Maryland Law Review

Volume 37 | Issue 2 Article 3

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Maryland Law Review

VOLUME 37 1977 NUMBER 2

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INTRODUCTION

In a series of cases in the past decade, the Maryland Court of Appeals has gradually expanded the scope of Maryland's long arm statute.[1] These cases have established broad availability of personal jurisdiction over non-resident defendants in actions arising out of tortious conduct or commercial transactions. However, the development of jurisdictional standards for domestic relations cases has proved to be more complex and less satisfactory. One part of the problem has been the absence of a basis for assertion of personal jurisdiction over a deserting spouse in an alimony action.

Traditionally, jurisdiction to grant divorce has been based simply on the domicile of one of the parties in the forum state.[2] In order to grant alimony or support, however, a court must obtain personal jurisdiction over the defendant.[3] These rules have caused hardship in cases in which one spouse has abandoned his or her family and has moved permanently to another jurisdiction.[4] If there

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1. *See, e.g.*, Krashes v. White, 275 Md. 549, 556-59, 341 A.2d 798, 802-04 (1975); Lamprecht v. Piper Aircraft Corp., 262 Md. 126, 277 A.2d 272 (1971); Groom v. Margulies, 257 Md. 691, 265 A.2d 249 (1970); Harris v. Arlen Properties, Inc., 256 Md. 185, 260 A.2d 22 (1969).

2. Williams v. North Carolina, 325 U.S. 226, 229-30 (1945). *See generally* H. CLARK, THE LAW OF DOMESTIC RELATIONS 285-313 (1968).

3. H. CLARK, *supra* note 2, at 314-19.

4. For a more complete analysis of the complexities of this situation, see Note, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289 (1973) [hereinafter cited as *Long-Arm Jurisdiction*].

is no basis for personal jurisdiction, the abandoned spouse may well be unable to obtain an alimony judgment in the state of the former matrimonial domicile. The abandoned spouse thus may be forced to undergo the great burden and inordinate expense of litigation in the state where the deserting spouse is domiciled. Even if the abandoned spouse does obtain an alimony decree at home, the questionable jurisdictional basis of the decree and the complexities of the full faith and credit clause[5] may make it difficult to enforce the judgment in another state.[6]

Courts in a number of jurisdictions have alleviated this problem by applying long arm statutes to allow jurisdiction over the vagrant spouse in an alimony action. In the recent case of *Bartell v. Bartell,*[7] such a construction of the Maryland long arm statute was urged before the Maryland Court of Appeals, but the court found it unnecessary to reach the jurisdictional issue. The pressing need for a resolution of this problem ensures that it will require further consideration.

THE PROBLEM: THE MINIMUM CONTACTS THEORY AND THE LONG ARM STATUTES

Historically, personal jurisdiction was founded on physical power. In 1877, the United States Supreme Court declared in *Pennoyer v. Neff*[8] that "every State possesses exclusive jurisdiction and sovereignty over persons . . . within its territory," and that "no State can exercise direct jurisdiction and authority over persons . . . without its territory."[9] The Court made it clear that these traditional limits on jurisdiction were required by the due process clause of the fourteenth amendment.[10] Personal jurisdiction was constitutionally valid only where the defendant was served personally within the jurisdiction, or where the defendant actually consented to service of process.[11]

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5. U.S. CONST. art. IV, § 1.

6. *See Long-Arm Jurisdiction, supra* note 4, at 289.

7. 278 Md. 12, 357 A.2d 343 (1976).

8. 95 U.S. 714 (1877).

9. *Id.* at 722. To the extent that *Pennoyer* rests upon the proposition that jurisdiction is grounded on the existence of physical power over the litigant or contested property, its precedential value has been undermined by the Supreme Court's recent decision in Shaffer v. Heitner, 45 U.S.L.W. 4849 (U.S. June 24, 1977). In *Shaffer,* the Court held that all jurisdictional inquiries were to be guided by the due process standards of International Shoe Co. v. Washington, 326 U.S. 310 (1945). For a discussion of *International Shoe,* see text accompanying notes 14 to 16 *infra.*

10. 95 U.S. at 733. *See* Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts: From* Pennoyer *to* Denckla: *A Review,* 25 U. CHI. L. REV. 569, 572-73 (1958).

11. 95 U.S. at 733. *Accord,* McSherry v. McSherry, 113 Md. 395, 77 A. 653 (1910).

This restrictive view of jurisdiction was developed in the context of a society in which most citizens spent all their lives "within the territorial limits of the sovereign to whom they owed allegiance."[12] However, as society became more mobile, business and personal affairs began to overlap jurisdictional boundaries, and the concept enunciated in *Pennoyer* was eroded by necessity. The courts developed a series of fictions to inject flexibility into the doctrine of physical power.[13] Finally, in *International Shoe Co. v. Washington,*[14] the Supreme Court adopted a new analysis for the constitutional delimitation of personal jurisdiction over non-resident defendants. The key language has become familiar:

> [D]ue process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."[15]

The new test was neither "mechanical" nor "quantitative": "[w]hether due process is satisfied must depend rather upon the quality and nature of the [defendant's] activity in relation to the fair and orderly administration of the laws which it is the purpose of the due process clause to insure."[16]

Four subsequent decisions by the Supreme Court applied and elaborated the *International Shoe* "minimum contacts" analysis.[17] As many commentators have recognized, these cases were not completely consistent.[18] For example, in *McGee v. International Life Insurance Co.,*[19] two new criteria were added to the "minimum contacts" analysis. The Court concentrated on the relationship

12. Johnston, *The Fallacy of Physical Power,* 1 J. MAR. J. PRAC. & PROC. 37, 44 (1967).

13. *See generally* Auerbach, *The "Long Arm" Comes to Maryland,* 26 MD. L. REV. 13, 14 (1966); Kurland, *supra* note 10, at 573-86.

14. 326 U.S. 310 (1945).

15. *Id.* at 316 (citations omitted).

16. *Id.* at 319. Similarly, the Court stated that jurisdiction was proper where there was "such contacts of the [defendant] with the state of the forum as make it reasonable, in the context of our federal system of government, to require the [defendant] to defend the particular suit which is brought there." *Id.* at 317.

17. Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950).

18. *E.g.,* Kurland, *supra* note 10, at 593-624; Seidelson, *Jurisdiction Over Non-Resident Defendants: Beyond "Minimum Contacts" and the Long-Arm Statutes,* 6 DUQ. U.L. REV. 221, 225-37 (1968); Comment, *Long-Arm and Quasi in Rem Jurisdiction and the Fundamental Test of Fairness,* 69 MICH. L. REV. 300 (1970).

19. 355 U.S. 220 (1957).

between the subject matter of the litigation and the forum state, and on a balancing of the forum's interest in providing redress with the parties' interests in the location of the litigation.[20] In *Hanson v. Denckla,*[21] however, the Court drew back from *McGee*'s expansive implications. The *Hanson* Court held that "it is essential in each case that there be some act 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."[22] The Court stated that the restrictions on the exercise of jurisdiction were "more than a guarantee of immunity from inconvenient or distant litigation."[23] Instead, limitations on jurisdiction were "a consequence of the territorial limitations on the power of the respective States."[24] Apparently, the physical power concept of *Pennoyer* had not been abandoned entirely.[25]

Despite these theoretical inconsistencies, *International Shoe,* along with its four-case progeny, have established a flexible analysis that has proven workable in practice. As generally applied, the analysis calls for the consideration of a number of factors, no one of which is controlling by itself.[26] These include "the nature and quality and the circumstances" of the defendant's acts in the jurisdiction,[27] the quantity of the defendant's activity,[28] an "estimate

20. *Id.* at 223-24. *See* Kurland, *supra* note 10, at 606-10.

21. 357 U.S. 235 (1958). For an analysis of this decision, see Scott, Hanson v. Denckla, 72 HARV. L. REV. 695 (1959).

22. 357 U.S. at 253. The Court further stated: "[T]he requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff* . . . to the flexible standard of *International Shoe Co. v. Washington.* . . . But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." *Id.* at 251 (citations omitted).

23. *Id.* at 251.

24. *Id.*

25. *See* Kurland, *supra* note 10, at 612-24; Comment, *Long-Arm and Quasi In Rem Jurisdiction and the Fundamental Test of Fairness,* 69 MICH. L. REV. 300, 307-09 (1970). Professor Ehrenzweig reached a similar conclusion even before *Hanson* was decided. Ehrenzweig, Pennoyer *is Dead — Long Live* Pennoyer, 30 ROCKY MTN. L. REV. 285 (1958). This view is clearly subject to reappraisal, however, in light of the Supreme Court's recent decision in Shaffer v. Heitner, 45 U.S.L.W. 4849 (U.S. June 24, 1977). *See* note 9 *supra.*

Unfortunately, the *Hanson* decision has generated some confusion; the Court simply failed to precisely define the restraint it imposed. *See* Hazard, *A General Theory of State Court Jurisdiction,* 1965 SUP. CT. REV. 241, 243-44.

26. *See generally* Kurland, *supra* note 10, at 623. For an interesting categorization of the potential factors, see Comment, *Extending "Minimum Contacts" to Alimony:* Mizner v. Mizner, 20 HASTINGS L. J. 361, 366-67 (1968) [hereinafter cited as *Extending "Minimum Contacts"*].

27. International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945). *See* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447 (1952).

28. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 448 (1952); International Shoe Co. v. Washington, 326 U.S. 310, 318-20 (1945).

of the inconveniences" posed by the location of the forum,[29] and the interest of the forum in providing redress.[30] In addition, the restraining caveat of *Hanson* must be complied with,[31] but it has been variously interpreted. At the least, it probably means that the "defendant must have taken some voluntary action calculated to have an effect in the forum State."[32]

The long arm statutes were enacted to provide legislative authority for the exercise of the expanded jurisdiction first allowed by *International Shoe*. Although there are variations in form and scope among the statutes in different states, the basic pattern has been to enumerate acts that give the defendant sufficient contact with the forum to enable the state to exercise jurisdiction. Maryland's long arm statute exemplifies the most common form:

> **§ 6-103. Cause of Action Arising From Conduct In State Or Tortious Injury Outside State.**
>
> (a) *Condition.* — If jurisdiction over a person is based solely upon this section, he may be sued only on a cause of action arising from any act enumerated in this section.
>
> (b) *In general.* — A court may exercise personal jurisdiction over a person, who directly or by an agent:
>
> (1) Transacts any business or performs any character of work or service in the state;
>
> (2) Contracts to supply goods, food, services, or manufactured products in the state;
>
> (3) Causes tortious injury in the state by an act or omission in the state;
>
> (4) Causes tortious injury in the state or outside of the state by an act or omission outside the state if he regularly does or solicits business, engages in any other persistent course of conduct in the state or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the state;
>
> (5) Has an interest in, uses, or possesses real property in the state; or
>
> (6) Contracts to insure or acts as surety for, or on, any person, property, risk, contract, obligation, or agreement located,

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29. International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945). *See* McGee v. International Life Ins. Co., 355 U.S. 220, 223-24 (1957); Travelers Health Ass'n v. Virginia, 339 U.S. 643, 648-49 (1950).

30. McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957); Travelers Health Ass'n v. Virginia, 339 U.S. 643, 649 (1950).

31. *See* text accompanying note 22 *supra*.

32. Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 549.

> executed, or to be performed within the state at the time the contract is made, unless the parties otherwise provide in writing.[33]

The classes of activities enumerated in the Maryland statute, such as transacting business in the state and causing tortious injury in the state, are traditional long arm categories.

A court will normally address two issues in determining whether long arm jurisdiction may be exercised in a particular case.[34] The first issue is one of statutory construction: it must be decided whether the defendant's activities in the forum state bring him within the scope of the statutory language. The second issue is a constitutional one: notwithstanding the applicability of the statute, a court must decide whether the defendant's contacts with the forum state satisfy the minimum contacts test established by *International Shoe* and its progeny. In many instances, jurisdiction has been denied solely by resolution of the first issue. In *Feathers v. McLucas*,[35] for example, the New York Court of Appeals held that jurisdiction could not be asserted over the defendant manufacturer of a tractor-mounted steel tank that had exploded while filled with propane gas. The relevant long arm provision allowed jurisdiction based upon the commission of "a tortious act within the state,"[36] but the court held that the defendant's "tortious act" was committed at the place of manufacture, in Kansas, and therefore was not committed "within the state."[37] The court pointedly stated that "the question presented is not . . . whether the Legislature *could* constitutionally have enacted legislation expanding the jurisdiction . . . [to cover this case], or whether, indeed, the Legislature *should* have done so . . . but whether the Legislature *did*, in fact, do so."[38]

Courts, however, have not always rigidly separated the issues of statutory construction and due process analysis. After all, it was the

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33. MD. CTS. & JUD. PROC. CODE ANN. § 6-103 (1974). The statute was enacted by 1964 Md. Laws ch. 95, and amended once by 1965 Md. Laws ch. 749. The Maryland statute was based on the UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT, § 1.03, 9B UNIFORM LAWS ANN. 74 (Supp. 1964), which formed the model for many state long arm statutes. For a general treatment of the significance of the Maryland statute, see Auerbach, *supra* note 13.

