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PERSONAL JURISDICTION IN NEBRASKA: THE NEED FOR A LONG ARM STATUTE

I. INTRODUCTION

Gaining personal jurisdiction over nonresident defendants is a problem frequently encountered by Nebraska attorneys. When faced with this problem, present Nebraska law requires that the attorney pursue one of two courses of action: (1) wait until the defendant is physically present within the state and serve him with process at that time, or (2) show that the defendant has in some way impliedly consented to the jurisdiction of Nebraska courts.¹

Over twenty years ago the United States Supreme Court in *International Shoe Co. v. Washington*² abandoned "presence" and "implied consent" as a standard for jurisdiction, and substituted a test based upon "minimum contacts" and "substantial justice."³ The Supreme Court, speaking through Justice Black, has since justified this change by arguing that jurisdictional tests based

¹ While these alternatives are, as a general rule, the only ones from which a Nebraska attorney has to choose, for a more detailed picture of present Nebraska law see notes 105-125 *infra* and accompanying text.

² 326 U.S. 310 (1945).

³ For the United States Supreme Court's statement of the law before *International Shoe* see *Pennoyer v. Neff*, 95 U.S. 714 (1878). That case emphasized the importance of geographic limitations upon the states' power to exert jurisdiction over a nonresident. It said that *in personam* jurisdiction could only be obtained if the nonresident voluntarily appeared, or was served process within the state. These territorial limitations produced theories for gaining jurisdiction based upon "presence" and "implied consent." If a corporation was "doing business" in the forum it was considered to be present there for purposes of service of process. *Green v. Chicago, B. & Q. Ry.*, 205 U.S. 530 (1907). And an individual was held to have impliedly consented to jurisdiction if he had an automobile accident on the state's highways. *Hess v. Pawloski*, 274 U.S. 352 (1927).

For a general discussion of the *International Shoe* doctrine and its effect on prior law see Campbell, *Jurisdiction Over Nonresident Individuals and Foreign Corporations: The Privileges and Immunities Clause*, 36 TUL. L. REV. 663 (1962); Ehrenzweig, *Pennoyer is Dead—Long Live Pennoyer*, 30 ROCKY MT. L. REV. 285 (1958); Foster, *Personal Jurisdiction Based on Local Causes of Action*, 1956 WIS. L. REV. 522; 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 (1958); Sobeloff, *Jurisdiction of State Courts Over Non-Residents in Our Federal System*, 43 CORNELL L.Q. 196 (1957); *Transient Jurisdiction—Remnant of Pennoyer v. Neff—A Round Table*, 9 J. PUB. L. 281 (1960).

upon geographical limitations are no longer consistent with the demands of a modern society, where transportation and communications make travel and contacts between the states an everyday occurrence.⁴

In response to *International Shoe*, several state legislatures have codified jurisdictional due process as outlined in that case.⁵ These statutes allow the state's judicial machinery to reach beyond state boundaries and pull in nonresident defendants. It is this characterization of the statute from which the term "long arm statute" is derived. Nebraska is one of those states which has not taken advantage of this new type of legislation.

The principle advantages which would inure to Nebraska should it enact a long arm statute, are threefold: (1) It would increase the opportunity for extraterritorial service and, consequently, benefit those employing its use by providing them with the money-saving advantage and convenience of litigating in their home forum; (2) Nebraska courts would be given a greater opportunity to enforce its laws and protect its citizens instead of entrusting this duty to the judicial system of foreign states; and (3) legal fees derived from causes of action arising in Nebraska would be secured for Nebraska attorneys who are better versed in local law.

Under present Nebraska law these advantages are not available. The purpose of this article is, therefore, to create an incentive for the passage of a long arm statute in Nebraska, and to provide information which will be helpful in drafting and interpreting its provisions.

II. GENERAL REQUIREMENTS FOR DUE PROCESS

There are three major decisions of the United States Supreme Court outlining the basic requirements and limitations imposed by the due process clause of the fourteenth amendment upon the states' power to exert personal jurisdiction over nonresident defendants.

In the landmark decision of *International Shoe Co. v. Washington*⁶ the Court departed from the traditional notion that jurisdiction is based upon a state's physical power over persons ap-

⁴ See *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222-23 (1957).

⁵ See notes 18-25 *infra* and accompanying text.

⁶ 326 U.S. 310 (1945).

pearing within its borders,⁷ and suggested that the true test depended upon the quality and nature of the defendant's activity in the forum.⁸ Consequently, jurisdiction did not require his presence within the forum, but rather that 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.'"⁹

*McGee v. International Life Ins. Co.*¹⁰ followed, giving impetus to *International Shoe* by upholding jurisdiction on the basis of one isolated contact with the forum. The defendant, a Texas insurance company, solicited a reinsurance agreement from a California resident. The insured accepted the offer in California and mailed the premiums from there to the Texas company until his death. In allowing California jurisdiction over the Texas company the Court stated that "consent," "doing business," and "presence" were no longer proper standards for measuring the extent to which a state could exert its judicial power over a foreign defendant. Instead it emphasized California's interest in providing proper redress for its citizens against foreign insurers who are reluctant to pay claims.¹¹

Finally, in *Hanson v. Denckla*¹² the Supreme Court demonstrated that due process still required some limitations to be placed upon the state's jurisdictional powers. In that case a trust agreement was executed with a Delaware firm by a resident of Pennsylvania. Subsequently, the settlor moved to Florida. In the litigation which followed, Florida tried to exercise jurisdiction over the Delaware corporation, but the Court held that there were

⁷ Justice Holmes expressed this when he recognized that "[t]he foundation of jurisdiction is physical power. . . ." *McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

⁸ The major activities of the corporation within the state included the solicitation of business by their salesmen who had no authority to conclude a contract in the state, and the displaying of samples in rooms rented by the corporation.

⁹ *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

¹⁰ 355 U.S. 220 (1957).

¹¹ It has been argued that *McGee* is limited to situations in which the state has a special regulatory interest such as insurance, securities, and highways. See, e.g., *Trippe Mfg. Co. v. Spencer Gifts, Inc.*, 270 F.2d 821 (7th Cir. 1959); *Mueller v. Steelcase, Inc.*, 172 F. Supp. 416 (D. Minn. 1959). Professor Currie answers the argument in this way: "I cannot see why a State is any less strongly concerned to ensure that its injured residents recover compensation from those who injure them than from those who promise to pay for injuries caused by others." Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 549.

