Limited Jurisdiction in California: The Long-Arm of the Law Reaches Farther in Tort Than in Contract

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LIMITED JURISDICTION IN CALIFORNIA: THE LONG-ARM OF THE LAW REACHES FARTHER IN TORT THAN IN CONTRACT

INTRODUCTION

A state’s exercise of in personam jurisdiction¹ over a non-resident defendant may be based on one of two theories. First, if the nonresident defendant’s forum-state activities are wide-ranging, continuous and systematic, the state may assume general jurisdiction over him for all causes of action, regardless of their relation to the defendant’s forum-state activities.² Second, if the nonresident defendant’s contacts with the forum state are not so extensive as to justify general jurisdiction, then jurisdiction may be assumed only if the cause of action arises directly from or is substantially connected with the defendant’s forum-state contacts.³ This latter concept of limited jurisdiction gives the courts more latitude to exercise personal jurisdiction than does the concept of general jurisdiction. Thus, it becomes important to examine the circumstances under which California’s courts have been willing to place a jurisdictional dispute into the limited jurisdiction context.

California jurisdictional disputes are governed by a long-arm statute which reaches to the limits of due process.⁴ Despite the liberal reach of this statute, California courts demanded, until 1976, strict compliance with traditional jurisdictional requirements. Then, in Cornelison v. Chaney,⁵ the California Supreme Court abandoned these requirements and adopted a flexible balancing approach to limited jurisdiction in a wrongful death action. One month later in Sibley v. Superior Court,⁶ the supreme court refused to exercise limited jurisdiction over a Florida resident in a breach-of-guaranty action, despite the defendant’s significant forum-state contacts related to the cause of action.⁷

1. An action in personam is one directed against or with reference to a specific person arising out of a legal obligation that person owes to another. BLACK’S LAW DICTIONARY 899 (rev. 4th ed. 1968).
4. CAL. CIV. PROC. CODE § 410.10 (West 1973) provides: “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.”
5. 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976).
7. Id. at 447, 546 P.2d at 325, 128 Cal. Rptr. at 37.
Though *Sibley* appeared to signal a retreat from *Cornelison*, when the court again confronted the question of whether or not to exercise limited jurisdiction, it liberally construed both the law and the facts to greatly expand the scope of limited jurisdiction. Thus, in *Kulko v. Superior Court*, the court upheld limited jurisdiction over a nonresident father in a suit for increased child support, concluding that his action in sending his daughter into California to live permanently with her mother amounted to a purposeful availment of the benefits and protections of California law.

Initially, this comment provides an overview of the traditional jurisdictional principles enunciated by the United States and California Supreme Courts. It then discusses and compares the California appellate courts' treatment of jurisdictional disputes in tort and contract cases prior to the recent supreme court decisions, perceiving that the substantive differences between these classes of cases plays a large role in determining how a court will apply the traditional jurisdictional principles.

Finally, this comment discusses the recent supreme court decisions, observing that they reaffirm the pattern established by the appellate courts. In assessing the constitutionality of this pattern, this comment points to the need for California courts to examine more closely the interests favoring or disfavoring the assertion of limited jurisdiction in order to ensure due process of law for nonresident defendants.

**Due Process Background**

Consistent with the flexibility inherent in the "fair play and substantial justice" test of *International Shoe v. Washington*, the 1969 California Legislature enacted a long-arm statute as broad as the outermost limits of the federal and state Constitutions. Additionally, an authoritative practice

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9. *Id.* at 524, 564 P.2d at 358, 138 Cal. Rptr. at 591.
10. 326 U.S. 310 (1945). The test provided that as a prerequisite to a state's exercise of in personam jurisdiction, a nonresident defendant must have had certain minimum contacts with the forum state. Whether due process was satisfied by the amount of such contacts depended "upon the quality and nature of the [defendant's] activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Id.* at 319.
11. The Judicial Council of California recommended in its 1969 report to the Governor and the Legislature that the lawmakers enact a modern jurisdiction statute attuned to the problems posed by an increasingly mobile society. *Judicial Council of...
guide to aid attorneys and courts in interpreting the statute was issued by the California Judicial Council. The guide detailed all modern instances in which courts had constitutionally exercised their judicial jurisdiction. The Council comment recognized, however, that the sufficiency of a particular nonresident’s relationship to a forum state was a matter of constitutional law on which the United States Supreme Court had the final voice.

The high court has, however, provided only two significant interpretations of state courts' power to exercise in personam jurisdiction under the broad “minimum contacts” test of International Shoe. In the first, McGee v. International Life Insurance Co., the Court held that California had jurisdiction over a Texas corporation on a cause of action for breach of contract where the corporation had solicited and delivered a reinsured life insurance policy to a California resident. The company contested the exercise of jurisdiction over it on the grounds that it had never solicited or done any insurance business in California apart from the one policy at issue. In response, Mr. Justice Black, writing for a unanimous Court, concluded:

It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with [California]. The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California had a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay their claims. . . .

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12. See id. at 27-28, 33-34, 69-91. The report included a summary of all the modern bases of judicial jurisdiction governing both natural persons, corporations, and unincorporated associations. Id. at 33. In approving the jurisdiction statute, the Senate announced its intent to incorporate all these bases into the California statute. See Report of the Senate Comm. on Judiciary on S.B. 503, reprinted in 2 J. Cal. Senate 3161 (1969).


14. See note 10 supra.


16. Id. at 221-22.

17. Id. at 222.

18. Id. at 223-24.
McGee established a principle of limited jurisdiction which permitted a state to constitutionally assert personal jurisdiction over a nonresident who had purposefully initiated some liability producing activity within the forum state. This jurisdiction was limited, however, to causes of action which arose out of such acts.

In the second, Hanson v. Denckla, the Court confronted the issue of whether or not a Florida probate court could assert in personam jurisdiction over the Delaware trustee of a trust created by a Pennsylvania settlor, who died domiciled in Florida. The Court recognized that the testatrix had carried on a considerable business correspondence with the Delaware trustee which could be likened to the mailing of premiums in McGee. Nevertheless, the court distinguished that case by stating that the trustee had not performed any acts in Florida that bore the same relationship to the trust agreement as the insurance solicitation bore to the insurance agreement in McGee. Since the defendant's activity in Florida hadn't given rise to a cause of action, the Court determined that it wouldn't be fair or reasonable to expect the Delaware trustee to appear and defend in Florida, unless the defendant had purposefully availed itself of the protection of Florida law.

The Supreme Court did not delineate what types of acts constituted "purposefully availing oneself of the privilege of conducting activities within a forum," thereby leaving the resolution of that question to the lower federal and state courts. The California Supreme Court's resolution appeared in Buckeye Boiler Co. v. Superior Court. There, the court equated engaging in economic activity as a matter of commercial actuality with Hanson's "purposeful availment" requirement to support an assertion of jurisdiction over a nonresident manufacturer in a products liability action.

