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# PERSONAL JURISDICTION OVER NONRESIDENT INDIVIDUALS: A LONG-ARM STATUTE PROPOSED FOR CALIFORNIA

In California personal jurisdiction over nonresident individuals is restricted by statute to several limited situations.<sup>1</sup> California's broadest jurisdictional provision provides that a nonresident is subject to the court's power if he was a resident at the time the cause of action arose, at the time of service of process, or at the time the action is commenced.<sup>2</sup> By judicial construction the "resident" must be a domiciliary of the state.<sup>3</sup> In addition, nonresident motorists<sup>4</sup> and fliers<sup>5</sup> may be reached under special jurisdictional statutes. Of course, a defendant's actual presence within the state when he is personally served<sup>6</sup> or his valid consent will enable the court to assert personal jurisdiction. However, the improbability of either of these circumstances leaves them minor bases for assuming jurisdiction over nonresidents. With the exception of the motorists and fliers provisions, this statutory scheme permits the assertion of jurisdiction over nonresidents in relatively infrequent and unlikely situations.

In contrast, both Illinois and New York have significantly expanded their power over nonresidents through the enactment of comprehensive long-arm statutes.<sup>7</sup> A similar California statute has been proposed by the Lawyers Club of San Francisco.<sup>8</sup> The proposal

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<sup>1</sup> Foreign partnerships may also be subject to California jurisdiction. CAL. CORP. CODE § 15700 (West 1955). However, the court's power extends only to the entity, not the individual partners. *Lewis Mfg. Co. v. Superior Court*, 140 Cal. App. 2d 245, 295 P.2d 145 (1956). For an excellent summary of present jurisdictional bases in California see Horowitz, *Bases of Jurisdiction of California Courts to Render Judgments Against Foreign Corporations and Nonresident Individuals*, 31 S. CAL. L. REV. 339 (1958).

<sup>2</sup> CAL. CODE CIV. PROC. § 417 (West 1954).

<sup>3</sup> *Owens v. Superior Court*, 52 Cal. 2d 822, 345 P.2d 921 (1959).

<sup>4</sup> CAL. VEH. CODE § 17451 (West Supp. 1968).

<sup>5</sup> CAL. PUB. UTIL. CODE § 21414 (West 1965).

<sup>6</sup> *Pennoyer v. Neff*, 95 U.S. 714 (1877).

<sup>7</sup> ILL. ANN. STAT. c. 110, § 17 (Smith-Hurd 1956); N.Y. CIV. PRAC. LAW § 302 (McKinney Supp. 1968); for an outline of similar provisions see note 8 *infra*. See also WASH. REV. CODE § 4.29.185 (1962), N.M. ANN. CIV. CODE § 21-3-16 (Supp. 1967).

<sup>8</sup> Sec. 418(a). Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, does thereby submit 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:

(1) The transaction of any business within this state;

would add a new provision, section 418, to the Code of Civil Procedure and would amend sections 411 and 417. Proposed section 418(a) sets out those events which would constitute a sufficient relationship with the state to enable California courts to obtain jurisdiction over a nonresident. The courts could assert jurisdiction if the nonresident defendant transacts any business within the state; commits a tort within the state; or owns, possesses, or uses any real or personal property within the state. Jurisdiction is likewise obtained when the defendant contracts to insure any person, property,

- (2) The commission of a tortious act within this state;
- (3) The ownership, possession or use of any real or personal property situated in this state;
- (4) Contracting to insure any person, property or risk located within this state at the time of contracting or which, it is known or reasonably should be known to the insurer, will be transferred to this state during such period as such contract will be in force;
- (5) The sale of goods, wares or merchandise to persons within this state.

Sec. 418(b). Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

Sec. 418(c). Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons upon the defendant outside this state and such service shall be of the same force and effect as though summons had been personally served within this state providing, however, that nothing contained herein limits or affects the right to serve any process in any other manner now or hereinafter provided by law.

