corporation with offices in Massachusetts brought breach of contract and deceit actions against three foreign corporations.[89] One corporation had engaged in direct transactions with plaintiff,[90] while the other two corporations placed orders for metal alloy logs with plaintiff only after the first corporation indicated that plaintiff's products were approved for use in aircraft construction.[91] The First Circuit upheld jurisdiction over the first corporation[92] but denied jurisdiction over the other two corporations.[93] In support of its holding, the court stated that nonresident defendants who have direct contacts with a resident plaintiff will have the constitutionality of the exertion of jurisdiction evaluated under a five-part test: "[T]he nature and purpose of the contacts[;] the connection between the contacts and the cause of action[;] the number of contacts[;] the interest of the forum[;] and the convenience and fairness to the parties. . . ."[94] Nonresident defendants who are passive purchasers, lacking any direct contact with the plaintiff, will not be subject to jurisidiction on two grounds. First, allowing the mere isolated entry into a manufac-

83. *Id.* at 618, 358 N.E.2d at 815-16.
84. MASS. ANN. LAWS ch. 223A, § 3 (Michie/Law. Co-op 1976).
85. *See* notes 88-116 *infra* and accompanying text.
86. *See* notes 88-95 *infra* and accompanying text.
87. *See* notes 96-117 *infra* and accompanying text.
88. 482 F.2d 1079 (1st Cir. 1973).
89. *Id.* at 1080-81.
90. *Id.* at 1081.
91. *Id.* at 1084-85.
92. *Id.* at 1082-84.
93. *Id.* at 1084-85.
94. *Id.* at 1083.

turing agreement with a forum resident to support jurisdiction renders all nonresident purchasers subject to long arm jurisdiction. Second, such a broad exertion of long arm jurisdiction will discourage foreign purchasers from dealing with resident sellers by generating a fear that the foreign purchaser will have to defend actions in distant courts.[95]

The second characteristic is continuous and systematic, rather than isolated, activity. Four decisions of the Massachusetts Supreme Judicial Court described the nature of this characteristic. In *"Automatic" Sprinkler*,[96] the court refused to allow assertion of jurisdiction over nonresident defendant whose contacts, in a breach of contract action for unpaid balance due on the sale of a palletizing machine,[97] were the mailing of a signed purchase order, the receipt of an invoice, and the mailing of a partial payment.[98] The court defined isolated activity as activity that has a slight impact on Massachusetts commerce and through which the defendant does "not 'purposefully . . . [avail] itself of the privilege of conducting activities within the forum state.' "[99] In 1978, the court reiterated the *"Automatic" Sprinkler* concept of isolated activity in *Droukas v. Divers Training Academy, Inc.*,[100] a breach of warranty action filed by a Massachusetts purchaser of two allegedly defective marine engines purchased from a Florida corporation.[101] The court refused to allow the assertion of jurisdiction over defendants,[102] noting that a single sale "f.o.b."[103] was an isolated transaction devoid of any other significant contacts with the Commonwealth.[104] As such, it was not an act by which defendant " 'purposefully [availed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.' "[105] In 1979 and 1980, the court further described isolated activity and defined its opposite facet,

95. *Id.* at 1084-85.

96. 361 Mass. 441, 280 N.E.2d 423 (1972).

97. *Id.* at 441, 280 N.E.2d at 424.

98. *Id.* at 444, 280 N.E.2d at 425.

99. *Id.* at 446, 280 N.E.2d at 426 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)) (brackets in original).

100. 375 Mass. 149, 376 N.E.2d 548 (1978).

101. *Id.* at 150, 376 N.E.2d at 549.

102. *Id.* at 157-60, 376 N.E.2d at 553-54.

103. In a contract for the sale of goods, the term "f.o.b." refers to terms of delivery and passage of the risk of loss to the goods. MASS. ANN. LAWS ch. 106, § 2-319(1) (Michie/Law. Co-op 1976).

104. 375 Mass. at 158-59, 376 N.E.2d at 553-54.