Although McGee and Hanson provided two new tests to aid the courts in determining the reasonableness of asserting personal jurisdiction over nonresident defendants, they did not make clear what factors satisfied the requirement of reasonableness in any given case. In Buckeye Boiler, the California

20. Id. at 238-39.
21. Id. at 252.
22. Id. at 253.
24. Id. at 902, 458 P.2d at 64, 80 Cal. Rptr. at 120.
Supreme Court ruled that the parties relative convenience in engaging in a trial within this state, was a factor to be considered in determining the reasonableness of asserting jurisdiction, once the defendant had the necessary contacts with the forum. In upholding the exercise of limited jurisdiction the supreme court stated:

Once it is established that the defendant has engaged in activity of the requisite quality and nature in the forum state and that the cause of action is sufficiently connected with this activity, the propriety of assuming jurisdiction depends upon a balancing of the inconvenience to the defendant in having to defend itself in the forum state against both the interest of the plaintiff in suing locally and the interrelated interest of the state in assuming jurisdiction. 25

With these traditional jurisdictional principles in mind, it becomes relevant to consider the circumstances under which California courts have found the exercise of limited jurisdiction reasonable.


In the absence of general jurisdiction over a nonresident defendant, a plaintiff may compel the defendant to appear in a lawsuit before a California court only if he can show that the cause of action arises out of or is substantially connected with the nonresident’s activities within the state. 26 Since the general jurisdiction tests of “extensive or wide-ranging” 27 or “continuous and systematic” 28 activity are considerably more demanding than the limited jurisdiction tests, a question arises as to when California courts have placed a jurisdictional controversy into the general or limited context. This question can best be answered by contrasting the judicial response in jurisdictional controversies arising in both tort and contract actions. This approach provides useful insight into how California courts have accommodated the varying interests of the

25. Id. at 899, 458 P.2d at 62, 80 Cal. Rptr. at 118.
27. See Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d at 898-99, 458 P.2d at 62, 80 Cal. Rptr. at 118.
state and litigants, when determining whether particular facts warrant the exercise of general or limited jurisdiction.

Tort Actions

In Michigan National Bank v. Superior Court, the First District Court of Appeal justified its assertion of limited jurisdiction over a Michigan bank on the grounds that the bank's California contacts constituted the very acts from which liability ensued. In this case, a California citizen had purchased a used aircraft on installment from a California dealer. The purchase was financed and secured by the Michigan National Bank, which did business exclusively in Michigan. The plane was repossessed by the bank and the purchaser sued the bank and others for conversion. The bank moved to quash service of the summons, the trial court denied the motion, and the bank petitioned for mandamus. The court of appeal denied the writ, reasoning that the Michigan bank's financing of the purchase of a plane sold and harbored in California constituted a substantial connection with the forum which supported the exercise of limited jurisdiction. Further, the court found that the position of the California purchaser was analogous to that of the beneficiary in McGee, since the bank contract was delivered in California, the bank undertook the dealer-seller's obligation under its mortgage in California, and the mortgage payments were to be remitted from California.

Similarly, in Quattrone v. Superior Court, the court of appeal upheld the exercise of limited jurisdiction over a Pennsylvania resident on a cause of action for fraud, notwithstanding the fact that the defendant had never set foot in California. Quattrone, the controller of a Pennsylvania subsidiary, was accused of filing false financial statements in order to personally benefit from a stock exchange program with a California parent. The parent brought an action against Quattrone and others alleging a conspiracy to defraud. He moved to quash personal service in Pennsylvania on the grounds he had never

30. Id. at 4, 99 Cal. Rptr. at 825.
31. Id.
32. Id. at 3, 99 Cal. Rptr. at 824.
33. Id. at 6, 99 Cal. Rptr. at 826.
34. Id.
36. Id. at 299, 118 Cal. Rptr. at 549.
done any business, received any income, or solicited any clients in California.\footnote{37} The trial court denied the motion and the defendant appealed for a writ of mandate.\footnote{38}

In denying the writ, the court of appeal held that the exercise of limited jurisdiction was reasonable when a defendant intentionally caused effects in California by acts done elsewhere and those effects concerned matters subject to special regulation by this state.\footnote{39} The court found such an effect produced by Quattrone's falsifying of the parent's financial records which caused it to issue stock in violation of a permit granted by the California Corporation Commissioner.\footnote{40} This permit violation was, in turn, a public offense under the California Corporations Code.\footnote{41}

Even though a cause of action has not directly arisen from a nonresident defendant's purposeful activities in this state, limited jurisdiction may still be exercised over him if it can be shown that the cause of action is substantially related to the defendant's California activities. Thus, in \textit{Threlkeld v. Tucker},\footnote{42} a Connecticut resident filed a number of lawsuits in California against his former wife.\footnote{43} The ex-wife counterclaimed in one of these suits for malicious prosecution and received a default judgment. When the husband did not satisfy the judgment, she brought a successful diversity action upon it in federal district court.\footnote{44} The husband appealed contending that the district court lacked personal jurisdiction over him because he had no contacts with California.\footnote{45} Utilizing California's long-arm statute, in accordance with federal rules,\footnote{46} the Ninth Circuit upheld the exercise of limited jurisdiction since the suit upon the judgment was "only one step removed from

\footnotesize{37. Id.  
38. Id. at 300, 118 Cal. Rptr. at 550.  
39. Id. at 306, 118 Cal. Rptr. at 554. The court noted the existence of another ground supporting the exercise of jurisdiction over Quattrone. By electing to participate in the stock program provided by the acquisition agreement, the nonresident defendant enjoyed the benefit and protection of California law because the program was approved by the California Corporation Commissioner only upon a showing that it was fair and equitable to Crown's shareholders. Id. at 307, 118 Cal. Rptr. at 555.  
40. Id. at 307, 118 Cal. Rptr. at 554.  
41. Id. at 307, 118 Cal. Rptr. at 554.  
42. 196 F.2d 1101 (9th Cir.), cert. denied, 419 U.S. 1023 (1974).  
43. Id. at 1103.  
44. Id.  
45. Id.  
46. Id. at 1102-03.  
47. Id. at 1103-1104.}
a diversity action upon a tort (malicious prosecution) committed by the nonresident in California, and it was closely related to an elaborate course of forum-related activities carried on by the defendant.”

Employing comparable reasoning, a California appellate court, in Shoei Kako Co. v. Superior Court, upheld the exercise of limited jurisdiction over a Japanese corporation in a products liability action. In this case, a motorcycle rider, wearing a particular type of safety helmet, was severely injured in a collision with an automobile. The injured rider brought a negligence action against the driver and all those who negligently designed, manufactured, tested, repaired, sold, retailed, wholesale and distributed the safety helmet. Shoei Kako received a copy of the summons at its head office in Japan because it had assumed all the legal obligations of the helmet manufacturer, D.S. Kagaku, after a merger between the two companies. It moved to quash the summons on the grounds that California lacked personal jurisdiction. The trial court denied the motion and Shoei Kako petitioned for a writ of mandate seeking a review of the order.

Although some inadmissable evidence indicated that D.S. Kagaku had sold the helmet in question to a Japanese exporter for delivery to California, the actual record revealed very little evidence which indicated that it and Shoei Kako were engaged in the distribution and sale of safety helmets in California.