Sec. 411.3. If the suit is against a minor, under the age of 14 years, residing ~~within this state~~ to such minor, personally, and also to his father, mother or guardian; or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If the suit is against a person ~~residing within this state~~ and for whom a guardian or conservator has been appointed: to such person, and also to his guardian or conservator.

Sec. 417. Where jurisdiction is acquired over a person who is outside of this state by publication of summons in accord with Sections 412 and 413, the court shall have the power to render a personal judgment against such person only if he was personally served with process and was a resident of this state (a) at the time of the commencement of the action or (b) at the time that the cause of action arose or (c) at the time of service *or was a person who came within the provisions of Section 418 of this code.* (Proposed new language in italics.)

Lawyers Club of San Francisco, Conference Resolution No. 28, 1968. (Copy on file in office of *Santa Clara Lawyer*). The 1964 Conference Resolutions Nos. 30, 31, and 32 concerning the scope of consent to service of process for nonresident motorists formed the basis for the 1967 amendments to Vehicle Code section 17451, *supra* note 4. Conference Resolution No. 28 seeks to extend to other subjects the same advantages now granted in cases involving operation of foreign motor vehicles in California.

This proposed statute differs from the Illinois and New York long-arm statutes in that section 418(a)(5) is unique to California; also, in this statute the nonresident insurer is subject to California jurisdiction if he insures a person or thing which he knows will be brought into California. The Illinois statute has a clause which subjects a nonresident Illinois' jurisdiction in a divorce proceeding if he has maintained a matrimonial domicile in the state or committed the act which give rise to the divorce proceeding in that state. New York has a clause which comprehensively covers the commission of a tortious act extrastate where the injury occurs within the state, *see* note 34 *infra*.

or risk which is located or will be located within the state, or if he sells any goods, wares, or merchandise to persons situated in the state. The statute would limit jurisdiction to causes of action arising from the jurisdictional events enumerated above, and the due process notice requirements would be fulfilled by out-of-state service of process.<sup>9</sup>

This comment will outline the jurisdictional boundaries of similar long-arm statutes in other states with particular emphasis placed on the troublesome problem of the nonresident individual defendant.<sup>10</sup> An examination of the significant extension of jurisdictional power which would result from enactment of section 418 will indicate the compulsion for adopting a modern basis of jurisdiction in California. Since the due process limitation on extrastate jurisdiction has been amply discussed,<sup>11</sup> if not talked to death,<sup>12</sup> it will only be mentioned where state courts have incorporated the constitutional standard as a rule of construction for their statutory provisions.

#### TRANSACTION OF ANY BUSINESS

While the Illinois and New York courts use differing language in construing the limits to which they are willing to extend jurisdiction under the "transaction of business" clause of their long-arm statutes, it appears that both courts reach the same conclusion when faced with a similar factual situation.

Earlier Illinois decisions required as an essential prerequisite to jurisdiction the nonresident's presence within the state at the time the business event occurred. In one decision, the court refused jurisdiction because a distributorship contract, the basis for the suit,

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<sup>9</sup> "[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Hanson v. Denckla*, 357 U.S. 235 (1958), requires that there must be some action through which the defendant purposefully avails himself of the privilege of conducting activities with the state, thus invoking the benefits of its laws. See generally *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 909 (1960); F. JAMES, *CIVIL PROCEDURE* 643 (1965).

<sup>10</sup> The problem of obtaining jurisdiction over nonresident corporate defendants is excluded from this discussion since the Supreme Court has held that the only limitation is "due process." This would be the ultimate restriction on any statute; see cases cited note 9 *supra*.

<sup>11</sup> *Developments in the Law—State-Court Jurisdiction*. 73 HARV. L. REV. 909 (1960); F. JAMES, *CIVIL PROCEDURE* 611-72 (1965).