105. *Id.* at 159, 376 N.E.2d at 554 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)) (brackets in original).

systematic and continuous activity. *Good Hope Industries* involved a civil action by a Massachusetts corporation and its wholly owned subsidiaries, which maintained offices in Massachusetts, against a Texas corporation.[106] The court upheld jurisdiction over defendant.[107] In doing so, the court refined the definition of isolated activity to include transactions that have no commercial consequences in Massachusetts.[108] Conversely, the court defined systematic and continuous activity as activity of substantial dimension and duration, which involves close contact with a forum resident.[109] The court pointed out that when a defendant has engaged in such substantial activity, he will not come into the Commonwealth's courts as an unsuspecting defendant.[110] *Carlson Corp. v. University of Vermont*[111] involved a Massachusetts corporation's suit against nonresident defendant for the balance due on a construction contract.[112] The supreme judicial court upheld the trial court's determination that it had jurisdiction[113] and described systematic and continuous activity as activity that has substantial commercial consequences within the Commonwealth.[114] Failure to honor a contractual obligation involving a large sum of money, in this case, payment for costs of the construction of a college living and learning center, will have substantial commercial consequences.[115] Note that the entire construction contract in *Carlson* was to be performed within the state of Vermont and thus, the only connection with the Commonwealth was that the parties executed the contract in Massachusetts.[116]

A nonresident defendant's activity thus must manifest two characteristics to pass constitutional muster. First, it must be active, involving direct transactions with the plaintiff. In addition, it must be continuous and systematic; that is, it must be of considerable dimension and duration, it must involve close contact with the plaintiff, and it must manifest the possibility of substantial commercial consequences within the Commonwealth. Activity that constitutes merely an isolated transaction, has little or no significant impact upon com-

106. 378 Mass. 1, 3, 389 N.E.2d 76, 78 (1979).
107. *Id.* at 11-12, 389 N.E.2d at 82-83.
108. *Id.* at 9, 389 N.E.2d at 81.
109. *Id.*
110. *Id.* at 10, 389 N.E.2d at 82.
111. [1980] Mass. Adv. Sh. 659, 402 N.E.2d 483.
112. *Id.* at 659, 402 N.E.2d at 483.
113. *Id.* at 667, 402 N.E.2d at 487.
114. *Id.* at 664, 402 N.E.2d at 486.
115. *Id.* at 666, 402 N.E.2d at 487.
116. *Id.* at 661, 402 N.E.2d at 484.

merce in the Commonwealth, and does not involve direct contact with a resident plaintiff will not pass constitutional muster for the assertion of jurisdiction.

C. *Section 3(a): Transacting Business in the Commonwealth*

The most widely litigated subsection is section 3(a), the operative words of which are very general: "transacting any business in this commonwealth."[117] The judicial standard as to what level of activity satisfies the transacting business requirement is somewhat amorphous. In cases of clearly isolated and infrequent business contact, the courts have held that the nonresident defendant's activities did not meet the literal requirements of the statute.[118] Activity, however, that is active, continuous, and systematic, and has an obvious impact on commerce in the Commonwealth clearly qualifies as transacting business.[119] On the other hand, even this increased level

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117. MASS. ANN. LAWS ch. 223A, § 3(a) (Michie/Law. Co-op Cum. Supp. 1981).

118. Kahn Paper Co. v. Crosby, 476 F. Supp. 1011, 1012-14 (D. Mass. 1979) (nonresident guarantor of payment for goods sold to another nonresident, when guarantor neither leased nor owned real or personal property in Massachusetts and did not execute the guarantee in Massachusetts); McClellan v. Woonsocket Inst. for Sav., 466 F. Supp. 943, 944 (D. Mass. 1979) (a nonresident bank which neither maintains offices, personnel or a mailing address, nor conducts loan closings in Massachusetts); Levine v. MacNeil, 428 F. Supp. 675, 676 (D. Mass. 1977) (single purchase of an automobile within the Commonwealth); Walsh v. National Seating Co., 411 F. Supp. 564, 569 (D. Mass. 1976) (bus seat manufacturer who mailed repair parts to parties to the action in Massachusetts but who maintained no sales office, inventory, nor a business license within the Commonwealth); Nichols Assoc. v. Starr, 4 Mass. App. Ct. 91, 94-97, 341 N.E.2d 909, 911-13 (1976) (nonresident surveyor's work for Massachusetts plaintiff and delivery of plans for an out-of-state project to Massachusetts plaintiff at plaintiff's Massachusetts offices at plaintiff's request).