48. Id. at 1104.
50. Id. at 810, 109 Cal. Rptr. at 403.
51. Id. at 810, 109 Cal. Rptr. at 404. Against the latter defendants, the plaintiff also brought suit for breach of an implied warranty of fitness and on a theory of strict liability. Id. at 810-11, 109 Cal. Rptr. 404.
52. Id. at 810, 109 Cal. Rptr. at 403.
53. Id. at 811, 109 Cal. Rptr. at 404.
54. Id.
55. Id.
56. Id. at 813, 109 Cal. Rptr. at 405-06.
57. The record revealed that Philip K. Huff had executed a declaration stating that prior to July 15, 1968 he had been doing business in California under the name D.S. Kagaku Co., and that on that date he incorporated and conducted a business under the name D.S. Safety Helmet Corporation. Further, respondent's attorney filed an affidavit stating that on December 9, 1971, Huff, as vice-president of D.S. Safety Helmet Corporation, gave him a business card bearing that legend with a Los Angeles address for the corporation, and the further endorsement “D.S. Kagaku Co.” with the Tokyo address of that corporation. Additionally, an investigator for the plaintiff submitted an affidavit stating that on January 13, 1973 Philip Huff was managing a booth at a motorcycle and accessories trade show in Long Beach, California where he
The appellate court conceded that the case supporting jurisdiction was "shockingly incomplete," but reasoned that its sufficiency must be viewed in light of Shoei Kako's failure to rebut the evidence that was presented. \(^5\) Consequently, the court upheld limited jurisdiction over Shoei Kako holding that the totality of facts suggested that the merged corporation should have reasonably anticipated that its safety helmets would be resold in California. \(^9\) The court concluded that Shoei Kako in selling its helmets to Japanese exporters or American importers had, in effect, purposefully availed itself of the California marketplace. \(^8\)

These cases stand for the proposition that to support the assertion of limited jurisdiction in a tort case from 1970-1975, California's appellate courts required that the cause of action arise from the nonresident defendant's purposeful activities within the state or be substantially related to them.

**Contract Actions**

In order to support an assumption of limited jurisdiction in a contract case during this period, California's appellate courts generally required that the cause of action arise out of the defendant's physical economic activity within this state.

An illustration of this general requirement appeared in *Belmont Industries, Inc. v. Superior Court*, \(^6\) where the Fifth District Court of Appeal was forced to determine whether a California drafting firm could obtain personal jurisdiction over a Pennsylvania corporation, in an action to enforce payment for drafting services. The services were performed in California by Viking Drafting in accordance with a contract solicited by Belmont over the telephone, negotiated through the mails, and ultimately executed by Belmont in Pennsylvania. \(^62\) Though Belmont had sent agents to California to discuss other jobs, no representative of the Pennsylvania corporation came to California to discuss the contract sued upon. \(^63\)

Since the contract sued upon was negotiated entirely
through interstate communications and consummated outside of California, the appellate court declined to consider whether limited jurisdiction could be asserted over the nonresident corporation. In denying general jurisdiction, the court reasoned:

Viking contends that its similar contracts with petitioner in past years, as well as petitioner's contracts with other California drafting firms and the occasional acts of petitioner in sending employees to California to confer on the progress of a contract, elevate petitioner's relationship with California to a constitutionally sufficient level for the exercise of jurisdiction. However, in evaluating petitioner's activities we must look to the nature and quality of the activity, rather than its quantity. . . . Irrespective of the number of contracts, the substance of petitioner's activities within the state has been the same—purchase of services from residents by contracts executed outside of the state. The occasional act of sending an employee into the state to expedite the services adds nothing to the relationship between petitioner and the state. . . .

Similarly, in Martin v. Detroit Lions, Inc., the Fifth District Court of Appeal upheld an exercise of limited jurisdiction on the grounds that the cause of action for breach of contract arose from the defendant's physical economic activity within California. A professional football player brought suit against a Michigan corporation, which owned and operated a professional football team for profit, to recover his full salary for the 1970 season pursuant to the terms of an alleged agreement. The trial court granted the defendant's motion to quash service of the summons and the plaintiff appealed.

The court of appeal reversed the trial court's order, holding that where the defendant had scouted, recruited and signed the employment contract in California and where its team played games regularly in this state, the California court had jurisdiction over the suit.

Also during this period, if a nonresident contract defendant's California contacts and activities were unrelated to the cause of action, then the plaintiff was required to show that the defendant had been doing a relatively large volume of business

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64. Id. at 288 n. 4, 107 Cal. Rptr. at 241 n. 4 (citations omitted).
66. Id. at 474, 108 Cal. Rptr. at 24.
67. Id. at 475, 108 Cal. Rptr. at 24.
68. Id.
in this state on a regular basis before the appellate courts asserted general jurisdiction. Accordingly, the Second District Court of Appeal in *Vibration Isolation Products, Inc. v. American National Rubber Co.*, an action involving breach of warranty, held that $25,000 in gross sales to California customers over a three year period by independent nonexclusive sales representatives was not sufficient nonresident activity within the state to support an assertion of general jurisdiction. On the other hand, the Fifth District Court of Appeal in *Ratcliffe v. Pedersen*, in a complaint sounding both in contract and tort, held that general jurisdiction could be assumed over a nonresident defendant who had sold more than 400 motorcycles to a California distributor over a two year period, where these sales represented his entire motorcycle business.

As the foregoing analysis of contract cases indicates, if the nonresident defendant's activities are not supportive of limited jurisdiction, the plaintiff will generally have great difficulty meeting the rigorous requirements supporting general jurisdiction.

**Tort and Contract Actions Compared**

A comparison of jurisdictional disputes in tort and contract cases brought under California's long-arm statute during this period reveals that the appellate courts accorded them differing treatment. The courts asserted limited jurisdiction over nonresident defendants in tort causes of action based on fewer California contacts than they required in contract causes of action.

In the intentional tort causes of action described in *Michigan National Bank* and *Quattrone*, the assertion of limited jurisdiction over the nonresident presented no difficulty based on the general principles outlined in *McGee*. However, if the tort cause of action asserted against a nonresident defendant did not arise directly from his forum contacts, then the California courts justified the assertion of limited jurisdiction based on a substantial connection between the plain-
tiff's claim and the defendant's forum-related activity. Thus, in *Threlkeld*, the Ninth Circuit upheld the exercise of limited jurisdiction over a nonresident defendant whose repeated California lawsuits provided the basis for the plaintiff's cause of action against him for malicious prosecution. Similarly, in *Shoei Kako*, the court upheld the exercise of limited jurisdiction over a nonresident defendant manufacturer whose product was shown to have made its way to California and caused injury.

In contract cases, however, appellate courts have seemingly demanded a more direct relationship between the nonresident's forum activity and the plaintiff's cause of action before upholding the exercise of limited jurisdiction. Essentially, they have required that a cause of action for breach of contract arise out of or be substantially connected with a nonresident defendant's physical economic activity within the state, although such a showing is not constitutionally required. A comparison of two breach of contract actions, *Belmont Industries* and *McGee*, illustrates that the California approach to limited jurisdiction in contract cases is unduly restrictive.

