Long-Arm Wrestling with Pennsylvania's Jurisdiction over Nonresident Individuals: The Reach of Section 8305

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LONG-ARM WRESTLING WITH PENNSYLVANIA'S JURISDICTION OVER NONRESIDENT INDIVIDUALS: THE REACH OF SECTION 8305

I. Introduction

The ability of a court to exercise jurisdiction over the parties in an action has always been a matter of primary concern to legislatures, the judiciary and legal scholars. Particularly troublesome have been the special problems which arise when the defendant is not a resident of the state in which a judicial action is brought.1 Most states have developed so-called "long-arm" statutes to define the parameters of that court's jurisdiction over nonresidents.

Pennsylvania's long-arm statute, originally enacted in 1970,2 provides for jurisdiction of Pennsylvania courts over nonresident individuals in basically three situations.3 Section 8303 covers nonresident individuals who have committed a tort within Pennsylvania;4 sections 8304 and 8309 deal with nonresident individuals who have done business within the state;5

1. The ability of a plaintiff to require the defendant to defend suit in the plaintiff's state may be critical to the outcome of the litigation, or even the plaintiff's decision to bring suit in the first instance. The burden on the party who must travel to another state, either to defend or bring suit, is often very great. He must bear costs of transportation; he may face hostile factfinders biased in favor of the local party; and he may have less favorable substantive laws applied to the controversy. See Developments in the Law — State-Court Jurisdiction, 73 HARV. L. REV. 909, 911 (1960) [hereinafter cited as Developments — Jurisdiction]. Further, because statutes of limitations are generally considered to be procedural for choice of law purposes, it is possible that a nonresident defendant may have to defend a claim brought in another state after the statute of limitations in his state has run. See Ehrenzweig, The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Convenience, 65 YALE L.J. 289, 291 (1956).


4. See id. § 8303. Section 8303 provides for jurisdiction over [a]ny nonresident of this Commonwealth who, acting individually, under or through a fictitious business name, or through an agent, servant or employee, shall have committed a tortious act within this Commonwealth . . . .

Id. (emphasis added).

5. See id. §§ 8304, 8309. Section 8304 provides for jurisdiction over [a]ny nonresident of this Commonwealth who, acting individually under or through a fictitious business name, or through an agent, servant or employee, shall have done any business in this Commonwealth . . . .

Id. § 8304 (emphasis added).

Section 8309(a) defines "doing business" as:

(1) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.

(410)
and section 8305 provides for jurisdiction over nonresident individuals who, through conduct outside of Pennsylvania, have caused "any harm" within the state. Due to the uncertainty of the intended scope of section 8305, a number of courts, primarily federal district courts, recently have had occasion to interpret the language of that section. Some of these courts have interpreted section 8305 very liberally, construing the section to provide for jurisdiction to an extent almost coterminous with the requirements of constitutional due process.

The purpose of this comment is to analyze section 8305 in light of both the limitations on jurisdiction over nonresidents mandated by the requirements of constitutional due process and the overall scheme underlying the Pennsylvania long-arm statute. This analysis will primarily be accomplished

(2) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

(3) The shipping of merchandise directly or indirectly into or through this Commonwealth.

(4) The engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by the Commonwealth or any of its agencies.

(5) The ownership, use or possession of any real property situate within this Commonwealth.

Id. § 8309(a) (emphasis added).

6. See id. § 8305. Section 8305 provides in pertinent part:

Any nonresident of this Commonwealth who, acting outside of this Commonwealth, . . . shall have caused any harm within this Commonwealth . . . shall be subject to service of process in any civil action or proceeding instituted in the courts of this Commonwealth arising out of or by reason of any such conduct.

Id. (emphasis added).

7. Because diversity of citizenship may provide a basis for federal court jurisdiction, a substantial number of suits against nonresidents are brought in federal district court. See 28 U.S.C. § 1332 (1970).


A similar result was effected in New Jersey by the state supreme court's promulgation of Civil Practice Rule 4:4-4. See N.J. CIV. PRAC. R. 4:4-4. Pennsylvania has provided for jurisdiction over foreign corporations to the full extent permitted by the Constitution. See PA. STAT. ANN. tit. 42, § 8309(b) (Supp. 1975).

Section 8309(b) provides that the jurisdiction and venue of courts of the Commonwealth shall extend to all foreign corporations and the powers exercised by them to the fullest extent allowed under the Constitution of the United States.