119. Good Hope Indus., Inc. v. Ryder Scott Co., 378 Mass. at 9-10, 389 N.E.2d at 81; Droukas v. Divers Training Academy, Inc., 375 Mass. at 153, 376 N.E.2d at 551; "Automatic" Sprinkler Corp. of America v. Seneca Foods Corp., 361 Mass. at 446, 280 N.E.2d at 426. *See* Whittaker Corp. v. United Aircraft Corp., 482 F.2d 1079, 1082-84 (1st Cir. 1973) (active supervision of and participation in development of prototype product, extensive contact with in-state parties, subsequent monitoring of the performance of the Massachusetts manufacture of the final product); Marketing & Distrib. Resources v. Paccar, Inc., 460 F. Supp. 990, 993-95 (D. Mass. 1978) (entry into contracts with two Massachusetts corporations for production of sales trainers, contemplation that the contracts would be performed in Massachusetts, numerous telephone calls and voluminous correspondence with Massachusetts corporations relating to the contracts); Salter v. Lawn, 294 F. Supp. 882, 884 (D. Mass. 1969) (organization, use, and control of a bankrupt Massachusetts corporation for the sole purpose of facilitating an agreement whereby nonresident was to share in ultimate corporate profits); C.H. Babb Co. v. A.M. Mfg. Co., 14 Mass. App. Ct. 291, 292-93 (1982) (non-resident corporation pursuit of acquisition of business through Massachusetts independent retailer, transmission by mail and telephone of potential customer lists to the retailer with instruction to use best efforts to conclude sales); Campbell v. Frontier Fishing & Hunting Ltd., [1980] Mass. App. Ct.

of activity may be insufficient to invoke registration under the Massachusetts Foreign Corporations Statute.[120]

When the case involves business activities that are classified as either clearly transacting business or not, the constitutional issues become subordinate to the literal statutory evaluation of those activities for the invocation of jurisdiction under section 3(a). When the activities are such that a clear, literal determination becomes impossible, the constitutional issues become the touchstone for determination of jurisdiction. An excellent illustration of this principle is a comparison of *Guay v. Ozark Airlines, Inc.*[121] and *Sahatjian v. Woodlets, Inc.*[122]

In both cases, Massachusetts residents brought breach of employment contract actions against their nonresident corporate employers.[123] In *Sahatjian*, defendant solicited sales in the Commonwealth through plaintiff, a resident agent. The court held that the voluntary nature of this action satisfied constitutional requirements, thus invoking fair play and substantial justice to require defendant to defend the action in Massachusetts.[124] In *Guay*, de-

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Adv. Sh. 1145, 1146-47, 405 N.E.2d 989, 990-91 (nonresident corporation maintenance of an agent, receipt of cash deposits for trips, and derivation of 33% of its business in Massachusetts).

