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DUE PROCESS AND LONG ARM JURISDICTION IN MINNESOTA: A CRITICISM OF THE MINIMUM CONTACTS STANDARD

Subject to limitations imposed by constitutional standards, state law determines the conditions under which a nonresident defendant in a civil action may be subject to a court's jurisdiction. The original due process standard that prohibited personal jurisdiction over a defendant located outside the forum state has been retracted and replaced. The more flexible standard requiring a defendant to have minimum contacts with the forum was developed to address the interstate character of modern transactions and activity. Since the minimum contacts standard was first articulated social and technological changes have eroded the capability of the standard to provide an objective assessment of whether due process requirements have been met. Nevertheless, the courts rely on the minimum contacts standard to interpret the scope of state jurisdictional statutes. The purpose of this Note is to suggest a supplemental standard to the minimum contacts standard with the goal of achieving an objective measure of due process in personal jurisdiction. First, however, this Note examines the history of due process in personal jurisdiction. Second, the five-factor test of minimum contacts currently used in Minnesota and the Minnesota long arm statutes are surveyed. Additionally, an interpretation of Minnesota's recently amended personal jurisdiction statute is proposed.

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I. INTRODUCTION

The requirement of due process has limited the power of states over nonresident defendants since a century ago when the United States Supreme Court declared territoriality to be the cornerstone of due process in personal jurisdiction. Under the doctrine of territoriality, a state could assert personal jurisdiction over a nonresident defendant only if the defendant was located within the forum’s territorial boundaries. Subsequent decisions, however, modified the stringent requirements imposed by this doctrine, and today the physical presence of a defendant in a state is less relevant than the nature of the defendant’s contacts with the state. Known as the minimum contacts standard, this modified doctrine of territoriality requires that before a nonresident defendant is subject to the jurisdiction of the court, the defendant must have had sufficient minimum contacts with the state to satisfy traditional notions of fair play and substantial justice.

Prompted by the more flexible requirements of the minimum contacts standard, state legislatures have enacted personal jurisdiction statutes,
referred to as long arm statutes and single act statutes. Increasingly, courts have determined that these statutes were intended to apply within constitutionally permissible limits. As a result of these broad interpretations, the due process standard has become incorporated into state statutes governing personal jurisdiction over nonresident defendants. Due process in personal jurisdiction therefore appears to function in a dual capacity. Incorporated into the statutes, the due process standard is a basis of statutory authority for a court to exercise jurisdiction. Concurrently, the standard is the constitutional perimeter beyond which no statute can authorize jurisdiction over a defendant.

Affecting the validity of the due process standard are both practical considerations about the effect of jurisdictional rules in a society that is technologically advanced and philosophical principles affecting the function of due process. Although the law of personal jurisdiction has kept pace with social change, the justification for the law has grown more abstract. Derived from the territoriality doctrine, the minimum contacts standard is founded on the location of a defendant’s activities.
in relation to the forum. On the basis of this relationship, the fairness of asserting personal jurisdiction is evaluated, the physical location of activities being the objective measurement of fair play and substantial justice. A standard of fairness based on physical activities, however, is affected by immense changes in the quantity and nature of interstate transactions that have occurred with the evolution of technology, particularly electronics technology, and as technology renders less significant and less apparent the physical location of transactions, the objective measure of fair play and substantial justice based on physical location becomes less useful. Unless fairness is interpreted in terms of measurable factors, a standard of fairness has the propensity to become subjective and elusive.

Questioning whether the law of due process in personal jurisdiction is expressed adequately by the minimum contacts standard, this Note suggests that a contemporary theory of due process has not been articulated sufficiently by the courts. To analyze the current law, the nature and purpose of due process in the law of personal jurisdiction and the historic context in which the doctrines of territoriality and minimum contacts have evolved are examined. With regard to Minnesota law,

17. See, e.g., id. at 320 (company’s “operations” established sufficient contacts); von Mehren & Trautman, Jurisdiction to Adjudge: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1171-73 (1966).
18. See notes 228-30 infra and accompanying text.
19. See notes 235-37 infra and accompanying text.
20. See notes 227-58 infra and accompanying text.
21. See notes 25-107 infra and accompanying text.

The discussion in this Note presumes that the evolution of law is shaped by historical events in combination with society’s perception and description of those events. The endeavor to describe human experience culminates in “knowledge.” Knowledge exists in a structured form, describable as a “paradigm.” Paradigms, systems of knowledge, replace one another when, over periods of time, human experience leads to a determination that a particular system of knowledge cannot provide a meaningful or useful answer for a problem which requires resolution. See generally T. Kuhn, The Structure of Scientific Revolutions (2d ed. 1970). New paradigms do not necessarily approximate truth to a greater extent than those they replace; rather, they are more relevant to the problems at hand. “[S]ince no two paradigms leave all the same ‘problems unsolved, paradigm debates always involve the question: Which problems is it more significant to have solved?” Id. at 110. Similarly, the same legal rationale that was suitable to address the social conditions and conscience of one era may be highly unsuitable to the circumstances and problems perceived in another era. Because it is derived from past experience, law is continually in the process of adjusting to changed social conditions. To be responsive to contemporary conditions in the application of law, the legal community and the courts need to identify not only the controlling legal theory but the problems that theory was fashioned to address; then, a determination can be made as to whether those problems remain significant. To the extent that the problems either have decreased in significance, or changed, the legal theory should be reformed. Cf. Tenneco, Inc. v. Public Serv. Comm’n, 382 F. Supp. 719, 721 (S.D.W. Va. 1973) (“The police power is difficult to define
the minimum contacts standard in Minnesota is surveyed,22 and the Minnesota personal jurisdiction and single act statutes are discussed.23 Finally, a supplemental standard to the minimum contacts standard is proposed with the goal of achieving a less abstract but still flexible doctrine of due process in personal jurisdiction.24

II. THE CONSTITUTIONAL STANDARD

A. Origins of the Doctrine of Territoriality

Imbedded in the present law of due process in personal jurisdiction are theories and precedent that derive more from European political theory than from the English common law.25 Continental theorists, particularly the Dutch jurist Huber, had developed a theory of exclusive jurisdiction in relation to the power a government has over all persons within its boundaries.26 Introducing the concept of the exclusivity of sovereign authority, Huber proposed that a sovereignty's laws have force binding all persons located within but not beyond the territory of a government.27 From that political theory, which was developed with reference to relations among separate and sovereign nations, the American jurist Story28 applied the principles to state sovereignties bound

precisely, because it is extensive, elastic and constantly evolving to meet new and increasing demands for its exercise for the benefit of society and to promote the general welfare.”). For an example of the United States Supreme Court's acknowledgement of this process, see Shaffer v. Heitner, 433 U.S. 186, 211-12 (1977) (although the history of in rem jurisdiction and the doctrine of territoriality would permit jurisdiction, the Court will not perpetuate a rule that “supports an ancient form without substantial modern justification”).

22. See notes 119-54 infra and accompanying text.
23. See notes 166-226 infra and accompanying text.
24. See notes 238-58 infra and accompanying text. This Note does not discuss the issue of what, if any, relationship should exist between choice of forum and choice of law questions. For a discussion advocating the relevance of factors that determine choice of law to those that determine choice of forum, see Currie, Survival of Actions: Adjudication versus Automation in the Conflict of Laws, 10 STAN. L. REV. 205 (1958).
25. See Hazard, A General Theory of State-Court Jurisdiction, 1965 SUP. CT. REV. 241, 258. The early English legal history of jurisdiction involved many factors only one of which was territoriality. See id. at 252-53. Because the reported English cases concerned jurisdictional relationships within the colonial British Empire, they are not useful as precedent for jurisdictional relationships among states of equal sovereignty. See id. at 253.

The early English concept of jurisdiction, lasting until the fifteenth century, required that a defendant be in physical custody. See Farrier, Jurisdiction Over Foreign Corporations, 17 MINN. L. REV. 270, 270 & n.1 (1933).
26. See Hazard, supra note 25, at 258-60.
27. See id. at 259. Huber suggested that, along with the principle of exclusive jurisdiction, sovereignties by comity recognize one another's power. See id.
28. See J. Story, Commentaries on the Conflict of Laws (1834). Story’s influence upon the American concept of jurisdiction was substantial. See Hazard, supra note 25, at 262 n.77. Hazard commented:
together in a federal system. In his application, Story more strongly established the exclusivity of the state's prerogative over activities located within its boundaries than did the original theory.

The transposition of a European political theory into a principle of the American legal system created tensions in the law of personal jurisdiction. In contrast to the group of autonomous governments existing in Europe, the American states are politically interdependent. Because the theory of exclusive jurisdiction permitted no exercise of authority beyond the state's boundaries, the theory failed to account for the federal relationship of the states. Recognized early, this anomaly was ameliorated to some extent by the provision for exceptions to the rule against extraterritorial service of process.

B. The Pennoyer Standard

In Pennoyer v. Neff the United States Supreme Court considered

It will have to await further study to say to what extent Story's propositions were influential in the interval between his first edition and the decision in Pennoyer v. Neff. There is no question, however, that Story influenced Pennoyer v. Neff itself. The basic organization, the intellectual structure, and much of the language of Justice Field's opinion is taken straight from Story.

Id. at 262 (footnote omitted).

29. See Hazard, supra note 25, at 258-60. Hazard wrote:

Story was instrumental in transforming Continental political theory into legal rules operative in a federal union. The Continental theorists were after all just that: They were building intellectual constructs for critical enlightenment, not administering the law in its intricate routine. Story, by the force of his prose and his learning, suggested that Huber's concepts were to be used to decide concrete cases and were consonant with the law as it stood.

Id. at 260.

30. See id. at 260-61. According to Hazard:

It is difficult to exaggerate the importance of [Story's] embellishments:

1. A mild statement about territorial sovereignty of states is converted into a rule limiting judicial jurisdiction.
2. The proposition that persons within the territory are subject to jurisdiction is expanded to include property within the jurisdiction.
3. The proposition is advanced that the jurisdiction over persons and property is exclusive, which does not follow necessarily from Huber's propositions.

Id. at 260.

31. See id. at 261-62.

32. Cf. id. at 263-65 (Story's principles fail to present a rationale for determining jurisdiction in a case involving multistate elements).

33. The exceptions discussed in Pennoyer v. Neff, 95 U.S. 714 (1877) were: state power to require a nonresident forming a partnership or association in the state to appoint an agent or representative to receive service of process, see id. at 735, state power to determine a citizen's civil status in relation to a nonresident such as in a divorce action, see id. at 734-35, and state power to regulate corporations chartered by the state. See id. at 735-36.

34. See Hazard, supra note 25, at 272-75.

35. 95 U.S. 714 (1877).
whether an Oregon court should be permitted to assert jurisdiction over a nonresident, who lived in California, in an action in which service of process was by publication. The Court determined that service of process on nonresidents beyond state boundaries invaded the exclusive jurisdiction and sovereignty of another state, reasoning that an individual citizen's right to due process of law would be violated if one state invaded the physical boundaries of another state to assert jurisdiction over a person located there.

The Court's logic in *Pennoyer* was responsive to the social and political context of the year 1877. The separateness of states and the disruption of federal policy had been demonstrated dramatically just a decade earlier during the Civil War, yet the Constitution required that states give full faith and credit to valid judgments rendered by the other states. Additionally, the American public had only a general perception of the immense geographic dimension of the country, in the public

36. See id. at 722.

37. See id. at 722, 733.

38. See 2 D. AARON, R. HOFSTADTER & W. MILLER, THE AMERICAN REPUBLIC 37-38 (1959) [hereinafter cited as R. HOFSTADTER]. For many years the Southern states were divided from the Northern states, to the degree that "[a]s late as 1880, Edwin L. Godkin, editor of the influential New York weekly, *The Nation*, wrote: 'The South, in the structure of its society, in its manners and social relations, differs nearly as much from the North as Ireland does, or Hungary, or Turkey.'" *Id.* at 38. In 1877, when *Pennoyer* was decided, 10 of the 11 seceding Southern states had been reorganized and readmitted to the Union for less than a decade. *See id.* at 21.