Id. (emphasis added).
by focusing upon the cases which have been compelled to deal with the nebulous language of section 8305. Finally, the Comment will consider several different theories of the intended coverage of section 8305 and propose alternatives for the change of the Pennsylvania individual long-arm statute.

Section 8305, at least on its face, provides an extremely broad basis for jurisdiction over nonresident individuals. Because the language of the section apparently confers jurisdiction without the necessity of showing that the nonresident was "doing business" in Pennsylvania and may be satisfied by a single act of a nonresident defendant, it is necessary initially to discuss briefly the limitations on the applicability of the section which result from the consideration of the requirement of due process of law.

II. CONSTITUTIONAL BACKGROUND

In determining whether a court can properly exercise jurisdiction over a nonresident individual courts must use a "two-step" test. Initially, the court must decide whether any provision of the state long-arm statute gives it the power to exercise jurisdiction.\(^\text{10}\) Secondly, it must determine whether the assertion of jurisdiction would be violative of the defendant's due process rights.\(^\text{11}\)

In attempting to delineate the constitutional requirements which must be fulfilled in order to uphold jurisdiction, the United States Supreme Court, in the landmark decision of International Shoe Co. v. Washington,\(^\text{12}\) held that due process is satisfied when the nonresident has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"\(^\text{13}\) Realizing the inherently subjective nature of their newly enunciated test, the Court stated that the test could not be "simply mechanical or quantitative," but rather depended "upon the quality and nature" of the nonresident's contacts with the forum.\(^\text{14}\)

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\(^{10}\) When a state has provided for long-arm jurisdiction to the full extent permitted by the Constitution, the statutory determination is perfunctory. See note 9 supra.

\(^{11}\) Although the "two-step" approach is basic, courts often merge discussion of statutory interpretation with that of due process. This appears to have often led to unusual statutory interpretations in order to reach the result which would have been obtained under a purely constitutional analysis. See Note, The Virginia Long-Arm Statute, 51 Va. L. Rev. 719, 731-32 (1965).

\(^{12}\) 326 U.S. 310 (1945). International Shoe involved a suit brought by the state of Washington against a foreign corporation to collect an unemployment compensation tax levied upon the corporation's salesmen who has been working within the state. Id. at 311-12.

\(^{13}\) Id. at 316, quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940).

\(^{14}\) 326 U.S. at 319. The Court also stated:

[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure
Since its decision in International Shoe, the Supreme Court has refined the substantive requirements of the “minimum contacts” test in only two instances. In McGee v. International Life Insurance Co., the Court stated that a “nonresident must have a ‘substantial connection’ with the forum state in order to satisfy due process.” The Court in McGee upheld California’s assertion of jurisdiction over a foreign corporation whose only contact with the state was the mailing of a life insurance policy into California and its later receipt of premium payments by mail from within the state. The McGee decision is especially significant because the Court for the first time upheld jurisdiction on the basis of a single contract between a foreign corporation and a resident of the forum state.

The following year, in Hanson v. Denckla, the Court made it clear that due process remains a viable restriction upon a state’s exercise of jurisdiction over a nonresident defendant. The Court stated that a nonresident must “purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws” in order to be subject to the jurisdiction of that state’s courts.

which requires the corporation to respond to a suit brought to enforce them, in most instances, hardly be said to be undue.

Id. at 222-23.

Although McGee has been interpreted by some writers and courts as limited to situations involving the insurer-insured relationship, it has more often been held to establish principles of general application. See Comment, The Pennsylvania Long-Arm: An Analytical Justification, 17 Vill. L. Rev. 73, 77 (1971).

18. 355 U.S. at 223. The Court held it “sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State.” Id. (emphasis added). Although the Court, in Hess v. Powloski, 274 U.S. 325 (1927) (sustaining the constitutionality of Massachusetts’ nonresident motor vehicle statute), had upheld the exercise of jurisdiction based upon a single contract with the forum state, that case and similar prior cases were predicated upon the theory that the nonresident had given implied consent to be sued by engaging in an activity subject to special regulation by the state. See Developments — Jurisdiction, supra note 1, at 918. For further discussion of the constitutional requirements which must be satisfied when jurisdiction is based upon a single act, see, e.g., Southern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968); Note, Jurisdiction Over Nonresident Corporations Based on a Single Act: A New Sole for International Shoe, 47 Geo. L.J. 342 (1958).