34. *See, e.g.*, Haynes v. James H. Carr, Inc., 427 F.2d 700, 703 (4th Cir. 1970); Topik v. Catalyst Research Corp., 339 F. Supp. 1102, 1105-06 (D. Md. 1972); Akichika v. Kelleher, 96 Idaho 930, 539 P.2d 283, 285 (1975).

35. 15 N.Y.2d 443, 459-60, 209 N.E.2d 68, 77, 261 N.Y.S.2d 8, 20-21 (1965), *consolidated on appeal sub nom.* Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.

36. N.Y. CIV. PRAC. LAW § 302(a)2 (McKinney 1972).

37. 15 N.Y.2d at 459-63, 209 N.E.2d at 77-79, 261 N.Y.S.2d at 20-21.

38. *Id.* at 459-60, 209 N.E.2d at 77, 261 N.Y.S.2d at 20-21 (emphasis in original).

expansion of constitutionally permissible jurisdiction that motivated the passage of the long arm statutes. A number of courts have therefore purported to equate the scope of the statute with the limits of constitutional jurisdiction, reasoning that the statute "reflect[s] a conscious purpose to assert jurisdiction over non-resident defendants to the extent permitted by the due process clause."[39] The Maryland Court of Appeals has indicated its approval of this view.[40]

There are difficulties with the position that a long arm statute is to be construed to provide jurisdiction whenever permitted by due process. Traditional long arm statutes enumerate specific categories of acts as prerequisites to the exercise of jurisdiction.[41] As a result, the statutes are potentially more restrictive than the minimum contacts analysis, which permits consideration of a variety of independent factors.[42] This problem was directly addressed in *St. Clair v. Righter*.[43] The plaintiff, a Virginia resident, sued non-resident defendants for libel based on publication in Virginia of letters that were mailed by the defendants outside of Virginia. The relevant portions of the Virginia long arm statute (the language of which is similar to that found in the Maryland statute) allowed jurisdiction where the defendant had

> (3) [c]aus[ed] tortious injury by an act or omission in this State; [or]
>
> (4) [c]aus[ed] tortious injury in this State by an act or omission outside 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 . . . .[44]

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39. Nelson v. Miller, 11 Ill. 2d 378, 389, 143 N.E.2d 673, 679 (1957). *Accord,* Hamilton Nat'l Bank v. Russell, 261 F. Supp. 145, 146-47 (E.D. Tenn. 1966) (Tenn. statute); Safari Outfitters, Inc. v. Superior Court, 167 Colo. 456, 459, 448 P.2d 783, 784 (1968); Schneider v. Linkfield, 40 Mich. App. 131, 198 N.W.2d 834 (1972), *aff'd,* 389 Mich. 608, 209 N.W.2d 225 (1973); Hebron Brick Co. v. Robinson Brick & Tile Co., 234 N.W.2d 250, 255-56 (N.D. 1975); Estes Packing Co. v. Kadish & Milman Beef Co., 530 S.W.2d 622, 627 (Tex. Civ. App. 1975).

40. *See, e.g.,* Krashes v. White, 275 Md. 549, 558-59, 341 A.2d 798, 803 (1975); Harris v. Arlen Properties, 256 Md. 185, 195-96, 260 A.2d 22, 27 (1969); Gilliam v. Moog Indus. Inc., 239 Md. 107, 111, 210 A.2d 390, 392 (1965). The Maryland cases are discussed at notes 224 to 231 and accompanying text *infra.*

41. *See, e.g.,* MD. CTS. & JUD. PROC. CODE ANN. § 6-103 (1974), quoted in full at text accompanying note 33 *supra.*

42. *See* text accompanying notes 26 to 32 *supra. Cf.* Piracci v. New York City Employee's Retirement Sys., 321 F. Supp. 1067, 1070 (D. Md. 1971) (Suggesting that some of the "enumerated acts" in Maryland's long arm statute do not extend jurisdiction to the outer limits of the due process clause in spite of an acknowledged intent to extend jurisdiction to these limits); Seidelson, *supra* note 18, at 237.

43. 250 F. Supp. 148 (W.D. Va. 1966).

44. VA. CODE § 8-81.2(3) & (4) (Supp. 1964).

The court carefully examined this statutory language and determined that neither category applied to the facts of the case.[45] Nevertheless, the court believed that jurisdiction was constitutionally warranted because Virginia had an interest in providing relief in a situation involving so many contacts with the state, and because the defendants had voluntarily committed an act "calculated to have an effect in the forum state."[46] Noting the trend toward merger of the statutory and constitutional limits,[47] the court decided that jurisdiction should be asserted. It disposed of the restrictive effect of the statutory language by reasoning that the statute was "merely legislative approval for the exercise by the courts of th[is] state of their inherent jurisdictional power *at least* to the limits set out in the statute. . . . [T]his does not *restrict* the courts and prohibit them from extending their jurisdiction to the limits of due process . . . ."[48]

Most courts would probably disagree with the analysis used in *St. Clair.* A court must have legislative authority for the exercise of jurisdiction.[49] Nevertheless, *St. Clair* illustrates the dilemma faced by courts that have asserted that traditional long arm statutes are intended to extend jurisdiction to constitutional limits, when those courts are confronted with the specific wording of the statute. Courts have resolved this problem in a variety of ways. Some courts have stretched the statutory language to the constitutional limits by imposing rather strained constructions,[50] thus effectively ignoring the strictures of the legislative mandate. Other courts, while stating that the long arm statute is intended to cover all cases where jurisdiction is constitutional, nevertheless do not equate the constitutional and statutory tests in application; these courts continue to examine the issue of statutory construction separately.[51] Finally, there are a number of opinions which apparently do merge

45. 250 F. Supp. at 150–51.

46. *Id.* at 154–55 (quoting Currie, *supra* note 32, at 549).

47. *Id.* at 152.

48. *Id.*

49. RESTATEMENT (SECOND) OF JUDGMENTS § 7, Comment a (1942). *See* Beaty v. M.S. Steel Co., 401 F.2d 157, 158–61 (4th Cir. 1968).

50. *See, e.g.,* Schneider v. Linkfield, 40 Mich. App. 131, 198 N.W.2d 834 (1972), *aff'd,* 389 Mich. 608, 209 N.W.2d 225 (1973). In *Schneider,* plaintiff sued in a Michigan court for injuries sustained in an automobile accident in Indiana. The parties all resided in Michigan at the time. The court sustained the exercise of jurisdiction based on "[t]he ownership, use, or possession of any real or tangible personal property situated within the state." MICH. COMP. LAWS ANN. § 600.705(3) (1968). The court held that, because the defendant's automobile was titled in Michigan, it was constructively situated in Michigan at the time of the accident in Indiana. 40 Mich. App. at 134, 198 N.W.2d at 836.

51. *See, e.g.,* Estes Packing Co. v. Kadish & Millman Beef Co., 530 S.W.2d 622 (Tex. Civ. App. 1975).

the two issues by measuring the facts solely against the minimum contacts test.[52] But the facts in this last category of cases generally make it obvious that the statute applies, so that it might be said that these courts have merely assumed its applicability.[53] Thus the last two categories of cases do not really solve the problem; courts in these cases simply exercise jurisdiction to the constitutional limit so long as the statute applies.

As many of the cases that will be discussed later have recognized, the minimum contacts analysis is easy to apply in the alimony context.[54] The vagrant spouse who has been domiciled in the forum where the abandoned spouse seeks relief clearly has had "minimum contacts" with the forum. Also, the state has a strong interest in protecting the abandoned spouse and providing redress. That interest is surely as strong as the state's interest in providing redress for tort or contract plaintiffs. Finally, by having maintained home and family in the forum, the vagrant spouse has certainly "purposefully avail[ed] [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."[55] While some weight must be given to the inconvenience to the vagrant spouse caused by litigation in a distant forum, the "estimate of the inconveniences"[56] may frequently be resolved in favor of the abandoned spouse's need for convenient relief.

The problem of identifying the proper boundaries of the statutory language is the major difficulty confronting a court's exercise of long arm jurisdiction in an alimony action. The Supreme Court cases that provided the impetus for the enactment of the statutes all involved business or fiduciary transactions. Consequently, the traditional statutes were worded to apply in a

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52. *See, e.g.*, Hamilton Nat'l Bank v. Russell, 261 F. Supp. 145 (E.D. Tenn. 1966); Safari Outfitters, Inc. v. Superior Court, 167 Colo. 456, 448 P.2d 783 (1968); Hebron Brick Co. v. Robinson Brick & Tile Co., 234 N.W.2d 250, 255-56 (N.D. 1975).

53. *Cf.* Piracci v. Employee's Retirement Sys., 321 F. Supp. 1067, 1070 (D. Md. 1971) (merging constitutional and statutory tests, but viewing the facts against both and holding neither test satisfied).

54. *See generally* Anderson, *Using Long-Arm Jurisdiction to Enforce Marital Obligations*, 42 MISS. L.J. 183 (1971); *Long-Arm Jurisdiction, supra* note 5; *Extending "Minimum Contacts," supra* note 26; Comment, *Domestic Relations: The Role of the Long Arm Statutes*, 10 WASHBURN L.J. 487 (1970).

55. Hanson v. Denckla, 357 U.S. 235, 253 (1958).

56. International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945).

commercial context.[57] A reading of the Maryland statute[58] readily suggests that what its draftsmen had in mind were tort actions and actions arising out of commercial activities. Alimony actions do not fit neatly into either of these categories. For example, in *Mroczynski v. McGrath*,[59] a conservator brought an action in Illinois on behalf of an incompetent to have his father's will set aside as against public policy because it disinherited the incompetent son. The father had abandoned the family in Illinois during his son's infancy and had moved permanently to another state. The plaintiff argued that the establishment of a marital domicile and a family constituted "transaction of . . . business"[60] in Illinois. But the court denied jurisdiction, finding it obvious that "such acts do not constitute the 'transaction of business' within the meaning of this statute, as the words commonly used and understood mean business in the commercial aspect."[61] The court also rejected the claim that the father's abandonment of his family constituted a "tortious act."[62]

Several states have resolved this problem by legislation that specifically provides for long arm jurisdiction in certain domestic relations cases.[63] For example, the New York legislature added the following provision to that state's long arm statute in 1974:

> A court in any matrimonial action or family court proceeding . . . may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or

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57. It has become well-established since these Supreme Court cases that the minimum contacts analysis applies to individual as well as corporate defendants. Rosenblatt v. American Cyanamid Co., 86 S. Ct. 1 (Goldberg, Circuit Justice, 1965); J.W. Sparks & Co. v. Gallos, 47 N.J. 295, 220 A.2d 673 (1966). *See generally* Smithers, *Virginia's "Long Arm" Statute: An Argument for Constitutionality of Jurisdiction Over Nonresident Individuals*, 51 VA. L. REV. 712 (1965).

58. MD. CTS. & JUD. PROC. CODE ANN. § 6-103 (1974). *See* text accompanying note 33 *supra*.

59. 34 Ill. 2d 451, 216 N.E.2d 137 (1966).

60. Civil Practice Act, § 17(1)(a), ILL. ANN. STAT. ch. 110, § 17(1)(a) (Smith-Hurd 1968).

61. 34 Ill. 2d at 454, 216 N.E.2d at 139.

62. Civil Practice Act, § 17(1)(b), ILL. ANN. STAT. ch. 110, § 17(1)(b) (Smith-Hurd 1968). For further discussion of the tort theory of long arm jurisdiction, see text accompanying notes 210 to 223 *infra*.