40. Boorstin, the historian, has written:

Nothing did more to keep the American open to outrageous novelties and happy accidents than the indefinite arena of his life... Never before had so populous a modern nation lived in so ill-defined a territory. The continent was only barely explored, yet settlers preceded explorers. Their maps were few and poorly drawn. Mapped in myth, mountain ranges, rivers, lakes, deserts, all became figments of optimism or of desperation: an Eden or a Hell—the Great American Garden or the Great American Desert.

During the first century of national life, Americans lived not at a verge, but in myriad fuzzy-edged islands. Westward advances were not a line. And American life, like the nation itself, was distinguished by its lack of clear boundaries. The continent was covered by penumbras, between the known and the unknown, between fact and myth, between present and future, between native and alien, between good and evil.

They lived on a little-known continent, but they did not know how little they knew. Yet if they had known more they might have dared less. Their enterprises were stirred by misinformation, fable, wild hopes, and unjustified certainties.
consciousness, the territories separating the western states—California, Oregon and Nevada—from other states were exotic, vast, and dangerous. Unknown to that era were the speed and ease of communication and travel provided by future inventions. While the national policy of expansion and growth encouraged the population to move and settle the more remote territorial areas, long distance travel was rigorous and uncommon. A nonresident defendant no longer present in a state could not easily return to the state to participate in litigation. Furthermore, the habits and customs of life were vastly different among the various regions of the country.

Given the historic context of the decision, Pennoyer reasonably refused to permit personal jurisdiction to extend beyond state boundaries. The identification of exclusive jurisdiction with due process, how-

D. Boorstin, The Americans 221-22 (1965) (emphasis added). Historians have asserted that the perception of a huge western expanse has affected the national character and American historical events. See generally id. at 221-74, 325-90; H. Commager, The American Mind 4-8 (1950); D. Noble, The Eternal Adam and the New World Garden (1968); D. Noble, Historians Against History (1965); Henry N. Smith, Virgin Land (1950); G. Wise, American Historical Explanations 187-209 (1973). Not until between 1867 and 1879 were large areas of the West geographically and geologically surveyed. See D. Boorstin, supra, at 242.

41. Ten western states had yet to be admitted to the Union in 1877. See R. Hofstadter, supra note 38, at 695 (North Dakota, South Dakota, Montana, Washington, Idaho, Wyoming, Utah, Oklahoma, New Mexico, and Arizona).

42. See Henry N. Smith, supra note 40, at 174-83. See generally D. Boorstin, supra note 40, at 263; R. Hofstadter, supra note 38, at 73-74. Native-American tribes controlled large geographic areas of the West. See D. Boorstin, supra, at 264. "In 1880 half the state of South Dakota was still considered Indian land." Id. See generally id. at 263-64; R. Hofstadter, supra, at 73-75.

43. See, e.g., R. Hofstadter, supra note 38, at 87-89. See generally B. Hibbard, A History of the Public Land Policies (1924). "At the end of the Civil War the time came at last for the realization of the dream of an agrarian utopia in the West on the basis of the Homestead Act." Henry N. Smith, supra note 40, at 174; see id. at 184-86.


45. See note 38 supra. Out of the spaciousness of the continent, popular heroes arose: In America, . . . space played the role of time. If Americans, in their new country, could not be separated from their national popular heroes by hundreds of years, they were in any case separated by hundreds of miles. This sense of distance was possible as it had not been in smaller, more homogeneous nations. D. Boorstin, supra note 40, at 333. Analysis of popular literature of the nineteenth century shows the images of the West were undergoing change in the 1870's, see Henry N. Smith, supra note 40, at 102-03, but the Western hero was still an adventurer in a land of unfriendly Indians and highway robbers. See id. at 95-96, 99. Heroes symbolized the "glorious victory of civilization over savagery and barbarism," making way for western settlement. See id. at 52-53. See generally id. at 51-111. Thus, the popular fiction of the nineteenth century establishes a mythical quality about the West.

46. But cf. Hazard, supra note 25, at 271-72 (noting the inconsistencies of the Pennoyer decision). "Appraised by contemporary critical standards for assessing logic and policy in
ever, created a rule that, because of increasing interstate activity, was subject to immediate and ever-enlarging exceptions.\textsuperscript{47} While seeking to achieve just results, the courts sought to adhere to the doctrine of territoriality.\textsuperscript{48} Among the theories used to justify jurisdiction were an individual's consent to suit in a state,\textsuperscript{49} and, in the case of foreign corporations, either consent or presence in the state.\textsuperscript{50} Consent could be actual, such as a contractual agreement to appear in a particular jurisdiction,\textsuperscript{51} or implied on the basis of a nonresident defendant's actions.\textsuperscript{52} For example, statutes were upheld that subjected a nonresident motorist to jurisdiction for use of the state's highways.\textsuperscript{53}

With respect to foreign corporations, states enacted statutes, which the Supreme Court upheld,\textsuperscript{54} that required a corporation to appoint an agent authorized to receive service of process within the state as a prerequisite to the corporation's doing business in the state.\textsuperscript{55} These statutes did not establish, however, that a foreign corporation was doing business in the state whenever the corporation effected consequences within the state.\textsuperscript{56} Determining whether a foreign corporation's activities constituted "doing business" in a state, so as to subject the corporation to personal jurisdiction, was difficult.\textsuperscript{57} To establish jurisdiction over ajudicial decision, \textit{Pennoyer v. Neff} arouses dismay and even despair. It is an example \textit{par excellence} of what Karl Llewellyn called the Formal Style in juristic reasoning."\textsuperscript{47} Id. (emphasis in original).

47. See Kurland, supra note 39, at 573-74.


49. See Kurland, supra note 39, at 575.

50. See id. at 578, 582.

51. See id. at 575.

52. See id.

53. See, e.g., Hess v. Pawloski, 274 U.S. 352 (1927); Ross, \textit{The Shifting Basis of Jurisdiction}, 17 MINN. L. REV. 146, 157 (1933). However, because no state has the right to require nonresidents to obtain prior consent for the use of its highways, the consent theory was a legal fiction. See Olberding v. Illinois Cent. R.R., 346 U.S. 338, 340-41 (1953).

54. See, e.g., Simon v. Southern Ry., 236 U.S. 115, 130-32 (1915) (test of presence or consent was whether corporation was "doing business" in state).

55. See Culp, supra note 48, at 378 n.13 (list of general corporation statutes); Farrier, supra note 25, at 271-73 (rationale supporting requirement of appointing agent for service of process); Kurland, supra note 39, at 578; Note, \textit{Foreign Corporations—Service of Process on Soliciting Agent as Constituting Due Process of Law}, 6 MINN. L. REV. 309, 311 (1922).

56. Jurisdiction is not valid unless the corporation is doing business in the state, the agent is appointed to act within the state, and the litigation arises out of corporate transactions in the state. See St. Clair v. Cox, 106 U.S. 350, 356, 357 (1882).

57. See Culp, supra note 48, at 375-76 ("The determination of 'doing business' is a problem of infinite variety and difficulty . . . ."). For a discussion of the application of the consent theory to corporations, see Kurland, supra note 39, at 578-82. One additional difficulty affected theories of jurisdiction over corporations: the law's historic struggle to define how, when, and where the corporate entity manifested itself. See id. at 577-78 &
foreign corporation on the basis that it was doing business in the state, alternative theories of consent, both actual and implied, and presence were used to satisfy the due process requirements articulated by the territoriality doctrine. Another theory advanced to aid courts in finding that a corporation was doing business within a state was the "submission" theory, which asserted that a corporation coming into the state subjected itself to the reasonable exercise of the state's police power. Although other theories were advanced, no single theory dominated: in at least one case the United States Supreme Court relied on three theories to justify the Court's decision. Because all of the theories failed to evoke a doctrine that could accommodate modern patterns of business activity, the United States Supreme Court fashioned a different theory that has modified, if not subsumed, the original doctrine of territoriality.

C. The Minimum Contacts Standard

Discarding the unsatisfactory vocabulary of presence and consent, the Supreme Court, in *International Shoe Co. v. Washington*, modified the doctrine of territoriality and advanced the minimum contacts standard. For extraterritorial service of process to be permitted this standard requires that a defendant not physically present in the state must have "minimum contacts" with the forum to satisfy traditional notions of fair play and substantial justice. Rather than examining the physical loca-
tion of a defendant in relation to the forum state, the minimum contacts standard looks to whether a defendant’s activities have occurred in the forum state. The sufficiency of contacts to permit jurisdiction depends on the nature, quality, and circumstances of the contacts. Additionally, the activities conducted in the state are compared to the cause of action; when the contacts are related directly to the cause of action a lower threshold of contacts is necessary to satisfy due process than if the contacts upon which jurisdiction is based are unrelated to the cause of action. In the latter instance, the defendant must be conducting continuous and substantial activities within the state that justify the exercise of jurisdiction for all causes of action.

By holding that a state cannot assert jurisdiction over a defendant who has no “contacts, ties, or relations” with the state, International Shoe retained vestiges of territoriality as a necessary aspect of satisfying due process requirements. Implying that common law fairness is not synonymous with constitutional due process, the Court, in dictum, stated that the purpose for imposing a due process standard is to achieve the fair, organized, and effective administration of public policy.

Expanding on International Shoe’s reasoning, the Court in McGee v. International Life Insurance Co. held that, in a cause of action brought by a plaintiff beneficiary of an insurance contract, due process permitted assertion of jurisdiction over a defendant insurance company that had only one insured in the entire state. Because the insurance contract was delivered in the state, the premiums were mailed from the state, and the insured was a resident of the state at the time of death, the Court found that the insurance contract had a substantial connection with the state. In its decision, the Court recognized that social conditions recommended a less restrictive standard of personal jurisdiction than had been suitable in the past. Modern transportation and communication made requiring a defendant to defend a suit in the state in which the defendant had engaged in business activity less burdensome

65. See id.
66. See id. at 318-19.
67. See id. at 317-19 (by implication).
68. See id. (by implication).
69. See id. at 319; cf. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 446 (1952) (when cause of action not related to foreign corporation’s activities in state, state may, but is not required to, assert jurisdiction over the corporation).
70. Cf. Kurland, supra note 39, at 623 (Hanson affirmed that “the concept of territorial limitations on state power is still a vital one”).
73. See id. at 223. The contacts in McGee were established through communication by mail. See id.
74. See id. at 222-23.
than such a requirement would have been in the Pennoyer era. Accordingly, inconvenience was not tantamount to a denial of due process. Furthermore, the Court found a strong state interest in providing a forum for settling disputes between resident insureds and nonresident insurers, particularly because policy holders with small or moderate claims would be unlikely to follow insurers out of the state to litigate claims.

In contrast to the expansion of the minimum contacts standard in McGee, the Court a year later imposed a limitation on the minimum contacts doctrine in Hanson v. Denckla. The central tension in Hanson was the correlating of fair play and substantial justice with the doctrine of territoriality. In an opinion that is often criticized for its opaqueness, the majority enunciated a standard of purposeful contacts but did not examine the justification for the territoriality doctrine. This failure to reevaluate the territoriality doctrine can be rationalized because the decision was written in an era of less nationalized economic and social activity than we know today.