20. Id. at 233, citing International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945). Hanson involved a trust agreement which had been executed in Delaware by a Delaware trust company and a settlor-beneficiary who resided in Pennsylvania. Id. at 238. The settlor-beneficiary subsequently moved to Florida, and the trustee accordingly sent the trust income to her in that state. While the Court

None of these decisions of the Supreme Court definitively stated whether in all cases, due process requires the plaintiff's cause of action to arise out of the nonresident's connection with the forum state. In Perkins v. Benquet Mining Co., the Court answered this question in the negative, holding that due process did not prohibit Ohio from exercising jurisdiction over a foreign corporation which had done sufficiently substantial business in the state, even though the cause of action arose from conduct entirely distinct from the corporation's activities in Ohio. It does appear, however, that the existence of a causal connection between the nonresident's activity in the forum and the plaintiff's cause of action is one of the factors to be considered in determining whether due process is satisfied, and that

"several bits of trust administration" performed by the settlor in Florida to the mailing of premiums in McGee, it could not find anything analogous to the solicitation present in McGee. Id. Moreover, the Hanson Court, in discussing the McGee decision, reiterated California's "manifest interest" in providing redress for its citizens injured by insurers, noting the specially enacted state legislation upon the subject. Id.

Hanson, a 5-4 decision, has been severely criticized because of the "purposefully availing" test's inapplicability in particular jurisdictional situations. For example, it is difficult to think of a tortfeasor, acting outside of the forum state and causing injury within the state, as being motivated by the protection and the benefit of the laws of the forum state. As a result, Hanson has often been limited to its facts or used only as a secondary test of appropriate jurisdiction. See, e.g., Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 256, 413 P.2d 732, 735 (1966) (rule cannot be applied properly to products liability cases). Alternatively, the "purposefully availing" language in Hanson has been equated with "foreseeability." See, e.g., Deveny v. Rheem Mfg. Co., 319 F.2d 124, 128 (2d Cir. 1963); Ehlers v. U.S. Heating & Cooling Mfg. Corp., 267 Minn. 56, 61-62, 124 N.W.2d 824, 827 (1963). See also Comment, supra note 17, at 78-81, 105.


22. Id. at 447-49. Perkins involved a suit brought in Ohio against a Philippine corporation which had carried on a "continuous and systematic, but limited, part of its general business" in that state during the Japanese occupation of the Philippines in World War II. Id. at 438. The cause of action did not arise in Ohio and did not relate to the corporation's activities there. Id. See Annot., 2 L. Ed. 2d 1664, 1670-71 (1958). This annotation took the position that it should be irrelevant in all cases whether the cause of action arose out of the nonresident's activity within the forum state. Id.; accord, Bork v. Mills, 458 Pa. 228, 232-33, 329 A.2d 247, 250 (1974) (dissenting opinion).

However, some commentators have suggested that the decision in Perkins has limited application because, inter alia, it arose during World War II, when suit could not be brought where the cause of action actually arose. See, e.g., Note, supra note 18, at 354.


Some statutes expressly provide for jurisdiction over a nonresident who does business within the forum state as to causes of action that do not arise out of this business. See, e.g., Fla. Stat. Ann. § 48.081(3) (1969) (corporation with business office within state and "actually engaged in the transaction of business therefrom"); Wis. Stat. Ann. § 262.05(1) ¶ (c) (Supp. 1975) (defendant "engaged in substantial and not isolated activities" within state). See generally Uniform Interstate and International Procedure Act § 1.02 (nonresident maintaining principal place of business within state).
when jurisdiction is based upon a single act such a causal connection must be found.24

Thus, in *Bork v. Mills*,25 the Pennsylvania Supreme Court held that the fact that a nonresident was statutorily "doing business" within the state26 was insufficient to support jurisdiction when the cause of action was unrelated to that activity.27 The court stated that the nonresident's activity had to be "so continuous and substantial as to make it reasonable' for the Commonwealth to exercise jurisdiction over their admittedly unrelated cause of action."28

III. The Pennsylvania Statute

Pennsylvania's long-arm statute, like those in many other states, has to a great extent been the product of piecemeal legislation enacted in response to significant state and federal judicial decisions concerning jurisdiction.29 For example, prior to *International Shoe*,30 Pennsylvania's jurisdiction over nonresidents was limited to owners or operators of motor vehicles,31 business corporations registered in the state,32 owners or operators of aircraft,33 and owners, tenants or users of real estate located

24. Note, *supra* note 18, at 353-55; note 23 and accompanying text *supra*. In *International Shoe*, the Supreme Court stated:
   
   [1] It has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there.
   