120. MASS. ANN. LAWS ch. 181, § 3 (Michie/Law. Co-op 1977). The statute allows a foreign corporation to maintain bank accounts; maintain and appoint trustees to hold, transfer, exchange, or register its securities; hold meetings of directors and shareholders; participate in action, suit, or administrative or arbitration proceedings; and comply with Massachusetts banking or insurance laws and not be subject to the filing requirement. In Goodwin Bros. Leasing v. Nousis, 373 Mass. 169, 366 N.E.2d 38 (1977), the court stated that machines owned and leased within the Commonwealth, the basis for the attempt to enforce the foreign corporation registration requirement, were "mere incidents of [the corporation's] interstate business." *Id.* at 176, 366 N.E.2d at 43. The legislature recently codified this portion of *Goodwin*. *See* 1981 Mass. Legis. Serv. 455 (West). The "incidents of interstate business" concept is one strongly rooted in prior Massachusetts case law. *See* Shulton, Inc. v. Consumer Value Stores, Inc., 352 Mass. 605, 611, 227 N.E.2d 482, 485 (1967). The Massachusetts Supreme Judicial Court, almost 20 years before *Goodwin* and 15 years before the enactment of the present language of Chapter 181, Section 3, explicitly defined the concept to include the following activities: maintaining an office, using a local bank account, employing local stenographers, presence of resident salespersons, presence of sample inventory and execution and performance of fair trade contracts with resident product dealers and distributors. Remington Arms Co. v. Lechmere Tire & Sales Co., 339 Mass. 131, 137, 158 N.E.2d 134, 138-39 (1959). These activities and those in *Goodwin* clearly would be sufficient to invoke jurisdiction over a foreign corporation. *See* note 70 *supra*, specifically *Whittaker Corp. v. United Aircraft Corp.* and subsequent cases; notes 86-115 *supra* and accompanying text.

121. 450 F. Supp. 1106 (D. Mass. 1978).

122. 466 F. Supp. 945 (D. Mass. 1979).

123. *Id.* at 946-47; 450 F. Supp. at 1107-08.

124. 466 F. Supp. at 949.

fendant operated charter flights in and out of the Commonwealth, was responsive to requests for tickets from independent travel agents, maintained a settlement bank account for the facilitation of travel agent ticket sales for connecting flights on other airlines, and maintained a "WATS" telephone number for the receipt of ticket orders.[125] The court held that these activities were of insufficient dimension to meet constitutional standards and did not require defendant to defend the lawsuit in Massachusetts.[126] The activities of both defendants so parallel each other that it is impossible to distinguish the cases on their facts. Constitutionally, however, the distinction is clear. Defendant in *Sahatjian* clearly solicated business in the Commonwealth and, in doing so, "avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."[127] In *Guay*, defendant's activities as to the ticket sales,[128] the bank account,[129] and the "WATS" line[130] were only to facilitate its services to independent travel agents. The charter flights averaged about six per year, were generally in support of professional sports teams flying in and out of Boston to a single, distant city, and were accomplished under contracts made outside of Massachusetts.[131] These activities clearly were isolated events, rather than systematic and continuous business activities in pursuit of trade within the Commonwealth.[132] Thus, they failed the constitutional test of fair play and substantial justice required to force defendant to defend in Massachusetts.[133]

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125. 450 F. Supp. at 1108-10.
126. *Id.* at 1111.
127. 466 F. Supp. at 947-48 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).
128. 450 F. Supp. at 1110.
129. *Id.* at 1109-10.
130. *Id.* at 1110.
131. *Id.* at 1108-09.
132. *Id.* at 1112.
133. In each of the following cases, the court granted jurisdiction over the nonresident defendant using the constitutional standards as the touchstone. In other words, defining the defendant's activities as transacting business did not offend constitutional standards. Nova Biomedical Corp. v. Moller, 629 F.2d 190, 197 (1st Cir. 1980) (nonresident's mailing a letter from out of state to an in-state plaintiff alleging patent infringement and threatening litigation); Little, Brown & Co. v. Bourne, 493 F. Supp. 544, 546-47 (D. Mass. 1980) (activities of nonresident author to facilitate the editing and publishing of a book); North Am. Video v. Leon, 480 F. Supp. 213, 218-19 (D. Mass. 1979) (resident corporation's telephone calls to nonresident defendant's employees and defendant's attendance at business meetings within the Commonwealth); Boston Super Tools, Inc. v. RW Technologies, Inc., 467 F. Supp. 558, 561-62 (D. Mass. 1979) (nonresident defendant's sale of tools through a local distributor, dealership agreement with local distributors and frequent communication with local distributor); Carlson Corp. v. University of Vermont, [1980] Mass. Adv. Sh. 659, 662, 402 N.E.2d 483, 485 (execution of a contract within