<sup>12</sup> For example, the most recent bound volume of the *Index to Legal Periodicals* lists approximately 100 articles on personal jurisdiction for the years 1964-67. 14 I.L.P. 447-51 (1967).

was signed outside the state and neither the defendant nor his agents were present in Illinois.<sup>13</sup> Accordingly, jurisdiction was sustained where the defendant entered the state to inspect machinery he had purchased from the plaintiff.<sup>14</sup> Subsequent cases, however, now make it clear that Illinois will sustain jurisdiction where the business transaction consisted merely of a sale to an Illinois resident without the defendant ever having entered the state. In 1965, a federal court applying Illinois law sustained jurisdiction over a nonresident defendant when the evidence indicated that he had merely solicited business and shipped food into Illinois.<sup>15</sup>

However, the requirements of due process impose a perimeter beyond which a sufficient jurisdictional base does not exist. Thus, in an action based on the sale of stock, where the negotiations occurred in Illinois but neither party intended to invoke the benefit of Illinois law, the defendant's contact with the state was not sufficient to support jurisdiction.<sup>16</sup>

While jurisdiction in Illinois is limited only by the requirements of due process<sup>17</sup> the New York courts deny any legislative intent to extend their long-arm statute to its outermost bounds. They theoretically limit the exercise of jurisdiction to situations where the plaintiff has shown that a purposeful relationship exists between the defendant and the state.<sup>18</sup>

Nevertheless, the New York decisions appear almost as liberal as Illinois'. A New York court found a sufficiently purposeful transaction where the defendant negotiated a service contract in New York supplemental to a contract for sale of machinery executed elsewhere and pursuant thereto sent two engineers into the state to maintain the machinery.<sup>19</sup> In another case,<sup>20</sup> jurisdiction was upheld although the defendant never entered the state. His purposeful rela-

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<sup>13</sup> *Grobark v. Addo Machine Co.*, 18 Ill. App. 2d 10, 151 N.E.2d 425 (1958); *aff'd*, 16 Ill. 2d 426, 158 N.E.2d 73 (1959).

<sup>14</sup> *Kropp Forge Co. v. Jawitz*, 37 Ill. App. 2d 475, 186 N.E.2d 76 (1962).

<sup>15</sup> *Continental Nut Co. v. Robert L. Berner Co.*, 345 F.2d 395 (7th Cir. 1965) (Defendant failed to deny allegations of solicitation and shipment of goods within Illinois).

<sup>16</sup> *Kaye-Martin v. Broke*, 267 F.2d 394 (7th Cir. 1959). *See also* *Koplin v. Saul Lerner Co.*, 52 Ill. App. 2d 97, 201 N.E.2d 763 (1964).

<sup>17</sup> *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957). *See also* *Koplin v. Thomas Haab & Boots*, 73 Ill. App. 2d 242, 219 N.E.2d 646 (1966).

<sup>18</sup> *Longines-Wittnauer Watch Co. v. Barnes & Reineche Inc.*, 15 N.Y.2d 443, 209 N.E.2d 68 (1965); there are three cases decided under this one title; *Longines-Wittnauer Watch Co. v. Barnes & Reineche Inc.*, *Feathers v. McLucas*, *Singer v. Walker*.

<sup>19</sup> *Id.* at 443, 209 N.E.2d at 68.

<sup>20</sup> *Id.* at 464, 209 N.E.2d at 80.

tion with New York consisted of mailing advertisements into the state and later shipping his product to a New York dealer.

Because of California's restricted jurisdictional statutes covering nonresident individual defendants, a local court lacks the authority to obtain jurisdiction when confronted with situations similar to those outlined above. In one California decision service of process in Canada was held ineffectual to secure jurisdiction over the nonresident for his fraudulent representations made in California to the plaintiffs during the course of a land sale transaction.<sup>21</sup> Likewise, in another case the defendant, a resident of Nevada, was held not subject to the California courts in a suit concerning a promissory note he executed here.<sup>22</sup> Again, an action concerning the cancellation of benefits under a pension plan was dismissed because the court could not obtain jurisdiction over nonresident members of the pension committee.<sup>23</sup>