326 U.S. at 317 (citations omitted).

25. 458 Pa. 228, 329 A.2d 247 (1974). In *Bork*, a Maryland defendant's truck was involved in an automobile accident in Virginia. The plaintiff was a Pennsylvania resident and a passenger in the automobile. *Id.* at 229-30, 329 A.2d at 248.

26. *Id.* at 231, 329 A.2d at 249. The plaintiff, alleging that the defendant had "haul[ed] freight for hire" within Pennsylvania, asserted jurisdiction under the "doing business" sections of the long-arm statute. *Id.* at 230, 329 A.2d at 248-49. For the text of these sections, see note 5 *supra*.

27. 458 Pa. at 231, 329 A.2d at 249. The accident involving defendant's truck in Virginia admittedly did not arise out of the defendant's business within Pennsylvania. 458 Pa. at 231, 329 A.2d at 249.


30. *See* notes 12-14 and accompanying text *supra*.


within the state. Following *International Shoe*, the Pennsylvania legislature enacted more expansive long-arm provisions, giving its courts jurisdiction over unauthorized insurers, unregistered corporations "doing business" within the state, owners or operators of water vessels, wholesalers of malt or brewed beverages, and owners or operators of motor boats.

In 1970, the Pennsylvania legislature passed the state's first comprehensive long-arm statute dealing with jurisdiction over nonresident individuals. This statute was transferred almost verbatim in 1972 into Title 42 of Pennsylvania's statutes as a result of the legislature's desire to organize all of the then-existing corporate and personal long-arm provisions into one title.

A. Section 8303

As one of the cornerstones of Pennsylvania's long-arm jurisdiction, section 8303 provides for jurisdiction over any nonresident who has "committed a tortious act within [Pennsylvania]." The language of the provision necessitates a court initially deciding the often difficult question of where a "tortious act" occurs, and unfortunately, no uniform rule or test has been accepted as providing an answer.

The *Restatement of Conflict of Laws* (Restatement) adopted the position that "[t]he place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place." Because the actual

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35. While the trend has been towards more expansive jurisdiction under these statutes, most states have failed to give their courts the power to exercise their jurisdiction over nonresidents to the fullest extent allowable under the Constitution. See *Developments — Jurisdiction*, supra note 1, at 1008. This may be attributable either to a conscious decision to restrict jurisdiction or a failure of state legislatures to reexamine their jurisdictional bases following new Supreme Court decisions involving jurisdiction. See id. at 1007-08.
43. Id. § 8303. For the text of this section, see note 4 supra.
44. *Restatement of Conflict of Laws* § 377 (1934). The *Restatement (Second) of Conflict of Laws*, however, adopted the position that the law of the state which "has the most significant relationship to the occurrence and the parties" is to be used to determine the rights and liabilities of the parties with respect to an.
injury is generally the last event necessary for liability, those states which follow the Restatement view have usually found that the place of the injury is determinative of the locus of the tortious act.\(^4\) While there are Pennsylvania cases which have seemingly followed the Restatement's position,\(^4\) there is also authority for holding that a tortious act occurs wherever the act or omission which caused the injury takes place.\(^4\) This latter interpretation would result in section 8303 being read as providing for jurisdiction over nonresident individuals who have "caus[ed] tortious injury by an act or omission in this state."\(^4\) Moreover, it has been argued that such an interpretation is "practically compelled" since section 8305 was

issue in tort. Restatement (Second) of Conflict of Laws § 3145 (1971). Four factors to be considered in deciding the law to be applied are:

(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
(d) the place where the relationship, if any, between the parties is centered.

Some commentators have suggested that the federal courts sitting in Pennsylvania have often been more liberal than the state courts in allowing jurisdiction over nonresidents. See Note, Jurisdiction Over Unregistered Foreign Corporations Doing Business in Pennsylvania: Confusion in Perspective, 27 U. Pitt. L. Rev. 879, 885 (1966); 76 Dick. L. Rev. 385, 387 (1972).
47. See McAndrew v. Burnett, 374 F. Supp. 460, 463 (M.D. Pa. 1974) (discussed in note 102 infra); Rufo v. Bastian-Blessing Co., 405 Pa. 12, 173 A.2d 123 (1961). In Rufo, the Pennsylvania Supreme Court, interpreting a statutory provision which provided for jurisdiction over foreign corporations "doing business" in Pennsylvania "in an action arising out of acts or omissions" within the state, determined that it was not bound, when considering the question of jurisdiction, by conflict of law principles which localize the tort to the place where the injury was suffered. Id. at 19-20, 173 A.2d at 127-28. Acknowledging that the defendant's only act was its negligent manufacture of the defective product, which had admittedly occurred outside of the state, the court concluded that the relevant consideration was neither where the injury occurred nor where the cause of action arose, but rather where the defendant's negligent acts or omissions took place. Id. The court reasoned "to hold otherwise, — i.e., that 'act' means 'injury' — is to legislate and that we cannot do." Id. at 20, 173 A.2d at 128 (emphasis supplied by the court).