There may be cases in which the facts are such that meeting the literal requirements of section 3(a) may be questionable, but the plaintiff's counsel believes that invocation of jurisdiction over the defendant would not offend constitutional standards. The solution to this problem is the pleading of additional and alternative statutory grounds for jurisdiction.[134]

D. *Section 3(b): Contracting to Supply Services or Things within the Commonwealth*

The judicial construction of "contracting to supply services or things" is clear but still is subject to constitutional scrutiny. The performance of a contract to provide goods or services within the Commonwealth, regardless of where it was made, must be the precipitating factor for the plaintiff's cause of action.[135] This interpretation extends to include a contract between a nonresident shipper and a nonresident railroad corporation to transport produce from Florida to Boston.[136] Use of the constitutional due process standard, however, has prevented an overly broad interpretation of the statutory language by rejecting jurisdiction over a nonresident connecting railroad carrier in the delivery of perishable food to Massachusetts[137] and a Florida corporation that made an isolated sale of two marine engines to a Massachusetts businessman.[138] This clear judicial interpretation continues in the area of tortious injury.

E. *Section 3(c): Causing Tortious Injury by Act or Omission in the Commonwealth*

The statutory language of section 3(c) is plain on its face, thus the cases under this section draw their operative limits without overt

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the Commonwealth); First Nat'l Bank v. Bergreen, [1981] Mass. App. Ct. Adv. Sh. 524, 524-25, 417 N.E.2d 50, 50-51 (rescript) (nonresident defendant's execution in Massachusetts of written guarantees of Massachusetts corporation).

134. *See* Good Hope Indus., Inc. v. Ryder Scott Co., 378 Mass. at 6-7, 389 N.E.2d at 79-80. *See generally* McClellan v. Woonsocket Inst. for Sav., 466 F. Supp. 943, 944-45 (D. Mass. 1979) (neither nonresident defendant's activities nor ownership of property meets statutory or constitutional requirements); Backman v. Schiff, 84 F.R.D. 132, 136-37 (D. Mass. 1979) (nonresident defendant's activities do not meet the statutory transacting business requirements but do statutorily qualify as acts or injuries within the Commonwealth which cause tortious injury).

135. Singer v. Paggio, 420 F.2d 679, 681 (1st Cir. 1970).

136. Sarno v. Florida E. Coast Ry., 327 F. Supp. 506, 507 (D. Mass. 1971).

137. Community-Suffolk, Inc. v. Denver & Rio Grande W.R., 475 F. Supp. 443, 446 (D. Mass. 1979).

138. Droukas v. Divers Training Academy, Inc., 375 Mass. 149, 157-59, 376 N.E.2d 548, 553-54 (1978).

reference to constitutional standards.[139] The act or omission of the defendant can be a purely physical one,[140] or one that is not purely physical but still tortious.[141] The act or omission, however, must occur within the Commonwealth.[142] Acts or omissions outside the Commonwealth fall under section 3(d).

F. *Section 3(d): Tortious Injury from an Act or Omission Outside the Commonwealth*

Section 3(d) allows jurisdiction where a nonresident defendant "caus[ed] tortious injury in this commonwealth by an act or omission outside this commonwealth 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 commonwealth."[143] The courts have taken the "tortious injury" language at face value[144] and have concentrated on the "doing business" aspect of the section. In the "doing business" analysis the constitutional standard again comes into play. Regularly doing business, or "persistent course of conduct," is defined as regular solicitation or the derivation of substantial revenue.[145] Once the two statutory requirements are met, the court must find that invocation

139. The definition of a tort is "a civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages." W. PROSSER, HANDBOOK OF THE LAW OF TORTS, § 1 at 2 (4th ed. 1971). Prosser seems to indicate that once tortious injury has occurred, the tortfeasor can be constitutionally required to defend an action on the tort at its situs. *Id. But see* Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 902-03 (2d Cir. 1981), for discusison of the fiduciary shield doctrine which exempts corporate agents from long arm jurisdiction in individual actions arising from tortious acts committed solely for employer benefit.