Dora Donner, the decedent in Hanson, had established a trust in Delaware while still a resident of Pennsylvania. Prior to her death, she changed her residence to Florida where she both executed a will and made an intervivos appointment from the Delaware trust to each of two other trusts established by a daughter, Elizabeth Hanson, for the bene-

75. See id. at 223.
76. See id. at 224.
77. See id. at 223.
79. See id. at 250-51.
80. See, e.g., Hazard, supra note 25, at 244 ("In a 5 to 4 decision, Mr. Chief Justice Warren reached the fair result, . . . but by a line of analysis that in all charity and after mature reflection is impossible to follow, no less to relate."); Twerski, A Return to Jurisdictional Due Process—The Case for the Vanishing Defendant, 8 Duq. U.L. Rev. 220, 240 (1970) ("Hanson v. Denckla . . . was so badly mishandled . . . that one is skittish about drawing meaningful conclusions from the case."); cf. Kurland, supra note 39, at 621-22 (criticizing the Court's attempt to distinguish Hanson v. Denckla from McGee v. International Life Ins. Co.).
81. See Hanson v. Denckla, 357 U.S. 235, 250-53 (1958). The Court, however, did acknowledge that changed social conditions had warranted the evolution toward the flexible minimum contacts standard and away from the Pennoyer rule. See id. at 250-51.
82. In the twenty-one years since Hanson changes have come that more closely bind the opposite ends of the country. Notably, in 1958, practical computer applications were in their infancy; for example, in the late 1950's the airlines only were beginning to install limited automatic-reservation systems. See K. Stehling, Computers and You 80-82 (1972). Not until 1963 did the New York Stock Exchange implement computer operations. See id. at 198. Telecommunications systems via satellite did not exist. Not yet developed was the program, even now only partially implemented, of electronic transfers of funds. Some theories have suggested that the onset of the electronic era is affecting drastically social attitudes and perceptions. See generally M. McLuhan, The Gutenberg Galaxy (1962).
fit of Hanson's two sons. After Donner died, two other daughters, Katherine Denckla and Dorothy Stewart, who had each received a half million dollars under the will, challenged the validity of the intervivos appointments to the two trusts in favor of the two children of Hanson. Two lawsuits resulted, one in Florida and one in Delaware. Asserting jurisdiction to determine the validity of the trust, the Florida courts ruled in favor of the two daughters contesting the appointment. The Delaware courts, however, found the trust and power of appointment valid under Delaware law and ruled in favor of Hanson's sons.

Permitting the Delaware decision to prevail, the United States Supreme Court found insufficient contacts between the trustee and Florida to justify Florida's assertion of jurisdiction. Although the decedent had maintained close business relations through the mail with the trustee for eight years, the Court stated that the cause of action did not arise "out of an act done or transaction consummated in the forum state," the trustee had neither solicited business in Florida nor held or administered trust assets there. Any contacts between the trustee and Florida occurred as a consequence of the decedent's relocation to Florida from Pennsylvania rather than because the trustee sought out the decedent in Florida. Such a contact was held to fail to satisfy due process requirements because it did not constitute an "act by which the defendant purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." The Court contrasted the fact that the trustee in Hanson had not initiated the contacts with a Florida resident against the fact in McGee that the nonresident defendant had solicited a reinsurance agreement with a California resident.

83. Whether the state asserted jurisdiction over the trustee or the trust assets was unclear. See Hanson v. Denckla, 357 U.S. 235, 243 (1958). For a detailed discussion of the facts along with a procedural history of the case, see Kurland, supra note 39, at 610-14.
84. See Kurland, supra note 39, at 613-14 (Florida Supreme Court upheld trial court's determination that power of appointment was an invalid testamentary disposition).
85. See Hanson v. Denckla, 357 U.S. at 242.
87. See Hanson v. Denckla, 357 U.S. at 255. By its decision the Court "reached the fair result." Hazard, supra note 25, at 244.
88. See id. at 251.
89. "[The corporate trustee] chose to maintain business relations with Mrs. Donner . . . in [Florida] for eight years, regularly communicating with her with respect to the business of the trust including the very appointment in question." Id. at 259 (Black, J., dissenting).
90. Id. at 251.
91. See id.
92. See id. at 253-54 ("unilateral activity" of those claiming relationship with nonresident defendant is insufficient contact).
93. Id. at 253.
94. See id. at 251.
For a period of eight years, however, the trustee in *Hanson* did have continuing business relations with Mrs. Donner in the state of Florida. Within the context of these facts, the majority opinion's threshold for purposeful contacts seems to require that the defendant would have had to effect in some way, rather than acquiesce in, relocation of an ongoing transaction to another forum. If this assumption is correct, the *Hanson* standard may have failed to anticipate the future in the type and amount of activities that routinely overlap state boundaries.Apparently the Court was attempting to prevent a contact, in and of itself, from subjecting a nonresident defendant to personal jurisdiction without other contacts with the state. According to the Court such un fettered jurisdiction would remove all constitutional restraints against subjecting defendants to suits in foreign jurisdictions.

The Court's decision in *Hanson* reflects the fact that a major difficulty in devising a standard governing extraterritorial personal jurisdiction is to develop a conceptual system that neither automatically confers nor denies jurisdiction over nonresident defendants. Perhaps the *Hanson* decision sought to avoid such a result by creating a bias in favor of the party taking a passive role in introducing an additional forum to an ongoing transaction. The dissent in *Hanson*, however, asserted that the majority was mistakenly basing its rule on conditions that no longer existed—the predominantly local business affairs and unacceptable costs and dangers inherent in travel between states existing at the time of the *Pennoyer* decision. The dissent would not have required that contacts be purposeful, or so directly a source of the cause of action.

Subsequent to *Hanson*, the United States Supreme Court has not sharpened the distinction between purposeful and nonpurposeful contacts. Not until 1978 did the Court again overrule a state's assertion of

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95. See id. at 259 (Black, J., dissenting).
96. See note 82 supra.
97. The Court noted that none of the trust assets had been held or administered in Florida, and that the trustees had never solicited business, even by mail, in Florida. See *Hanson v. Denckla*, 357 U.S. at 251. Furthermore, the cause of action did not arise out of the trustees' contact with Florida, but was merely related to the contact. See id at 251-52. See generally Comment, Minimum Contacts Confused and Reconfused—Variation on a Theme by International Shoe—Or, Is This Trip Necessary?, 7 SAN DIEGO L. REV. 304, 309 (1970) (relation between contact and cause of action is one element required by due process).
98. See *Hanson v. Denckla*, 357 U.S. at 251. The Court in *Hanson* stated "it is a mistake to assume that this trend [toward a more flexible standard] heralds the eventual demise of all restrictions on the personal jurisdiction of the state courts." Id.
99. See Twerski, supra note 80, at 241-43.
100. Cf. Currie, supra note 6, at 549 (*Hanson* requires defendant to have taken "voluntary action calculated to have an effect in the forum State.").
101. See *Hanson v. Denckla*, 357 U.S. at 259-60 (Black, J., dissenting).
102. See id. at 260.
extraterritorial personal jurisdiction. The major innovation affecting the minimum contacts standard has been the Court's enlargement of the scope of the standard's application to quasi in rem jurisdiction. Because the standard must be satisfied for a court to obtain jurisdiction over the interests of a person as well as over the person, property

103. See Kulko v. Superior Court, 436 U.S. 84 (1978). In Kulko, a divorced mother lived in California and the father lived in New York, where the couple had entered into a separation agreement. The couple's two children lived in New York with their father and spent their vacations with their mother in California, pursuant to the terms of a custody agreement. Subsequently, the children determined that they wanted to live with their mother in California and the father did not object. In California, the mother petitioned to increase the amount of child support she received. The California Supreme Court upheld a lower court's application of the state's long arm statute to the father in the child support proceeding. See Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), rev'd, 436 U.S. 84 (1978).

The California Supreme Court had determined that by allowing his children to live in California, the father had invoked the benefits and protections of the laws of the state, deriving an economic benefit by sending his children to live in the state. See 19 Cal. 3d at 524, 564 P.2d at 358, 138 Cal. Rptr. at 591. The factual basis for this conclusion was the father's purchase of a plane ticket for his daughter and his consent when she requested to move. See id. at 524, 564 P.2d at 358, 138 Cal. Rptr. at 590-91. Distinguishing the father's affirmative acts and consent regarding the custody of his daughter from his lack of participation in the son's relocation (the mother had paid the son's transportation), the California court held that, in the case of the son alone, the father's failure to undertake efforts to retrieve the child would not constitute an invocation of the benefits and protections of the state laws. See id. at 525, 564 P.2d at 358, 138 Cal. Rptr. at 591. The California court concluded, however, that the state had jurisdiction over the father on the issue of child support for both children. See id. at 525, 564 P.2d at 358-59, 138 Cal. Rptr. at 591-92.

Rejecting the state court's reasoning, the United States Supreme Court held that to permit the assertion of jurisdiction over the father was unreasonable. See 436 U.S. at 92, 96. Placing importance both on the fact that the case involved domestic relations rather than commercial activity, see id. at 97, and the fact that the father had remained in New York where the family had resided, see id., the Court concluded that basic considerations of fairness would not permit the assertion of jurisdiction over the father. See id. (place of father's domicile is proper forum).

In summary, the bare fact of a child's residency in a state, although it creates a substantial state interest in protecting the needs of the child, see id. at 98, is not sufficient to impose an unreasonable burden on family relations when contacts between the state and the individual do not satisfy the minimum contacts test. See id. at 97-98.


105. See id. In Shaffer, nonresident plaintiffs sought to bring a shareholder's derivative suit against officers and directors of a corporation by attaching stock located in Delaware and owned by the individual nonresident defendants. A Delaware statute established Delaware as the situs of ownership of stock in Delaware corporations even if the stock certificates were located in other states. See Del. Code Ann. tit. 8, § 169 (1974). The defendants asserted that they did not have sufficient minimum contacts with the state to warrant the assertion of jurisdiction over them. See Shaffer v. Heitner, 433 U.S. at 193.

The lower Delaware court distinguished the facts in Shaffer from those in Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969) and its progeny, by asserting that the purpose of the Delaware statute was to compel the appearance of the defendants rather than to secure
wholly unrelated to the plaintiff's cause of action does not alone provide a valid basis for state court jurisdiction. Remaining intact is the basic tenet of the minimum contacts standard as presented in *International Shoe* that the relationship between the forum, the defendant, and the litigation must satisfy the standard of fairness and substantial justice.

**D. Constitutional Restrictions on the Minimum Contacts Standard**

Because the minimum contacts standard has increased the extraterritorial reach of state jurisdiction, the standard may be subject to independent constitutional restrictions. Already recognized by courts and commentators as potential restrictions on the minimum contacts standard are the interstate commerce clause and the first amendment.

possession of property pending trial between debtor and creditor. See *Shaffer v. Heitner*, 433 U.S. at 193.

On appeal, the Delaware Supreme Court found that the action was a quasi in rem action and therefore not subject to the *International Shoe* requirements. See *Greyhound Corp. v. Heitner*, 361 A.2d 225, 229 (Del. 1976), *rev'd sub nom.* *Shaffer v. Heitner*, 433 U.S. 186 (1977). The United States Supreme Court disagreed and reversed, further recanting the doctrine of territoriality:

There have . . . been intimations that the collapse of the *in personam* wing of *Pennoyer* has not left that decision unweakened as a foundation for *rem* jurisdiction. Well-reasoned lower court opinions have questioned the proposition that the presence of property in a State gives that State jurisdiction to adjudicate rights to the property regardless of the relationship of the underlying dispute and the property owner to the forum. . . . The overwhelming majority of commentators have also rejected *Pennoyer*'s premise that a proceeding “against” property is not a proceeding against the owners of that property. Accordingly, they urge that the “traditional notions of fair play and substantial justice” that govern a State’s power to adjudicate *in personam* should also govern its power to adjudicate personal rights to property located in the State. 433 U.S. at 205 (emphasis in original) (citations omitted). Acknowledging that the state often has a substantial interest in governing property within its boundaries, the Court held that many, if not most, types of in rem actions would not be prevented by the application of the minimum contacts standard. See *id.* at 207-08. The Court was united in expanding the scope of the minimum contacts standard, see *id.* at 219, but the dissent took issue with the determination that insufficient minimum contacts existed. See *id.* at 221-22 (Brennan, J., concurring in part and dissenting in part).