It does appear that the conflicts question of whose law to apply and the question of the ability of a court to exercise jurisdiction involve entirely different considerations. For example, there are many instances in which a court may properly exercise jurisdiction over a nonresident, but still apply the law of another state under conflict of laws principles. The use of conflicts of laws principles in deciding whether jurisdiction is proper, therefore, merely clouds the basic issues. For a discussion of the semantic problems involved in the interpretation of various long-arm provisions, see In Personam Jurisdiction Over Nonresident Manufacturers in Product Liability Actions, 63 Mich. L. Rev. 1028, 1035-43 (1965).

48. Comment, supra note 17, at 86-88. The commentator also expressed the opinion that in determining jurisdiction, Pennsylvania had not adopted the Restatement view concerning where a tortious act occurs. Id. at 87-88; see notes 44-47 and accompanying text supra.
intended to cover those situations where the nonresident causes harm by out-of-state tortious activity.\textsuperscript{49}

B. Sections 8304 and 8309

The second principal provision underlying Pennsylvania's long-arm scheme is section 8304, which provides for jurisdiction over any nonresident individual who has "done any business in [Pennsylvania]."\textsuperscript{50} The section must be considered in light of its definitional counterpart, section 8309, which defines five classes of "doing business" for the purposes of the statute.\textsuperscript{51} The first two classes concern activity undertaken "for the purpose... of realizing pecuniary benefit"; section 8309(a)(1) covers "the doing... of a series of similar acts" for that purpose\textsuperscript{52} and section 8309(a)- (2) involves the "doing of a single act... with the intention of initiating a series of such acts."\textsuperscript{53} The profit motive is not statutorily relevant in the section's final three classes of activity.\textsuperscript{54} Section 8309(a)(3) covers "[t]he shipping of merchandise directly or indirectly into or through [the state],"\textsuperscript{55} section 8309(a)(4) encompasses "[t]he engaging in any business or profession within [the state],"\textsuperscript{56} and section 8309(a)(5) deals with "[t]he ownership, use or possession of any real property situate within [the state]."\textsuperscript{57}

One of the difficulties confronting plaintiffs attempting to assert jurisdiction under one of the long-arm statute's "doing business" provisions is the possibility that a single act may be insufficient to support jurisdiction


\textsuperscript{50} Pa. Stat. Ann. tit. 42, § 8304 (Supp. 1975). For the text of this section, see note 4 supra. Although the "doing business" test was abrogated as a constitutional requirement by International Shoe, 326 U.S. at 313-15, many states still couch their long-arm statutes in this familiar language. See Developments - Jurisdiction, supra note 1, at 1000-01.


\textsuperscript{53} Id. § 8309(a)(2).

\textsuperscript{54} While there are court statements that the profit motive is essential to the "doing business" test, these cases are distinguishable in that they dealt with sections 8309(a)(1) and 8309(a)(2), and not sections 8309(a)(3)-(a)(5). See, e.g., McAndrew v. Burnett, 374 F. Supp. 460, 462 (M.D. Pa. 1974).


\textsuperscript{56} Id. § 8309(a)(4).

\textsuperscript{57} Id. § 8309(a)(5).

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under the statute. Courts have almost universally held that the primary "doing business" provisions, sections 8309(a)(1) and (a)(2), require a "systematic course of conduct as contrasted with isolated or sporadic occurrences."\(^5^8\) The 1970 amendment to the "doing business" sections changed the prior language to provide that section 8309(a)(3), the "shipping" provision, would constitute an independent form of "doing business," without the "systematic course of conduct" requirement.\(^6^9\) The language of sections 8309(a)(4) and (a)(5), added to the list of "doing business" activities by the same 1970 amendment, would also appear to allow jurisdiction based upon a single act.\(^6^0\)

Therefore, whereas the United States Supreme Court has held that the Constitution does not prevent a state from exercising jurisdiction over a nonresident defendant based upon a single act, Pennsylvania has made a policy decision that, in general, a "systematic course of conduct" within the state is a prerequisite to a finding that a nonresident was "doing business" for purposes of personal jurisdiction.\(^6^2\) This statutory requirement best illustrates Pennsylvania's apparent legislative decision that its jurisdiction over nonresident individuals should be less extensive than that allowed under the Constitution. This same requirement also appears to have caused many plaintiffs to assert jurisdiction, often alternatively, under either section 8303 or section 8305, which, being single-act provisions, contain no such requirement.\(^6^3\)