In both *Belmont Industries* and *McGee*, the nonresident corporations solicited the litigated contracts from outside this state and conducted business with respect to those contracts entirely through the mails or by telephone. The facts of the two cases might be distinguished on the basis that the Texas insurance company, by receiving premium payments from a California resident, had enjoyed a direct economic benefit from this state, while the defendant in *Belmont Industries* had merely enjoyed the benefit of California based-technology. However, the nonresident company in *Belmont Industries* expected an eventual gain from the project for which the drafting services were performed. Thus, in essence, each nonresident company received a benefit based on its dealings with Califor--

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76. 496 F.2d 1101 (9th Cir. 1974). See text accompanying notes 42-46 supra.
77. *Id.* at 1104.
79. *Id.* at 814-15, 109 Cal. Rptr. at 406.
82. See 355 U.S. at 221-22; 31 Cal. App. 3d at 284, 288 n.4, 107 Cal. Rptr. at 238, 241 n.4.
83. 355 U.S. at 222.
nary residents. Though the facts in the two cases were comparable, the results were not.

In McGee, the Supreme Court upheld the exercise of limited jurisdiction over the foreign insurer despite the absence of any physical activity by it within California. Conversely, in Belmont Industries the court of appeal denied the assertion of limited jurisdiction over the nonresident company because it had not engaged in any physical acts within California which gave rise to a cause of action.

Thus, California’s lower courts used different criteria when determining the reasonableness of exercising limited jurisdiction, depending on the nature of the claim presented. In tort causes of action, the California courts held that a nonresident defendant had satisfied the Hanson “purposeful availment” requirement by filing harassing lawsuits in this state, submitting fraudulent financial statements to a California corporation from outside this state, and selling products under circumstances such that the defendant should have known that his product would be sold and used in California. In contract causes of action, however, California’s appellate courts required physical economic activity by the nonresident defendant in California in connection with the contract sued upon in spite of McGee. If this requirement prevails it will become increasingly difficult for California plaintiffs to enforce contracts in this state as California businesses turn more and more to dealing with distant firms entirely through the mails and by telephonic communication.

In the wake of the differing treatments accorded the two types of cases by the appellate courts, it is important to exam-

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84. The cases should not be distinguished on the basis that in McGee the California court had obtained jurisdiction over the Texas insurance company under a special statute, since that was only one factor in the Supreme Court’s evaluation of the reasonableness of assuming jurisdiction over the nonresident insurer. Id. at 221 n.1.
85. Id. at 221-22.
86. 31 Cal. App. 3d at 288 n.4, 107 Cal. Rptr. at 241 n.4.
87. See text accompanying notes 19-24 supra.
88. See text accompanying notes 42-48 supra.
89. See text accompanying notes 35-41 supra.
90. See text accompanying notes 49-60 supra.
91. See text accompanying notes 61-72 supra.
92. As long ago as 1957 the United States Supreme Court in McGee v. International Life Ins. Co., 355 U.S. 220 (1957), observed: “Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines.” Id. at 222-23.
ine whether this pattern is present in recent California Supreme Court cases.

**RECENT STATE SUPREME COURT DECISIONS UNDER THE LONG-ARM STATUTE**

For several years the only expression on the permissible reach of California's long-arm statute came from the state's appellate courts. Although they granted jurisdiction more freely in certain tort actions, these courts did so based on the rigorous traditional requirements. Then in 1976, the California Supreme Court, in *Cornelison v. Chaney*, moved away from traditional jurisdictional restrictions in a wrongful death action. Contemporaneous with this expansion, the supreme court declined to exercise limited jurisdiction in *Sibley v. Superior Court*, an action involving a breach of a guaranty. Subsequent to these apparently conflicting decisions, the supreme court expanded the concept of limited jurisdiction to its furthest extent yet in a child support action, *Kulko v. Superior Court*.

In view of the disparate treatment accorded these differing claims brought under the long-arm statute, a comparative analysis of the policy considerations underlying each decision must be undertaken to determine their impact on the jurisdictional inquiry.

**Cornelison v. Chaney**

In *Cornelison*, the supreme court explored the traditional requirements supporting the exercise of both limited and general jurisdiction and found that neither were met. The defendant was an independent Nebraska trucker who was licensed to haul freight in California. In each of the seven years preceding the action, he made about 20 trips to California with loads averaging $20,000 in value. While enroute to California with a load, he collided with a car just south of Las Vegas near the California-Nevada border. The plaintiff's husband was killed in the accident and she sued the trucker for wrongful death.

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93. 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976).
94. 16 Cal. 3d 442, 546 P.2d 322, 128 Cal. Rptr. 34 (1976).
96. 16 Cal. 3d at 147, 545 P.2d at 266, 127 Cal. Rptr. at 354.
97. Id. at 146-47, 545 P.2d at 266, 127 Cal. Rptr. at 354.
98. Id. at 146-47, 545 P.2d at 265, 127 Cal. Rptr. at 353.
based upon his negligent driving. The defendant was served by mail in Nebraska and he moved to quash the summons. The trial court granted the motion and the plaintiff appealed.

In considering the nonresident’s California contacts, the supreme court initially determined that they were “not so substantial or wide-ranging as to justify general jurisdiction over him.” Additionally, the court found that they were not connected to the cause of action in the direct manner which had justified the assertion of jurisdiction in *McGee*. The court, however, continued the jurisdictional inquiry because it could not “overlook the fact that [the] defendant’s contacts with California, although insufficient to justify general jurisdiction over him, are far more extensive than those of the defendant in *McGee*. It held that a “substantial nexus” was demonstrated between the plaintiff’s cause of action and defendant’s forum related activities which justified an assertion of limited jurisdiction. Even though the accident occurred in Nevada, this nexus was supplied by the fact that the accident occurred close to the California border while the defendant was on his way there to further his commercial activities.

Having found that jurisdiction could be exercised, the *Cornelison* court then considered whether California was the proper forum. The court balanced the relative burdens to the parties and concluded that it was. The court noted that the plaintiff, a witness to the accident, was a California resident whose proof of damages rested in California where her husband earned his living. Moreover, the court observed that a necessary incident to the defendant’s multi-state trucking operation was the foreseeability of having to defend lawsuits in distant forums.

Justice Clark, in his dissent, criticized the majority for failing to show the requisite connection between the cause of action at issue and the defendant’s California activities. He reasoned that the only conceivable connection between the

99. Id. at 146, 545 P.2d at 265, 127 Cal. Rptr. at 353.
100. Id.
101. Id. at 148, 545 P.2d at 267, 127 Cal. Rptr. at 355.
102. Id. at 149-50, 545 P.2d at 268, 127 Cal. Rptr. at 356.
103. Id. at 150, 545 P.2d at 268, 127 Cal. Rptr. at 356.
104. Id. at 149, 545 P.2d at 268, 127 Cal. Rptr. at 356.
105. Id. at 149, 545 P.2d at 267-68, 127 Cal. Rptr. at 355-56.
106. Id. at 152, 545 P.2d at 269, 127 Cal. Rptr. at 357.
107. Id. at 151, 545 P.2d at 269, 127 Cal. Rptr. at 357.
108. Id.
cause of action and the defendant’s forum-related activity was that the defendant was rolling towards California and the plaintiff away from it when the accident occurred.\textsuperscript{109} Although conceding that arguably the accident “arose” from the defendant’s pursuit of business activity in this state, he found no authority suggesting that such a tenuous connection would support the assertion of in personam jurisdiction.\textsuperscript{110} In fact, he pointed out that “every decision cited by the majority upheld limited jurisdiction only where the cause of action arose from or was substantially related to defendant’s activity within the forum state itself.”\textsuperscript{111} Since every event relevant to plaintiff’s cause of action occurred in Nevada, Clark concluded that the prevailing rule required the denial of jurisdiction.