Code of Civil Procedure section 411 allows the court to assume jurisdiction over nonresident corporations doing business in this state.<sup>24</sup> The California Supreme Court has broadly construed the term "doing business" and has imposed only those limitations required by due process.<sup>25</sup> This, together with the impetus generated by the liberal Illinois and New York decisions, indicates that proposed section 418 would be construed to its constitutional limits. Were this section to become law, a California court would no longer be forced to refuse jurisdiction simply because a defendant who executed a note in this state is not a resident. Similarly, a nonresident defendant who makes fraudulent representations in California concerning the sale of local land would also be required to defend in California.<sup>26</sup>

Under present law there is no protection for the California citizen who deals with a nonresident individual. It seems ludicrous that a nonresident flier involved in an airplane accident is amenable to suit<sup>27</sup> while the same person, were he to enter a contract with a resident of the state, could escape all liability here for the transaction.

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<sup>21</sup> *Martens v. Winder*, 341 F.2d 197 (9th Cir. 1965).

<sup>22</sup> *Josephson v. Superior Court*, 219 Cal. App. 2d 354, 33 Cal. Rptr. 196 (1963).

<sup>23</sup> *Muggill v. Reuben H. Donnelley Corp.*, 62 Cal. 2d 239, 39 Cal. Rptr. 753 (1964).

<sup>24</sup> CAL. CODE CIV. PROC. § 411 (West 1954).

<sup>25</sup> *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 347, 347 P.2d 1 (1959).

<sup>26</sup> This is not to say that the court would have definitely exercised jurisdiction in these particular situations, but jurisdiction would not have been refused merely because defendants were not residents of California within the meaning of Code of Civil Procedure section 417.

<sup>27</sup> CAL. PUB. UTIL. CODE § 21414 (West 1965).

California has a long history of progressive legislation and yet it is possible for a nonresident tourist to carry on business while temporarily vacationing in California and completely escape the authority of our courts by making a convenient exit. In keeping with this progressive spirit California ought to afford its residents the constitutionally permissible power to reach nonresident defendants who have wronged California citizens. Code of Civil Procedure section 418 will give the courts this power.

#### COMMISSION OF A TORTIOUS ACT

In 1957 Illinois adopted a most liberal construction of section 17 of the Illinois Civil Practice Act, the prototype for modern long-arm provisions. That statute's enactment, as interpreted by the state supreme court, reflected a conscious purpose to assert jurisdiction over nonresidents to the extent permitted by due process.<sup>28</sup> The landmark decision sustained extension of the state's process to reach a nonresident merchant whose employee had delivered a stove to an Illinois resident in the ordinary course of business when the latter sued for personal injury resulting from the negligent delivery of the stove. Thus a single act of ordinary business which resulted in injury to a resident was a sufficient "contact" to form a basis of jurisdiction.<sup>29</sup> While the defendant may have been "transacting business" within the meaning of the statute, the court apparently sanctioned jurisdiction on the basis of the defendant's "tortious act."<sup>30</sup> If a similar situation were to arise in California, the court would lack the requisite statutory authority to serve the defendant, since he would not be a resident within the meaning of section 417 of the Code of Civil Procedure.

Post-*Nelson v. Miller*<sup>30a</sup> cases in Illinois and other states have focused on the problem of determining where the "tortious act" was committed. Illinois has construed the tortious act to be the place where the last event occurs which renders the defendant liable. One case involved an out-of-state corporate defendant which manufactured safety valves. In the course of its business the corporation sold the valves to another extrastate manufacturer who assembled them on his waterheaters and then sold the heaters to retailers. Plaintiff purchased a heater and was injured by an explosion due to defendant's defective safety valve. Jurisdiction was sustained since the

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<sup>28</sup> *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

<sup>29</sup> F. JAMES, CIVIL PROCEDURE 645 (1965).