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60. Act of July 1, 1970, No. 152, [1970] Pa. Laws 444 (repealed 1972) (re-enacted as PA. STAT. ANN. tit. 42, §§ 8301 et seq. (Supp. 1975). One commentator has cogently argued that section 8309(a)(4) was intended to make the "doing business" requirements much less restrictive. Comment, \(^5^8\) supra note 17, at 93-96. The author concluded that the phrase "engaging in any business" considerably broadened the "doing business" basis for jurisdiction by encompassing: "(1) instances where the nonresident has entered the forum for pecuniary gain; and (2) instances where a contract was either made or performable within the state." Id. at 94 (footnote omitted).

This interpretation, however, does not seem to have been adopted, as of yet, by any court in Pennsylvania. For example, in Rosen v. Solomon, 374 F. Supp. 915 (E.D. Pa. 1974), wherein the contract was both negotiated and to be performed in Pennsylvania, the court summarily stated that it was indisputable that the section was inapplicable. \(^6^0\) Id. at 918 n.1.


62. See notes 58-60 and accompanying text \(^5^8\) supra.

C. Section 8305

The final jurisdiction conferring provision of the state's long-arm scheme is section 8305. This section authorizes the exercise of jurisdiction over any nonresident individual who, through activity outside of Pennsylvania, causes "any harm" within the state, in any suit arising out of or by reason of such conduct. 64

The requirement that the plaintiff's cause of action arise out of the nonresident's conduct which caused harm within Pennsylvania is self-defining and, in fact, may be constitutionally mandated since the section is primarily a single-act provision. 65 However, when section 8305 is viewed within the entire scheme of the long-arm statute, interpretation of some other language in the section presents several analytical difficulties. It is not clear: 1) what activity is within the scope of the section, i.e., whether the section confers jurisdiction in both tort and contract actions; 2) whether "harm" as used in the section includes both personal injury and financial loss; 3) when the requirement that "any harm" must have been suffered within Pennsylvania has been satisfied; and 4) whether it is necessary to determine that the "cause" of the plaintiff's harm, as well as its effect, occurred within the state.

1. Requirement of "Out-of-State Activity"

The initial prerequisite to the application of section 8305, that the nonresident acted outside of the state, could produce illogical results. In the abstract, it is difficult to understand the rationale of this requirement since it would seem that jurisdiction over a nonresident would be more appropriate when his activity occurred within, rather than outside of, the forum state — the in-state activity necessarily increasing due process "minimum contacts." No theoretical problem exists, of course, if all out-of-state activity which would subject a nonresident to jurisdiction under section 8305 would also, if the activity took place within the state, subject the nonresident to jurisdiction under some other provision of the long-arm statute. However, under present interpretations of the Pennsylvania long-arm statute, it would appear that there would be some situations in which out-of-state activity which would have satisfied the requirements of section 8305, would not, if it had occurred within the state, have satisfied the requirements of any provision of the present long-arm statute. An example of this might be taken from the factual situation presented in Rosen v. Solomon. 66 Rosen involved a suit by a Pennsylvania resident against a California resident for the alleged breach of a stock option agreement. 67 The defendant's attorney

65. See notes 24-28 and accompanying text supra.
67. Id. at 917.
had negotiated the agreement in Pennsylvania, where it was later prepared. Following execution by the defendant in California, the agreement was returned to Pennsylvania and signed by the plaintiff. After the plaintiff exercised the option, scheduling the closing in Pennsylvania, the defendant allegedly defaulted. The court held that the requirements of "doing business" were not satisfied, but found that the defendant's out-of-state activity — apparently his failure to go through with the agreement — had caused harm within the state and accordingly held that section 8305 supported personal jurisdiction.

It is submitted that if the defendant in *Rosen* had personally come to Pennsylvania for the contract's negotiation, execution, and subsequent breach, section 8305 would have been inapplicable because the requisite out-of-state activity would have been lacking. Moreover, although his presence in Pennsylvania for each of these events would have increased his contacts with the state for due process purposes, personal jurisdiction would not have been available under any other provision of the present long-arm statute.