¹² 357 U.S. 235 (1958).

still some territorial limitations over the powers of the respective states, and that the "unilateral" activity of the settlor in moving to Florida could not satisfy the contact requirements necessary for jurisdiction under due process. The Court said 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."¹³ Since it was the settlor who moved to Florida on her own initiative it cannot be said that the defendant purposefully availed itself of the protection of Florida law.

These recent decisions have caused traditional tests for jurisdiction to evolve into a determination of what is fair in each situation.¹⁴ The outcome of each case, therefore, depends upon its own facts¹⁵ and requires a balancing of the interests involved.¹⁶ Some of the more important interests which must be considered are: (1) the trial convenience of the forum; (2) the interests of the state in enforcing its own laws and protecting its citizens; (3) the inconvenience resulting to the defendant if he must travel a great distance to defend; and (4) the expense to the plaintiff if he must travel to a distant forum to enforce his claim.¹⁷

III. LEGISLATIVE APPLICATION OF INTERNATIONAL SHOE

A. TYPES OF LONG ARM STATUTES AVAILABLE IN OTHER JURISDICTIONS.

The grandfather of all present-day long arm statutes was enacted in 1955 by the Illinois legislature.¹⁸ Its provisions were based upon the *International Shoe* doctrine and, therefore, drafted for the specific purpose of extending jurisdiction over nonresidents to the limits of due process.¹⁹ The text of the statute provides:

¹³ *Id.* at 253.

¹⁴ See Note, *Developments in the Law: State-Court Jurisdiction*, 73 HARV. L. REV. 909, 923-25 (1960).

¹⁵ See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

¹⁶ *Supra* note 14.

¹⁷ An evaluation of these interests has become a part of the due process test. See *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223-24 (1957). It is interesting to note that this aspect of due process is very similar to the doctrine of *forum non conveniens*. See *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

¹⁸ ILL. REV. STAT. ch. 110, § 17 (1956). For a discussion of this statute see Cleary & Seder, *Extended Jurisdictional Bases for the Illinois Courts*, 50 NW. U.L. REV. 599 (1955).

¹⁹ ILL. REV. STAT. ch. 110, § 17 (1956), Historical and Practice Notes p. 165. It was there stated that: "With the adoption of this section, Illi-

(1) Any person,²⁰ whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:

- (a) The transaction of any business within this State;
- (b) The commission of a tortious act within this State;
- (c) The ownership, use, or possession of any real estate situated in this State;
- (d) Contracting to insure any person, property or risk located within this State at the time of contracting.

Several states have since enacted similar statutes,²¹ New York having recently enacted one nearly identical to that of Illinois.²² The statute most general in terminology, and therefore the vaguest, is Rhode Island's.²³ It merely states that the courts of that state shall exercise jurisdiction over nonresidents to the extent allowable under due process.

The Wisconsin statute,²⁴ enacted in 1959, was obviously drafted with an attempt toward eliminating the vagueness of the due process concept. It too reaches for the limits of due process, as do all long arm statutes, but is much more definite in illustrating the situations in which a nonresident will be expected to defend in its courts.

Finally, in 1962 the Commissioners on Uniform State Laws made their contribution to the growing interests in extended jurisdiction by submitting their own act for consideration.²⁵ Its provisions were more detailed than the Illinois law, but still did not approach the exactness of the Wisconsin statute.

nois has expanded the in personam jurisdiction of its courts to the limits permitted under the Due Process clause of the Fourteenth Amendment."

²⁰ The words "Any person" emphasize an important aspect of a long arm statute. It applies equally to individuals and corporations alike.

²¹ See, e.g., IDAHO CODE ANN. § 5-514 (Supp. 1965); ME. REV. STAT. ANN. ch. 112, § 21 (Supp. 1963); MONT. R. CIV. P., Rule 4B; N.M. STAT. ANN. § 21-3-16 (Supp. 1965); WASH. REV. CODE § 4.28.185 (1962).

²² N.Y. CIV. PRAC. § 302.

²³ R.I. GEN. LAWS ANN. § 9-5-33 (Supp. 1965). See also N.J. RULES 4:4-4(d).

²⁴ WIS. STAT. ANN. § 262.05 (Supp. 1965). The Wisconsin Statute is comprised of twelve major provisions at least one of which is more extensive in itself than the major provisions of the Illinois Act *in toto*.

²⁵ UNIFORM LAWS ANN. 9B Misc. Acts § 1.03 (Supp. 1964).

B. THEORY BEHIND THE DRAFTING AND INTERPRETING OF A LONG ARM STATUTE.

All true long arm statutes are drafted with the intent of expressing, as nearly as possible, a statutory formulation of jurisdictional due process as it appears in *International Shoe*.²⁶ The difficulty which the drafter faces is how to define, with particularity, a concept based upon "minimum contacts" and "substantial justice." These two elements by nature require a factual determination. Consequently the drafter must try to overcome the problem of how to be accurate in drawing the provisions of the statute, and yet keep them flexible enough so that the court can honestly interpret them to conform with the limits of due process. A misstatement of the law could very easily cause the provisions to go beyond or fall short of this goal.

There seems to be only three major solutions to this problem. The first is simply alertness in interpretation. This requires an understanding of the statute's purpose to reach the limits of due process, and then a reading of it to conform to this purpose.

Secondly, the statute can be drafted in language general and vague enough so as to encompass all factual situations constitutionally possible.²⁷ This solution does, however, sacrifice one of the major virtues of good draftsmanship in that it will not serve as adequate notice to those who may be affected by the statute.

Finally, a provision could be added which would explain the purpose of the statute and require that the words employed in its provisions should be construed liberally, but only in a manner which would allow for jurisdiction in all situations consistent with due process.²⁸ The drafter would therefore be able to illustrate the situations in which jurisdiction would probably lie without having to worry about frustrating the purpose of the statute. This latter method seems preferable since it insures a proper interpretation of the statute without sacrificing the important element of notice.

²⁶ See note 19 *supra*. See also Briggs, *Contemporary Problems in Conflict of Laws: Jurisdiction by Statute Part II*, 24 MONT. L. REV. 85 (1963).

²⁷ See, e.g., R.I. GEN. LAWS ANN. § 9-5-33 (Supp. 1965); N.J. RULES 4:4-4(d).

²⁸ Wisconsin has included a special provision within its code requiring that the statute be construed liberally so as to effectuate its purpose. WIS. STAT. ANN. § 262.01 (Supp. 1965).