63. IDAHO CODE ANN. § 5-514(e) (1976 Supp.); ILL. ANN. STAT. ch. 110, § 17(1)(e) (Smith-Hurd 1968); IND. CODE ANN. Trial Rule 4.4 (Burns 1976); KAN. STAT. ANN. § 60-308(b)(8) (1976); NEV. REV. STAT. § 14.065(2)(e) (1973); N.M. STAT. ANN. § 21-3-16 A(5) (1975 Supp.); N.Y. CIV. PRAC. LAW § 302(b) (McKinney Supp. 1976); OHIO REV. CODE Civil Rules tit. II, rule 4.3(A)(8) (Page 1971); OKLA. STAT. ANN. tit. 12, § 1701.03(a)(7) (West 1976 Supp.); WIS. STAT. ANN. § 247.057 (West 1977 Supp.).

> domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the obligation to pay support or alimony accrued under the laws of this state or under an agreement executed in this state.[64]

Those courts that have considered the question have found these statutes to be constitutional.[65]

The cases that follow shed some light on the question whether long arm jurisdiction may be asserted in the alimony and support contexts, in the absence of specific legislation.

THE SEPARATION AGREEMENT CASES

Willis v. Willis[66] was the first reported case to consider the applicability of long arm jurisdiction to an action on a separation agreement.[67] The plaintiff wife sued in New York to have a separation agreement enforced. The defendant husband was domiciled outside New York when the agreement was executed,[68] and he continued to be domiciled outside the state at the time of suit. Additionally, the defendant maintained no business in New York. The plaintiff argued that the act of executing the separation agreement in New York brought the defendant within the terms of the New York long arm statute, which conferred jurisdiction over a person who "transact[ed] any business within the state."[69] The court granted the defendant's motion to vacate the summons and complaint, holding that it had no jurisdiction.[70] The court went no further than to hold that the statute applied only to transactions with a "commercial aspect,"[71] involving "business" in that sense.

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64. N.Y. CIV. PRAC. LAW § 302(b) (McKinney Supp. 1976).

65. *E.g.*, Scott v. Hall, 203 Kan. 331, 454 P.2d 449 (1969); Dillon v. Dillon, 46 Wis. 2d 659, 176 N.W.2d 362 (1970). *See generally* Anderson, *supra* note 54; Friedman, *Extension of the Illinois Long Arm Statute: Divorce & Separate Maintenance,* 16 DE PAUL L. REV. 45 (1966); Note, *In Personam Jurisdiction Expanded: Utah's Long Arm Statute,* 1970 UTAH L. REV. 222.

66. 42 Misc. 2d 473, 248 N.Y.S.2d 260 (Sup. Ct. 1964).

67. Cockrum v. Cockrum, 20 App. Div. 2d 642, 246 N.Y.S.2d 376 (1964), decided a few days before *Willis,* reversed a trial court's alimony order for want of proper jurisdiction. The court apparently believed that domicile was the only relevant basis for jurisdiction.

68. 42 Misc. 2d at 474, 248 N.Y.S.2d at 261.

69. N.Y. CIV. PRAC. LAW § 302 (McKinney 1972) (amended 1974 N.Y. Laws ch. 859, § 1, to specifically cover action for support).

70. 42 Misc. 2d at 474-75, 248 N.Y.S.2d at 261-62. *Accord,* Durgom v. Durgom, 47 Misc. 2d 513, 262 N.Y.S.2d 874 (Civ. Ct. 1965).

71. 42 Misc. 2d at 475, 248 N.Y.S.2d at 262.

Having found the statute inapplicable, the court did not reach the constitutional issue.

The restrictive rule established by *Willis* was short-lived, two decisions from other jurisdictions contributing to its demise. In *Spitz v. Spitz,*[72] the parties had lived together in New York and had executed a separation agreement there, after which the husband moved to Massachusetts. The plaintiff wife obtained a judgment on the agreement in New York, and she brought an action on the New York judgment in Massachusetts. The Massachusetts court held that the New York court had properly exercised long arm jurisdiction over the husband.[73] The court did not consider the construction of the New York statute rendered in *Willis* to be binding. But the court did more than merely construe "transacting business" differently. Instead, the court took a broad view of the husband's activities, stating that the separation agreement was a "mere incident in a complex domestic situation which involves the responsibility of the defendant as the head of a family, over a long period of time."[74] The court continued:

> Whether an arrangement whereby one lives apart from his wife and family and leaves the state of their residence can be designated "doing business" is beside the point. The expression is not a term of art. . . . What does matter is that a course of action inextricably involved in the status and legal responsibilities of the defendant is going on in the state of New York. The jurisdiction of the courts of New York over such a situation is by no means casual. The State of New York can, if it so desires, invoke criminal sanctions to enforce the claims of this plaintiff on the defendant. There is a strong social interest in the security of family life.[75]

The Maryland Court of Appeals also had occasion to examine *Willis* in *Van Wagenberg v. Van Wagenberg.*[76] Mr. and Mrs. Van Wagenberg had lived together in Maryland. When they separated, the wife moved to New York, where the parties executed a separation agreement. Some years later, Mrs. Van Wagenberg obtained a New

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72. 31 Mass. App. Dec. 124 (Boston Mun. Ct. 1965).

73. *Id.* at 129–30. The husband attacked the validity of the New York judgment on the ground that the New York court lacked jurisdiction over him. In an action on a judgment of a foreign state, the jurisdiction of the foreign court is subject to attack, and the forum court need not give full faith and credit to the first judgment if it finds jurisdiction to have been unsound. Hanson v. Denckla, 357 U.S. 235 (1958).

74. 31 Mass. App. Dec. at 129.

75. *Id.* at 129–30.

76. 241 Md. 154, 215 A.2d 812 (1966).

York judgment against her husband for payments due on the separation agreement, and subsequently filed suit on the New York judgment in Maryland. The Maryland Court of Appeals held that the New York judgment was grounded on proper long arm jurisdiction.[77]

The Maryland court based its decision on its reading of *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*,[78] a major decision of the New York Court of Appeals. The Maryland court read *Longines* as establishing that the acts involved need not be "commercial" in the strict sense.[79] The court noted that although a separation agreement was not a transaction for profit in the marketplace, it was nevertheless "a legal act of the most serious nature" that "sounds in contract" and "deals with matters commonly associated with business."[80] The court concluded that "[o]ur study of the *Longines* decisions persuades us that it is the doing of an act — with the necessary contact in the state — which is determinative, and that the legislative history and the plain meaning of the statute show that it includes within its reach acts such as are here involved."[81] The court concluded that *Willis* should not be followed.[82]

Spitz and *Van Wagenberg* set the stage for the abandonment of the *Willis* rule in subsequent New York decisions. A line of New York cases has established a clear rule that the execution of a separation agreement constitutes the transaction of business within the meaning of the statute. The first case expressly so to hold and to disapprove *Willis* was *Kochenthal v. Kochenthal.*[83] Once again, the issue was whether a trial court had properly exercised long arm jurisdiction over a non-resident husband in a suit for arrears due on a separation agreement that was executed in New York. The court cited with approval *Spitz v. Spitz,*[84] and *Van Wagenberg v. Van Wagenberg,* quoting at length from the Maryland court's discussion of the commercial nature of a separation agreement.[85] But the

77. *Id.* at 172-76, 215 A.2d at 822-24.

78. 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965).

79. 241 Md. at 166, 169-70, 215 A.2d at 818, 820-21.

80. *Id.* at 167-68, 215 A.2d at 819.

81. *Id.* at 170, 215 A.2d at 821.

82. *Id.* at 171-72, 215 A.2d at 821-22.

83. 28 App. Div. 2d 117, 282 N.Y.S.2d 36 (1967). Before *Kochenthal,* one New York case had disapproved *Willis* in dicta, Raschitore v. Fountain, 52 Misc. 2d 402, 404, 275 N.Y.S.2d 709, 711 (1966), and one case had implicitly disapproved *Willis,* Todd v. Todd, 51 Misc. 2d 94, 272 N.Y.S.2d 455 (Sup. Ct. 1966).

84. 28 App. Div. 2d at 118-19, 282 N.Y.S.2d at 38 (quoting 31 Mass. App. Dec. 124 (Boston Mun. Ct. 1965)). *See* text accompanying notes 73 to 75 *supra.*

85. 28 App. Div. 2d at 119, 282 N.Y.S.2d at 39 (quoting 241 Md. at 167-68, 215 A.2d at 819-20).

Kochenthal court also read the term "business" broadly, quoting extensively from the lower court's opinion:

> I do not hold to the belief that the statute in question must be so narrowly construed as to be applicable only to pecuniary transactions of a commercial nature. . . . The term "business" should not necessarily be limited to commerce among the states and thus be applicable only to people and corporations engaged in pecuniary gain. I know of no concept of contract law which would exclude agreements between husband and wife in such a manner as to draw a mantle of protection over either the husband or the wife in the event that one of them becomes a resident of another state and proceeds to violate a written instrument duly made and executed between them.[86]

The court concluded that the minimum contacts test would also support its holding.[87] *Kochenthal* has been followed by numerous cases, most of which have held that jurisdiction should be exercised.[88]

The cases discussed above are not entirely consistent in their reasoning. In its simplest form, the question facing these courts was one of statutory construction: does the act of executing a separation agreement make the defendant one who has "transact[ed] any business within this state,"[89] within the meaning of the statute? If read narrowly, *Van Wagenberg* and *Kochenthal* were decided simply by answering this question in the affirmative, reasoning that a separation agreement has enough legal and financial consequences to bring it within the concept of "transacting business."[90] On the

86. 28 App. Div. at 120, 282 N.Y.S.2d at 39-40 (quoting Kochenthal v. Kochenthal, 52 Misc. 2d 437, 441, 442-43, 275 N.Y.S.2d 951, 954 (Sup. Ct. 1966)).

87. 28 App. Div. at 120-21, 282 N.Y.S.2d at 40 (quoting 52 Misc. 2d at 442-43, 275 N.Y.S.2d at 956).

88. *See, e.g.*, Zindwer v. Ehrens, 34 App. Div. 2d 906, 311 N.Y.S.2d 389 (Sup. Ct. 1970); Kassuto v. Yalon, 77 Misc. 2d 132, 353 N.Y.S.2d 291 (Sup. Ct. 1974); Lawrenz v. Lawrenz, 65 Misc. 2d 627, 318 N.Y.S.2d 610 (Fam. Ct. 1971).

However, in Whitaker v. Whitaker, 56 Misc. 2d 625, 289 N.Y.S.2d 465 (Sup. Ct. 1968), the court refused to exercise long arm jurisdiction over a non-domiciliary husband in an alimony action by the abandoned wife. The court held that the "weight of authority" seemed to be that the execution of a separation agreement did not confer long arm jurisdiction. *Id.* at 626, 289 N.Y.S.2d at 466. This observation is clearly erroneous. First, *Kochenthal* had already been decided by a higher court; the *Whitaker* court was apparently unaware of *Kochenthal*. Second, in addition to *Willis*, the court cited Raschitore v. Fountain, 52 Misc. 2d 402, 275 N.Y.S.2d 709 (Sup. Ct. 1966). While declining to reach the jurisdictional issue, the *Raschitore* court disapproved *Willis* in dictum, so that the *Whitaker* court apparently misread *Raschitore*.

89. N.Y. CIV. PRAC. LAW § 302(a)(1) (McKinney 1972).

90. *See* Van Wagenberg v. Van Wagenberg, 241 Md. 154, 166-72, 215 A.2d 812, 818-22 (1966); Kochenthal v. Kochenthal, 28 App. Div. 2d 117, 121, 282 N.Y.S.2d 36, 41 (Sup. Ct. 1967) (concurring opinion).

other hand, the court in *Spitz* stated that whether or not a particular transaction "[could] be designated 'doing business' is *beside the point.*"[91] *Spitz* upheld jurisdiction because there was "a course of action inextricably involved in the status and legal responsibilities of the defendant"[92] occurring in the forum state. The court viewed the specific categories of contacts named in the statute as mere guidelines, designed to be construed liberally so as to permit the broadest permissible extension of jurisdiction.