In *Shaffer*, the Court arguably seeks to achieve the fair and orderly administration of the law by balancing fairness to nonresident defendants and the state’s ability to regulate property within its boundaries. See *id.* at 207-10.

106. See *Shaffer v. Heitner*, 433 U.S. at 211-12.
107. See *id.* at 204, 206.
108. See, e.g., *Williams v. Connolly*, 227 F. Supp. 539, 548 & n.9 (D. Minn. 1964) (dictum) (although no one has sufficiently examined possible adverse effects on interstate commerce, with expanding concepts of jurisdiction, burden on interstate commerce could become a factor) (citing Note, *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 909, 983-87 (1960)). If Congress, through legislation, has authorized a state to enact laws that burden interstate commerce, no defense based on the interstate commerce clause exists against the state’s exercise of personal jurisdiction to enforce those laws. See *International Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945).
Prior to *International Shoe* the commerce clause did serve as an independent basis upon which to restrict personal jurisdiction that created an unreasonable burden on interstate commerce. Arguably, the flow of interstate commerce generally is facilitated more than hindered by long arm jurisdiction; by availing a means of redress to residents against nonresident defendants, long arm jurisdiction encourages residents to conduct business with nonresidents. The courts since *International Shoe* have suggested, however, that the interstate commerce clause could limit long arm jurisdiction that was demonstrably harmful to interstate commerce.

With regard to the first amendment, the cases suggest two generalizations. First, the first amendment does not create an absolute exclusion from personal jurisdiction for nonresident publishers. Second, first amendment considerations materially affect the issue of personal jurisdiction. Recognizing the potential for personal jurisdiction over nonresident publishers to cause a chilling effect on freedom of speech and the press, one court has held that the first amendment requires a higher threshold of minimum contacts in a libel case than for other tort cases in order to avoid creating a chilling effect on the circulation of information.

In first amendment cases another basis that has been both asserted to restrict personal jurisdiction over nonresident publishers and criticized is the combination of the minimum contacts standard with the single-publication rule. Potentially, the single-publication rule re-


110. See, e.g., International Milling Co. v. Columbia Transp. Co., 292 U.S. 511, 517-18 (1934) (dictum) (necessities of commerce are a basis of denying jurisdiction); Davis v. Farmers Coop. Equity Co., 262 U.S. 312, 315-16 (1923) (corporate long arm statute imposed heavy and serious burden upon interstate commerce). Theoretically, the interstate commerce clause could have precluded advancement of the "consent" theory of jurisdiction. See Kurland, supra note 39, at 581.

111. See, e.g., Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502, 507 (4th Cir. 1956). But cf. Williams v. Connolly, 227 F. Supp. 539, 548 & n.9 (D. Minn. 1964) (dictum) (commerce clause issues have not been sufficiently articulated to assume that commerce clause should require a separate test of state statute's constitutionality).

112. See, e.g., Buckley v. New York Post Corp., 373 F.2d 175, 183-84 (2d Cir. 1967) ("[T]he First Amendment could be regarded as giving forum non conveniens special dimensions and constitutional stature in actions for defamation against publishers and broadcasters.").


stricts the number of locations in which a libel can occur, because under the rule each individual sale within a state does not constitute a separate publication. Following the logic that for purposes of personal jurisdiction the tort is not completed until an injury results, however, the single-publication rule is irrelevant because an injury can establish in and of itself a contact with the state. If the first amendment imposes some restriction on the minimum contacts standard, that restriction, arguably, should stem directly from the first amendment rather than indirectly from first amendment policy considerations.

E. The Minimum Contacts Standard in Minnesota: The Five-Factor Test

Using the minimum contacts standard set forth by the United States Supreme Court, state and federal courts in Minnesota have employed five factors to examine the constitutionality of an exercise of personal jurisdiction over nonresident defendants. First articulated by the Eighth Circuit Court of Appeals in *Aftanase v. Economy Baler Co.*, the five-factor test appears to balance the countervailing policies, on the one hand, of effective state control of activities affecting state residents, against, on the other hand, unreasonable assertions of jurisdiction over nonresidents. From the United States Supreme Court decisions, the

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80 (2d Cir. 1967) (single-publication rule should not be basis of prohibiting lawsuit at place where effect of publication is felt). The *Buckley* court's decision that the single-publication rule does not preclude long arm jurisdiction applies only to plaintiffs who are generally known or reside in the state in which the alleged libel had occurred. See *id.* at 180.

116. See, e.g., Church of Scientology v. Minnesota State Medical Ass'n Foundation, 264 N.W.2d 152, 155 (Minn. 1978). See *generally* *Comment,* *supra* note 109, at 348 & nn.43-47.


118. Cf. *Buckley v. New York Post Corp.*, 373 F.2d 175, 180 (2d Cir. 1967) (the alleged injury constitutes tortious conduct within the contemplation of the state long arm statute). *See also* *Anselmi v. Denver Post, Inc.*, 552 F.2d 316, 320-23 (10th Cir.) (discussion of rationale for not using single-publication rule to prevent exercise of long arm jurisdiction under state statute), *cert. denied*, 432 U.S. 911 (1977).


120. See *id.* at 195-96 (analyzing five Supreme Court opinions). The Ninth Circuit Court of Appeals has adopted a three-step analysis that determines first, whether, directly or indirectly, a nonresident has done an act or completed a transaction in the state, second, whether the claim arises out of or results from the defendant's activity in the forum, and third, whether jurisdiction over the defendant rests upon the due process concepts of fairness and justice. *See, e.g., L.D. Reeder Contractors v. Higgins Indus., Inc.*, 265 F.2d 768, 773 & n.12 (9th Cir. 1959).
Eighth Circuit extracted the following factors to be used in determining whether jurisdiction should be exercised: (1) the quantity of contacts the defendant has with the forum, (2) the quality and nature of the contacts, (3) the source and connection of those contacts with the cause of action, (4) the state's interest in providing a forum, and (5) the convenience to the parties. By applying these factors to the elements of a particular case, a court determines whether personal jurisdiction over a nonresident defendant can be asserted while preserving notions of fair play and substantial justice. Although none of the factors in the five-factor test employs the purposeful contacts language set forth in Hanson, and the test is potentially less restrictive than the language of the purposeful contacts standard, the five-factor test can be used to articulate the Hanson standard. By examining the quality, nature, and source of the contacts, a court can ascertain if the contacts were purposeful enough to invoke the benefits and protections of the state—the threshold of fair play and substantial justice.

1. Quantity

In determining whether the quantity of contacts is sufficient, courts examine contacts between the defendant and the state that are both related and unrelated to the cause of action. A limited number of related contacts can satisfy due process requirements, and, under some circumstances, one related contact can be sufficient. Absent a

122. See Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965).
123. The Hanson standard is an element of the nature and quality factor. See, e.g., Marquette Nat'l Bank v. Norris, 270 N.W.2d 290, 295-96 (Minn. 1978); Northern States Pump & Supply Co. v. Baumann, 311 Minn. 368, 374, 249 N.W.2d 182, 186 (1976); Hardrives, Inc. v. City of LaCrosse, 307 Minn. 290, 296, 240 N.W.2d 814, 817-18 (1976).
124. In Marquette Nat'l Bank v. Norris, 270 N.W.2d 290 (Minn. 1978), the Minnesota Supreme Court expressly discussed purposeful contacts in the context of single and isolated transactions. See id. at 295-97.
126. See, e.g., Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965).
sufficient number of related contacts, if the contacts unrelated to the cause of action are sufficiently continuous, assertion of jurisdiction over the defendant may be justified. Thus, when the unrelated contacts amount to an ongoing presence in the state, the quantity factor seemingly will be controlling and the other factors need not be met. Due process requires at the minimum one contact: meeting that threshold then permits examination of other factors that affect the sufficiency of the contact.

2. Quality and Nature

The quality and nature of a contact, the second factor, is examined by describing the contact with the state and determining the potential effect of the contact in the state. Thus, the quality is greater when the nature of the contact has the potential to cause physical harm or when the contact incurs the benefits and protections of the state’s laws for the defendant. The more regularly a defendant transacts business in the state, the greater the quality and nature of his or her contacts. Even with as minimal a quantity of contacts as one, the fact of a strong state interest in providing a forum to residents increases the quality factor.


130. See, e.g., Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965) (potential of metal baler to cause harm created element of quality).


133. See McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957) (single contact was insurance contract received in forum state; forum has “manifest interest” in providing redress for residents when insurers refuse to pay claims).
The nonresident defendant’s role in effecting with the state a contact related to the cause of action also is significant. For example, a nonresident defendant is less susceptible to jurisdiction when the plaintiff solicited the defendant’s contact with the state, or when a third-party defendant’s contacts were indirect, resulting for example from a relationship with the third-party nonresident plaintiff who is seeking to invoke jurisdiction. Thus, the quality and nature factor can be described as an evaluation of the bare fact of the contact in relation to its consequences in the state. This evaluation is affected by the context of the contact in relation to the facts of the case.

3. Source and Connection of Contacts with the Cause of Action

The third factor, the source and connection of the contacts with the cause of action, analyzes the relationship that exists between the con-

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The courts have imposed a lower threshold of contacts to permit jurisdiction over nonresident sellers than nonresident buyers. See, e.g., Guardian Packaging Corp. v. Kapak Indus., Inc., 316 F. Supp. 952, 954-55 (D. Minn. 1970); Fourth Northwestern Nat’l Bank v. Hilson Indus., Inc., 264 Minn. at 115-16, 117 N.W.2d at 735. This distinction is not based on the identity of the parties, but, rather, on the difference in the quality and nature of their contacts with a state. See, e.g., Northern States Pump & Supply Co. v. Baumann, 311 Minn. at 371-72, 249 N.W.2d at 185. Nonresident sellers who solicit and initiate transactions in one state and then return to their own state to bring suit on the accounts of nonresident buyers would gain an unfair advantage over those buyers. See Fourth Northwestern Nat’l Bank v. Hilson Indus., Inc., 264 Minn. at 117, 117 N.W.2d at 736 (quoting and endorsing Conn v. Whitmore, 9 Utah 2d 250, 255, 342 P.2d 871, 875 (1959)). Payments by a defendant in the forum state without any other contacts do not constitute a minimum contact. See, e.g., Fourth Northwestern Nat’l Bank v. Hilson Indus., Inc., 264 Minn. at 118, 117 N.W.2d at 736.


137. See, e.g., id. at 1283. In Marshall & Stevens Co., the plaintiff sued the defendant insurer for underinsuring a school facility. Denying liability, the nonresident insurer filed a third-party complaint against the Chicago actuarial company that had computed the value of the facility. The court refused to extend jurisdiction over the third-party defendant, noting that of the eight alleged contacts with Minnesota, only one had a connection with the cause of action. See id. at 1283, 1286. Of the single Minnesota contact with the cause of action, the court stated that it was “extremely tenuous . . . and . . . clearly insufficient to support an exercise of jurisdiction over [the third-party defendant].” Id. at 1284.

contacts with the state and the cause of action. To establish an adequate source and connection, the contact need not be a direct cause of the litigation. If the consequences in the state from an out-of-state act that is at issue in the litigation were foreseeable, this factor is satisfied. The source and connection need not be established, however, if with respect to the quantity and quality and nature factors the contacts are substantial.

4. State Interest

Articulated as the forum's interest that state residents have a means of redress, the state interest factor can tip the balance to permit jurisdiction; when claims are of a nature that their pursuit out of state would be improbable the state interest is particularly strong. When claims relate to issues between nonresidents regarding transactions outside the state, the state interest is negligible. As an independent factor, the state interest factor, along with the convenience factor, is secondary in importance to the first three factors discussed above. This factor, however, often affects the quality and nature factor.