C. MAJOR PROBLEMS ARISING IN THE DRAFTING AND INTERPRETING OF A LONG ARM STATUTE.

As was previously mentioned, giving proper notice is an important aspect of drafting a statute. Wisconsin's long arm statute presents a good model. Its detailed provisions completely outline the facts necessary to sustain jurisdiction and, in this way, warn the average businessman of the circumstances which will give rise to his liability to defend in that state.

Where the Illinois act merely refers to a "tortious act" committed within the state, the Wisconsin statute provides the following:

(3) Local act or omission. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

(4) Local injury; foreign act. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury either:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

(b) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.²⁹

In a long arm statute detailed notice can give rise to a problem. By committing the statute to precise definition, the legislature may include some cases that, while falling within the strict wording of the statute, still offend traditional notions of fair play and substantial justice.³⁰ Jurisdiction in such cases would be denied on the grounds of due process. Precise definition may also exclude cases where jurisdiction could constitutionally be applied. In this respect the statute may "inhibit the flexibility of courts in dealing with [these] unforeseen situations."³¹

²⁹ WIS. STAT. ANN. §§ 262.05(3), (4) (Supp. 1965).

³⁰ For a case denying jurisdiction on constitutional grounds which seems to fall within section (4)(b) of the Wisconsin act see *O'Brien v. Comstock Foods, Inc.*, 123 Vt. 461, 194 A.2d 568 (1963). Also, for what would seem to be a clear case for jurisdiction under (5)(e) see *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F.2d 502 (4th Cir. 1956). That case denied jurisdiction on a constitutional basis. Only one shipment of goods had been made into the state and that was solicited by the buyers agent during a business trip to the seller's forum. On this point Professor Currie stated that "it is arguable that it so affects the equities as to require the buyer to return also when he is plaintiff." Currie, *The Growth of The Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 556.

³¹ *Developments in the Law: State-Court Jurisdiction*, 73 HARV. L. REV. 909, 1017 (1960).

In addition to solutions previously suggested in connection with this problem,³² the court may also rely upon the doctrine of *forum non conveniens* to exclude from the purview of the statute cases which cannot conveniently be tried in that forum.³³

The Illinois act also illustrates the difficulty in drafting a long arm statute. Its provision relating to "[t]he commission of a tortious act within this State"³⁴ has given rise to several problems in interpretation.

A literal reading of the provision suggests that jurisdiction can only be asserted over a nonresident if his "acts" are committed within the state. This would greatly restrict the statute's power to reach the limits of due process. Realizing this, the Illinois Supreme Court interpreted the phrase "tortious act" liberally to mean tort which in choice of law embodies consideration of not only where the act occurred but where the injury resulted.³⁵ In this manner suit was allowed when the injury had taken place within the state.³⁶

Montana solved this problem with a simple change of wording. The applicable provision reads: "the commission of any act which results in accrual within this state of a tort action."³⁷ The word "accrual" obviously has made it immaterial where the defendant's acts were committed.

The second problem which arises from this same provision is whether actual proof must be shown that a tort was committed within the state before jurisdiction can be asserted. If this were true a plaintiff, who obtains jurisdiction in Illinois under the "tortious act" clause and gets a default judgment, may be forced to prove the merits (tortious act) when he attempts to enforce the default judgment in another state and it is there collaterally attacked on the basis that the Illinois act did not apply.

This problem was also sidestepped by the Illinois Supreme Court in holding that the clause only required that the plaintiff state a cause of action in tort arising from the conduct of the defendant.³⁸

³² See notes 27 & 28 *supra* and accompanying text.

³³ A section of the Wisconsin Code specifically allows this. WIS. STAT. ANN. § 262.19 (Supp. 1965).

³⁴ ILL. REV. STAT. ch. 110, § 17(1)b (1963).

³⁵ Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 436, 176 N.E.2d 761, 763 (1961).

³⁶ *Id.* at 436, 176 N.E.2d at 763.

³⁷ MONT. R. CIV. P., Rule 4(B)1(b).

³⁸ Nelson v. Miller, 11 Ill. 2d 378, 393, 143 N.E.2d 673, 681 (1957).

In comparing the Illinois and Wisconsin acts one will discover that the draftsman is going to be presented with another problem. Specifically, should the act allow jurisdiction on the basis of activities by the defendant within the state unrelated to the claim sued upon? The Illinois statute apparently does not,³⁹ whereas, the Wisconsin statute specifically allows for jurisdiction on that basis as long as the activities engaged in are "substantial and not isolated."⁴⁰

The United States Supreme Court has upheld jurisdiction based upon substantial activities totally unrelated to the cause of action.⁴¹ It therefore appears that Illinois has excluded from its statute certain cases where it would be constitutionally permissible to assert jurisdiction.

This exclusion may come, however, as a matter of policy. By excluding causes of action unrelated to the defendant's contacts with the forum, the state might avoid opening its courts to cases which could be more conveniently tried in some other forum. By using the doctrine of *forum non conveniens*, however, the same result would be accomplished. Nevertheless, the wording of the Wisconsin statute seems to be more consistent with the initial purpose of a long arm statute, that is, to assert jurisdiction to the fullest extent allowable under the Constitution.

One final area included within the scope of the Wisconsin statute that is excluded from the Illinois statute is causes of action arising out of possession or ownership of personal property within the state.⁴² This, however, may be a tenuous basis for asserting jurisdiction since personal property is more readily moveable from one forum to another thus lessening the state's interest in its well being.⁴³ The Commissioners on Uniform State Laws have expressly excluded this area from their law "because of the difficul-

³⁹ *Supra* note 34. See also *Bryant v. Finnish Nat'l Airline*, 253 N.Y.S.2d 215 (1964). That case holds that the New York long arm statute does not allow for jurisdiction based upon contacts unrelated to the action, but that section 301 of the New York Code does. This section reads: "A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore." It is possible that this same result may be reached under section 17(4) of the Illinois act depending upon the statutory or common law presently in effect in that state.

⁴⁰ The Wisconsin statute has a special provision allowing jurisdiction for unrelated causes of action as long as there are other contacts with the state. See WIS. STAT. ANN. § 262.05 (1)d (Supp. 1965).

⁴¹ See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

⁴² See WIS. STAT. ANN. § 262.05 (6) (Supp. 1965).

⁴³ Currie, *supra* note 30, at 580.

ties that might be posed in situations such as those involving stolen property, conditional sales and chattel mortgages.”⁴⁴

IV. JUDICIAL INTERPRETATION

In order that some advantages and possible difficulties arising under a long arm statute might be illustrated, specific cases are discussed below in sections corresponding to the provisions of the Illinois act.