140. Backman v. Schiff, 84 F.R.D. 132, 137 (D. Mass. 1971) (product marketing within the Commonwealth which allegedly involved misappropriation of proprietary interest, breach of confidential relations, and interference with contractual relations).

141. Murphy v. Erwin-Wasey, Inc., 460 F.2d 661, 664 n.3 (1st Cir. 1972) (nonresident defendant knowingly distributes a false statement in Commonwealth intending that statement be relied upon to the injury of the resident plaintiff); Burtner v. Burnham, 13 Mass. App. Ct. 158, 163 (1982) (nonresident defendant communicates by mailing and telephoning false information upon which plaintiff relies to his detriment).

142. Chlebda v. H. E. Fortna & Bro., 609 F.2d 1022, 1023 (1st Cir. 1979) (failure to warn of dangers inherent in product use not established to have occurred within the Commonwealth); Bradley v. Chelueitte, 65 F.R.D. 57, 59-61 (D. Mass. 1974) (improper release of plaintiff from Puerto Rican hospital by Puerto Rican doctor).

143. MASS. ANN. LAWS ch. 223A, § 3(d) (Michie/Law. Co-op Cum. Supp. 1981).

144. Engine Specialties, Inc. v. Bombardier, Ltd., 454 F.2d 527, 530 (1st Cir. 1972) (claim of impairment of business operations sufficient assertion of tortious injury within Commonwealth).

145. Kolikof v. Samuelson, 488 F. Supp. 881, 884 (D. Mass. 1980). The determination of substantial revenue is an absolute figure rather than a ratio of the in-state revenue to the total revenue. Mark v. Obear & Sons, 313 F. Supp. 373, 375-76 (D. Mass. 1970). Substantial revenue can be as low as $5,000.00. *Id.*

of jurisdiction satisfies the due process standards of the "traditional notions of fair play and substantial justice."[146] The constitutional standard also is important in section 3(e).

G. *Section 3(e): Interest, Use, or Possession of Real Property*

Although interest, use, and possession of real property are amply defined elsewhere,[147] one court has extended the concepts to include the retention of an architect to design and construct a building on a nonresident defendant's leased land in Massachusetts.[148] Constitutionally, the courts have both anticipated[149] and followed[150] the Supreme Court standard of *Shaffer*[151] in holding that the defendant's interest in real property in Massachusetts must be related to the cause of action for it to be the basis of the invocation of jurisdiction.[152]

H. *Section 3(f): Contracts to Insure*

Section 3(f) is plain on its face and has not been the subject of litigation to date. The authors, however, predict that litigation under this section will focus on the constitutional standards enunciated in *Rush*.[153]

IV. CONCLUSION

The Massachusetts Long Arm Statute is designed to provide a forum where citizens of the Commonwealth may pursue causes of action that arise as the result of a nonresident's activities. Use of the Long Arm Statute is a twofold process in which both the statutory requirements regarding the nature of activity and the constitutional due process standards must be satisfied. In light of this twofold process, counsel who anticipate defending or pursuing business litigation need to remain current on both the Massachusetts courts' statutory interpretations and the United States Supreme Court's constitutional requirements concerning long arm jurisdiction.

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146. Kolikof v. Samuelson, 488 F. Supp. 881, 884 (D. Mass. 1980) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

147. *See* D. PARK and M. PARK, 28 and 28A MASSACHUSETTS PRACTICE (1981).

148. deLeo v. Childs, 304 F. Supp. 593, 595 (D. Mass. 1969).

149. *See* notes 59-62 *supra* and accompanying text.

150. McClellan v. Woonsocket Inst. for Sav., 466 F. Supp. 943, 945 (D. Mass. 1979).

151. *See* notes 59-65 *supra* and accompanying text for a discussion of *Shaffer v. Heitner*.

152. *See* notes 150-151 *supra*.

153. *See* notes 66-75 *supra* and accompanying text for a discussion of *Rush v. Savchuk*.