Clark also criticized the majority for concluding that California was the proper forum. He contended that even assuming the constitutionality of maintaining the action in California, the defendant’s burden in litigating in California was far greater than the plaintiff’s burden in litigating in Nevada. First, he noted that all the witnesses except for the plaintiff herself were in Nevada.\textsuperscript{112} Second, he observed that the police and medical reports as well as physical evidence were in that state.\textsuperscript{113} Accordingly, Clark argued that not only would the defendant be forced to incur heavy litigation expenses in preparing his case since the bulk of evidence was outside the forum state, but he might be practically precluded from securing all the witnesses necessary for his defense in California.\textsuperscript{114} Clark also pointed out that the plaintiff had easy access to the Nevada forum and would not be greatly inconvenienced in bringing her action there.\textsuperscript{115}

\textit{Cornelison} represents a flexible approach to the resolution of jurisdictional disputes based upon the interplay of four essential considerations—a continuous course of conduct within the forum state, a sufficient nexus between the cause of action and that conduct, matters of convenience, and the state’s interests—with the strength of one factor compensating for the weakness of another. Although the \textit{Cornelison} approach

\begin{footnotes}
\item 109. \textit{Id.} at 153, 545 P.2d at 270, 127 Cal. Rptr. at 358.
\item 110. \textit{Id.}
\item 111. \textit{Id.}
\item 112. \textit{Id.} at 154, 545 P.2d at 270, 127 Cal. Rptr. at 358.
\item 113. \textit{Id.}
\item 114. \textit{Id.} at 154, 545 P.2d at 271, 127 Cal. Rptr. at 359.
\item 115. \textit{Id.}
\end{footnotes}
marks a radical departure from traditional jurisdictional principles, it will only be available in ordinary negligence and wrongful death actions wherein a tortious act occurring outside the state may be conceptually connected with the nonresident defendant's forum-state activity.\textsuperscript{118} It seems unlikely that this conceptual connection would be satisfied by a nonresident defendant who failed to perform on a contract in a sister state pursuant to an agreement entered into in California. The contract defendant, in breaching such a contract, is not intent upon furthering his commercial activities in this state. Thus, the \textit{Cornelison} approach to the acquisition of limited jurisdiction based on a liability-producing act outside California would probably be unavailable to the contract plaintiff.

\textit{Sibley v. Superior Court}

\textit{Sibley} was decided by the California Supreme Court one month after \textit{Cornelison}. In that case, a limited partnership had been formed in California by Carlsberg Mobile Home Properties, a California corporation, and Sunrise Lakes, Inc., a Georgia corporation, to operate two mobile home parks in Georgia.\textsuperscript{117} Under the terms of the partnership agreement, Carlsberg was to contribute its holdings of land in Georgia\textsuperscript{118} and Sunrise was to manage the business as the general partner,\textsuperscript{119} while making monthly payments to Carlsberg in California.\textsuperscript{120} Sibley, a Florida resident, personally guaranteed the obligation of Sunrise to make the payments.\textsuperscript{121} When Sunrise defaulted on its payments, Carlsberg tried to collect from Sibley who refused to pay. As a result, Carlsberg brought an action in California

\textsuperscript{116} The \textit{Cornelison} court's finding of a "substantial nexus" between the cause of action and the defendant's forum-related activities was premised on two considerations. First, the defendant's activities within California consisted primarily of hauling freight in and out of this state. The driving of the defendant's truck, the very activity which gave rise to the cause of action, was "the essential basis of defendant's contacts with this state." \textit{Id.} at 149, 545 P.2d at 268, 127 Cal. Rptr. at 356. Secondly, the accident occurred not far from the California border, while the defendant was bound for this state to deliver goods to a local manufacturer. \textit{Id.} Thus, at the time the defendant's liability-producing act occurred he was engaged in furthering his commercial activities in California by hauling freight into this state. Hence a logical connection could be made between the cause of action and the defendant's economic activities in California.

\textsuperscript{117} 16 Cal. 3d at 444, 546 P.2d at 323, 128 Cal. Rptr. at 35.
\textsuperscript{118} \textit{Id.} at 448, 546 P.2d at 326, 128 Cal. Rptr. at 38.
\textsuperscript{119} \textit{Id.} at 444, 546 P.2d at 323, 128 Cal. Rptr. at 35.
\textsuperscript{120} \textit{Id.} at 444, 546 P.2d at 323-24, 128 Cal. Rptr. at 35-36.
\textsuperscript{121} \textit{Id.} at 444, 546 P.2d at 324, 128 Cal. Rptr. at 36.
against Sunrise, alleging breach of the partnership agreement, and against Sibley, for breach of the guaranty agreement.\textsuperscript{122} The trial court denied Sibley's motion to quash service of the summons for lack of personal jurisdiction and the court of appeal affirmed.\textsuperscript{123} The defendant then petitioned the California Supreme Court for a writ of mandate seeking to set aside the trial court's order denying the motion to quash.\textsuperscript{124}

Carlsberg argued that Sibley's guaranty executed in Florida induced it to enter the limited partnership.\textsuperscript{125} It pointed out that the signing of the guaranty in Florida was intended to and did cause an effect in California, thereby giving rise to a recognized basis for exercising personal jurisdiction over a nonresident defendant.\textsuperscript{126} Further, Carlsberg emphasized that since the performance guaranteed was the payment of money to a California partnership, Sibley could have anticipated that his failure to perform would have an effect in California.\textsuperscript{127}

The supreme court conceded that in breaching his guaranty, Sibley had caused an "effect" in this state by an act done elsewhere. However, it held that the imposition of jurisdiction would be unreasonable since the record failed to disclose that Sibley had purposefully availed himself of either the privilege of conducting business in California or the benefits and protections of its laws.\textsuperscript{128} The court observed that even if Sibley had reasonably foreseen that his breach would have some impact in this state, Carlsberg had not assumed any obligations to him which he could have had enforced in California.\textsuperscript{129} It also observed that while other parties involved in the suit had considerable contacts with California, their purposes could not be imputed to Sibley so as to support personal jurisdiction over him.\textsuperscript{130}

The two dissenting justices found the requisite minimum contacts present to assert personal jurisdiction. Justice Mosk, author of the dissent, premised his argument on the fact that the guaranty was negotiated in and delivered to Carlsberg in