A. TRANSACTION OF BUSINESS

Cases arising under the transaction of business clause have generally been subjected to more rigid requirements for sustaining jurisdiction than those arising under the tortious act clause.⁴⁵ One reason may be that the courts continue to associate an action related to business transactions with the old doing business test. Generally, however, it may be said that under a long arm statute the contacts necessary to sustain jurisdiction are considerably less than those required under a doing business statute.⁴⁶ An isolated transaction may be enough to meet the requirements of a long arm statute,⁴⁷ whereas otherwise an accompanying intention to continue transactions in the state might be necessary under doing business.⁴⁸

The main issue under transaction of business is whether or not the minimum contact required for jurisdiction is a physical presence of the defendant or his agents within the state. *McGee* and *Hanson* are largely responsible for this divergence of opinion. The former emphasizes the state's interest in the controversy, while the latter emphasizes the necessity for certain contacts with the forum state. *Hanson* has therefore been interpreted by some to require a physical presence within the state.

This approach was taken in *Grobark v. Addo Mach. Co.*⁴⁹

⁴⁴ *Supra* note 25, commissioners' note 77.

⁴⁵ See generally, *Currie, supra* note 30, at 538-79.

⁴⁶ See *Hass v. Fancher Furniture Co.*, 156 F. Supp. 564 (N.D. Ill. 1957); *Steele v. De Leeuw*, 40 Misc. 2d 807, 244 N.Y.S.2d 97 (Sup. Ct. 1963); *Lurie v. Rupe*, 51 Ill. App. 2d 164, 201 N.E.2d 158 (1964), *cert. denied* 380 U.S. 964 (1965).

⁴⁷ See, e.g., *Natural Gas Appliance Corp. v. AB Electrolux*, 270 F.2d 472 (7th Cir. 1959); *Patrick Ellam, Inc. v. Nieves*, 41 Misc. 2d 186, 245 N.Y.S.2d 545 (Sup. Ct. 1963); *Compania de Astral, S. A. v. Boston Metals Co.*, 205 Md. 237, 107 A.2d 357 (1954).

⁴⁸ *Tomson v. Iowa State Traveling Men's Ass'n*, 88 Neb. 399, 129 N.W. 529 (1911), *rev'd on other grounds*, 89 Neb. 791, 132 N.W. 405 (1911).

⁴⁹ 16 Ill. 2d 426, 158 N.E.2d 73 (1959).

which arose under the Illinois long arm statute. In that case the plaintiffs had concluded a contract by mail with defendants, a New York corporation, which granted the plaintiffs an exclusive dealership of defendant's products in Chicago. Plaintiffs continued to act under this agreement for a considerable time until the contract was allegedly breached by defendants. The court held that Illinois could not constitutionally assert jurisdiction over the foreign corporation, emphasizing that plaintiffs were not agents of the defendants while acting under the exclusive dealership in Chicago. A later Illinois case interpreted *Grobark* as meaning that the defendant or his agents must perform some acts related to the claim sued upon while physically present within the state in order to establish jurisdiction.⁵⁰

Following *Grobark*, "transaction of business" generally was interpreted to require some physical contact by the defendant or his agent with the forum.⁵¹ This contact could occur in the form of preliminary negotiations⁵² or the actual execution of a contract,⁵³ but the contact is not sufficient if the defendant's presence within the forum was casual and the transaction of business was more by accident than design.⁵⁴ In the latter situation, where defendant's presence was only casual, the court probably denied jurisdiction because it would be unfair to the defendant to require him to defend in that forum when his presence there was not initially intended for business purposes.⁵⁵ Likewise, when a plaintiff solicits defendant's business and the defendant later sends agents to inspect plaintiff's products it might be unfair to

⁵⁰ *Saletko v. Willys Motors, Inc.*, 36 Ill. App. 2d 7, 183 N.E.2d 569 (1962).

⁵¹ See *Kropp Forge Co. v. Jawitz*, 37 Ill. App. 2d 475, 186 N.E.2d 76 (1962). In interpreting *Grobark* the court said "that the performance of jurisdictional acts by a non-resident or his agent, while physically present in Illinois, is essential for submission to the jurisdiction of the courts of this state. . . ." *Id.* at 480-81, 186 N.E.2d at 79. But when the plaintiff is the apparent agent of the defendant and the only physical contact the defendant has with the state, the result may be different. See *Orton v. Woods Oil & Gas Co.*, 249 F.2d 198 (7th Cir. 1957); *Bonan v. Leach*, 22 F.R.D. 117 (E.D. Ill. 1957).

⁵² *Natural Gas Appliance Corp. v. AB Electrolux*, 270 F.2d 472 (7th Cir. 1959). But see *E Film Corp. v. United Features Syndicate, Inc.*, 172 F. Supp. 277 (N.D. Ill. 1958).

⁵³ *Steele v. De Leeuw*, 40 Misc. 2d 807, 244 N.Y.S.2d 97 (Sup. Ct. 1963).

⁵⁴ *Kaye-Martin v. Brooks*, 267 F.2d 394 (7th Cir. 1959).

⁵⁵ He would not have purposely availed himself of the laws of that forum. *Hanson v. Denckla*, 357 U.S. 235 (1958). And the state's interest in the subject matter would probably not be strong enough to relax the application of that rule. See *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

hold the defendant on the basis of this contact with the forum because it was the plaintiff who initiated the transactions.⁵⁶

Under the present interpretation of the transaction of business clauses a typical case for jurisdiction can be illustrated by the decision in *Steele v. De Leeuw*⁵⁷ which arose under the New York long arm statute. There the defendant was a Netherlands corporation. One of its officers traveled to New York and executed a contract on behalf of the corporation for the purchase of some stock. The action against the corporation arose out of this contract. In upholding jurisdiction the court cited *McGee v. International Life Ins. Co.*⁵⁸ as the leading case in the area favoring jurisdiction on the basis of a single act, and the court concluded by saying: "[I]t is clear that the *transaction of business* test, as set forth in the new statute, requires considerably less than the contacts required in this state under the *doing business* test of the former procedure."⁵⁹

The language of the *De Leeuw* case is encouraging because it takes a positive approach in applying the provisions of the long arm statute. It does not, however, answer the question posed by the *Grobark* analysis of this area, which is whether jurisdiction can be asserted over a nonresident defendant who has not made a physical appearance within the forum but has taken the initiative in a transaction concluded by mail. It appears that if you accept the balancing of interests rationale promoted by *International Shoe* and subsequent cases it would be inconsistent to stop the analysis upon a finding that the defendant had not been physically present within the forum. This physical presence has not been required in tortious act cases. An Illinois case, for example, has allowed jurisdiction where the defendant's only contact with the state was the foreseeable presence of one of its products within the state.⁶⁰ There appears to be no valid reason for distinguishing between a tort action and a contract action on this issue. Professor Currie has indicated this in prophesying the eventual demise of *Grobark* and other similar cases: "Illinois has a policy of securing to her businessmen the benefit of their bargains, as well as one of compensating them for injuries; the former is no less vital to the health of the Illinois economy than the latter."⁶¹

⁵⁶ See *Conn v. Whitmore*, 9 Utah 2d 250, 342 P.2d 871 (1959).