Under either theory, there are strong arguments that the resulting "*Kochenthal* rule" is correct. It is, of course, arguable that a separation agreement is merely a settlement of personal affairs and is therefore not within the contemplation of the statute. It has been held by some courts that the acts of establishing and maintaining a family relationship are not "business."[93] But the actual nature of a separation agreement suggests a contrary conclusion. The similarities between a separation agreement and a business contract were articulated by a commentator on the New York long arm statute:

> [T]here are enough "commercial" earmarks on the usual separation agreement to qualify as a transaction of business. Extensive provisions are normally made for the division of property, complicated tax structures are often erected, and in many cases escrow funds are created, with banks acting as escrowees. The numerous preliminary negotiations . . . , the complex financial arrangements and the hard headed bargaining of the market place all attest to the commercial nature of the agreement.[94]

A valid separation agreement is generally a legal contract that must be supported by consideration.[95] The agreement often attempts to establish a final settlement of the property rights of the spouses.[96] But the agreement itself does not affect the marital status; indeed, an agreement may be held void if it facilitates a divorce directly.[97] Therefore, its purpose is necessarily limited to defining the

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91. Spitz v. Spitz, 31 Mass. App. Dec. 124, 129 (Boston Mun. Ct. 1965) (emphasis added).

92. *Id.*

93. *See, e.g.*, Mroczynski v. McGrath, 34 Ill. 2d 451, 216 N.E.2d 137 (1966).

94. N.Y. CIV. PRAC. LAW § 302 commentary (McKinney 1972) (McLaughlin, Practice Commentaries 302:15).

95. 1 W. NELSON, DIVORCE & ANNULMENT § 13.05 & 13.20 (2d ed. J. Henderson 1945).

96. *Id.* at § 13.39.

97. *Id.* at § 13.22.

obligations of the parties.[98] Thus it is an arm's length transaction between two persons who are already estranged, and it deals with matters that are carefully considered.

If the constitutional analysis is applied, the argument for exercising jurisdiction is equally strong. Marital duties exist under the law of the forum state by virtue of the marriage. "Certainly, the existence of a marital domicile in a state has as many consequences as 'economic activity' does."[99]

THE BROAD LONG ARM STATUTES

By executing a separation agreement in the forum, the defendant provides a court with a convenient focal point for application of long arm jurisdiction. In the absence of a separation agreement, it becomes more difficult to identify contacts with the forum that fit the language of the traditional long arm categories. If the spouses have maintained their marital domicile in the forum, the defendant clearly has had considerable contact with that state. But unless there is a separation agreement, the abandoned spouse's action for support or alimony does not arise out of a contract, nor does it arise out of specific acts that provide the "overtone of commercial necessity"[100] of the traditional long arm language. Nevertheless, a number of courts have exercised long arm jurisdiction in support or alimony actions where there was no separation agreement. This section will discuss the cases that did so by applying broadly worded long arm statutes.

The parties in *Soule v. Soule*[101] lived together in California, where the wife brought an action for divorce and alimony. Before she commenced the action, the husband moved to Montana, where he was served with process. The California long arm statute provided for personal jurisdiction if the defendant "was a resident of this State (a) at the time of the commencement of the action, or (b) at the time that the cause of action arose, or (c) at the time of service."[102] A California appellate court affirmed the exercise of jurisdiction over the non-resident defendant under this statute.

Because the defendant was a resident of California[103] when the cause of action arose, the court had no difficulty in holding that the

98. *See Id.*

99. *Long-Arm Jurisdiction, supra* note 4, at 296.

100. Anderson, *Using Long-Arm Jurisdiction To Enforce Marital Obligations*, 42 MISS. L.J. 183, 188 (1971).

101. 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961), *cert. denied*, 368 U.S. 985 (1962).

102. 1951 Cal. Stat. ch. 935 § 1, *as amended by* 1957 Cal. Stat. ch. 1674 (current version at CAL. CIV. PROC. CODE § 410.10 (1977)).

103. 193 Cal. App. 2d at 445, 14 Cal. Rptr. at 418.

statute applied.[104] Thus, in contrast to the separation agreement cases discussed previously, *Soule* was a case in which the language of the statute clearly applied. The only real issue in *Soule* was whether application of the statute was constitutional under the minimun contacts concept.[105]

The court based its holding that jurisdiction was constitutional entirely on the precedent of *Owens v. Superior Court.*[106] *Owens* was a tort suit against the owner of a dog that had bitten the plaintiff; as in *Soule,* the defendant had been domiciled in California when the cause of action arose, but moved away before suit was commenced. The *Owens* court's analysis of the nature of the defendant's contact with the forum state, which was adopted by *Soule,* is interesting. The defendant contended that, notwithstanding the statute, his amenability to suit based on domicile ceased when his domicile there ended.[107] The *Owens* court agreed that "the mere fact of past domicile in the state would not subject [the defendant] to its jurisdiction indefinitely."[108] But the court stated that the defendant's conduct in the state, namely "ownership and possession of the offending dog,"[109] might subject him to jurisdiction under the doctrine of *International Shoe.* The court rejected the argument that these contacts were insufficient and that a non-resident individual defendant's conduct had to be of an especially dangerous nature before it would subject him to tort liability in the forum:[110]

> Even if we were to assume that an activity carried on within the state out of which the cause of action arose must be of some peculiarly dangerous or serious kind to justify an assertion of jurisdiction, *no such limitation exists if the defendant was also domiciled in the state at the time the cause of action arose.* When, as in this case, the cause of action arose here out of an

104. *Id.* Commentators have stated that one specific purpose behind this California statute was to reach domestic relations cases. *See generally* 1 RUT.-CAM. L.J. 117, 124 n.48 (1969).

105. 193 Cal. App. 2d at 446, 14 Cal. Rptr. at 418.

106. 52 Cal. 2d 822, 345 P.2d 921 (1959).

107. *Id.* at 829, 345 P.2d at 923. The defendant's argument reflected prior law. Domicile is a clear basis for personal jurisdiction. Milliken v. Meyer, 311 U.S. 457, 464 (1940). The California statute in question was an amendment of a prior statute which had allowed jurisdiction based on domicile. The defendant argued that the amendment did not alter the old rule, so that the domicile must be continuing to form a basis for jurisdiction.

108. 52 Cal. 2d at 829, 345 P.2d at 923.

109. *Id.* at 830, 345 P.2d at 924.

110. *Id.* at 832, 345 P.2d at 925. The defendant was asserting that pre-*International Shoe* cases involving jurisdiction over non-resident motorists were controlling. For further discussion of the non-resident motorist cases, see Auerbach, *supra* note 13, at 15-16.

> activity carried on here *at a time when defendant was domiciled here,* "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" (International Shoe Co. v. State of Washington, 326 U.S. 310, 319 [1945] . . .) fully justifies subjecting defendant to the jurisdiction of our courts.[111]

The court's analysis contains a strong implication that, even though former domicile alone cannot subject a non-resident defendant to jurisdiction indefinitely after he has moved away, nevertheless the fact of domicile at the time of the conduct leading to the suit is in itself a strong factor in weighing his "contacts" against the requirements of due process. "Domicile implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance."[112] *Soule* applied this rationale to support actions against deserting spouses. The court concluded that the fact of domicile, when combined with the conduct that gave rise to the divorce action, was sufficient to satisfy the minimum contacts test.[113]

The *Soule* rule was scrutinized in *Mizner v. Mizner,*[114] where the Nevada Supreme Court gave full faith and credit to a California judgment awarding alimony. The court acknowledged that none of the Supreme Court's minimum contacts cases had involved alimony, but stated that the minimum contacts concept was "peculiarly suited to matrimonial support cases":[115]

> If such [sufficient] contacts are in fact present in the particular case . . . then the extension of in personam jurisdiction beyond the borders of the forum state may prove to be a sensible step in solving some of the hardships arising from family separation. . . . [S]trict application of the Pennoyer rule to family support cases has encouraged migratory divorce by offering a shield to a spouse wishing to avoid financial responsibility. The state of the matrimonial domicile has a deep interest in its citizens and a legitimate purpose in taking steps to preclude their improverishment.[116]

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111. 52 Cal. 2d at 832, 345 P.2d at 925 (emphasis added), *quoted with approval in* Soule v. Soule, 193 Cal. App. 2d 443, 446, 14 Cal. Rptr. 417, 418 (1961), *cert. denied,* 368 U.S. 985 (1962).

112. Williams v. North Carolina, 325 U.S. 226, 229 (1945) (Frankfurter, J.).

113. 193 Cal. App. 2d at 446, 14 Cal. Rptr. at 418. Indeed, it has been argued that "whenever one state is both the marital domicile and the forum, analysis almost always will demonstrate sufficient 'minimum contacts' to allow the assumption of jurisdiction [by that state]." *Extending "Minimum Contacts," supra* note 26, at 369.

114. 84 Nev. 268, 439 P.2d 679, *cert. denied,* 393 U.S. 847 (1968).

115. *Id.* at 270, 439 P.2d at 680.

116. *Id.* at 270–71, 439 P.2d at 680–81.

The court approved the *Soule* decision, and held that jurisdiction had been properly exercised.[117]

Two justices dissented,[118] arguing on several grounds that *Soule* should not be followed and that the minimum contacts concept could not be applied to alimony cases at all. Although these opinions have been criticized elsewhere,[119] their main contentions require examination. Both dissenting justices argued that the minimum contacts concept should not be applied because an alimony judgment is generally modifiable by subsequent action of the awarding court.[120] The minimum contacts concept was developed in the context of tort and contract suits; a tort or contract judgment is final. But if a court has obtained in personam jurisdiction over a defendant in a suit for alimony, "it conceivably will have continuing personal jurisdiction over him to modify the alimony award for the rest of his life."[121] Because of this added burden on the defendant, the dissenters contended that the requirements of substantive due process developed in tort and contract cases could not be the same in alimony cases.

Although it is true that amenability to suit for modification may be burdensome on a non-resident spouse, it is by no means clear that this burden justifies a different substantive due process standard (*e.g.*, physical power). The absent spouse is afforded some protection from real unfairness by the law governing modification.[122] Modification is not automatic. The spouse seeking modification must show some genuine change in the circumstances of at least one of the parties in order to justify the modification.[123] Only events which have occurred subsequent to the last decree may be considered.[124] Therefore, the moving party in a modification action can only succeed if there is a change in one spouse's financial situation

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117. *Id.* at 272, 439 P.2d at 681-82.

118. *Id.* at 273, 439 P.2d at 682 (Collins, J., dissenting); *id.* at 275, 439 P.2d at 684 (Batjer, J., dissenting).

119. *Extending "Minimum Contacts," supra* note 26, at 372 & nn.93 & 94; 1 RUT.-CAM. L.J. 117, 121-23 (1969); Comment, *Extraterritorial Jurisdiction to Award Alimony*, 1969 WASH. U.L.Q. 98, 103-04 [hereinafter cited as *Extraterritorial Jurisdiction*].

120. 84 Nev. at 275, 277-78, 439 P.2d at 683, 685-86.

121. *Id.* at 275, 439 P.2d at 683.

122. *See generally Extending "Minimum Contacts," supra* note 26, at 372-75.

123. Lott v. Lott, 17 Md. App. 440, 302 A.2d 666 (1973); H. CLARK, *supra* note 2, at 456. *See* Winkel v. Winkel, 178 Md. 489, 15 A.2d 914 (1940).

124. H. CLARK, *supra* note 2, at 456-57. *See* Stansbury v. Stansbury, 223 Md. 475, 477, 164 A.2d 877, 878 (1960).

warranting court action. In addition, the right of modification is available to both parties.[125]

A more fundamental question is whether the departure of a spouse should lessen his or her obligations to the former spouse. If the obligor spouse moved away after the divorce and alimony decree, he or she would clearly be subject to the court's continuing jurisdiction.[126] The dissenters in *Mizner* would require a different result merely because the obligor spouse moved away before the suit was filed, even though the burden on him or her would be the same in either case. But even if the indeterminateness of an alimony decree is recognized it does not follow that the minimum contacts concept is entirely inapplicable to alimony proceedings. The "estimate of the inconveniences"[127] to the parties is only one of the factors a court considers in determining whether to exercise jurisdiction. The burden placed on the defendant by continuing jurisdiction suggests only that the balance among the factors is different in alimony cases and tort and contract cases. The question then becomes whether "the burdens placed upon the absent spouse [are] sufficiently weighty that 'traditional notions of fair play and substantial justice' require that he be able to abdicate his responsibility to his wife and children. . . . It would not seem so."[128]

The dissenting justices in *Mizner* argued that the Supreme Court's decisions in *Estin v. Estin*[129] and *May v. Anderson*[130] supported the contention that minimum contacts jurisdiction has no place in alimony cases.[131] In *Estin,* a wife brought suit in New York, the former marital domicile, for arrearages in alimony payments. The defendant husband appeared and asserted a prior Nevada divorce decree.[132] The husband argued that the Nevada decree was

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125. H. CLARK, *supra* note 2, at 460. Maryland courts, however, deal strictly with petitions for reduction of alimony. *See, e.g.,* Bracone v. Bracone, 16 Md. App. 288, 295 A.2d 798 (1972).