141. See, e.g., Anderson v. Luitjens, 311 Minn. 203, 208-09, 247 N.W.2d 913, 916 (1976).

142. See, e.g., International Shoe Co. v. Washington, 326 U.S. 310, 318 (1945); Hardrives, Inc. v. City of LaCrosse, 307 Minn. 290, 298, 240 N.W.2d 814, 819 (1976) (when contacts are substantial with respect to quantity and quality, it is not essential that they be related to the cause of action).

143. See, e.g., Mid-Continent Freight Lines, Inc. v. Highway Trailer Indus., Inc., 291 Minn. 251, 256, 190 N.W.2d 670, 674 (1971).

144. See, e.g., McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957) (residents would be at disadvantage if forced to follow insurance company to distant state); Northern States Pump & Supply Co. v. Baumann, 311 Minn. 368, 374, 249 N.W.2d 182, 186 (1976) (Minnesota "has an interest in providing a forum for a resident allegedly wronged"); Mid-Continent Freight Lines, Inc. v. Highway Trailer Indus., Inc., 291 Minn. 251, 255-56, 190 N.W.2d 670, 674 (1971) (jurisdiction over nonresident third-party defendant in indemnity action by nonresident defendant denied; court would have permitted jurisdiction if plaintiff had commenced suit against third-party defendant).


147. See note 133 supra and accompanying text.
5. Convenience

The final consideration, the convenience factor, balances the interests of the plaintiff in having the case tried in the particular forum against the inconvenience to the nonresident defendant for having to defend in the plaintiff's forum. Generally, convenience is measured in relation to the travel involved in the litigation and the location of evidence and witnesses. Unless the inconvenience to either party is serious, this consideration is irrelevant.

As mentioned previously, of the five factors that analyze the character of the contacts, three are of primary significance. These factors—the quantity, quality and nature, and source and connection of the contact to the cause of action—are closely interrelated and have not always been discussed by the courts separately from one another. Cumulatively,
they can recommend jurisdiction when any one factor alone would not justify its exercise.\(^{154}\)

III. **THE MINNESOTA LONG ARM STATUTES**

A. **Introduction**

1. **The Two-Step Test**

Whether a state has jurisdiction over a nonresident depends on a two-step approach, involving first, the state jurisdiction statutes and second, due process limitations.\(^{155}\) Before examining whether the requisite minimum contacts have occurred, a court, at least in theory,\(^ {156}\) determines whether the applicable jurisdictional statutes encompass the nonresident defendant in a given fact situation.\(^{157}\) Some statutes, as interpreted, are broader than due process permits,\(^{158}\) whereas other statutes do not contemplate jurisdiction that would otherwise be permissible under the due process requirements.\(^{159}\) When a statute does not permit jurisdiction even though the requisite minimum contacts exist, the court may not exercise jurisdiction.\(^{160}\) Similarly, when a statute contemplates

\(^{154}\) See, e.g., Marquette Nat'l Bank v. Norris, 270 N.W.2d 290, 295 (Minn. 1978) (when only contact is one isolated transaction, its nature and quality becomes dispositive); Hardrives, Inc. v. City of LaCrosse, 307 Minn. 290, 298, 240 N.W.2d 814, 819 (1976) (because contacts were substantial as to quantity and quality, they need not be related to cause of action).

Apart from the minimum contacts tests arising out of the due process clause, additional constitutional bases for restricting jurisdiction exist. See notes 108-18 supra and accompanying text.


\(^{156}\) As discussed below, see notes 181-83 infra and accompanying text, the distinction between the statutory applicability test and the due process test is not always clear because of the liberal interpretation given the state statutes. See 2 Moore's Federal Practice ¶ 4.41-1[3], at 4-457 (2d ed. 1978) ("[I]n many states, the only question to be decided is whether it would offend due process to assert jurisdiction in the particular case.").


the nonresident defendant's act as a basis for jurisdiction, but the act
does not constitute a contact sufficient to meet the minimum contacts
threshold, personal jurisdiction will not be sustained. \(^6\) Only when both
the statute and due process authorize extraterritorial service of process
can a court exercise personal jurisdiction over a nonresident defend-
ant. \(^6\)

Among the contemporary state statutes, the broadest eliminate any
statutory language apart from the due process standard. \(^6\) In the states
that specifically enumerate which actions invoke jurisdiction over a
defendant, some courts hold that the statutes should be construed
strictly, \(^6\) whereas others liberally construe the statutes. \(^6\) In those

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\(^{161}\) Minn. 1970) (federal courts should observe any state statutory limitations on jurisdiction that are stricter than due process requires); Washington Scientific Indus., Inc. v. American Safeguard Corp., 308 F. Supp. 736, 739 (D. Minn. 1970) (agent's contact with state on behalf of principal not within long arm statute so as to allow jurisdiction over agent); cf. Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 448 (1952) (states are not compelled to assert jurisdiction to maximum limits of due process).

\(^{162}\) See, e.g., Smith v. Lloyd's of London, 568 F.2d 1115, 1118 n.7 (5th Cir. 1978) (insurer who infrequently accepted policies through insurance agents in state may not have had adequate contacts even if statute was applicable); Conwed Corp. v. Nortene, S.A., 404 F. Supp. 497, 505 (D. Minn. 1975) (letter threatening patent infringement action constituted "use of personal property" contemplated by statute but due process would be offended by the assertion of jurisdiction); Gelineau v. New York Univ. Hosp., 375 F. Supp. 661, 668 (D.N.J. 1974) (even though service was proper under New Jersey statute, subjecting New York hospital to suit would violate due process because only contact with state was treating one of its residents).


\(^{164}\) See, e.g., Jennings v. McCall Corp., 320 F.2d 64, 72 (8th Cir. 1963) (Missouri courts do not interpret foreign corporation statute to extend to limits of due process); American Baseball Cap, Inc. v. Duzinski, 308 So. 2d 639, 642 (Fla. Dist. Ct. App. 1975) (party seeking assertion of personal jurisdiction has burden to present facts that clearly justify the applicability of statute; statute must be strictly construed).

states with specific statutory criteria for personal jurisdiction that are broadly interpreted to the extent permitted by due process, the two tests for determining jurisdiction appear to overlap.

2. The Minnesota Statutes

The early Minnesota long arm statutes related to nonresident motorists\(^\text{166}\) and foreign corporations doing business in the state.\(^\text{167}\) More recently, these older statutes have been amended and supplemented both by long arm statutes affecting specific matters\(^\text{168}\) and a general personal jurisdiction statute.\(^\text{169}\) The principle of the various statutes is the same: to provide a basis for service of process on nonresident defendants who have done either an act within the state or an act outside the state with an effect within the state. Together, the statutes may provide overlapping bases for exerting jurisdiction.\(^\text{170}\) Of Minnesota's two long arm stat-

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\(^{166}\) Id. For a general discussion of service of process under state nonresident motorist, aircraft, and watercraft statutes, see 2 Moore's Federal Practice, supra note 156, at ¶ 4.41-1[2].


\(^{168}\) See, e.g., Minn. Stat. §§ 60A.19(3), .21(2) (1978) (insurance regulation); id. § 80A.27(3)-(5), (7)-(8) (securities regulation); id. § 170.55 (nonresident motorists); id. § 518.11 (marriage dissolution); id. § 518A.05 (child custody). In a marriage dissolution a court has no personal jurisdiction over a nonresident defendant unless personal service of process is made within the state. See Allegrezza v. Allegrezza, 236 Minn. 464, 467, 53 N.W.2d 133, 135 (1952).


utes that are general in application, the older, single-act statute, which only applies to foreign corporations, is narrower in scope than the personal jurisdiction statute, which applies to both foreign corporations and nonresident individuals. Furthermore, unlike the single-act

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172. See MINN. STAT. § 303.13, subd. 1(3) (1978).

173. See id. § 543.19(1) (1978). The personal jurisdiction statute reads in part:

Subdivision 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any non-resident individual, or his personal representative, in the same manner as if it were a domestic corporation or he were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or non-resident individual:

(a) Owns, uses, or possesses any real or personal property situated in this state, or
(b) Transacts any business within the state, or
(c) Commits any act in Minnesota causing injury or property damage, or
(d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:

(1) Minnesota has no substantial interest in providing a forum; or
(2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice; or
(3) the cause of action lies in defamation or privacy.

Id. Clause (d) was amended in 1978. See Act of Apr. 5, 1978, ch. 780, § 2, 1978 Minn. Laws 1110, 1111-12. The former language of clause (d) read:

(d) Commits any tort outside of Minnesota causing injury or property damage within Minnesota, if, (1) at the time of the injury, solicitation or service activities were carried on within Minnesota by or on behalf of the defendant, or (2) products, materials or things processed, serviced or manufactured by the defendant were used or consumed within Minnesota in the ordinary course of trade.

Act of May 15, 1967, ch. 427, 1967 Minn. Laws 936, 937. The remaining subdivisions of the statute read:

Subd. 2. The service of process on 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 with the same effect as though the summons had been personally served within this state.

Subd. 3. Only causes of action arising from acts enumerated in subdivision 1 may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

Subd. 4. Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereafter provided by law or the Minnesota Rules of Civil Procedure.

Subd. 5. Non-resident individual, as used in this section, means any individual, or his personal representative, who is not domiciled or residing in the state when suit is commenced.

statute for lawsuits in tort, the personal jurisdiction statute has no requirement that the plaintiff be a resident of Minnesota. Interpreting the statutes broadly, the Minnesota courts have construed the statutes so that both the single-act statute's language "a contract . . . to be performed in whole or in part" and the personal jurisdiction statute's language "transacts any business" can apply with virtually equal breadth. Similarly, the courts have not distinguished the personal jurisdiction statute's application to tort actions from that of the single-act language applying to foreign corporations. Thus, despite distinctions in the language of the two statutes, the differences are more apparent than real.

B. Court Interpretation of the Statutes

Notwithstanding the two-step test requiring an analysis of the effect of the statute separately from that of the minimum contacts test of due process, the Minnesota state and federal courts have relied on the due process standard to interpret the personal jurisdiction statutes. Consonant with other jurisdictions, the Minnesota Supreme Court has held consistently that the statutes should be interpreted broadly to the extent permitted by due process. In that spirit, the court has held that although Minnesota's foreign corporation statute specifically excludes

175. Id. § 543.19(1).
176. Compare id. § 303.13, subd. 1(3) (1978) (single-act statute; plaintiff must be Minnesota resident) with id. § 543.19(1) (personal jurisdiction statute; no similar requirement).
177. Id. § 303.13, subd. 1(3).
178. Id. § 543.19(1)(b).
180. See, e.g., Anderson v. Luitjens, 311 Minn. 203, 206, 247 N.W.2d 913, 915 (1976) (although defendant offered plausible distinction in application of Minn. Stat. § 303.13, subd. 1(3) from that of Minn. Stat. § 543.19(1), both should be applied to limits permitted by due process); Mid-Continent Freight Lines, Inc. v. Highway Trailer Indus., Inc., 291 Minn. 251, 253-54, 190 N.W.2d 670, 672-73 (1971) (both statutes should be applied to maximum limits consistent with due process).
181. See, e.g., Anderson v. Luitjens, 311 Minn. 203, 206, 247 N.W.2d 913, 915 (1976) (Legislature's basic consideration was maximum extraterritorial jurisdiction permissible).
182. See note 165 supra and accompanying text.
183. See Aftanase v. Economy Baler Co., 343 F.2d 187, 191-92 (8th Cir. 1965); Anderson v. Luitjens, 311 Minn. 203, 206-07, 247 N.W.2d 913, 915 (1976); cf. 2 Moore's Federal Practice, supra note 15 ¶ 4.41-1[3], at 4-456 (federal courts have construed Minnesota long arm statutes to broadest extent permitted by due process).
insurance companies from its reach, that same statute's single-act provision applies to insurance transactions and events not contemplated under the insurance statutes. Thus, unless a statute specifically forbids extraterritorial personal service on a nonresident, as in the case of a proceeding for alimony or its modern equivalent, long arm statutes pertaining to specific matters do not appear to preclude jurisdiction under the general statutes.