⁵⁷ 40 Misc. 2d 807, 244 N.Y.S.2d 97 (Sup. Ct. 1963).

⁵⁸ 355 U.S. 220 (1957).

⁵⁹ 40 Misc. 2d 807, 808, 244 N.Y.S.2d 97, 99 (Sup. Ct. 1963).

⁶⁰ *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

⁶¹ Currie, *supra* note 30, at 570.

A federal court in Wisconsin has also disagreed with *Grobark* on its analysis of *McGee*.⁶² That case involved a manufacturer's representative who acted in the nature of an independent contractor in soliciting orders for the defendant, a nonresident corporation. This was the only contact the defendant had with the forum state. In upholding jurisdiction over the corporation the court said: "We reject the defendant's contention that the special interest a state has in providing redress for its residents when an insurer refuses to pay its claim is the decisive factor in the *McGee* case."⁶³

In *Paulos v. Best Sec., Inc.*,⁶⁴ a Minnesota case, jurisdiction was upheld over a foreign corporation which had no agents within the state. The transaction involved resulted from a solicitation by mail for a subscription to a magazine which analyzed stock market action. Through information found in this magazine the plaintiff was led to purchase from the defendant several shares of stock in an Alaska company. These transactions occurred primarily by means of long distance telephone calls and some written correspondence. In a suit resulting from these transactions the court held that the state had a substantial interest in gaining redress for the plaintiff and that the minimum contacts were sufficient to sustain jurisdiction. This holding therefore is contra to those requiring the physical presence of defendant's agents within the state,⁶⁵ but it is arguably distinguishable from them on the basis that the state has a special regulatory interest in the sale of securities within its borders.⁶⁶

The "physical presence" requirement initiated by *Grobark* has no place under the *International Shoe* test. *Hanson* only requires that the defendant purposely avail himself of the benefits of the forum. This certainly need not be manifested by the defendant's actual presence in the forum. When this approach is taken the transaction of business clauses will reach their potential effectiveness.

B. TORTIOUS ACT

The provisions dealing with tortious conduct, under recently

⁶² *Wisconsin Metal & Chem. Corp. v. DeZurick Corp.*, 222 F. Supp. 119, 123 (D. Wis. 1963).

⁶³ *Id.* at 123.

⁶⁴ 260 Minn. 283, 109 N.W.2d 576 (1961).

⁶⁵ See, e.g., *Morgan v. Heckle*, 171 F. Supp. 482 (E.D. Ill. 1959); *Grobark v. Addo Mach. Co.*, 16 Ill. 2d 426, 158 N.E.2d 73 (1959); *Saletko v. Willys Motors, Inc.*, 36 Ill. App. 2d 7, 183 N.E.2d 569 (1962).

⁶⁶ See *Doherty & Co. v. Goodman*, 294 U.S. 623 (1935).

enacted long arm statutes, have been more successful in extending jurisdiction than have those provisions dealing with the transaction of business. As a result, it has been held that these provisions are not restricted to torts caused by defendant's actions within the state, but also extend to situations where defendant's actions occur entirely outside the state.⁶⁷ Nor is it required that the defendant's activities in the state be continuous. They can be based upon one isolated contact with the state.⁶⁸ And, while some states may have 'single act' statutes which require the tort to result in physical injury to person or property,⁶⁹ this is not constitutionally required⁷⁰ and jurisdiction may be extended to torts causing financial harm to the plaintiff through unfair competition,⁷¹ fraud,⁷² and other torts of a like nature.⁷³

Under a long arm statute it is not difficult to sustain jurisdiction when the injury results from a single act committed within the state. In *Nelson v. Miller*,⁷⁴ for example, the defendant had sent his employee into the state to deliver a stove. The employee, in negligently unloading the stove, injured the plaintiff. The court said that defendant's contact with the state was sufficient to uphold jurisdiction and that it would not be unfair to require him to defend in Illinois.

In *Smyth v. Twin State Improvement Corp.*,⁷⁵ a case cited

⁶⁷ See *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

⁶⁸ *Ibid.*

⁶⁹ See, e.g., ME. REV. STAT. ANN. tit. 112, § 21 (Supp. 1963).

⁷⁰ See *Platt Corp. v. Platt*, 42 Misc. 2d 640, 249 N.Y.S.2d 1 (Sup. Ct. 1964). There the court said: "I find nothing in the legislative history of the 'single act' statute which supports defendants' claim that the phrase 'tortious act', as set forth in Sec. 302 (a) (2), CPLR, was not intended to encompass acts of omission. On the contrary, the express provisions of this section clearly include all torts, except those based on defamation of character. Even this exclusion was not made because of any constitutional requirements of due process, as alleged by defendants, but was incorporated in the law to avoid unnecessary inhibitions on freedom of speech and of the press . . ." *Id.* at 644, 249 N.Y.S.2d at 6.

⁷¹ *R.I.T.A. Chem. Corp. v. Malmstrom Chem. Corp.*, 200 F. Supp. 954 (N.D. Ill. 1962).

⁷² *Bluff Creek Oil Co. v. Green*, 257 F.2d 83 (5th Cir. 1958). For a final disposition of the case and the issue regarding jurisdiction see 287 F.2d 66 (5th Cir. 1961).

⁷³ See *Platt Corp. v. Platt*, 42 Misc. 2d 640, 249 N.Y.S.2d 1 (Sup. Ct. 1964).