\textsuperscript{122} \textit{id.}
\textsuperscript{123} \textit{id.} at 444-45, 450, 546 P.2d at 324, 327, 128 Cal. Rptr. at 36, 39.
\textsuperscript{124} \textit{id.} at 445, 546 P.2d at 324, 128 Cal. Rptr. at 36.
\textsuperscript{125} \textit{id.} at 446, 546 P.2d at 325, 128 Cal. Rptr. at 37.
\textsuperscript{126} \textit{id.} at 445-46, 546 P.2d at 324-25, 128 Cal. Rptr. at 36-37.
\textsuperscript{127} \textit{id.} at 446, 546 P.2d at 325, 128 Cal. Rptr. at 37.
\textsuperscript{128} \textit{id.} at 447, 546 P.2d at 325, 128 Cal. Rptr. at 37.
\textsuperscript{129} \textit{id.}
\textsuperscript{130} \textit{id.} at 447-48, 546 P.2d at 326, 128 Cal. Rptr. at 38.
California, and contemplated payments there.\textsuperscript{131} He further emphasized that Carlsberg would not have signed the limited partnership agreement in California without Sibley’s guarantee.\textsuperscript{132} He concluded that “[T]his is precisely the type of act, originally performed elsewhere but causing a specific effect in California, contemplated by \textit{Quattrone v. Superior Court}.”\textsuperscript{133} Justice Mosk also observed that California was the convenient and proper forum for hearing the action because Carlsberg was formed in California and maintained its only place of business there, while the limited partnership involved in the litigation was created in California under its Corporations Code.\textsuperscript{134}

\textit{Kulko v. Superior Court}

In \textit{Kulko}, the California Supreme Court once again confronted the question of whether it was reasonable to assume limited jurisdiction over a nonresident defendant who caused “effects” in California by acts done outside the state. Here, the parents of Ilsa and Darwin Kulko, after obtaining a divorce in Haiti, agreed that the children would reside with their father in New York during the school year and with their mother in San Francisco during vacation periods.\textsuperscript{135} The father agreed to pay the mother child support during these California vacation periods.\textsuperscript{136}

In 1973, on the eve of her departure to spend Christmas vacation with her mother, Ilsa told her father that she wanted to stay with her mother in California permanently.\textsuperscript{137} The father purchased a one-way plane ticket to California for her and she subsequently lived with her mother during the school year and her father during vacations.\textsuperscript{138}

In January of 1976, without his father’s knowledge, Darwin phoned his mother from New York and asked if he could come to California to live with her.\textsuperscript{139} She immediately sent him an airplane ticket to San Francisco and he joined his sister.\textsuperscript{140}

\begin{itemize}
\item \textsuperscript{131} \textit{Id.} at 450, 546 P.2d at 327, 128 Cal. Rptr. at 39.
\item \textsuperscript{132} \textit{Id.}
\item \textsuperscript{133} \textit{Id.}
\item \textsuperscript{134} \textit{Id.} at 449, 546 P.2d at 327, 128 Cal. Rptr. at 39.
\item \textsuperscript{135} \textit{Id.} at 519, 564 P.2d at 355, 138 Cal. Rptr. at 588.
\item \textsuperscript{136} \textit{Id.}
\item \textsuperscript{137} \textit{Id.} at 519-20, 564 P.2d at 355, 138 Cal. Rptr. at 588.
\item \textsuperscript{138} \textit{Id.} at 520, 564 P.2d at 355, 138 Cal. Rptr. at 588.
\item \textsuperscript{139} \textit{Id.}
\item \textsuperscript{140} \textit{Id.}
Three weeks later Mrs. Kulko filed suit in a California court to establish the Haitian divorce as a California judgment, to gain permanent custody of the children, and to receive increased child support. 141

The father was served with summons by mail and made a special appearance in California moving to quash the service for lack of personal jurisdiction. 142 The trial court denied the motion and the defendant filed a writ of mandate with the California Supreme Court. 143

The court began by noting that the nonresident father's act of sending his daughter into California to live with her mother caused an "effect" in this state, but recognized that the exercise of jurisdiction based upon such conduct must meet the tests of reasonableness outlined in International Shoe and Hanson. 144 Thus, the court reasoned the record must show that the nonresident "purposefully availed himself of the privilege of conducting business in California or of the benefits and protections of California laws. . . or anticipated that he would derive any economic benefit as a result of his act outside of California." 145

In applying the foregoing criteria to an action for increased child support, the court observed, without citing supporting authority, that "probably no parental act more fully invokes the benefits and protections of California law than that by which a parent permits his minor child to live in California. The parent thereby avails himself of the total panoply of the state's laws, institutions and resources. . . ." 146

In contrast to the supreme court's position, the public policies encouraging the payment of child support and cooperation between parents in abiding by visitation agreements had recently led two courts of appeal to refuse personal jurisdiction over nonresident fathers. In Titus v. Superior Court, 147 the court held that merely sending children into California for visits with their mother in accordance with a written custody agreement did not subject a nonresident father to California

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141. Id.
142. Id.
143. Id.
144. Id. at 521, 564 P.2d at 356, 138 Cal. Rptr. at 589.
145. Id. at 521-22, 564 P.2d at 356, 138 Cal. Rptr. at 589.
146. Id. at 522, 564 P.2d at 356, 138 Cal. Rptr. at 589.
jurisdiction. Similarly, in *Judd v. Superior Court*, the court concluded that it was neither fair nor reasonable to hold that California acquired jurisdiction over a nonresident father merely because he sent support payments to California, communicated with his children by mail or telephone and visited them there.

The supreme court acknowledged that standing alone, Mr. Kulko’s act in temporarily sending his daughter to California in accordance with the separation agreement would not support the assertion of jurisdiction. However, the court noted that, unlike *Titus*, the defendant later sent his daughter here for permanent residence. This distinguishing feature led the court to conclude that California had acquired personal jurisdiction over the defendant. The court reasoned that by actively consenting to Ilsa’s living in California on a permanent basis, the defendant purposely availed himself of California’s laws for her care and protection.

In his dissent, Justice Richardson stressed the *Sibley* requirement that the causing of an “effect” in California must be designed to “purposefully avail oneself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of the forum’s laws.” He argued that

Petitioner may have purchased Ilsa’s air passage to California, but my reading of the record indicates no purposeful conduct by him which can reasonably be said to invoke the benefits and protections of California laws. At best, petitioner passively acquiesced in his teenaged daughter’s unilateral decision to live in California.