126. 1 RUT.-CAM. L.J. 117, 120 (1969).

127. International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945).

128. *Extending "Minimum Contacts," supra* note 26, at 374-75 (quoting International Shoe Co. v. Washington, 326 U.S. at 316).

129. 334 U.S. 541 (1948).

130. 345 U.S. 528 (1953).

131. 84 Nev. 268, 273-79, 439 P.2d 679, 682-86.

132. Estin v. Estin, 334 U.S. 542, 542-43 (1948). The parties had lived together in New York. Upon their separation, the wife had obtained a decree of separation and alimony in a New York proceeding in which the husband participated. The husband subsequently moved to Nevada, where he obtained an absolute divorce. The wife was served in the Nevada proceeding by constructive service, but she did not participate, so that the Nevada decree was entirely ex parte. The Nevada decree made no mention of alimony. After he received the Nevada divorce, the husband stopped paying alimony; this prompted the wife's action for arrearages. *Id.*

entitled to full faith and credit in New York, and that it had the effect of extinguishing his obligation to pay alimony.[133] The Supreme Court sustained a judgment for the wife, holding that the Nevada decree was not entitled to full faith and credit on the issue of the wife's right to alimony.[134] Although the divorce was valid, the Nevada court could not have cut off the wife's alimony right without in personam jurisdiction over her.[135] The Court acknowledged that this ruling made the Nevada divorce decree "divisible," by giving "effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony."[136]

In *Estin,* then, the Supreme Court ruled that an ex parte divorce decree granted to a husband in the first forum (Nevada) could not be asserted by the husband to extinguish his former wife's right to alimony in the second forum (New York), by way of full faith and credit. The dissenting justices in *Mizner* concluded that the *Estin* rule applied in *Mizner,* where the first forum (California) granted the wife divorce and alimony in an ex parte proceeding, and the wife asserted that judgment to establish her right to alimony in the second forum (Nevada) by way of full faith and credit.[137] There is language in *Estin* which, taken out of context, might support that conclusion.[138] The broad issue in both cases was whether the first

133. *Id.* at 543.

134. *Id.* at 549.

135. *Id.* at 546-49. The Nevada court's jurisdiction to grant the husband a divorce was based on the husband's domicile in Nevada. The Supreme Court approved the traditional rule that domicile of one spouse in a state gives that state jurisdiction to grant a divorce. Therefore, the Nevada divorce decree validly terminated the marital status. *Id.* at 546-47. The New York court did not challenge the fact of the husband's domicile. *See generally* Williams v. North Carolina, 325 U.S. 226 (1945).

It is not clear that the Nevada court did in fact purport to terminate the wife's right to alimony. That court was informed of the wife's prior New York alimony decree. 334 U.S. at 543. However, the Nevada court may simply not have ruled on the issue at all. *Id.* at 551 (Frankfurter, J., dissenting). However, in the New York proceeding, the husband asserted that the divorce effectively extinguished alimony rights. Therefore, the Supreme Court faced the issue whether the Nevada decree could possibly have that effect. *Id.* at 547.

The Nevada court had no basis on which to assert personal jurisdiction over the wife. Because the wife's right to alimony was a personal right, the Supreme Court held that the Nevada court could not terminate it without personal jurisdiction over the wife. *Id.* at 547-49. But the Nevada court never asserted that it did have such jurisdiction.

In *Estin,* the wife's right to alimony was established before the Nevada proceeding by a New York decree. The Supreme Court has subsequently held that the *Estin* rule applies even if the wife has no alimony decree prior to the ex parte divorce. Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957).

136. 334 U.S. at 549.

137. Mizner v. Mizner, 84 Nev. 268, 273-75, 276, 439 P.2d 679, 682-83, 684 (1968) (Collins & Batjer, J.J., dissenting).

138. *Id.*, 439 P.2d at 683, 684.

forum had proper jurisdiction over the defendant, so as to require that full faith and credit be accorded to that judgment in the second forum. However, when placed in context, the two cases are not parallel. In *Estin,* the first forum had no basis for asserting personal jurisdiction over the defendant wife. The wife had not been served with process in Nevada, nor had she appeared and consented to jurisdiction there.[139] She had no contact at all with Nevada; it is not stated that she had ever been there. The Supreme Court could never have reached the issue of minimum contacts jurisdiction in *Estin*; the issue was not present. Furthermore, the Nevada court did not assert personal jurisdiction over the wife; the court merely granted the husband a divorce on the basis of his Nevada domicile.[140] Therefore, the Supreme Court did not hold that Nevada had improperly asserted personal jurisdiction. The Supreme Court merely held that the Nevada action could not have cut off alimony rights without personal jurisdiction. The Court had no occasion to rule on what would have been a proper basis for such jurisdiction.[141] In contrast, the first forum in *Mizner* (California) had an arguable basis for jurisdiction because the defendant husband maintained his marital domicile there for eighteen years and had done acts there that gave rise to the wife's right to divorce and alimony.[142] The court of the first forum *did* assert personal jurisdiction based on the California long arm statute, and on that basis held the defendant liable for alimony. The issue before the court of the second forum in *Mizner* (Nevada) was whether that jurisdiction was properly exercised. Because the Supreme Court did not reach that issue in *Estin,* that case was not controlling in *Mizner.*

Furthermore, different fact patterns often yield different rules of jurisdiction. In *Estin,* the issue was the power of the first forum to cut off the defendant's alimony rights. In *Mizner,* the issue was the power of the first forum to grant alimony against the defendant. This difference itself may be enough to distinguish the two cases.

There are similar problems with the dissenting justices' reliance on *May v. Anderson.*[143] In *May,* the parties maintained their marital domicile in Wisconsin. Marital troubles arose, and the wife moved with her children to Ohio. The husband then obtained an ex parte

139. 334 U.S. at 543, 544.

140. *Id.* at 543-44.

141. *See* note 135 and accompanying text *supra.*

142. Mizner v. Mizner, 84 Nev. 268, 269-70, 439 P.2d 679, 679-80 (1968).

143. 345 U.S. 528 (1953). The dissenting justices also cited New York *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1947). *Halvey* was a predecessor case to *May* on the subject of jurisdiction to grant custody rights. *Halvey* is not dispositive in *Mizner* for the same reasons that *May* is not.

decree in Wisconsin granting him divorce and custody. The wife was served personally in Ohio, but, as the Supreme Court noted, the Wisconsin statute authorized out of state service only for divorce actions, making no mention of custody proceedings.[144] After the wife had refused to surrender custody of the children to the husband, he filed a habeas corpus proceeding in Ohio, relying on the Wisconsin custody award. The Supreme Court held that the Wisconsin decree was not entitled to full faith and credit in the Ohio proceeding because the Wisconsin court had no power to cut off the wife's right to custody of her children without in personam jurisdiction over her.[145] The Court invoked the "divisibility" theory of *Estin,*[146] and held that the wife's right to custody was "a personal right entitled to at least as much protection as her right to alimony."[147] Thus the Court ruled that an ex parte decree of custody in favor of the husband, granted by a court of the first forum (Wisconsin), could not be asserted by the husband to cut off the wife's right to custody in the second forum (Ohio) by way of full faith and credit. The analogy between *May* and *Mizner* is stronger than the analogy between *Estin* and *Mizner.* In both *May* and *Mizner,* the first forum was the marital domicile, and therefore the court of the first forum had an arguable basis for long arm jurisdiction over the defendant spouse. But again, it is clear that *May* does not dispose of the issue presented in *Mizner.* In *May,* there was no statute that purported to grant personal jurisdiction over the absent spouse in child custody cases. The statute relied on allowed out of state service solely for divorce cases.[148] Jurisdiction to grant divorce is theoretically different from jurisdiction to determine personal rights. The Supreme Court ruled only that divorce jurisdiction, which is based on domicile, does not give a court the power to cut off custody rights. The Supreme Court in *May* had no occasion to consider whether the wife's past contacts with the first forum (Wisconsin) could form a proper basis for personal jurisdiction under the minimum contacts theory.[149] Differences between the nature of the rights affected in *May* and *Mizner* suggest that different jurisdictional standards may be appropriate.

144. 345 U.S. at 530-31 & n.3 (1953).

145. *Id.* at 533-35.

146. *Id.* at 533-34 & n.6 (discussing Estin v. Estin, 334 U.S. 541, 549 (1948)). *See* text accompanying notes 135 & 136 *supra.*

147. 345 U.S. at 534.

148. *See* note 144 and accompanying text *supra.*

149. *See* Mizner v. Mizner, 84 Nev. 268, 271, 439 P.2d 679, 681 (1968). *Accord,* Mitchim v. Mitchim, 518 S.W.2d 362, 365 (Tex. 1975). *See* People *ex rel.* Loeser v. Loeser, 51 Ill. 2d 567, 283 N.E.2d 884 (1972) (jurisdiction of the first forum based on a long arm statute held sufficient on facts substantially identical to those in *May*); 1 RUT.-CAM. L.J. 117, 122 (1969).

The Supreme Court recognized that child custody involves "[r]ights far more precious . . . than property rights . . . ."[150] The state's strong interest in protecting the welfare of children also supports the conclusion that the jurisdictional rules regarding custody established in *May* are not dispositive of cases involving alimony.[151]

Jurisdiction in *Soule*[152] and *Mizner*[153] was based on the California long arm statute[154] which, if read literally, is easily applicable to alimony actions. The *Soule* court and the *Mizner* majority held that its application to the alimony action presented was constitutional. In *Hines v. Clendenning*,[155] the Supreme Court of Oklahoma dealt with an even broader statute. A defendant husband was personally served in Louisiana in an Oklahoma action for divorce and alimony. The husband challenged the Oklahoma court's long arm jurisdiction over him. The section of the Oklahoma long arm statute in question allowed jurisdiction

> as to a cause of action . . . arising from the person's:
>
> . . . .
>
> (7) maintaining any other relation to this state or to persons or property . . . which affords a basis for the exercise of personal jurisdiction by this state consistently with the Constitution of the United States.[156]

Thus the issues of statutory construction and constitutionality were merged completely. The court was faced directly with the issue of how the minimum contacts test should be applied in an alimony action.

The parties in *Hines* had been married in Oklahoma and appeared to consider the state their home, but they moved about frequently during the period of their marriage.[157] Nevertheless, the

150. May v. Anderson, 345 U.S. 528, 533 (1963). *See* 1 RUT.-CAM. L.J. 117, 122 (1969); *Extraterritorial Jurisdiction, supra* note 119, at 103-04.

151. 345 U.S. at 536 (Frankfurter, J., concurring) (recognition of the uniqueness of legal rules regarding child custody).

152. 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961), *cert. denied*, 368 U.S. 985 (1962). *See* text accompanying notes 101 to 113 *supra*.

153. 84 NEV. 268, 439 P.2d 679 (1968), *cert. denied*, 393 U.S. 847 (1968). *See* text accompanying notes 114 to 119 *supra*.

154. 1951 Cal. Stat. ch. 935 § 1, *as amended by* 1957 Cal. Stat. ch. 1674 (current version at CAL. CIV. PROC. CODE § 410.10 (1977)). *See* text accompanying note 102 *supra*.

155. 465 P.2d 460 (Okla. 1970), *noted in* 10 WASHBURN L.J. 487 (1971).

156. OKLA. STAT. ANN. tit. 12, § 1701.03 (West Supp. 1976-77). For a similar statutory provision, see CAL. CIV. PROC. CODE § 410.10 (1977).