Within the perimeters of the general personal jurisdiction statute, the court's policy of interpreting the statute broadly resulted in the court ignoring a statutory provision. A Minnesota Supreme Court decision rendered superfluous the clause in Minnesota Statutes section 543.19 relating to torts committed outside the state that cause injury in the state. In Anderson v. Luitjens, a case involving a tortious act committed in Iowa that resulted in injury in Minnesota, the court interpreted the personal jurisdiction statute so that an "injury" occurring in Minnesota constituted commission of a tort in the state.

In Luitjens, teenagers from Minnesota were served liquor at an Iowa tavern located three miles from the Minnesota state line. One of the teenagers became intoxicated and subsequently, while driving back from the tavern, was involved in a two-car accident in Minnesota approximately ten miles from the tavern. A passenger in the car driven by the intoxicated teenager brought suit against four parties including the tavern owner. Because Iowa law prohibits serving liquor to a minor or to an intoxicated person, three defendants, the two car drivers and the


185. *See* Hunt *v.* Nevada State Bank, 285 Minn. 77, 104, 172 N.W.2d 292, 308 (1969) ("There was an intended harmonious mesh between these two jurisdictional statutes; the legislature cannot have meant to grant immunity to the corporation aiding in a tortious conversion in Minnesota merely because that organization is an insurance company."). *cert. denied*, 397 U.S. 1010 (1970).

186. *See also* 2 W. Nelson, *Divorce and Annulment* § 14.12 (2d ed. 1961). When no other service is possible on a resident defendant, the courts permit service by publication. *See* Gill *v.* Gill, 277 Minn. 166, 171, 152 N.W.2d 309, 313 (1967).


188. Clause (d) of the original personal jurisdiction statute, Act of May 15, 1967, ch. 427, § 1(1)(d), 1967 Minn. Laws 936, 937 (current version at *Minn. Stat.* § 543.19(1)(d) (1978)), was ignored by the court in Anderson *v.* Luitjens. *See* 311 Minn. at 206-07, 247 N.W.2d at 915-16.

189. 311 Minn. 203, 247 N.W.2d 913 (1976).

190. *See id.* at 206, 247 N.W.2d at 915.

191. *See id.* at 205, 247 N.W.2d at 914 (construing *Iowa Code* §§ 123.47, .49(1), .49(2)(h) (1975)).
owner of one car, cross-claimed for contribution and indemnity against the tavern owner. The trial court dismissed the action against the tavern owner for lack of personal jurisdiction, but the Minnesota Supreme Court reversed. 192

Relying on section 543.19 clause (c)—"commits any tort in Minnesota"—the court made no reference to clause (d)—"commits any tort outside of Minnesota causing injury or property damage within Minnesota if the defendant were engaging in other activities in the state." 193 Clause (d) would seem to have been applicable, 194 and, two years later, in a case presenting closely parallel facts, 195 the defendant specifically argued that the clause (d) language—"commits any tort outside of Minnesota"—should control. 196 Nonetheless, referring to its earlier decision, the court held that clause (c) governed not only because the injury occurred in Minnesota but also because the defendant failed to present a compelling argument as to why clause (d) should govern. 197 Because the court relied on the due process standard to interpret the statute broadly, ignoring the restrictive wording in clause (d), the Luitjens decision illustrates that to some degree, despite continued acknowledgment of the two-step test, the two tests for determining jurisdiction are blurred. 198

192. See 311 Minn. at 204, 212, 247 N.W.2d at 914, 918.
194. See 311 Minn. at 205-07, 247 N.W.2d at 915-16. The court's decision contravened what the court has described as a "duty" to reconcile related provisions if possible. See Roinestad v. McCarthy, 249 Minn. 396, 405, 82 N.W.2d 697, 703 (1957); cf. MINN. STAT. § 645.16 (1978) ("Every law shall be construed, if possible, to give effect to all its provisions."); id. § 645.17(2) ("The legislature intends the entire statute to be effective and certain . . . .").
195. If clause (d) had been applied, it is difficult to formulate a rationale that would have permitted the state to assert jurisdiction over the defendant. A possible rationale would have been that a "tort" consists not only of the intentional or negligent act, but the resulting harm or damage as well. In Anderson v. Luitjens, for example, the act was committed in Iowa while the harm occurred in Minnesota. Thus, the "tort" was committed, in part, in each state.

In Blamey, a small liquor establishment owned by a sole proprietor and located in Wisconsin, close to the state border and near the exit to an interstate highway, sold off-sale beer to a minor from Minnesota. Later, the car driven by the minor who purchased the beer was involved in a one-car accident in Minnesota, resulting in injury to the fifteen-year-old plaintiff, a passenger in the car. The teenagers had driven to Wisconsin solely for the purpose of obtaining beer. See Blamey v. Brown, 270 N.W.2d at 885-86.
197. See Blamey v. Brown, 270 N.W.2d at 886.
198. See id. at 886-87.
199. Cf. Taylor v. Portland Paramount Corp., 383 F.2d 634, 640 (9th Cir. 1967) (state courts fail to interpret statutes independently from constitutional standard); McQuay,
C. Legislative Response: Amendment of the Personal Jurisdiction Statute

Responding favorably to the result in *Luitjens*, the Minnesota Legislature amended the personal jurisdiction statute by removing the old language in clause (d) and substituting a more general set of requirements as to when acts committed outside the state result in injury inside the state. Under the amendment, jurisdiction over nonresident defendants is permitted for an "act" committed outside Minnesota that results in injury or property damage in the state, provided that none of the following three elements is present: jurisdiction is not permitted when Minnesota has no substantial interest in providing a forum, when, by permitting jurisdiction, the burden on a defendant would violate fairness and substantial justice, or when the cause of action lies in defamation or invasion of privacy.

1. Substantial State Interest

A substantial state interest has been defined in relation to the due process test. In that context, the state has a substantial interest in providing a means of redress for its residents to ensure them maximum protection against injuries caused by nonresidents. Therefore, the

Inc. v. Samuel Schlossberg, Inc., 321 F. Supp. 902, 905 (D. Minn. 1971) (because the state supreme court interprets the statutes as extending to the limits of due process, the federal court need not determine how the state supreme court would decide the case; the state court would not be more restrictive than and could not exceed federal constitutional standards).

200. 311 Minn. 203, 247 N.W.2d 913 (1976).
201. Compare Minn. Stat. § 543.19(1)(d) (1978) (containing amended language) with Act of May 15, 1967, ch. 427, § 1(1)(d), 1967 Minn. Laws 936, 937 (amended 1978). Also, the Legislature substituted the word "act" to replace the word "tort" in clause (c). See Act of Apr. 5, 1978, ch. 780, § 2, 1978 Minn. Laws 1110, 1111 (current version at Minn. Stat. § 543.19(1)(c) (1978)). Arguably, this change was made to keep clauses (c) and (d) parallel in language. The change from "tort" to "act" in clause (d) arguably was made to prevent the need for determining the situs of any tort that is asserted in a cause of action. See Act of Apr. 5, 1978, ch. 780, § 2, 1978 Minn. Laws 1110, 1111 (current version at Minn. Stat. § 543.19(1)(c) (1978)).
203. See, e.g., McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957) (state has "manifest interest" when claim is less than cost of bringing action in foreign jurisdiction, placing resident at "severe disadvantage"); B & J Mfg. Co. v. Solar Indus., Inc., 483 F.2d 594, 598-99 (8th Cir. 1973) (state has interest when plaintiff seeks declaratory judgment that defendant's patent was invalid and not infringed), cert. denied, 415 U.S. 918 (1974); Aftanase v. Economy Baler Co., 343 F.2d 187, 196, 197 (8th Cir. 1965) (state has manifest interest in providing residents means of redress for insurance claims; state has lesser but "not insignificant" interest in products liability claims of residents); Thompson v. Kiekhaefer, 372 F. Supp. 715, 720 (D. Minn. 1973) (substantial interest in providing a forum for alleged libel decreases when an alternative forum is available without imposing hardship on resident plaintiff); United Barge Co. v. Logan Charter Serv., Inc., 237 F. Supp.

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state interest probably increases inversely to the feasibility of pursuing a claim out of state.204 Apart from the state interest in protecting its residents, another interest recognized by the United States Supreme Court is the state’s ability to resolve property disputes205 and ensure the marketability of property in the state.206 Thus, a substantial state interest appears to derive from the nature of the relationship between the state and the cause of action. This interest increases when no other state has equivalent contacts, such as in multiparty litigation involving defendants from several states.207 Another aspect of the state interest, when Minnesota has closer ties with the defendants than any other forum in relation to the action, is an interest in promoting “judicial economy.”208

Whatever the eventual parameters of “a substantial state interest in the cause of action,”209 the presence of this language in the amendment implies that for acts committed outside the state clause (d) of the statute requires finding a substantial state interest even if the minimum contacts standard is less restrictive. Presently, the five-factor test of minimum contacts used in Minnesota, by not requiring a substantial state interest,210 potentially appears to be less restrictive than the statute.

624, 627 (D. Minn. 1964) (state has policy of providing a forum for residents who suffer harm from actions of nonresidents); Williams v. Connolly, 227 F. Supp. 539, 546 (D. Minn. 1964) (for products liability claims, state has “important interest” in providing forum for injured residents); Northern States Pump & Supply Co. v. Baumann, 311 Minn. 368, 374, 249 N.W.2d 182, 186 (1976) (when state resident alleges breach of contract, state “obviously has an interest in providing a forum”); Anderson v. Luitjens, 311 Minn. 203, 209, 247 N.W.2d 913, 917 (1976) (because plaintiffs are residents, state has “strong interest” in providing a forum); cf. Mid-Continent Freight Lines, Inc. v. Highway Trailer Indus., Inc., 291 Minn. 251, 256, 190 N.W.2d 670, 674 (1971) (because third-party plaintiff was a nonresident, state interest was minimal in asserting jurisdiction over nonresident third-party defendant).


206. See, e.g., id. at 207-08.


210. See notes 119-54 supra and accompanying text.
2. Fairness and Substantial Justice

The second element that can prevent an exercise of jurisdiction is a burden on the defendant that is violative of fairness and substantial justice. By incorporating this language into the statute, the amendment gives the courts statutory authority to find jurisdiction under the statute so long as the exercise of jurisdiction is fair. As has been discussed, the statutory language technically is independent of the constitutional standard. Thus, with regard to the first step in the two-step test, a judicial determination of fairness under the statute theoretically may be narrower than the constitutional requirement. Even if the five-factor test is satisfied, the courts under the statute can make a distinction based on criteria other than contacts, such as the relative mobility or national-versus-local character of the parties. Thus, the courts have statutory authority to shape a standard of fairness for nonresident defendants who have committed an act outside the state, causing injury or property damage in the state. Of course, if the courts interpret the amendment to be a legislative adoption of the due process standard the statute will not function independently of the due process standard. While the new language does not appear to mandate a departure from the results in recent long arm jurisdiction cases, the amended law restores the integrity of the analytic framework in the two-step test by permitting the courts to consider whether fairness and substantial jus-

212. See notes 155-65 supra and accompanying text.
213. See id.
214. As a hypothetical example, assume a nonresident small retailer is about to be sued. In one fact situation the retailer initiated the inquiry that led to a franchise relationship for certain products with a national manufacturer headquartered in Minnesota. Arising out of this relationship are several contacts between the retailer and the manufacturer in Minnesota related to marketing strategies. After a dispute develops between the retailer and manufacturer the manufacturer has grounds to assert that the retailer has converted the manufacturer’s property, and the retailer writes a letter to his national association of retailers alleging that the manufacturer engaged in deception.