Justice Richardson concluded by warning that, “the rule

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148. Id. at 803, 100 Cal. Rptr. at 485.
150. Id. at 45, 131 Cal. Rptr. at 249-250.
151. 19 Cal. 3d at 524, 564 P.2d at 358, 138 Cal. Rptr. at 591.
152. Id.
153. The court majority added that the defendant had derived an immediate economic benefit by allowing Ilsa to live with her mother throughout the school year since he was no longer liable for the child’s support for that period. Id. at 524-25, 564 P.2d at 358, 138 Cal. Rptr. at 591.
154. Id. at 527, 564 P.2d at 359, 138 Cal. Rptr. at 592.
155. Id. Justice Richardson also argued that even if the nonresident father’s acts with respect to his daughter could be rationalized as “purposeful conduct,” there was no conceivable basis on which to support in personam jurisdiction over him with respect to Darwin. Richardson pointed out that the father “neither knew of, nor lifted a finger to assist, Darwin’s flight to California.” Id. at 528, 564 P.2d at 360, 128 Cal. Rptr. at 593.
announced by the majority may encourage a divorced parent such as petitioner to forbid or physically prevent his or her children from visiting a California parent, lest personal jurisdiction be thereby conferred over the nonresident parent."\(^{156}\)

**Policy Considerations Underlying the Different Outcomes**

The California Supreme Court liberally construed the concept of limited jurisdiction in order to provide a local forum for California residents in wrongful death and child support actions, but strictly construed traditional jurisdictional principles to deny it in a breach of a guaranty action. Thus, the state high court reaffirmed the trend established by the appellate courts that certain types of plaintiffs will be required to show fewer nonresident contacts related to their cause of action to support the assertion of limited jurisdiction. While the courts themselves have rarely articulated the policy reasons behind their jurisdictional decisions, the logical explanation for the divergent treatment accorded tort and child support claims as opposed to those in contract lies in the different substantive interests at stake in those controversies.

The willingness of the *Cornelison* court to break a new path in jurisdictional law by holding a nonresident defendant subject to limited jurisdiction on a cause of action arising from an accident occurring in Nevada was prompted, in part, by California's interest in providing one of its residents with a local forum.\(^{157}\) Although the supreme court failed to expound this interest in *Cornelison*, it has long recognized California's interest in insuring that severely injured California residents are provided with a local forum.\(^{158}\) One basic reason for this position is that tort victims may be physically or financially incapable of litigating in another state.\(^{159}\) Additionally, if the plaintiff is compelled to travel to a foreign state to sue, his counsel may be disadvantaged due to lack of familiarity with the foreign procedural and substantive law.\(^{160}\) Finally, if the claim is not brought in the foreign state, or the plaintiff loses or receives an inadequate judgment, then the plaintiff's

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156. *Id.* at 528, 564 P.2d at 360, 138 Cal. Rptr. at 593.
157. 16 Cal. 3d at 151, 545 P.2d at 269, 127 Cal. Rptr. at 357.
159. *Id.* at 906, 458 P.2d at 67, 80 Cal. Rptr. at 123.
home state may have to bear the expense of caring for the injured or his or her spouse through disability insurance, unemployment insurance and other forms of tax-funded relief assistance.\footnote{\textup{\textsuperscript{161}}} 

In \textit{Sibley}, in spite of the fact that the cause of action arose out of the defendant’s purposeful forum-state “contacts,” the supreme court refused to uphold limited jurisdiction on the ground that the defendant was a gratuitous guarantor who had not satisfied the \textit{Hanson} “purposeful availment” requirement. Though the court did not articulate the policy reasons for its decision, it was apparently swayed by the economic interests at stake in the dispute. In \textit{Harkness Co., Inc. v. Amezcua},\footnote{\textup{\textsuperscript{162}}} an action to recover for nonpayment of a promissory note, economic interests persuaded the Fifth District Court of Appeal to deny the assertion of limited jurisdiction over a Mexican citizen. The court held that limited jurisdiction could not be exercised where the defendant had no purposeful contacts with the forum state apart from the agreement to make payments on the note to a California resident and some telephone calls to California concerning performance of the contract.\footnote{\textup{\textsuperscript{163}}} The court reasoned that the assumption of jurisdiction on these facts could adversely affect the free flow of interstate commerce and, hence, the best economic interests of California.\footnote{\textup{\textsuperscript{164}}} Similarly, if the supreme court in \textit{Sibley}, had held that a nonresident subjected himself to the jurisdiction of California courts by merely gratuitously guarantying the financial obligation of another, the free flow of commerce and trade into and from this state would have been adversely affected. If a gratuitous guarantor knew that he would have to travel to a distant forum to defend an action on his guaranty, he might be discouraged from guarantying an obligation to be performed by or for California businesses.\footnote{\textup{\textsuperscript{165}}}


\footnote{\textup{\textsuperscript{162}}} 60 Cal. App. 3d 687, 131 Cal. Rptr. 667 (1976).

\footnote{\textup{\textsuperscript{163}}} Id. at 689-90, 131 Cal. Rptr. at 668-69.

\footnote{\textup{\textsuperscript{164}}} Id. at 694, 131 Cal. Rptr. at 671-72.

\footnote{\textup{\textsuperscript{165}}} See also \textit{Belmont Indus., Inc. v. Superior Court}, 31 Cal. App. 3d 281 at 289, 107 Cal. Rptr. at 242, where the court of appeal stated that a compelling reason against the assumption of jurisdiction by California over the foreign corporation was the adverse effect such an action would have upon the free flow of commerce into and out of California. The court cited the following persuasive language of the Utah Supreme Court in \textit{Conn. v. Whitmore}, 9 Utah 2d 250, 254, 342 P.2d 871, 874-75 (1959):

“Brief reflection will bring to mind difficulties to be encountered if the ordering of merchandise in a foreign state by mail and taking delivery through a designated
Sibley also reflects a basic principle of contract law that courts should not remake a contract for the parties by incorporating new obligations in it. Since Carlsberg failed to include a forum-selection clause, whereby suit on the guaranty could be brought only in California, the court would not compel Sibley to appear in California without his having purposefully invoked the benefits and protections accorded by this state's laws.

In Kulko, the California Supreme Court again neglected to furnish any policy reasons in support of its assertion of limited jurisdiction. On a theoretical level, however, the policy reasons underlying a claim for increased child support are substantially similar to those underlying an ordinary personal injury or wrongful death action. The plaintiff's home state has a compelling interest in insuring that the plaintiff be awarded the full financial support she seeks lest she and her minor children become a burden upon the state's taxpayers.

When the policy considerations underlying tort and contract claims are contrasted, it is evident that the state has a more compelling interest in providing a tort victim with a local forum than in providing a contract victim with one. In tort actions, the state has an interest in providing a forum to assure full and adequate compensation for injured plaintiffs and deterring wrongful conduct upon California citizens. On the other hand, contracting parties are less in need of a local forum since they have presumably entered into their agreement freely and voluntarily with ample opportunity to weigh the risks of a

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carrier, whether private or common, is to be deemed "doing business" in a foreign state, which will draw one into the orbit of the jurisdiction of its courts. This would for practical purposes obliterate any protection one might have from being compelled to go to a foreign jurisdiction to defend a lawsuit. A person contemplating business in another state would have only two alternatives: either subject himself to the jurisdiction of the foreign court if any dispute arises, or refrain from doing such business."


167. See note 175 supra.

168. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 36, Comment c (1971), cited in JUDICIAL COUNCIL REPORT, supra note 11, at 78, recognizes that:

A state has a special interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.

suit being brought on the contract. Accordingly, the principles of fairness and reasonableness embodied in the concept of due process indicate that a nonresident defendant should be less entitled to urge a denial of limited jurisdiction in the intentional tort or negligence situation and more entitled to urge such a denial in the contract situation.

Conceding that policy considerations support California's continued adherence to the differing treatment of tort and contract cases in jurisdictional disputes, the question then becomes will this approach, as applied, withstand constitutional attack.