157. 465 P.2d at 461-62. After their marriage in Oklahoma, the parties lived there for a year and a half. They then moved away for four years while the husband attended medical school. They returned to Oklahoma for a year, during which time

court found that the defendant had sufficient contacts with Oklahoma to satisfy due process standards, and jurisdiction was sustained.[158] The court's analysis demonstrates that the imprecision created by the major Supreme Court cases[159] makes it difficult to determine the exact basis for jurisdiction in alimony cases. The court emphasized that the broad "interest analysis" approach of *McGee v. International Life Insurance Co.*[160] strongly favored the exercise of jurisdiction:

> [I]t might reasonably be said that the husband helped [his wife] select the forum where, as a matter of economic necessity, she would have to live and bring her action for relief.
>
> . . . .
>
> The "manifest interest" of the State of Oklahoma in the marital status, and financial relief incident thereto, of its residents, is surely as great as the interest of California in providing effective redress for insurance policy beneficiaries residing within its borders.[161]

The court also stressed the "estimate of the inconveniences," noting that, although the litigation placed a burden on the nonresident husband, the alternative would be to leave the wife with no remedy because she could not afford to litigate elsewhere.[162] However, the court felt compelled to retreat from the suggestion that these considerations alone could justify jurisdiction. As if mindful of the restraining caveat of *Hanson v. Denckla,*[163] the court cautioned

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the husband registered to vote. They then went to California, where the husband was stationed in the Air Force. The husband continued to vote in Oklahoma. After two years, the wife returned alone to Oklahoma, where she filed her action. *Id.*

158. *Id.* at 463–64. The court listed the "contacts" it found relevant:

> (1) the marriage was contracted in Oklahoma; (2) the parties twice resided there under circumstances strongly indicating domicile; (3) defendant Hines attended college here, obtained a license to practice medicine here, registered to vote and did vote here; (4) he sent his wife back to Oklahoma, her home state and the state of her parents, and refused to permit her to return to him in California; (5) the wife, at her husband's direction, was effectively abandoned in Oklahoma and her right, if any, to alimony, may be said to have accrued at least in part in Oklahoma.
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> *Id.* at 463.

159. *See* text accompanying notes 129 to 151 *supra.*

160. 355 U.S. 220 (1957). *See* text accompanying notes 19–20 *supra.*

161. 465 P.2d at 463. The reference to insurance beneficiaries is a comparison to the facts of McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

162. 465 P.2d at 463.

163. 357 U.S. 235 (1958). *See* text accompanying notes 21 to 25 *supra.*

that the basis for its holding was largely the nature of the husband's overt contact with the state.[164]

In *Mitchim v. Mitchim*,[165] the Texas Supreme Court gave full faith and credit to an Arizona alimony judgment based on the Arizona long arm statute. The statute allowed jurisdiction "[w]hen the defendant is a . . . person . . . [who] has caused an event to occur in this state out of which the claim which is the subject of the complaint arose . . . ."[166] The Texas court held the statute applicable to alimony actions, noting that "[i]n other states long-arm statutes containing only general language have been held to confer personal jurisdiction over nonresident defendants in divorce actions," and that "the courts of Arizona make no distinction between domestic relations cases and other types of suits."[167] The court approved the reasoning in *Mizner v. Mizner*,[168] that the state of the marital domicile had a strong interest in providing relief to abandoned spouses, so that the minimum contacts test was well suited to alimony actions.[169] Addressing the issue of the inconvenience to the defendant, the court stated that "[i]n view of his prior residence [in Arizona], he might have suffered less inconvenience and expense in defending the suit in Arizona than [his wife] would have in prosecuting her suit in Texas."[170] The court considered it important that "relevant evidence may have been more readily available"[171] in

164. 465 P.2d at 463-64. Recently, the Supreme Court of California, applying a long arm statute worded similarly to Oklahoma's, upheld personal jurisdiction in a child support setting. In Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977) (en banc), personal jurisdiction was exercised over a New York domiciled ex-husband in an action for increased child support payments. Prior to their divorce, granted by the Republic of Haiti, the Kulkos had lived in New York, where a separation agreement was executed. By the terms of this agreement, the couple's two children were to remain with the defendant in New York during the school year, and with the plaintiff in California during vacation periods. When one child informed the defendant that she wished to live permanently with her mother in California, the defendant provided that child with a one-way airplane ticket. The Supreme Court of California stated that the New York husband, by sending the child to California to live permanently with her mother, had "purposely availed himself of the full protection and benefit of California laws for the care and protection of [the child] on a permanent basis." *Id.* at 524, 564 P.2d at 358, 138 Cal. Rptr. at 591. The court upheld jurisdiction on the strength of the California long arm statute, CAL. CIV. PROC. CODE § 410.10 (1977), which allows for the exercise of personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States."

165. 518 S.W.2d 362 (Tex. 1975).

166. 16 ARIZ. REV. STAT., Rule Civ. Proc. 4(e)(2) (1961).

167. 518 S.W.2d at 365; *accord,* Nickerson v. Nickerson, 25 Ariz. App. 251, 542 P.2d 1131 (1975).

168. 84 NEV. 268, 439 P.2d 679 (1968). *See* text accompanying notes 114 to 118 *supra.*

169. 518 S.W.2d at 365-66.

170. *Id.* at 367.

171. *Id.*

Arizona. As in *Soule v. Soule*[172] and *Mizner v. Mizner*,[173] the court's analysis suggests that the former marital domicile has strong justifications for asserting long arm jurisdiction.

The cases in this section establish a judicial consensus that long arm jurisdiction may be exercised in an alimony action against a non-resident spouse, even if the statute does not specifically grant jurisdiction in domestic relations cases. These courts found the minimum contacts concept to be well suited to alimony actions, particularly if the suit was in the former marital domicile.

THE MINIMUM CONTACTS CASES

The cases involving separation agreements[174] applied a conventionally worded long arm statute in settlements of domestic disputes, despite the commercial context of the statutory language. The separation agreement itself manifested an act by the defendant in the forum that was sufficiently commercial to be reconciled with the statutory categories. The cases in the previous section determined that the minimum contacts theory governed personal jurisdiction in alimony actions, but those cases applied statutes whose language was no barrier. A few courts have bridged the gap and have applied narrowly worded statutes in alimony actions, or have found jurisdiction in the absence of an applicable statute.

Wright v. Wright[175] was an action by an abandoned New Jersey wife against her non-resident husband. The New Jersey long arm statute conferred jurisdiction over non-resident corporations, partnerships, and associations only.[176] There was no statute that on its face conferred jurisdiction over non-resident spouses in support actions. Nevertheless, the New Jersey Superior Court, Chancery Division, held that personal service on the husband outside the state gave the court personal jurisdiction over him.

The court relied on *J.W. Sparks & Co. v. Gallos*,[177] in which the New Jersey Supreme Court had approved Professor Currie's assertion that "there is no justification for limiting the [minimum contacts] test to corporations for if it is fair to subject corporations with business contacts in a state to legal action there, it is also fair to do the same with respect to individuals 'similarly situated.'"[178]

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172. 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961).
173. 84 Nev. 268, 439 P.2d 679 (1968).
174. *See* text accompanying notes 66 to 99 *supra*.
175. 114 N.J. Super. 439, 276 A.2d 878 (1971).
176. N.J. CIV. PRAC. R. 4:4-4.
177. 47 N.J. 295, 220 A.2d 673 (1966).
178. *Id.* at 301, 220 A.2d at 676 (quoting Currie, *The Growth of Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 561).

But *Sparks* did not involve the New Jersey long arm statute.[179] There, the New Jersey Supreme Court was construing a New York long arm statute that allowed jurisdiction over a defendant who transacted business in the state, and was not expressly limited to corporations.[180]Moreover, *Sparks* was an action arising out of the defendant's business contacts with New York. Thus the superior court in *Wright* expanded *Sparks*: it determined that in a New Jersey action jurisdiction could be asserted over individual defendants "doing business in this State" (even though the New Jersey statute was by its terms limited to corporate defendants) where the state had a legitimate interest in protecting an abandoned spouse and child.[181]

Wright was a marked departure from conventional analysis. Despite the narrow wording of the statute, the court asserted that it "[saw] no reason why . . . long-arm jurisdiction should not be available in a separate maintenance action against a non-resident defendant, given an appropriate factual setting."[182] In the case at bar, the court believed that New Jersey's interest in protecting the abandoned wife and child, and the defendant's occupation as a columnist for a New Jersey newspaper, justified jurisdiction.[183] The minimum contacts test was satisfied, and the statute was not allowed to limit jurisdiction so as to create an anomalous injustice.

Three of seven justices of the Nebraska Supreme Court adopted similar reasoning in *Stucky v. Stucky*.[184] A wife was awarded a divorce, alimony and support by a Nebraska court in 1969. The parties maintained a home in Nebraska and lived there from 1961 until 1965, but the defendant husband had been absent from Nebraska, except for two brief visits, from 1965 until 1969. The plurality opinion noted that the defendant could be subject to in personam jurisdiction because he failed to establish that he had abandoned his Nebraska domicile.[185] A fourth justice concurred

179. *Sparks* was an action in New Jersey where the plaintiff sought full faith and credit for a New York judgment. 47 N.J. at 297, 220 A.2d at 674. Thus the issue before the New Jersey Supreme Court was whether jurisdiction in the New York action had been properly exercised under the applicable New York long arm statute. *Id.*

180. *Id.* The statute was CITY CIV. CT. ACT § 404 (McKinney 1963). Its provisions were identical to N.Y. CIV. PRAC. LAW § 302 (McKinney 1972). *See* text accompanying note 69 *supra*.

181. Wright v. Wright, 114 N.J. Super. 439, 443, 276 A.2d 878, 880 (1971).

182. *Id.*

183. *Id.* Interestingly, the court asserted that the minimum contacts test was satisfied largely because the husband's newspaper column indicated that he was doing business in New Jersey. *Id.*

184. 186 Neb. 636, 185 N.W.2d 656 (1971), *noted in*, 51 NEB. L. REV. 159 (1971).

185. *Id.* at 640, 185 N.W.2d at 659. Although the defendant had been away from Nebraska for several years, he continued to make deposits in a joint checking account

solely on this basis.[186] But the plurality apparently preferred to base the holding on long arm jurisdiction.[187] The Nebraska statute, which was worded similarly to Maryland's,[188] allowed jurisdiction on the basis of traditional long arm categories.[189] The plurality expressly acknowledged that the statutory language did not cover alimony and support actions.[190] Nevertheless, the three justices believed that the statute manifested the legislature's intent to "apply the minimum contacts rule" when it was constitutionally permissible to do so.[191] The plurality held "the minimum contacts concept . . . [to be] peculiarly suited to marital support cases,"[192] because " 'it is reasonable and fair to require a defendant whose voluntary acts have given rise to a cause of action in a state to litigate his responsibility for that conduct at the place where it occurred.' "[193] In the case at bar, the minimum contacts concept was found to be satisfied, because the last marital domicile was in Nebraska, and because "the defendant continuously and systematically maintained his family here thereafter."[194]

Although *Wright v. Wright* and *Stucky v. Stucky* asserted jurisdiction based on the minimum contacts concept, both cases placed some reliance on a narrowly worded long arm statute as an expression of legislative authorization for expanded jurisdiction.[195]

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there. Credit and utility accounts continued to be in the defendant's name. Mortgage payments were jointly made. The defendant and his wife continued to file joint income tax returns, which listed the defendant's address as the joint home in Nebraska. *Id.*

186. *Id.* at 647, 185 N.W.2d at 662-63 (Spencer, J., concurring).

187. *Id.* at 640-42, 185 N.W.2d at 659-60.

188. The Maryland long arm statute is quoted at text accompanying note 33 *supra*.

189. NEB. REV. STAT. § 25-536 (1975).

190. 186 Neb. at 641, 185 N.W.2d at 659.

191. *Id.* at 641, 642, 185 N.W.2d at 659, 660.

192. *Id.* at 642, 185 N.W.2d at 660. *See* Foris v. Foris, 103 N.J. Super. 316, 247 A.2d 156 (1968).

193. 186 Neb. at 641-42, 185 N.W.2d at 660 (quoting Owens v. Superior Court, 52 Cal. 2d 822, 831, 345 P.2d 921, 925 (1959)).

194. 186 Neb. at 642, 185 N.W.2d at 660. *See* notes 184-85 and accompanying text *supra*. The plurality's conclusion might be supported by another Nebraska statute, which stated: "A court of this state may exercise jurisdiction on any other basis authorized by law." NEB. REV. STAT. § 25-539 (1975). It is not entirely clear what is meant by "authorized by law." To interpret "law" as statutory law would seem to render the provision superfluous. If "law" is read to include decisional law, this section might constitute legislative authority to expand personal jurisdiction as permitted by the Supreme Court cases. The *Stucky* plurality cited this provision, 186 Neb. at 641, 185 N.W.2d at 659, but did not appear to rely on it.

Three justices dissented, accusing the plurality of "judicial legislation." *Id.* at 643, 185 N.W.2d at 660 (Newton, J., dissenting). The dissenters believed that minimum contacts jurisdiction could be exercised only in areas expressly covered by statute. *Id.* at 647, 185 N.W.2d at 662.

195. *See* text accompanying notes 175 to 180 and 184 to 193 *supra*.