<sup>30</sup> *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

<sup>30a</sup> *Id.*

court construed "tortious act" to include not only the wrong but also the resultant injury, here caused by the explosion.<sup>31</sup>

On the other hand, New York and Washington, interpreting statutes similar to Illinois', were unwilling to sustain that state's position. In a somewhat similar factual situation, New York decided that an extrastate act cannot be changed into an intrastate act simply because the injury occurred within the state. In that case a gas tank, manufactured by the nonresident, was fitted onto a truck and subsequently exploded while traveling through New York.<sup>32</sup> A Washington court was also unwilling to extend jurisdiction to a situation where only the injury occurred within the state. The defendant, an Oregon automobile dealer, sold a car to an Oregon resident who was injured when the car malfunctioned in Washington. The court felt defendant had no intention of benefiting from the laws of the state of Washington when he sold the car, and that it would be inequitable to assume jurisdiction over a defendant in such a situation.<sup>33</sup>

However, after the New York decisions, the state legislature modified the long-arm statute so as to conform to the Illinois rule. It now appears that the courts would have to sustain jurisdiction even in a case where personal injury is the only jurisdictional event alleged.<sup>34</sup>

In two California decisions the court had to refuse jurisdiction where the wrongful conduct apparently occurred extrastate. In the first decision plaintiff suffered an injury when a bowling ball fell off

<sup>31</sup> *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

<sup>32</sup> *Longines-Wittnauer Watch Co. v. Barnes & Reineche, Inc.*, 15 N.Y.2d 443, 458, 209 N.E.2d 68, 76 (1965).

<sup>33</sup> *Oliver v. American Motors Corp.*, 17 Wash. 2d 870, 425 P.2d 647 (1967); *Gray* was distinguished on the basis that the defendant in *Gray* was a manufacturer while in *Oliver* the defendant was merely a dealer. The court felt it was reasonable for a manufacturer to foresee interstate transportation of his goods, but felt this was not a reasonable assumption on the dealer's part. Since Washington and Oregon have a long contiguous border, the reasonableness of this rationale is questionable. However, there was apparently no contact with the state of Washington other than the fact that the malfunction and injury occurred there; no other motorists were involved in the accident.

<sup>34</sup> N.Y. CIV. PRAC. LAW § 302 (McKinney Supp. 1968), amending N.Y. CIV. PRAC. LAW § 302 (McKinney 1963). The added portion reads,

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce. . . .

a return rack manufactured by the defendant, a citizen of Washington.<sup>35</sup> In the later action a container of drain cleaner exploded when a plumber mixed it with another solution while trying to repair plaintiff's pipes.<sup>36</sup> In both of these cases jurisdiction was refused because the individual defendants were not residents of the state. Clearly California bases jurisdiction on domicile rather than the commission of a tort.<sup>37</sup> Had these cases arisen under proposed section 418 the results certainly would have been different since both New York and Illinois would assume jurisdiction in such situations.<sup>38</sup>

California also has nonresident motorists<sup>39</sup> and fliers<sup>40</sup> statutes which subject individuals to the state's jurisdiction when they are involved in an accident resulting from the use of their car or plane within this state. However, jurisdiction is limited under these statutes to causes of action arising solely from the use of the car or plane. If a nonresident motorist were to assault someone while in the state, the courts presently lack authority to determine his liability unless he consented to jurisdiction or was served in this state. These alternatives are highly improbable considering the time involved in commencing an action and a person's usual reluctance to be involved in a lawsuit.

#### OWNERSHIP OF REAL AND PERSONAL PROPERTY

The provision asserting jurisdiction on the basis of a nonresident's relationship to property located within the state is restricted to those actions arising out of the ownership, use, or possession of real or personal property within the state. As such, it is outweighed in importance by the overlapping clauses dealing with the "transaction of business" and the commission of a "tortious act" within the state. It is under these latter provisions that most of the cases have been decided.

Under the ownership provision of its long-arm statute, Illinois sustained jurisdiction over a former tenant who at the time of service

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<sup>35</sup> *Turner v. Superior Court*, 218 Cal. App. 2d 468, 32 Cal. Rptr. 717 (1963).