This illogical result — which it is submitted could not have been intended by the legislature — could nevertheless have been avoided if section 8305 had been read by the court as the "other half" of section 8303, that is, by limiting the section to *tortious* activity. Accordingly, section 8303 would cover tortious injury caused by an in-state act or omission, while section 8305 would be limited to encompassing out-of-state tortious activity causing injury within Pennsylvania. This would leave breach of contract

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68. Id. The agreement had a provision in it which stated that it was to be construed in accordance with the laws of Pennsylvania. *Id.*

69. *Id.*

70. *Id.* The closing had been continued once by agreement. *Id.*

71. *Id.* at 918. The court concluded that the agreement's negotiation and the events leading to its breach constituted a single integrated transaction rather than the required "systematic course of conduct." *See* note 58 and accompanying text *supra*.

72. Other out-of-state activity on the part of the defendant included sending his attorney to Pennsylvania to negotiate the agreement and his execution of it in California. 374 F. Supp. at 917. However, it would seem that it was the agreement's breach which caused the plaintiff's harm. Because most breaches of contract are manifested by a failure to act, rather than by any overt action, it would seem that an argument could be made that the legislature's phrasing of the section in terms of a positive occurrence could preclude its application in many breach of contract situations. *See* *Developments — Jurisdiction, supra* note 1, at 1004.

73. 374 F. Supp. at 919.

74. Jurisdiction would not have been possible under section 8303 because no tortious act was involved; nor would this have changed the fact that only a single integrated transaction was involved, for purposes of "doing business" within the meaning of section 8304 and 8309. *See* note 71 *supra*.

75. Moreover, interpreting sections 8303 and 8305 as complementary would make the Pennsylvania jurisdictional design very similar to that provided for by sections 1.03(a) (3) and (a) (4) of the *Uniform Act*. Many states have avoided the interpretive problems concerning the locus of a tortious act by passing the *Uniform Act*, or a similar statute, thereby providing separate long-arm provisions which differentiate between conduct in the state causing tortious injury and conduct outside of the state.
situations to be covered exclusively by the "doing business" sections of the long-arm statute. It is submitted that such an interpretation is the most logical and consistent explanation of the long-arm statutory scheme.

An argument along this line was made by the defendant in Rosen, but rejected by the court.\textsuperscript{76} The Rosen court emphasized that the specific reference to tortious acts in section 8303, coupled with the absence of any "language whatsoever which would limit its application to tortious acts," indicated a legislative intention that section 8305 encompass acts other than only torts.\textsuperscript{77}

However, the lack of specific language in section 8305 limiting its application to tortious activity does not necessarily settle the question. A reasonable alternative explanation of the legislature's failure to be more precise in the section's language may be the prior interpretive difficulties regarding the locus of a tortious act.\textsuperscript{78} An intentional legislative decision to omit any reference to "tortious acts" may have been made to avoid even the slightest possibility of restrictive judicial decisions upon the question of the intended scope of the section.\textsuperscript{79}

2. Nature of "Harm"

The second prerequisite to the application of section 8305 is that the nonresident must have caused "harm" within Pennsylvania.\textsuperscript{80} It would appear that whenever a nonresident is sued he has allegedly caused or will cause the plaintiff harm. However, an argument can be made that the term "harm" was intended by the legislature to be limited to personal injury

causing tortious injury within the state. Section 1.03(a)(4) of the Uniform Act provides for jurisdiction when a nonresident

[causes] tortious injury in this state by an act or omission outside this state \textit{if} he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state . . . .

\textsc{Uniform Interstate and International Procedure Act} § 1.03(a)(4) (emphasis supplied). This section of the Uniform Act, therefore, differs from section 8305 in that it is not a single-act provision. For the text of section 1.03(a)(3) and a list of the states which have enacted the Uniform Act, see note 49 \textit{supra}. For a general discussion of the Uniform Act, see Woods, \textit{The Uniform Long-Arm Act in Arkansas: The Far Side of Jurisdiction}, 22 Ark. L. Rev. 627 (1969). For a similar provision, see N.D.R. Civ. P. 4(b)(2)(C) & (D).

\textsuperscript{76} Id. at 919.
\textsuperscript{77} Id.
\textsuperscript{78} Id. For a discussion of the problems involved in determining the locus of a tortious act, see notes 43-49 and accompanying text \textit{supra}. To date, however, no court has confronted — or even mentioned — the illogical result produced by refusing to limit section 8305 to tortious activity.

\textsuperscript{79} See notes 43-49 and accompanying text \textit{supra}. It is apparent that the legislature could also have made section 8303 clearer in this regard. See \textit{id}. However, since it appears that "tortious acts" in section 8303 was intended to have a restrictive effect, requiring the activity to occur within Pennsylvania, the legislature would not have been concerned about restrictive court interpretations with respect to the scope of that section.