THE CONSTITUTIONALITY OF CALIFORNIA'S APPROACH

While the flexible path to jurisdictional resolution, prompted by the passage of an expansive long-arm statute, has allowed the California judiciary to accommodate the plaintiff's needs and the state's policy interests at the same time, due process of law demands fairness and justice for nonresident defendants whose property is subjected to potential deprivation when personal jurisdiction is assumed. These competing concerns dictate that when California courts rely on the Cornelison approach to assert limited jurisdiction, they balance that decision's essential factors—a continuous course of forum-state conduct, a substantial nexus between the cause of action and the defendant, and the defendant's minimum contacts with the forum state. These factors must be weighed carefully to ensure that personal jurisdiction does not offend due process.

169. See note 166 supra.

170. Some commentators have suggested that courts should require a lesser quantum of a nonresident defendant's contacts related to the cause of action to uphold limited jurisdiction in a tort action than in a contract action because of policy factors favoring the tort claimant. See Carrington & Martin, Substantive Interests and the Jurisdiction of State Courts, 66 Mich. L. Rev. 227 (1969), where the authors observed that,

within the sphere of compensatory tort litigation, plaintiffs who appear to have suffered bodily injury are generally somewhat more likely to succeed in invoking the jurisdictional long-arm than those whose interests are wholly economic, and that within these categories the tangibility of the alleged harms may be a factor in influencing the judgment. . . . Thus, the supplier of potentially harmful goods may be viewed as undertaking a special responsibility for the welfare of the consumers which makes it peculiarly inappropriate for him to resist the moral claim of the state when it seeks to assert power over him. This undertaking is less relevant when the same supplier is engaged in a warranty dispute over the quality of delivered goods with a commercial buyer who was in a position to bargain for a local forum if he regarded the risk of distant litigation as a significant aspect of his contract relation; in such a dispute, the supplier is in a stronger position to resist the use of the long-arm on the basis of attenuated contacts.

Id. at 232.
action and that conduct, the convenience considerations and the state's interest in maintaining the action—to achieve substantial justice for the nonresident and local parties.\textsuperscript{171} Thus, where the nexus between the cause of action and the defendant's forum activity is somewhat weak, extensive commercial activities on the part of the defendant, a strong state interest in assuming jurisdiction and the relative convenience of the California forum should be demonstrated before limited jurisdiction is upheld. If the interests disfavoring as well as favoring the imposition of limited jurisdiction are accorded legitimate consideration in the \textit{Cornelison} balancing process, then \textit{Cornelison} will not prove to be an undue extension of state jurisdictional powers.

However, in its most recent jurisdictional decision in \textit{Kulko}, the California Supreme Court passed a decision that might unduly extend the state's jurisdictional powers. By observing that no parental act more fully invokes the benefits and protections of a forum's laws than that of sending one's minor child into the forum state to live with a separated parent, the \textit{Kulko} court misinterpreted the plain meaning of \textit{Hanson}'s "purposeful availment" requirement. The Supreme Court in \textit{Hanson} seemed to want to ensure fairness for nonresident defendants by making them subject to a forum's jurisdiction only when they had purposefully engaged in some forum-related activity, resulting in the assumption of legal obligations by and towards them which they could seek to enforce or defend under the forum's laws.\textsuperscript{172} Assuming arguendo that the nonresident father's "purposeful" act of sending his daughter to California

\begin{footnotes}
\footnote{171}{The United States Supreme Court has recently reasserted the importance of focusing the jurisdictional inquiry upon the relationship among the nonresident defendant, the forum state, and the underlying cause of action. See \textit{Shaffer v. Heitner}, 45 U.S.L.W. 4853 (June 24, 1977) (quasi-in-rem jurisdiction).}

\footnote{172}{In \textit{Shaffer}, the Court reasoned that all assertions of state court jurisdiction must be evaluated according to the standards set forth in \textit{International Shoe} and its progeny. \textit{Id.} at 4854. In so ruling, the Court reaffirmed the fairness concept stemming from the due process clause that "a state may not make binding a judgment . . . against an individual or corporate defendant with which the state has no contacts, ties or relations." \textit{Id.}}

\footnote{19-24}{The rationale behind the \textit{Hanson} "purposeful availment" requirement, see text accompanying notes 19-24 supра, was drawn from the following passage in \textit{International Shoe Co. v. Washington}, 326 U.S. 310, 326 (1945):

\begin{quote}
[The activities carried on in behalf of the appellant] resulted in a large volume of business, in the course of which appellant received the benefits and protections of the laws of the [forum] state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities.
\end{quote}}
\end{footnotes}
was designed to avail the father of the benefits and protections of California law, the only direct legal benefit he received by such an act was the opportunity to recover damages for personal injuries and wrongful death inflicted upon his daughter in California. It seems unreasonable to assume that the nonresident father contemplated such an eventuality when he sent his daughter to stay permanently in California. Hence, the nonresident father could not reasonably be said to have satisfied the Hanson "purposeful availment" requirement in its ordinary sense.

Moreover, the Kulko court stretched the facts of the case by finding that the nonresident father's acquiescence in his daughter's unilateral decision to go to California and his purchase of a one-way airplane ticket in recognition of her desire constituted "purposeful" conduct on his part. Whereas the supreme court was careful to point out in Sibley that the conduct of others could not be imputed to the defendant guarantor so as to support limited jurisdiction over him," limited jurisdiction over Kulko could only be justified by imputing to him the purposeful conduct of his daughter.

The California approach to limited jurisdiction appears to comport with the due process demands of the Constitution, when it accommodates, as in Cornelison, the needs of all the parties. However, when the approach fails to so accommodate the parties, as in Kulko, it would seem to be constitutionally deficient, since undue hardship can result to the nonresident defendant.

CONCLUSION

While the due process concept is the servant of substantive interests, it demands considerations of fairness towards nonresident defendants. If the California judiciary is to properly control the expansive jurisdictional powers inherent in its elastic long-arm statute, it must exercise balanced judgment so that the private interests and needs of all litigants as well as those of the forum state are met." The costs to the plaintiff and the

173. Parents have a statutory right of action to recover from a third person whose wrongful act or negligence has resulted in injuries or death to their child. A father's right to recover for such injuries or death is not affected by an award of permanent custody to the mother. See CAL. CIV. PROC. CODE §§ 376-377 (West 1973).

It can be argued that the father received the indirect benefit of having his daughter protected by California's laws. See text accompanying notes 146-153 supra.

174. 16 Cal. 3d at 447-48, 545 P.2d at 326, 128 Cal. Rptr. at 38.

175. See note 171 supra.
state of foregoing an assertion of limited jurisdiction must be fairly measured against the risks of subjecting the nonresident defendant to an unfair hearing. To accomplish this task, the plaintiff must first establish that the wrong allegedly committed by the nonresident either arose directly out of his California contacts or was rationally and substantially related to a continuous course of forum-related activity. After this showing, if the nonresident defendant cannot demonstrate that his inconvenience in defending a lawsuit in California would be significantly greater than the countervailing interests of the plaintiff and the state in compelling him to appear before a California tribunal, then limited jurisdiction may be constitutionally exercised.

Richmond Martin Flatland