⁷⁴ 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

⁷⁵ 116 Vt. 569, 80 A.2d 664 (1951).

with approval by Justice Black in *McGee*,⁷⁶ the Supreme Court of Vermont allowed jurisdiction where damage was to tangible property within the state. In that case defendant corporation sent its employees into the state to re-roof plaintiff's house. In doing so they caused considerable damage to the roof. In allowing jurisdiction over the corporation the court said:

Common ideas of justice require that a foreign corporation be subject to suit in the courts of a state where it does a tortious act, when the state so elects, and when the suit is based on such act The probabilities are that the witnesses will be readily available; the law of the state where the act is done will control the consequences of the act. To require a resident to commence his action in a foreign jurisdiction on a tort committed where he lives, and to transport his witnesses to such other state might well make protection of his right prohibitive and in effect permit a foreign corporation to commit a tort away from its home with relative immunity from legal responsibility.⁷⁷

It is when the defendant's acts are done entirely outside the state and cause injury to person or property within the state that jurisdiction may be more difficult to sustain. This type of situation usually arises when the defendant negligently manufactures a product which is shipped into the forum state and causes injury to the plaintiff there. The courts are split in this area on the amount and nature of the contacts with the forum required to force the defendant to defend there.⁷⁸ Some courts require that there be additional activity in the state other than the mere presence of the defendant's product therein.⁷⁹ These activities may include advertisement, solicitation by authorized agents, or other contacts with the state. Other courts are satisfied with a finding that the defendant's product caused injury to the plaintiff within the state.⁸⁰

⁷⁶ 355 U.S. 220, 223, n.2 (1957).

⁷⁷ 116 Vt. 569, 575, 80 A.2d 664, 668 (1951).

⁷⁸ See Currie, *supra* note 30, at 547.

⁷⁹ See, e.g., *Trippe Mfg. Co. v. Spencer Gifts Inc.*, 270 F.2d 821 (7th Cir. 1959); *Mann v. Equitable Gas Co.*, 209 F. Supp. 571 (N.D. W. Va. 1962); *Mueller v. Steelcase, Inc.*, 172 F. Supp. 416 (D. Minn. 1959); *Moss v. City of Winston-Salem*, 254 N.C. 480, 119 S.E.2d 445 (1961); *Putnam v. Triangle Publications*, 245 N.C. 432, 96 S.E.2d 445 (1957).

⁸⁰ See, e.g., *Anderson v. PennCraft Tool Co.*, 200 F. Supp. 145 (N.D. Ill. 1961); *McMahon v. Boeing Airplane Co.*, 199 F. Supp. 908 (N.D. Ill. 1961); *Adamek v. Michigan Door Co.*, 260 Minn. 54, 108 N.W.2d 607 (1961); *Atkins v. Jones & Laughlin Steel Corp.*, 258 Minn. 571, 104 N.W.2d 888 (1960); *Feathers v. McLucas*, 21 App. Div. 2d 558, 251 N.Y.S.2d 548 (3d Dep't 1964); *Johnson v. Equitable Life Assur. Soc'y of U.S.*, 43 Misc. 2d 850, 252 N.Y.S.2d 477 (Sup. Ct. 1964).

Factors such as foreseeability and causation often enter into a determination of liability to defend in a certain forum.⁸¹ They are basically an outgrowth of the rule in *Hanson* which requires that the defendant purposely avail himself of the benefits and protections of the forum.⁸²

If it is reasonably foreseeable, taking into consideration all relevant factors, that defendant's products may find their way into the forum state he may be said to have purposely submitted to its jurisdiction.⁸³ If, however, an independent contractor, or some other intervening force causes the goods to flow into the forum state it may be difficult to say that the defendant purposely availed himself of the laws of that state.⁸⁴

The leading case in this area is *Gray v. American Radiator & Standard Sanitary Corp.*⁸⁵ One of the defendants was a foreign corporation which manufactured a safety valve in Ohio which was purchased and attached to a hot water heater by a Pennsylvania company. The heater was then shipped into Illinois where it exploded and caused injury to the plaintiff. The corporation which manufactured the safety valve appeared specially to object to the court's jurisdiction over its person. With no evidence of any further contact with the forum state, the Supreme Court of Illinois said in upholding jurisdiction that:

Where the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation of use here, it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this state.⁸⁶

The court further believed that it was not unreasonable to subject the defendant to jurisdiction. It is also interesting to note that in

⁸¹ See Reese & Galston, *Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249 (1959).

⁸² *Hanson v. Denckla*, 357 U.S. 235 (1958).

⁸³ *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961). *Andersen v. National Presto Indus., Inc.*, 135 N.W.2d 639 (Iowa 1965).

⁸⁴ See, e.g., *Moss v. City of Winston-Salem*, 254 N.C. 480, 119 S.E.2d 445 (1961). That case involved a North Carolina statute which allowed jurisdiction where the cause of action arose out of the manufacture of goods which were reasonably expected to be consumed in the forum, regardless of the fact that an independent contractor may have intervened. This case seemed to fall within the statute because the distributor of the product in the state was like an independent contractor. But the court denied jurisdiction.

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

⁸⁶ *Id.* at 442, 176 N.E.2d at 766.

discussing the foreseeability factor the court inferred from the nature of the defendant's business that a substantial amount of defendant's goods would be consumed in Illinois. Some courts will not, however, indulge in such inferences even though they may be willing to uphold jurisdiction on the basis of one contact with the forum.⁸⁷

Breach of express warranty actions resulting in injury are also included within the scope of tortious act clauses. This was demonstrated in the recent New York decision of *Singer v. Walker*.⁸⁸ In that case the plaintiff, a small boy, was injured by a geologist's hammer which had been purchased for him from a New York dealer who had ordered it from defendant's mail order catalogue. The boy gained possession of the hammer in New York but sustained injury in Connecticut where it broke while he was using it. The New York court specifically stated that "a breach of warranty resulting in harm is now characterized as also a tortious wrong,"⁸⁹ and further held that "defendant was responsible for a continuous tortious act, namely, the circulation in New York of a defective hammer, always bearing its mislabelling. . . ."⁹⁰

The *Singer* case will no doubt be a welcome reference for attorneys in a long arm jurisdiction who feel that they may have a difficult time proving negligence but can be successful in a breach of express warranty action. The obvious jurisdictional advantages to bringing the action under a tortious act clause have been previously discussed.⁹¹

Aside from the foregoing considerations it is necessary to caution the reader on what might be an unexpected contingency to gaining jurisdiction. This is the possibility that, while the necessary contacts with the forum seem to have been satisfied, it would still be unfair to require the defendant to defend in that state. Judge Sobeloff's example in *Erlanger Mills v. Cohoes Fibre Mills*⁹² would probably best illustrate this. Assume that while on vacation a Pennsylvania tourist buys a set of tires from a California tire dealer. The person making the sale realizes from seeing the

⁸⁷ See *O'Brien v. Comstock Feeds, Inc.*, 123 Vt. 461, 194 A.2d 568 (1963). The court here held that a showing that the product was placed within the stream of commerce, without more, was not sufficient to show that the defendant had intentionally shipped goods into the state.