<sup>36</sup> *Sylvester v. King Mfg. Co.*, 256 Cal. App. 2d 236, 64 Cal. Rptr. 4 (1967).

<sup>37</sup> *Smith v. Smith*, 45 Cal. 2d 235, 288 P.2d 497 (1955); *Hartford v. Superior Court*, 47 Cal. 2d 447, 304 P.2d 1 (1956); *Miller v. Superior Court*, 195 Cal. App. 2d 779, 16 Cal. Rptr. 36 (1961).

<sup>38</sup> While these decisions dealt with corporate defendants the courts failed to find that fact determinative.

<sup>39</sup> CAL. VEH. CODE § 17451 (West Supp. 1968). This statute limits jurisdiction to those causes of action arising from any accident resulting from the operation of the motor vehicle within the state.

<sup>40</sup> CAL. PUB. UTIL. CODE § 21414 (West 1965). This statute limits jurisdiction to those causes of action arising from any accident resulting from the operation of the aircraft within the state.

resided out-of-state.<sup>41</sup> While in that case the defendant had lived in an apartment for two years, the court considered that any term of occupancy, even if for one month was sufficient to render defendant amenable to out-of-state process.

Under present law, if a nonresident were to enter a short term lease for a vacation cottage located in California, he would not be considered a domiciliary and could not be compelled to defend an action in California arising out of his use of the property. Section 418 would solve this problem. The vacationer by his possession of the property during his visit would be subject to process although he was no longer physically present within the state. Since he has benefited from the laws of California while living here, it seems inequitable to allow him to escape obligations he has voluntarily assumed.<sup>42</sup>

The proposed clause would also subject the nonresident to jurisdiction for any action arising out of his ownership, use, or possession of *personal* property within the state.<sup>43</sup> This provision is akin to the nonresident motorist statute by which a person is deemed to have consented to jurisdiction by driving his car in this state. Under section 418 the same rationale would apply. Whether this section will have any practical effect is questionable since most causes of action arising out of the ownership of personal property will fall within the "transaction of business" or "tortious act" provisions.

#### CONTRACTING TO INSURE AND SALES OF GOODS, WARES AND MERCHANDISE

The first part of proposed section 418(a)(4)<sup>44</sup> would seem to be merely a codification of existing law.<sup>45</sup> When an extrastate insurer contracts with a California insured, the company is subject to California's jurisdiction even though it has no other business contacts within the state.<sup>46</sup>

The second part of proposed section 418(a)(4)<sup>47</sup> subjects the insurer to California jurisdiction where he knows, or should know,

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<sup>41</sup> Porter v. Nahas, 35 Ill. App. 2d 360, 182 N.E.2d 915 (1962).

<sup>42</sup> *Id.* at 365, 182 N.E.2d at 917.

<sup>43</sup> This section is unique to California's proposed long-arm statute.

<sup>44</sup> See note 8 *supra*.

<sup>45</sup> McGee v. International Life Ins. Co., 355 U.S. 220 (1957). The court held that the state (California) has an interest in providing redress for its residents when non-resident insurers refuse to pay claims. Thus the mere fact that the policy was issued to a California resident was a sufficient jurisdictional base.

<sup>46</sup> F. JAMES, CIVIL PROCEDURE 641-42 (1965).

<sup>47</sup> See note 8 *supra*.

that the insured person or item will be brought into California, and should be upheld by the California courts. In light of the language in *McGee v. International Life Insurance Company*<sup>48</sup> that commercial transactions are expanding rapidly and are often carried on by parties separated by many states, and also considering the implied consent statute regarding insurance companies,<sup>49</sup> California should assert jurisdiction in these situations. Such power can be based either on the theory that insurance companies are traditionally regulated by the states,<sup>50</sup> or on the theory that the insurer knew the covered items would be used in California and because of this will be availing himself of the benefits of the state's law and should not be allowed to escape liability simply because the contract was not executed in this state.<sup>51</sup> For example, a California merchant who purchases goods in distant states and insures them with a non-resident insurance company, is certain to let the insurer know the goods will be brought into California, regardless of whether the insurer ever solicited business in California.<sup>52</sup>