In the alternative fact situation, assume that the same nonresident retailer sells a defective product to a Minnesota resident. Prior to the sale, completed in the retailer’s home state, the purchaser informed the retailer he was taking the product to Minnesota, and the retailer guaranteed the product’s quality. The retailer has a small number of sales of similar products to other Minnesota residents. Upon returning to Minnesota the purchaser is injured by the product.

In both situations, the retailer has committed an act outside the state resulting in consequences in the state. Arguably, the considerable burden on the retailer to come to Minnesota is less fair in a suit by the national manufacturer than in one by the purchaser. The five-factor test, however, is satisfied in both instances. If the courts use the statute to determine fairness and justice, the courts can distinguish the two situations on some basis other than minimum contacts.

tice are achieved without having to rely on the due process clause as the source of the test.

3. Defamation and Privacy Lawsuits

The third element of the amended clause (d) prohibits jurisdiction when the act committed outside the state is the basis of an action in defamation or privacy. Although the legislative history supplies negligible background for the provision, a suggested rationale is that two related factors prompted the Legislature to enact this exception to extraterritorial personal jurisdiction. One factor is the precedent of a similar prohibition under New York law. The other factor is the potential for a chilling effect on first amendment interests in freedom of speech and press because no evidence of physical or economic loss is apparent, the possibility of frivolous suits may increase. The resulting burden would fall most heavily on small-scale publications, those least able to defend themselves even in the preliminary stage of a lawsuit. Large-scale media enterprises conducting activity in Minnesota cannot

217. Although proponents of the amendment had prepared information in support of the defamation and privacy exception, see Statement of Lobbyists (Aug. 11, 1979) (on file in William Mitchell Law Review office), no questions were raised by the legislators during committee hearings. See, e.g., Tapes of Hearings on S.F. 1862 Before the Minnesota Senate Judiciary Comm., 70th Minn. Legis., 1978 Sess.; Tapes of Hearings on S.F. 1862 Before the Subcomm. on Judicial Administration of the Minnesota Senate Judiciary Comm., 70th Minn. Legis., 1978 Sess.
218. These factors were discussed by proponents of the bill with individual legislators. See Statement of Lobbyists (Aug. 11, 1979) (on file in William Mitchell Law Review office).

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

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 . . .

221. Cf. Amba Marketing Sys., Inc. v. Jobar Int'l, Inc., 551 F.2d 784, 788 n.4 (9th Cir. 1977) (dictum) (distinction can be made between injury-causing events and more amorphous tort claims such as patent and trademark infringement and unfair competition).
222. For an example of the costs that can accrue to a publisher in order to obtain a summary judgement in a frivolous suit, see D. Gillmor & J. Barron, Mass Communication Law 182 (2d ed. 1974).
seek protection within the exception, however, because they are susceptible to jurisdiction under clause (b) for transacting business in the state.223

Because the Legislature imposed the specific privacy and defamation exception to the general rule permitting jurisdiction for injuries occurring in the state, the Minnesota courts should give effective meaning to the exception, particularly in view of strong first amendment interests.224 If the courts were to permit jurisdiction, independent of the exception, on the basis of a telephone interview or a single in-state interview under either the “transacts any business” clause or the “commits any act in Minnesota” clause, the exception largely would be obviated. Furthermore, because an interview in Minnesota may not be causally related to an alleged injury from an out-of-state publication, jurisdiction should not be based on the “commits an act in Minnesota” clause. One additional factor suggests that the courts should develop a meaningful exception to jurisdiction for out-of-state acts related to causes of action in defamation and privacy: the Legislature’s amendment relating to defamation and privacy cases is the procedural complement to the Minnesota Supreme Court’s adoption in 1978 of the single-publication rule,225 a substantive rule that states that the good faith distribution of defamatory material previously published does not constitute a republication.226 Therefore, the “commits any act in Minnesota” clause should not be construed to include acts that are within the normal sale and distribution of the material subsequent to the actual publication of the material.

4. A Look to the Future

By amending the personal jurisdiction statute, the Legislature has


224. See note 113 supra and accompanying text.

225. See Church of Scientology v. Minnesota State Medical Ass’n Foundation, 264 N.W.2d 152, 155 (Minn. 1978).

226. “Under the ‘single-publication rule,’ the statute of limitations begins to run when a mass-produced newspaper, book, or magazine is first released to the public.” Id. at 155. Subsequent incidental republications do not trigger a new period for the statute to run against the original publisher. See id.

A state rule of civil procedure has been held to deny jurisdiction in a case involving interstate publication of an allegedly defamatory blacklist. See Bethany Auto Sales, Inc. v. Aptco Auto Auction, Inc., 564 F.2d 895, 896-97 (9th Cir. 1977) (per curiam) (allegation of harm or injury from interstate publication does not constitute an event within the state which confers personal jurisdiction). Had the plaintiff established that a republication occurred within the state, the court might have permitted jurisdiction over nonresident defendants having no contacts with the state. See id. at 897.
authorized Minnesota courts to incorporate whatever tests are advisable to determine the issue of long arm jurisdiction as it relates to acts committed outside the state resulting in an injury in Minnesota. Thus, independent of the authority of the constitutional due process standard, the courts can employ tests akin to the five-factor test. With the new language, the courts in Minnesota have clear statutory authority to achieve fairness and justice while accommodating changing technological and social circumstances, so long as the courts comply with the limitations imposed by the United States Supreme Court’s interpretation of the due process clause under the minimum contacts standard.

IV. A Proposed Supplement to the Minimum Contacts Standard

Practically speaking, the results of the application of the minimum contacts standard seem fair and reasonable.\textsuperscript{227} The standard’s validity in terms of its current practical effects, however, should be distinguished from the standard’s potential for usefulness in the future as well as the adequacy of the principle of fairness and substantial justice as a limitation of the minimum contacts standard. Two problems are inherent in due process as it is elaborated currently by the minimum contacts standard.

The first problem is the potential for the decreasing meaningfulness of contacts alone in determining the issue of personal jurisdiction. Whether the standard is couched in terms of purposeful contacts or in terms of a group of factors that examines the context and character of the contact, the minimum contacts standard relies primarily on an examination of the contacts themselves.\textsuperscript{228} Seemingly, some national and international networks of activity could effect, more or less simultaneously, the requisite minimum contacts between the defendant and a number of jurisdictions. For example, in the evolving use of electronic

\textsuperscript{227} An apt summarization of the operation of the law of personal jurisdiction has been made by Moore:

It is not possible within the limitations of [Moore’s treatise] to analyze and compare the hundreds of state and federal decisions applying [the] basic due process principles, but a few generalizations may be made. If there are substantial contacts with the state, for example a substantial and continuing business, and if the cause of action arises out of those contacts, jurisdiction will be sustained. If there are substantial contacts with the state, but the cause of action does not arise out of these contacts, jurisdiction may be sustained. If there is a minimum of contacts, and the cause of action arises out of the contacts, it will normally be fair and reasonable to sustain jurisdiction. But if there is a minimum of contacts, and the cause of action does not arise out of the contacts, there will normally be no basis of jurisdiction, since it is difficult to establish the factors necessary to meet the fair and reasonable test.

\textsuperscript{228} See notes 63-68, 152-54 supra and accompanying text.
information relay systems in governmental, banking, and commercial transactions, contacts by users may be so continuous and plentiful as to justify jurisdiction over the user in several states. Under these circumstances, some basis independent of the contacts themselves seems desirable to examine the appropriateness of exerting personal jurisdiction in a particular forum.

The second problem, interrelated with and intensified by the first, relates to whether the principle of fairness and substantial justice is sufficient to resolve the issue of personal jurisdiction. To understand this problem, the development of due process in personal jurisdiction must be recalled. Apart from its application to a specific legal context, due process imposes no specific procedural requirements. The first standard giving concrete meaning to due process in personal jurisdiction was territoriality, based on the theory of exclusive jurisdiction.


230. For a case involving a computer file that resulted in plaintiff's detention in different parts of the country by police when he came in routine contact with authorities, see Maney v. Ratcliff, 399 F. Supp. 760 (E.D. Wis. 1975). The defendant, the Louisiana police, accused of negligently failing to remove plaintiff's name from computer bank, argued unsuccessfully that the long arm statute was not intended to apply to use by police and prosecutors of records in the National Crime Information Center. See id. at 767.

In another context, the minimum contacts standard is, arguably, insufficient to analyze adequately the use of garnishment statutes to effect jurisdiction. Cases relating to the use of garnishment statutes include: O'Connor v. Lee-Hy Paving Corp., 437 F. Supp. 994 (E.D.N.Y. 1977), aff'd, 579 F.2d 194 (2d Cir.), cert. denied, 99 S. Ct. 639 (1978); Rintala v. Shoemaker, 362 F. Supp. 1044 (D. Minn. 1973); Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 888 (1976), vacated and remanded, 433 U.S. 909 (1977), aff'd on remand, 272 N.W.2d 888 (Minn. 1978); Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 888 (1976), cert. denied, 99 S. Ct. 639 (1978); Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 888 (1976), vacated and remanded, 433 U.S. 902 (1977), aff'd on remand, 272 N.W.2d 888 (Minn. 1978), prob. juris. noted, 47 U.S.L.W. 3553 (U.S. Feb. 21, 1979) (No. 78-952); Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). The method of gaining jurisdiction is to garnish the contractual obligation of an insurer doing business in the state to defend and indemnify the nonresident defendant insured. For example, if two residents of a state have a car accident and the complaining party subsequently changes residency to a state with which the defendant has no contacts other than the insurer's policy obligation, the new state of residency may be able to gain jurisdiction over the nonresident defendant to the limits of his or her insurance policy. Whether the insurer does business in the new state of the plaintiff's residency is determinative. See, e.g., Savchuk v. Rush, 272 N.W.2d 888, 891-93 (Minn. 1978), prob. juris. noted, 47 U.S.L.W. 3553 (U.S. Feb. 21, 1979) (No. 78-952).

The main justification of the Minnesota Supreme Court's decision to permit jurisdiction under the above circumstances is the reasonableness of such jurisdiction in terms of fairness and minimum contacts. See id. at 892-93. Without questioning the court's conclusion, the analysis, arguably, would be more effective if the result could be justified in terms of the orderly administration of laws as well as in terms of the fair administration of laws.

231. See note 64 supra and accompanying text.

232. See notes 25-30, 35-37 supra and accompanying text.
ity's evolution into the minimum contacts standard demonstrates that due process could not be effectuated by limiting personal service of process to within the forum's boundaries. Rather, the law has observed that cumulative transactions or events routinely can involve residents of different states. What replaced the original equation of due process with exclusive territorial jurisdiction was the equation of due process with extraterritorial jurisdiction, to the extent that minimum contacts result in fair play and substantial justice.

The problem is that the principle of fairness and substantial justice is itself a highly flexible boundary. Arguably, because the fairness and substantial justice principle is general and elastic, it does not comprise a limitation on minimal purposeful contacts that is any more concrete or measurable than the threshold concept of "due process of law." In those instances in which the contacts between a defendant and a forum provide an inadequate basis for resolving the constitutional issues affecting personal jurisdiction, no independent and concrete criterion of due process exists. Yet, some criterion is desirable. Without one, the constitutional doctrine of due process remains an abstraction. The application of constitutional doctrines should not be confused with the application of moral truth. The justification on constitutional grounds for a particular application of the law should be more than: "Because the result is fair and just." Otherwise, the constitutional justification precludes discussion and interpretation.