⁸⁸ 21 App. Div. 2d 285, 250 N.Y.S.2d 216 (1st Dep't 1964).

⁸⁹ *Id.* at 288, 250 N.Y.S.2d at 220.

⁹⁰ *Id.* at 286, 250 N.Y.S.2d at 218.

⁹¹ See notes 60-61 *supra* and accompanying text.

⁹² 239 F.2d 502 (4th Cir. 1956).

license plates that the buyer is from Pennsylvania. After his return to Pennsylvania the purchaser of the tires has a blowout causing him to sustain injury. Subsequently he brings suit in Pennsylvania. The plaintiff argues that the defendant could foresee that he would return to Pennsylvania and use the tires in that state and should therefore be required to defend there. But the court would most likely be inclined to hold otherwise unless the tire company carried on a large volume of interstate activity which resulted in some other contacts within the state. The reason would probably be that there is something unfair about requiring the defendant to go to Pennsylvania when it was the plaintiff who first traveled to California and there initiated the transaction.

C. OWNERSHIP, USE, OR POSSESSION OF REAL ESTATE

The ownership, use, or possession of land in the forum provides an obvious contact with that state. It can hardly be said that the defendant has not purposely availed himself of the benefits and protections of that jurisdiction when he gains an interest therein of this nature.

Furthermore, the state has a strong interest in litigation which may affect title to land located within its borders.⁹³ It therefore appears that the forum state could exercise jurisdiction over a defendant who had never appeared within the state as long as he participated in either the buying or selling of land located there.⁹⁴

This provision would also allow the owner of an apartment house to gain jurisdiction over a departed tenant for leaving the premises in a damaged condition,⁹⁵ or for the non-payment of rent. But, in a like manner, a nonresident owner of the premises may be required to defend an action in that state on the basis of an injury resulting from negligently failing to keep the premises in repair,⁹⁶ or from the breach of a building contract.⁹⁷

A user of the premises is also subjected to jurisdiction pro-

⁹³ See, e.g., RESTATEMENT, CONFLICT OF LAWS § 215 (1934). See also *People v. Streeper*, 12 Ill. 2d 204, 145 N.E.2d 625 (1957); Note, *Ownership, Possession, or Use of Property as a Basis of In Personam Jurisdiction*, 44 IOWA L. REV. 374 (1959).

⁹⁴ See *Currie*, *supra* note 30, at 580.

⁹⁵ *Porter v. Nahas*, 35 Ill. App. 2d 360, 182 N.E.2d 915 (1962).

⁹⁶ See *Dubin v. City of Philadelphia*, 34 Pa. D. & C. 61 (Phil. Co. Ct. 1938). See also, *Calcote v. Century Indem. Co.*, 93 So. 2d 271 (La. Ct. of Appeals 1957).

⁹⁷ *Wm. E. Strasser Constr. Co. v. Linn*, 97 So. 2d 458 (Fla. 1957).

vided the action arises during the time in which he uses the property,⁹⁸ and arises out of its use.⁹⁹ This may include a contractor in rightful possession of the premises while constructing a building thereon,¹⁰⁰ or even a nonresident mortgagee who has begun to collect rent upon a default by the mortgagor.¹⁰¹

Many of the foregoing cases may also appear under another provision in the statute. Therefore, the main advantage of this section seems to be in actions affecting title to land when that is substantially the *only* connection the defendant has with the forum.

D. CONTRACTING TO INSURE ANY PERSON, PROPERTY OR RISK

Little need be said about this section since it is based upon the philosophy of *McGee v. International Life Ins. Co.* which has already been discussed.¹⁰² From this decision it is apparent that the only required contact with the forum is the insurance contract. This contract does not however, have to be made within the forum, nor are agents required to be present in the forum in order to sustain jurisdiction.

It should further be noted that the Illinois statute limits jurisdiction to actions arising from any person, property or risk insured which is "located within this State at the time of contracting."¹⁰³ This guarantees a substantial interest on the part of the state in the subject matter of the litigation, which may be constitutionally required when the minimum contacts are otherwise lacking. The Wisconsin statute is not so limited.¹⁰⁴

V. NEBRASKA LAW AND EXTENDED JURISDICTION

In Nebraska, jurisdiction can be obtained over nonresident corporations if they are doing business within the state.¹⁰⁵ An isolated transaction is not considered doing business¹⁰⁶ unless it reveals a purpose or intention to carry on further activities within

⁹⁸ *Murphy v. Indovina*, 384 Pa. 26, 119 A.2d 258 (1956).

⁹⁹ *Shouse v. Wagner*, 84 Pa. D. & C. 82 (Alleg. Co. Ct. 1952).

¹⁰⁰ *Chong v. Faull*, 88 Pa. D. & C. 557 (Phil. Co. Ct. 1954).

¹⁰¹ *Dubin v. City of Philadelphia*, 34 Pa. D. & C. 61 (Phil. Co. Ct. 1938).

¹⁰² See notes 10-11 *supra* and accompanying text.

¹⁰³ ILL. REV. STAT. ch. 110 § 17(1)d (1963).

¹⁰⁴ See WIS. STAT. ANN. § 262.05 (Supp. 1963).

¹⁰⁵ See NEB. REV. STAT. § 21-20,114 (Cum. Supp. 1963). This statute has supplanted NEB. REV. STAT. § 21-1211 (Reissue 1962).

¹⁰⁶ *Pitzer v. Stifel, Nicolaus & Co.*, 143 Neb. 394, 9 N.W.2d 495 (1943).

the state.¹⁰⁷ Under the old Nebraska doing business statute, jurisdiction could not be asserted over those engaged solely in interstate commerce.¹⁰⁸ This rule may be changed, however, by the new Business Corporation Act which became effective in 1963.¹⁰⁹ It does not specifically exclude corporations engaged solely in interstate activity,¹¹⁰ and there is no apparent reason why it should. In fact, the United States Supreme Court has said that corporations operating interstate can be amenable to state court jurisdiction.¹¹¹ However, the old doing business test is still a part of the statute and will no doubt be interpreted in light of the decisions interpreting that phrase under the prior statute.¹¹²

Foreign insurers are subject to jurisdiction in Nebraska under a separate statute.¹¹³ The legislature provided specially for substituted service on unauthorized insurers.¹¹⁴ The purpose of this section is to prevent those who have contracts with foreign insurers from having to resort to distant forums.¹¹⁵ The applicable section apparently applies, however, only when the activities within the state are "systematic or continuous."¹¹⁶

Another Nebraska statute bases jurisdiction over nonresidents on one contact with the state, and is also applicable to individuals. This is the nonresident motorist statute which is used to serve process on nonresidents who have had a motor vehicle accident within the state and since left its borders.¹¹⁷ This statute is strictly construed and applies only to those parties specifically mentioned.¹¹⁸

¹⁰⁷ *Tomson v. Iowa State Traveling Men's Ass'n*, 88 Neb. 399, 129 N.W. 529, *rev'd on other grounds* 89 Neb. 791, 132 N.W. 405 (1911).