In *Egbert v. Egbert*,[196] a New Jersey court asserted personal jurisdiction over the defendant in an alimony action. No New Jersey statute expressly authorized such jurisdiction.[197] The court in *Egbert* stated that "[t]he jurisdiction this court asserts is not based on [any] statute but on the facts found and case law cited."[198] The court recognized that "[t]he existence of a marital domicile in a state has as many consequences as economic activity does . . . and should satisfy due process requirements so as to permit *in personam* jurisdiction for the award of alimony and child support against a vagrant spouse."[199] The court apparently believed that the minimum contacts cases alone justified jurisdiction.

Not all courts have accepted such expansive use of long arm jurisdiction. In *Doyle v. Doyle*,[200] an intermediate appellate court in Oregon affirmed an order vacating an alimony decree for lack of jurisdiction over the defendant. At the time of the suit, Oregon had no long arm statute.[201] The court declined to follow *Soule v. Soule*,[202] *Mizner v. Mizner*,[203] and *Hines v. Clendenning*,[204] noting that in each of those cases, jurisdiction had been based on a broad long arm statute.[205] The court recognized that *Stucky v. Stucky*[206] had asserted jurisdiction even though no statute applied by its terms, but the court declined to follow *Stucky*. The court felt that it was bound to follow precedents of the Oregon Supreme Court and to hold that long arm jurisdiction could not be exercised in alimony actions.[207] Interestingly, the court did not exclude the possibility that the Oregon Supreme Court could approve such jurisdiction; it stated that the "change must be made *by that court* . . . or the legislature."[208]

196. 125 N.J. Super. 171, 309 A.2d 746 (1973).

197. *See* note 195 and accompanying text *supra*.

198. 125 N.J. Super. at 176, 309 A.2d at 749.

199. *Id.* at 175, 309 A.2d at 748 (citation omitted). The exact basis for the court's holding is unclear. The court held that the husband was still domiciled in New Jersey. *Id.* at 173, 309 A.2d at 747. This fact alone could have justified the jurisdiction. The court also implied that it may have had continuing jurisdiction over him because of an earlier proceeding. *Id.* at 173, 176, 309 A.2d at 747, 749. But the structure and emphasis of the opinion indicates that the central rationale was minimum contact jurisdiction.

200. 17 Or. App. 529, 522 P.2d 906 (1974).

201. *Id.* at 536, 522 P.2d at 909.

202. 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961). *See* text accompanying notes 101 to 113 *supra*.

203. 84 Nev. 268, 439 P.2d 679 (1968). *See* text accompanying notes 114 to 117 *supra*.

204. 465 P.2d 460 (Okla. 1970). *See* text accompanying notes 155 to 164 *supra*.

205. 17 Or. App. at 535-36, 522 P.2d at 909.

206. 186 Neb. 636, 185 N.W.2d 656 (1971). *See* notes 184 to 194 and accompanying text *supra*.

207. 17 Or. App. at 535-36, 522 P.2d at 909.

208. *Id.* at 536, 522 P.2d at 909 (emphasis added).

Thus it is arguable that the *Doyle* court would agree that long arm jurisdiction could be asserted without specific legislative action.

THE TORT THEORY

One of the traditional categories of acts which confers long arm jurisdiction over a defendant is his commission of a tortious act within the forum state.[209] If it is accepted that a deserting spouse wrongfully injures his or her spouse, it may be possible to assert jurisdiction on this theory. In *Poindexter v. Willis,*[210] a mother obtained a judgment in Illinois under a paternity act.[211] The court determined the defendant to be the child's father and ordered him to pay support and maintenance. The appellate court sustained the exercise of long arm jurisdiction, holding that failure to support the child constituted a "tortious act" within the meaning of the Illinois long arm statute.[212] The court relied on two major Illinois cases, *Nelson v. Miller,*[213] and *Gray v. American Radiator & Standard Sanitary Corp.*[214] The *Nelson* court had rejected the defendant's contention that jurisdiction for commission of a tortious act could be exercised only after the plaintiff proved his right to recover in tort. The case established the rather obvious proposition that, at the jurisdictional determination stage, the plaintiff need only allege acts committed by the defendant within the state and a proper cause of action in tort.[215] In *Gray,* the court held that a "tortious act" was committed in Illinois when injury occurred in that state as a result of negligent manufacture outside the state.[216] Both cases involved causes of action that are conventionally categorized as tort actions. The *Poindexter* court quoted language from *Nelson* and *Gray* that indicated the words "tortious act" were not to be construed restrictively,[217] and noted that the paternity act placed a duty on the father to support his illegitimate child.[218] The court concluded:

> [T]he word "tortious" . . . is not restricted to the technical definition of a tort, but includes any act committed in this state which involves a breach of duty to another and makes

209. *See, e.g.,* MD. CTS. & JUD. PROC. CODE ANN. § 6-103(b)(3) (1974).
210. 87 Ill. App. 2d 213, 231 N.E.2d 1 (1967).
211. ILL. REV. STAT. ch. 106-¾, § 51-66 (1963).
212. 87 Ill. App. 2d at 218, 231 N.E.2d at 3. The Illinois long arm statute is Civil Practice Act, § 17, ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd 1968).
213. 11 Ill. 2d 378, 143 N.E.2d 673 (1957).
214. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).
215. 11 Ill. 2d at 391-95, 143 N.E.2d at 680-82.
216. 22 Ill. 2d at 435-36, 176 N.E.2d at 762-63.
217. 87 Ill. App. 2d at 216-17, 231 N.E.2d at 3.
218. *Id.* at 216, 231 N.E.2d at 2.

> the one committing the act liable to [the] respondent in damages. Therefore . . . the failure of the father to support an illegitimate child constitutes a tortious act within the meaning of the statute . . . .[219]

One commentator has suggested that the rationale of *Poindexter* could be applied to an alimony action, if it is established that the law of the forum state places a duty of support on the deserting spouse.[220] However, most courts that have addressed the issue have been unwilling to construe the statutory language to apply to actions that are not strictly torts. In *Mroczynski v. McGrath,*[221] the court rejected the contention that "the break-up of the family unit and the attendant results . . . [constitute] 'tortious conduct' . . . ."[222] The word "tortious" has a specific legal meaning and is therefore more difficult to construe broadly than language about transacting business.

THE MARYLAND CASES AND THE STATE OF THE MARYLAND LAW

In the cases involving application of long arm jurisdiction in the traditional areas of tort and commercial litigation, the Maryland Court of Appeals has examined the problem of the relationship between the wording of the long arm statute and the constitutional limitations.[223] In an early long arm case, the court stated that

> [i]t seems clear that the purpose of the Legislature in enacting these new provisions was to give the courts of the State personal jurisdiction over all out of state persons and corporations which constitutionally could be reached as having had sufficient Maryland contacts, under the jurisdictional yardstick established by the Supreme Court in cases such as *International Shoe Co. v. Washington, . . . McGee v. International Life Ins. Co.,* . . . and *Hanson v. Denckla* . . . .[224]

As was discussed earlier,[225] such an equation of the statutory and constitutional standards needs refinement if it is to be applied meaningfully, because the long arm statute is more restrictive

219. *Id.* at 217-18, 231 N.E.2d at 3.

220. *Long-Arm Jurisdiction, supra* note 4, at 299.

221. 34 Ill. 2d 451, 216 N.E.2d 137 (1966); *see* text accompanying notes 59 to 62 *supra.*

222. 34 Ill. 2d at 455, 216 N.E.2d at 139-40. *See also* State *ex rel.* Carrington v. Schutts, 217 Kan. 175, 535 P.2d 982 (1975), and authorities cited therein.

223. *See* text accompanying notes 39 to 48 *supra.*

224. Gilliam v. Moog Indus. Inc., 239 Md. 107, 111, 210 A.2d 390, 392 (1965) (dictum).

225. *See* text accompanying notes 39 to 53 *supra.*

than the minimum contacts test. The cases suggest that the Court of Appeals is developing a solution. The court has not disregarded the language of the statute; rather, in all of the cases, it has weighed the applicability of one or more of the long arm categories to the facts.[226] But in *Lamprecht v. Piper Aircraft Corp.*,[227] the court came to the point:

> The application of the long arm statute to a particular situation entails dual considerations — first, that of statutory construction and second, that of constitutionality. We have held that the legislative purpose, to a great degree, was the expansion of judicial jurisdiction up to but not beyond the outermost limits permitted in this area by the due process decisions of the Supreme Court. . . . Therefore, consideration of the constitutional question in each case is essential not only for its own purpose *but also as a significant factor in the interpretation of the statute.*[228]

And in *Krashes v. White,*[229] the court reaffirmed this approach:

> Although six specific categories are listed in the subsections of [the long arm statute], this Court has applied [the long arm statute] flexibly, in order to carry out the legislative intent of extending the personal jurisdiction of Maryland courts as far as is possible consistent with the Due Process Clause . . . .
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> . . . .
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> Perhaps fact situations will arise which will be deemed outside the scope of the . . . statute, although there may be a constitutional basis for jurisdiction over the nonresident defendant. Nevertheless, the prior decisions of this Court make it clear that the reach of the statute will largely depend upon whether Maryland *in personam* jurisdiction may be asserted under the Fourteenth Amendment.[230]

These statements provide a sound method for giving force to the legislative purpose without overreaching the bounds of the legislation. The two steps, statutory construction and constitutional

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226. *See, e.g.,* Groom v. Margulies, 257 Md. 691, 265 A.2d 249 (1970); Harris v. Arlen Properties, 256 Md. 185, 260 A.2d 22 (1969); Vitro Elec. v. Milgray Elec., Inc., 255 Md. 498, 258 A.2d 749 (1969); Novack v. National Hot Rod Ass'n, 247 Md. 350, 231 A.2d 22 (1967).

227. 262 Md. 126, 277 A.2d 272 (1971).

228. *Id.* at 130, 277 A.2d at 275 (emphasis added).

229. 275 Md. 549, 341 A.2d 798 (1975).

230. *Id.* at 558-59, 341 A.2d at 803-04.

analysis, must both be performed, but to some extent they may be performed together. The result of the constitutional inquiry is a factor in the application of the statutory language.

The Maryland Court of Appeals has decided several cases involving application of long arm jurisdiction in domestic relations situations. The first such case, which has been discussed previously,[231] was *Van Wagenberg v. Van Wagenberg*.[232] There, the court afforded full faith and credit to a New York judgment on a separation agreement.[233] The Maryland Court of Appeals analyzed the jurisdictional basis of the New York judgment, and concluded that long arm jurisdiction had properly been exercised.[234] The court reached this conclusion by determining that, under New York law, the execution of a separation agreement in New York constituted "transaction of business" within the meaning of the New York long arm statute.[235]

Although *Van Wagenberg* involved interpretation of New York law, it has become a significant Maryland precedent. After examining the New York cases, the Maryland court decided that "transaction of business within the state" was not limited to "business" of a commercial nature, but "includ[ed] . . . contracts of any kind made within the state, and 'purposeful activity' of any kind, within the state."[236] The court has apparently adopted this position as a part of Maryland law.[237] In one case, the court stated:

> We held in *Van Wagenberg* that the acts done within a State which will support in personam jurisdiction as transacting "any business" are not necessarily limited to acts which are a part of commerce or of transactions for profit, but include acts which constitute a purposeful activity within the State.[238]

Furthermore, at the time of the *Van Wagenberg* decision, New York had not yet applied its long arm statute to actions based on separation agreements. In fact, one opinion by an intermediate appellate court in New York, *Willis v. Willis*,[239] had held the long arm statute to be inapplicable. The Maryland court chose to refute

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231. *See* text accompanying notes 76 to 82 *supra*.
232. 241 Md. 154, 215 A.2d 812 (1966).
233. *See* text accompanying notes 76 to 82 *supra*.
234. 241 Md. at 162-72, 215 A.2d at 816-22.
235. *Id.* at 166-72, 215 A.2d at 818-22.
236. *Id.* at 166, 215 A.2d at 818.
237. Harris v. Arlen Properties, 256 Md. 185, 197-98, 260 A.2d 22, 28 (1969); Novack v. National Hot Rod Ass'n, 247 Md. 350, 356, 231 A.2d 22, 26 (1967).
238. Novack v. National Hot Rod Ass'n, 247 Md. 350, 356, 231 A.2d 22, 26 (1967).
239. 42 Misc. 2d 473, 248 N.Y.S.2d 260 (Sup. Ct. 1964).

expressly the reasoning of *Willis* and to draw from New York cases in other contexts.[240] Thus the court further strengthened the suggestion that it was prepared to hold that an action based on a separation agreement could be brought under the Maryland long arm statute.