Proposed section 418(a)(5)<sup>53</sup> gives the California courts personal jurisdiction over the nonresident when he sells goods, wares, or merchandise to persons within this state. Since this section does not appear in similar long-arm statutes, the apparent intention of the draftsmen was to reach those people otherwise exempt from jurisdiction by the interpretations given to the "transaction of business" and "tortious act" provisions of the long-arm statute. If the California courts interpret "transaction of business" with the same breadth accorded "doing business,"<sup>54</sup> that is, as broadly as due process allows, then section 418(a)(5) will be of limited value as a separate jurisdictional base since selling goods constitutes the "transaction of business."

In addition to enumerating jurisdictional events, the proposed long-arm statute clarifies certain procedural matters. For example, the new statute would not preclude establishing jurisdiction on the grounds contained in existing statutes such as the residence or implied consent statutes.<sup>55</sup> In the case of the nonresident individual,

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<sup>48</sup> 355 U.S. 220, 223 (1957).

<sup>49</sup> CAL. INS. CODE §§ 1610-13 (West 1955); 15 U.S.C. § 1011 allows state regulation of insurance companies.

<sup>50</sup> SEC v. Variable Annuity Life Ins. Co. of America, 359 U.S. 65, 68-9 (1959).

<sup>51</sup> *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223-24 (1957).

<sup>52</sup> *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961), held that the defendant knew that his valves would be used in another state, and that such use would benefit from that state's laws. This benefit is the basis for making him liable to personal jurisdiction.

<sup>53</sup> See note 8 *supra*.

<sup>54</sup> *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 347, 347 P.2d 1 (1959).

<sup>55</sup> CAL. INS. CODE §§ 1610-13 (nonresident insurance company); CAL. VEH. CODE

however, the existing statutes provide limited jurisdictional bases, and the proposed statute would become the major source of power. Furthermore, section 418(b) would prevent joinder of any action not arising from any of the jurisdictional events mentioned in section 418(a) with a cause of action arising from section 418(a). It appears that this section was added to protect the defendant from being subject to jurisdiction unless the traditional notions of "fair play and substantial justice" are met.<sup>56</sup> One California appellate court decision, construing section 411, has refused jurisdiction by apparently requiring the cause of action to be related to the business transacted within the state.<sup>57</sup> Yet, neither the United States nor the California Supreme Court requires such a stringent construction of the "minimum contacts" theory.<sup>58</sup>

### CONCLUSION

At present, California jurisdiction over individuals is based on domicile and implied consent. Such concepts are not only outdated but, in the case of a nonresident, support jurisdiction in relatively infrequent situations. Proposed section 418 would join California in the ranks of progressive states which base jurisdiction on a person's purposeful relationship with the state. Moreover, California citizens would enjoy much greater opportunity to litigate their rights in the most convenient, and sometimes, only available forum.

*Richard A. Barsotti*

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§ 17451 (nonresident motorist act); CAL. PUB. UTIL. CODE § 21414 (nonresident fliers act); CAL. CORP. CODE § 15700 (nonresident partnerships); *Walrus Mfg. Co. v. New Amsterdam Gas Co.*, 184 F. Supp. 214, 217-18 (S.D. Ill. 1960) (construing the Illinois statute): ". . . personal jurisdiction may be acquired otherwise than by means of Ill. C.A. § 17 for a cause of action not enumerated therein."

<sup>56</sup> "[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

<sup>57</sup> *Buckeye Boiler Co. v. Superior Court*, 269 A.C.A. 129, 74 Cal. Rptr. 580 (1969), *hearing granted*, 70 A.C. 4 (Minutes, April 28, 1969).

<sup>58</sup> *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952); *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 347, 347 P.2d 1 (1959).