¹⁰⁸ *Traphagen v. Lindsay*, 95 Neb. 823, 146 N.W. 1026 (1914); *Nebraska Wheat Growers Ass'n v. Norquest*, 113 Neb. 731, 204 N.W. 798 (1925).

¹⁰⁹ See NEB. REV. STAT. § 21-20,114 (Cum. Supp. 1963).

¹¹⁰ *Ibid.*

¹¹¹ See *International Harvester Co. of America v. Kentucky*, 234 U.S. 579 (1914).

¹¹² See note 122, *infra*.

¹¹³ NEB. REV. STAT. § 44-137 (Reissue 1960). Nonresidents dealing in securities are also covered by a special statute. See Neb. Laws 1965, ch. 549, at 1790.

¹¹⁴ NEB. REV. STAT. § 44-137.03 (Supp. 1963).

¹¹⁵ NEB. REV. STAT. § 44-137.02 (Supp. 1963).

¹¹⁶ *Ibid.*

¹¹⁷ NEB. REV. STAT. § 25-530 (Reissue 1964).

¹¹⁸ *Rose v. Gisi*, 139 Neb. 593, 298 N.W. 333 (1941). It has been held, however, that a nonresident corporation can also be subjected to jurisdiction under this statute if one of its employees has an accident while

If Nebraska does not follow the present trend, and enact a long arm statute, it may still liberalize the interpretation of its doing business statute.¹¹⁹ Some states, namely California, have chosen this course.¹²⁰ Justice Traynor, in later reflections upon his participation in those California decisions, reasoned that the doing business statutes were originally geared to due process and, consequently, were flexible in meaning.¹²¹ Some commentators, nevertheless, seem to agree that the "doing business" language in these statutes cannot logically be extended to reach the limits of due process, and a majority of the cases seem to support their speculations.¹²² Furthermore, a statute like Nebraska's, even though interpreted liberally, could not reach a nonresident individual without contradicting the express desire of the legislature to limit the language to corporations.¹²³ As a result, many of the advantages bestowed upon the states by the *International Shoe* rationale are unavailable to Nebraska plaintiffs.

The Nebraska Supreme Court has not clarified its position with regard to the new due process rationale. In a recent case, for example, the court gave passing recognition to *International Shoe* but based its decision upon language that was familiar long before that case appeared.¹²⁴ Even the result supplied no indica-

in the course of his business. *Covert v. Hastings Mfg. Co.*, 44 F. Supp. 773 (D. Neb. 1942).

¹¹⁹ See Note, *Developments in the Law: State-Court Jurisdiction*, 73 HARV. L. REV. 909, 1000 (1960). See also NEB. REV. STAT. § 25-321 (Reissue 1964) which has been restrictively construed to prevent its use as a long arm statute. See Coffman, *Service of Summons in Nebraska*, 15 NEB. L. BULL. 333, 359 (1937).

¹²⁰ See, e.g., *Borgward v. Superior Court*, 51 Cal. 2d 72, 325 P.2d 137 (1958); *Henry R. Jahn & Son, Inc. v. Superior Court*, 49 Cal. 2d 855, 323 P.2d 437 (1958).

¹²¹ Traynor, *Is This Conflict Really Necessary?*, 37 TEXAS L. REV. 657 (1959).

¹²² See Note, *Recent Interpretations of "Doing Business" Statutes*, 44 IOWA L. REV. 345 (1959).

¹²³ See NEB. REV. STAT. § 21-20,114 (Cum. Supp. 1963).

¹²⁴ *Dale Electronics, Inc. v. Copymaton, Inc.*, 178 Neb. 239, 244, 132 N.W. 2d 788, 791 (1965). The court said: "It does seem, as a minimal requirement, that the manner and extent of doing business in this state must be such as to warrant the inference of actual as distinguished from a merely fictitious or constructive presence in the state, and such that it may be said that the corporation itself, through the representative capacity of its agents, is in the state. To hold that a foreign corporation is doing business in Nebraska merely because it fills an order received by mail from a Nebraska resident without more appearing, is to extend the doctrine of doing business in the state for the purpose of constructive service too far." See also *Berg v. Midwest Laundry Equip. Corp.*, 175 Neb. 423, 122 N.W.2d 250 (1963).

tion of the court's true position because the case appeared to be a close one even under a long arm statute, and was therefore clearly not within the doing business statute.

V. CONCLUSION

It is submitted that Nebraska should adopt a long arm statute. Recent decisions of the United States Supreme Court have greatly expanded the concepts upon which Nebraska's present statutes are based. Other states have reacted by enacting long arm statutes which have already proven their effectiveness, leaving no doubt that the old "doing business" statutes are becoming rapidly outdated.

It is the responsibility of the Nebraska legislature to keep abreast with modern legislation that may be beneficial to the welfare of the state's citizens. The long arm statute is a streamlined example of this type of legislation. Modern methods of transportation and communication have made commercial transactions on a nation-wide scale common-place. Potentially dangerous products may be manufactured hundreds of miles away causing eventual injury to a buyer in this state. Consequently, resident businessmen and buyers are increasingly coming into contact with non-residents. Inevitably some form of injury results and a cause of action must be prosecuted. If the defendant is a corporation and is not doing business in Nebraska the claimant must spend hundreds of dollars to travel to the defendant's home forum. And if the defendant is unincorporated Nebraska courts can acquire jurisdiction over him only if he is present within this state.

If Nebraska passed a long arm statute many of these problems would be eliminated, and the citizens of this state would be financially benefited. Nebraska courts would be conveniently open to them, when now the problem of jurisdiction over nonresident defendants is difficult if not financially unfeasible.

When the United States Supreme Court has supplied the legal motive, Illinois and other states the method, it would appear that the legislature should follow these precedents if the benefits to the state outweigh the burdens. These burdens should appear insignificant when matched with the need of many Nebraska plaintiffs for an inexpensive and convenient redress against an elusive but culpable nonresident defendant. It is hoped that this article will provide an incentive and a source of information for action in this area.

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