The next Maryland case to deal with the domestic relations area was *Renwick v. Renwick*.[241] A former wife brought an action to enforce, *inter alia*, a New Jersey support and alimony decree. The New Jersey court had exercised long arm jurisdiction on the authority of *Wright v. Wright*[242] and *Egbert v. Egbert*.[243] These cases held long arm jurisdiction to be properly exercised solely on the basis of the minimum contacts theory, without any clear statutory mandate.[244] The Maryland Court of Special Appeals afforded the judgment full faith and credit, expressing no doubt as to the validity of those decisions. The court cited *Van Wagenberg* as establishing that "[t]he Court of Appeals has found constitutional a sister state's expansion of *in personam* out-of-state service beyond the business sphere and subject areas specifically delineated in the long-arm statute."[245] This expansive interpretation of *Van Wagenberg* suggests that the Maryland Court of Special Appeals would find long arm jurisdiction warranted in alimony actions.

The unusual case of *Geelhoed v. Jensen*[246] is also of significance. The plaintiff, a Maryland domiciliary, brought suit for criminal conversation against a California domiciliary who had resided in Maryland for two years, during which he had allegedly become the paramour of the plaintiff's wife. The plaintiff was prepared to prove only one act of sexual intercourse, which had taken place in Canada. The plaintiff relied on the subsection of the Maryland long arm statute that provides for exercise of jurisdiction based on causing "tortious injury . . . by an act . . . outside of the state if [the defendant] . . . engages in any . . . persistent course of conduct in the state . . . ."[247] Asserting the principle of ejusdem generis, the defendant urged that the "persistent course of conduct" must involve commercial activity. Once again, the Maryland Court of Appeals rejected this argument.[248] The court stated that "[w]hen

240. 241 Md. 154, 170-71, 215 A.2d 812, 821 (1966).
241. 24 Md. App. 277, 330 A.2d 488 (1975).
242. 114 N.J. Super. 439, 276 A.2d 878 (1971).
243. 125 N.J. Super. 171, 309 A.2d 746 (1973).
244. *See* text accompanying notes 175 to 182 & 196 to 199 *supra*.
245. 24 Md. App. at 288, 330 A.2d at 495.
246. 277 Md. 220, 352 A.2d 818 (1976).
247. MD. CTS. & JUD. PROC. CODE ANN. § 6-103(b)(4).
248. 277 Md. at 225-27, 352 A.2d at 822.

terms having a relatively flexible quality . . . are used in the statute, they necessarily take their meaning from [the] legislative purpose. In the case of the long arm statute, such terms are meant to be coextensive with the requirements of due process."[249]

Although *Geelhoed* was, strictly speaking, a tort action, it involved the marital relationship. The court's probing analysis of the constitutional issue in this context is particularly important. After carefully analyzing the Supreme Court decisions, the court stated:

> The principal contacts of [the defendant] with the State arose from his residence in the State for two years, albeit while he apparently retained a California domicile. [His] contacts with the State, however, were not of a passing nature; his home in Maryland was his principal place of abode for two years, and one of his two places of business was likewise located in the State. Working and maintaining one's principal residence in the State would seem as a general proposition to constitute engaging in a "persistent course of conduct" in the State and satisfy due process in the case of a natural person.[250]

These contacts satisfied the requirements of *Hanson v. Denckla*,[251] because "[o]ne who resides in a state necessarily avails himself of the benefits and protections of its laws. The taking up of residence is . . . the quintessential act by which one avails himself of the privilege of conducting activities in the state."[252] In addition, the Court of Appeals noted that "it is significant that Maryland has a special interest in the domestic relations of its citizens and therefore in providing a forum for them to remedy alleged wrongs to those relations."[253] This analysis would seem to be equally applicable to a vagrant spouse.

In a recent case, *Bartell v. Bartell*,[254] the Maryland Court of Appeals declined an opportunity to rule on the applicability of the long arm statute in an alimony suit. The Bartells had resided in Maryland as a married couple for twenty-two years when Dr. Bartell abruptly abandoned his wife and daughters and left for Canada. Mrs. Bartell instituted suit in Maryland for alimony and support, and the trial court entered judgment in her favor.[255] The Court of

249. *Id.* at 226–27, 352 A.2d at 822.
250. *Id.* at 230, 352 A.2d at 824.
251. 357 U.S. 235 (1958).
252. 277 Md. at 231, 352 A.2d at 825.
253. *Id.* at 233, 352 A.2d at 826.
254. 278 Md. 12, 357 A.2d 343 (1976).
255. *Id.* at 16, 357 A.2d at 345.

Special Appeals reversed, primarily on the ground that Dr. Bartell's deposition had been erroneously excluded from a jurisdictional hearing.[256] Before the Court of Appeals, the plaintiff-appellant argued that the long arm statute was applicable.[257] But the Court of Appeals reversed on the ground that the deposition had been properly excluded,[258] making no mention of the long arm issue.

The Maryland cases that have been discussed here have clearly laid the groundwork for applying the long arm statute against the vagrant spouse. The Court of Appeals has indicated that, at least where the statutory words are broad and generic, the statute is to be construed broadly, with reference to the minimum contacts analysis.[259] In the *Geelhoed* case, the court analyzed one such broad long arm phrase, "persistent course of conduct," with reference to constitutional standards, and found it to be satisfied where the defendant had lived and worked in Maryland for two years.[260] Where a defendant has lived within the marital relationship in Maryland, he or she might be said to have "transacted business" in Maryland by a similar analysis. The court has indicated that the "business" involved need not be commercial,[261] and that it might include any "acts which constitute a purposeful activity in the State."[262] More generally, a reading of the cases suggests that the court has become increasingly unwilling to allow the specific long arm categories to have an unnecessarily restrictive effect where the minimum contacts analysis indicates that jurisdiction is warranted.

If the constitutional requirements are used as the primary measure, the only major barrier to extension of jurisdiction to alimony cases would seem to be the concept that physical power is the foundation of jurisdiction. As was noted early in this article,[263] it is not clear that this concept has completely disappeared. Nevertheless, the Supreme Court's decision in *Shaffer v. Heitner*,[264] which ruled that the minimum contacts analysis of *International Shoe* is to control the assertion of jurisdiction in all situations, should dispel any lingering doubts about the demise of *Pennoyer*. Freed from *Pennoyer's* concept of physical power, a court should experience no difficulty in asserting jurisdiction over a defendant whose relationship with the forum consists only of previous domicile and of having

256. Bartell v. Bartell, 28 Md. App. 180, 187-92, 344 A.2d 139, 144-46 (1975).
257. Brief for Appellant at 7-9, Bartell v. Bartell, 278 Md. 12, 357 A.2d 343 (1976).
258. Bartell v. Bartell, 278 Md. 12, 357 A.2d 343 (1976).
259. *See* text accompanying notes 224 to 230 *supra*.
260. *See* text accompanying notes 250 to 253 *supra*.
261. *See* text accompanying notes 231 to 238 *supra*.
262. Novack v. National Hot Rod Ass'n, 247 Md. 350, 356, 231 A.2d 22, 26 (1967).
263. *See* note 25 and accompanying text *supra*.
264. 45 U.S.L.W. 4849 (U.S. June 24, 1977).

previously married, lived, and worked in the forum. Indeed, at least one of the cases discussed here has suggested that former domicile has strong significance.[265] Furthermore, the various factors that play a part in the Supreme Court's constitutional analysis all tend to indicate that jurisdiction is warranted.[266]

The ultimate decision will involve an element of "sociological jurisprudence"; that is, the Maryland court's view of its own role as necessitating a response "to demands for change not yet embodied in legislation."[267] If the court views judicial decision-making as "a social tool to be judicially modified from time to time so as to meet changing societal needs,"[268] it may extend jurisdiction because of the clear need to protect deserted spouses. If the court considers this response unwarranted judicial law-making, it will be reluctant to go so far.

The law of "statutory construction" is rather ambiguous.[269] No attempt will be made here to examine the many "canons" of statutory construction that might bear on the issue.[270] Nevertheless, it may be suggested briefly that application of the long arm statute in an alimony case is acceptable statutory construction, and not improper judicial law-making. The statute is essentially remedial:[271] it was enacted to provide a forum for Maryland plaintiffs who have been wronged by the actions of foreign defendants. The need for such redress is as equally pressing in domestic relations cases as it is in commercial cases. The Maryland Court of Appeals has adopted a flexible approach to the statute which suggests that the statute does not clearly forbid its application by negative implication. Where

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265. *See* text accompanying notes 106 to 113 *supra.*

266. *See* text accompanying notes 54 to 57 *supra.*

267. Daynard, *The Use of Social Policy in Judicial Decision-Making,* 56 CORNELL L. REV. 919, 919 (1971).

268. Yarbrough, *Mr. Justice Black and Legal Positivism,* 57 VA. L. REV. 375, 383 (1971).

269. "The hard truth of the matter is that American courts have no intelligible, generally accepted, and consistently applied theory of statutory interpretation." H. HART & A. SACKS, THE LEGAL PROCESS 1201 (Tentative Edition 1958). *See generally* Witherspoon, *Administrative Discretion to Determine Statutory Meaning: "The High Road",* 35 TEX. L. REV. 63 (1956); Witherspoon, *Administrative Discretion to Determine Statutory Meaning: "The Low Road",* 38 TEX. L. REV. 392 (1960); Witherspoon, *Administrative Discretion to Determine Statutory Meaning: "The Middle Road": I,* 40 TEX. L. REV. 751 (1962).

270. *See generally* Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to be Construed,* 3 VAND. L. REV. 395 (1950).

271. It is frequently asserted that remedial statutes are to be liberally construed. 3 A. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 60-01 (4th ed. C. Sands 1974). This includes statutes which extend jurisdiction. *Id.* at §§ 67.03 & .04.

there is a clear need for application beyond the most literal context of the statute, and the statutory language does not clearly forbid such expansion, courts have found extension of the statute to be warranted in a variety of situations.[272] Professor Dickerson summarized this process in his recent study of application of legislation:

> Suppose the relevant original legislative intent, which is not disclosed by the statute when read in its proper context, is directly and reliably disclosed by the legislative history or otherwise. Here, it would seem appropriate for the court to create a rule of law consistent with that intent, unless it determined that to do so would be significantly incompatible with related statutory law.[273]

Professor Dickerson acknowledges that such an approach must be used with caution; in general, there is "no room for serving current social needs by *overriding* reasonably inferable legislative intent . . . ."[274] But where the legislative purpose is clear, "[t]he basic idea is to further the manifest legislative purpose as consistently as possible with the statute and the rest of the legal order."[275]

CONCLUSION

There is a clear need for resolution of the problems of jurisdiction in domestic relations cases, and particularly in alimony actions against vagrant spouses. Despite the persistence of some problems, the cases collected in this article establish a broad-based judicial consensus that the long arm statutes may properly provide a solution. The need for this step was well expressed by one court:

> "Rapid technological developments improving the speed and facility of transportation necessitate an expanded scope of jurisdiction. The inconvenience and hardship experienced in requiring resort to a foreign forum, the cost of which could inhibit the plaintiff-spouse from ever bringing any action and financially dilute whatever award the spouse might win. . . . [T]he convenience of hearing the action where the cause of action arose; the enjoyment, by the departed spouse, of the rights and protections of the matrimonial state while residing in that state; the contraction of the marriage and residence

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272. *See* R. DICKERSON, THE INTERPRETATION AND APPLICATION OF STATUTES 198-205 (1975).

273. *Id.* at 243.

274. *Id.* at 245 (emphasis added).

275. *Id.* at 244. *See* 2 A. SUTHERLAND, *supra* note 271, at § 55.02.

> in the marital state and the consequent obligations arising therefrom . . . ."
>
> The last matrimonial domicile would seem to be the proper forum where divorce, support and custody cases can be litigated. The existence of a marital domicile in a state has as many consequences as economic activity . . . .[276]

During the past century, the law of personal jurisdiction has been in an evolutionary state. The Court of Appeals should be reluctant to interpret Maryland's long arm statute in a wooden fashion, at least in those cases in which such an approach would cause manifest injustice.

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276. Egbert v. Egbert, 125 N.J. Super. 171, 175, 309 A.2d 746, 748 (1973) (quoting 1 RUT.-CAM. L.J. 117, 128 (1969)).