A rationale that can supplement the minimum contacts standard exists. Already alluded to in *International Shoe*, this rationale was suggested by the court's statement that "[w]hether due process is satisfied must depend upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." Due process requires not

233. See notes 47-50, 64-68 supra and accompanying text.
234. See id.
235. Cf. Twerski, supra note 80, at 245 ("Overall fairness to everyone may be a desideratum of the common law but it is not the foundation of the due process clause. If we desire to engage in a common law evaluation of fairness to all parties, then the due process clause ceases to be the vehicle for limiting the exercise of jurisdiction.").
236. See notes 229-30 supra and accompanying text.
237. Law should not be considered the equivalent of morality. See Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 459-60, 464 (1897). "[N]othing but confusion of thought can result from assuming that the rights of man in a moral sense are equally rights in the sense of the Constitution and the law." Id. at 460. Absolute truth should be distinguished from instrumental truth; the former is beyond human comprehension and the latter is subject to influence and change. See A. Wheels, *The End of the Modern Age* 107 (Harper Torchbook ed. 1973) (quoting K. Popper, *Conjectures and Refutations* 29 (1963)).
238. 326 U.S. at 319.
239. Id. (emphasis added).
only fairness but the orderly administration of justice. In addition to promoting those elements pertaining to the fairness to the parties, this principle, in terms of the capabilities of the legal system, invokes a practical measure of the implications of asserting jurisdiction. Otherwise, without the practical measure, the more abstract principle of fairness may foster a result that would hinder some other public policy.

Support for the fair and orderly administration of laws standard can be found in other United States Supreme Court decisions. In *Kulko v. Superior Court*, the California Supreme Court had determined that sufficient purposeful contacts existed between a nonresident defendant and the state to permit the exercise of jurisdiction over the nonresident in a cause of action relating to child support. Holding that jurisdiction over the defendant would be unreasonable, the United States Supreme Court reversed and noted that, given the facts of the case, to permit jurisdiction over a parent concerning the issue of child support could burden unreasonably family cooperation and support, which public policy seeks to promote. Impliendly, the Court's opinion suggests that even if personal jurisdiction over a nonresident defendant were fair, due process can prohibit such jurisdiction if an exercise of jurisdiction inhibits effective government by thwarting some other public policy. Thus, the exercise of personal jurisdiction must be consistent with the orderly administration of laws as well as fairness and substantial justice.

Conversely, an assertion of jurisdiction may not be necessary to achieve the orderly administration of laws. In *Kulko*, the Court stated that two factors affected the sufficiency of the state interest to assert jurisdiction over a nonresident father. One was the lack of a special jurisdictional statute relating to a nonresident parent. The other factor was California's participation in a uniform reciprocal support law that provided a means of securing child support from nonresident defendants without either party having to leave his or her home state. Apparently using those factors, the Court examined by what means, if...

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243. See *Kulko v. Superior Court*, 436 U.S. 84, 92, 96, 101 (1978). The Court noted that because both California and New York were signatories of uniform support acts, the plaintiff had a viable means of both prosecuting and collecting her claim in a New York court. See id. at 99-100 & 100 n.14.
244. See id. at 98.
245. See, e.g., 24 Ala. L. Rev. 634, 640 (1972) (multiple factors can affect decision of whether exercise of personal jurisdiction is appropriate).
247. See id. at 98-100.
The legal system presently provides effective redress for a plaintiff. The combined effect of the absence of a special jurisdiction statute with the existence of a law that made out-of-state relief feasible suggested that personal jurisdiction over the defendant in *Kulko* was not necessary for the plaintiff to obtain redress.248

Arguably, an exercise of personal jurisdiction should be examined not only with respect to the minimum contacts standard, but also with respect to a standard that represents the orderly administration of laws element of due process. Such a standard, termed the "federal interest standard," would be broader than each state's parochial interest in providing a forum for its residents249 and protecting the marketability of property within its boundaries.250 Four factors should comprise the federal interest standard: (1) the interest in providing an effective means of redress for plaintiffs; (2) the interest in preventing the creation of a category of judgment proof defendants;251 (3) the interest in effecting a reasonable division of labor among states affected by multistate activity;252 and (4) the interest in advancing other public policies, such as first amendment and interstate commerce interests. Additionally, the federal interest standard should examine the effect of an assertion of jurisdiction on the orderly administration of laws in cases in which jurisdiction is not clearly precluded on the basis of insufficient contacts. In contrast, when no contacts exist or they are unrelated and clearly insufficient to permit fairness and substantial justice, the federal interest standard would be inapplicable.253

248. *See id.* Even if jurisdiction had been necessary, the minimum contacts standard would require some contact between the state and the defendant. *See id.* at 100-01. A specific statute authorizing jurisdiction for a particular type of activity arguably lowers the threshold of minimum contacts. On the other hand, the existence of laws providing a practical means for the plaintiff to obtain relief outside the state could raise the minimum contacts threshold.

249. *See notes 144-45 supra* and accompanying text.


251. *See note 77 supra* and accompanying text; *cf.* Hunt v. Nevada State Bank, 285 Minn. 77, 111, 172 N.W.2d 292, 312 (1969) (in multiparty litigation it is fair to assert jurisdiction over defendants who if not tried in the forum probably will not be tried at all), cert. denied, 397 U.S. 1010 (1970).

252. The Minnesota Supreme Court has recognized impliedly this federal interest in Hunt v. Nevada State Bank, 285 Minn. 77, 172 N.W.2d 292 (1969), cert. denied, 397 U.S. 1010 (1970), by noting the fairness of exercising jurisdiction over several nonresident defendants who, "if not tried in this forum and in these same proceedings, would probably not face trial anywhere. Minnesota, so far as appears, is the only state having significant contacts with all the defendants to this complicated multiparty litigation." *Id.* at 111, 172 N.W.2d at 312; *cf.* Ellwein v. Sun-Rise, Inc., 295 Minn. 109, 110, 203 N.W.2d 403, 405 (1972) (when nonresident defendants were in a position to direct, manage, and control manner in which Minnesota corporation did business within the state, court held there was no more convenient forum than Minnesota).

253. *Cf.* *Kulko* v. Superior Court, 436 U.S. 84, 100-01 (1978) (without contact between
When the sufficiency of the contacts is debatable, the federal interest standard should determine the effect on the parties and the courts of both a denial and of a grant of jurisdiction. Thus, the courts should ascertain whether the plaintiff has any practical means of redress in the legal system either within the forum or without. In causes of action involving several nonresident defendants, the forum state may have stronger contacts with some defendants than with others. To prevent creating a category of judgment proof defendants in these cases, a lower threshold of minimum contacts should be acceptable with regard to defendants whose contacts might be insufficient if no other defendants were involved. The courts could then examine from the standpoint of the efficiency of the courts whether the state is the most reasonable forum in which to litigate.254

When the contacts are clearly sufficient to permit fairness and substantial justice to the parties, the federal interest standard should inquire whether, despite the presence of minimum contacts, the assertion of jurisdiction would adversely affect other public policy. For example, the constitutional interest in promoting interstate commerce requires protection of that activity,255 although the orderly administration of laws probably would not permit protection in a manner that diminishes access to reasonable means of redress for injuries to plaintiffs.

In addition to the interstate commerce clause, another constitutional consideration is the first amendment interest in freedom of speech and press.256 As discussed earlier, courts have recognized the potential for problems in this area resulting from expanded long arm jurisdiction.257 To protect this constitutional interest, without creating a blanket constitutional exemption, the constitutional right of freedom of speech and press can be viewed as an element of the orderly administration of laws. As such, first amendment policies could require that the threshold of minimum contacts be measured in terms of whether a chilling effect might occur if jurisdiction were permitted. Through this method courts could adjust the threshold of contacts in view of the characteristics of

defendant and forum state a substantial state interest alone cannot justify personal jurisdiction over defendant).

254. See Ellwein v. Sun-Rise, Inc., 295 Minn. 109, 110-12, 203 N.W.2d 403, 405-06 (1972) (as the focal point of corporate communications, Minnesota had sufficient contacts with all defendant directors; to deny jurisdiction would require relitigation in several states). The reasonableness of the forum in relation to judicial economy should be distinguished from the reasonableness in relation to the convenience of the parties which is addressed within the minimum contacts analysis. See notes 148-51 supra and accompanying text.


256. See notes 112-18 supra and accompanying text.

257. See id.
the nonresident publisher: a national publisher may be capable of de-
fending in a state when a very small publisher having an equal number
of contacts is not. Thus, even if in both instances the current tests of
fairness would permit jurisdiction, the orderly administration of law
would only permit the exercise of jurisdiction when no chilling effect is
likely to result. 258

V. CONCLUSION

An objective analysis of due process in personal jurisdiction is articu-
lated only partially by the minimum contacts standard, which addresses
most directly the "fair administration of laws." To supplement this
standard, this Note suggests that the conceptual framework of due pro-
cess be augmented by a federal interest standard articulating the
"orderly administration of laws." Together, the two elements of the
principle "the fair and orderly administration of laws" balance the con-
ceptual framework of due process between the ideal of fairness and the
existing legal system's capabilities, ensuring that the law itself be per-
ceived as a tool of finite capabilities. 259

By imposing a measurable standard of due process, a just and even
application of the constitutional standard is more likely than if the
standard is extremely elastic. Since feudal times, legal documents have
established that the legitimate exercise of power should be circum-
scribed 260 by due process of law to prevent the intemperate and uneven
application of the law. 261 Unless the constitutional principle of due
process is imbued with measurable qualities, however, its very elasticity
can result in imparting the immense authority of the Constitution upon
subjective judgments. 262

258. Alternative means could be developed for safeguarding nonresident defendants
over whom jurisdiction is permitted. For example, when first amendment interests are
involved, courts could be empowered to require that the plaintiff post a bond to be paid
to the defendant should the court determine the claim was frivolous. Cf. 18 WAYNE L. REV.
1585, 1598 (1972) (long arm statutes should provide for posting of bond to cover de-
fendant's litigation expenses in the event of a frivolous claim).

259. See Holmes, supra note 237, at 459-60, 469. "[A] body of law is more rational and
more civilized when every rule it contains is referred articulately and definitely to an end
which it subserves, and when the grounds for desiring that end are stated or are ready to
be stated in words." Id. at 469.

260. Predating American colonial history, the concept of due process of law is recog-
nized to have been first generally expressed in eleventh century feudal decrees. See R.
MOTT, DUE PROCESS OF LAW § 1 (2d ed. 1973). The phrase "due process of law" was first
used against illegal deprivation of liberties in the fourteenth century when the King
reaffirmed the Magna Carta during a political crisis. See id. § 2, at 4-5 & 5 n.11.

261. See generally id. § 3, at 6; id. § 26, at 71-72 (abuses of royal power); id. § 3, at 7 &
n.23 (abolition of Star Chamber).

concurring) (natural justice concepts of fair play, justice, and reasonableness can result
in unfortunate abridgment of constitutional safeguards).
Related to these concerns about unfairness and rigidity in the law is the principle that constitutional principles should be distinguished from philosophic goals and theories. Although without question, aspirational goals are a necessary component of the legal system, in the search for the means of effecting these aspirations standards must evolve that are measurable and concrete. Through objective rules and tests the decision is made as to which values to defend at a given moment and how to reconcile society's conflicting demands. Otherwise, "[w]hen the thinker who claims to possess the charter of social order merges with the statesman who justifies his actions as a consequence of universal truth, where will ordinary people turn for support of their claims?"

Today, the possibilities for continuing and multistate transactions are enlarging. In this context, the orderly administration of laws standard offers to supplement the minimum contacts standard to provide a concrete yet flexible basis for determining the issue of whether the due process clause permits an exercise of personal jurisdiction over a non-resident defendant.

263. Practical decisions cannot be made wisely solely on the basis of abstract philosophic theory. See R. Unger, Knowledge & Politics 253-59 (1975). "If philosophy were a concrete knowledge, the best philosopher would indeed be the best ruler." Id. at 257.
264. See id. at 258.
265. Id. at 257.