\textsuperscript{80} Pa. Stat. Ann. tit. 42, § 8305 (Supp. 1975). For the text of this section, see note 6 \textit{supra}. 

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and not include financial loss. The basis of this contention is the fact that while section 8305 contains only the term "harm," the legislature used the phrase "harm or financial loss" in section 8304. The argument concludes that the legislature must have perceived some difference between "harm" and "financial loss," and that it did not intend section 8305 to cover financial loss. However, in Aamco Automatic Transmissions, Inc. v. Tayloe, a federal district court concluded that the plaintiff's loss of income and profits, as well as damage to trade name and reputation — purely financial injury — resulting from the defendant's torts of conspiracy and intentional interference with contractual relations, satisfied the requirements of section 8305. Subsequently, the determination that "harm" includes financial as well as personal injury has been followed by every court within Pennsylvania which has had occasion to consider the question.

3. "Any" Harm Within Pennsylvania

Regardless of the way that "harm" is defined, section 8305 requires a determination that "any harm" has occurred within Pennsylvania. There appear to be some situations in which this determination may present substantial analytical difficulty. Particularly troublesome are situations such as those where a plaintiff received negligently performed services or purchased defectively manufactured goods outside of Pennsylvania, but was within the state when any resultant injury manifested itself. One such situation was presented to a federal district court in McAndrew v. Burnett. McAndrew involved a suit against a New York doctor who had allegedly left a hemostat in a patient's body during an operation in New York. At the time of the operation, the doctor and the patient were both residents of New York. After the patient moved to Pennsylvania, he was X-rayed by another doctor who discovered the existence of the hemostat. The patient later died as an apparent result of the first doctor's negligence.

81. PA. STAT. ANN. tit. 42, § 8304 (Supp. 1975) (emphasis added). For the text of this section, see note 5 supra.
82. Even if it is assumed that the inconsistency in the language of the two sections was due to poor drafting rather than an intention to establish "harm" and "financial loss" as separate categories of injury, it is illustrative of the lack of precision and clarity which is characteristic of the Pennsylvania long-arm.
84. Id. at 1296. The court seemingly equated "harm" with "injury." The court's conclusion, however, was arguably dictum because of its finding that, under the particular facts of the case, there were not sufficient minimum contacts to satisfy due process. Id. at 1299.
87. Id. at 461.
88. Id.
89. Id.
90. Id. Following the hemostat's discovery, the defendant-doctor made phone calls and a trip to Pennsylvania for consultation. Id. at 461–62. However, because
However, the court held that jurisdiction over the nonresident doctor was not permitted by either the Pennsylvania long-arm statute or by due process.91 Discussing section 8305, the court held that the harm had occurred in New York when the hemostat was left in the patient's body.92 Thus, although the court stated that the patient suffered injury while in Pennsylvania,93 it concluded that no harm had occurred within the state within the meaning of section 8305.94 In reaching this conclusion, the court stressed the fact that the doctor-patient relationship had terminated when the patient moved to Pennsylvania.95 The McAndrew court also found support in Wright v Yackley96 a Ninth Circuit decision which involved a malpractice suit brought by an Idaho citizen against a nonresident doctor.97 However, the principal issue in Wright was whether, assuming valid jurisdiction under Idaho's long-arm statute98 the exercise of jurisdiction would have violated the requirements of constitutional due process.99 The court determined that in the case of negligently performed personal services, due process requires that the "focus must be on the place where the services are rendered."100 The Wright court recognized that the consequences of personal services are felt wherever the person who receives them chooses to go,101 but rejected the idea that the negligent performance of personal services is "a portable tort which can be deemed to have been committed wherever the consequences were foreseeably felt [as] wholly inconsistent with the public interest in having services of this sort generally available."102 Because "[m]edical services in particular should not be proscribed by the

he was not licensed to practice within the state, he did not take part in the surgery to remove the hemostat. Id. at 462.

While the plaintiff alleged jurisdiction under sections 8303, 8304, and 8305, the McAndrew court rejected the applicability of section 8303 because it held that the tortious act of leaving the hemostat in the decedent's body was committed in New York and not within the Commonwealth. Id. at 462-63. For a discussion tending to support the proposition that section 8303 is properly limited to acts done only within Pennsylvania, see notes 47-49 and accompanying text supra.

91. Id. at 462. Because the court also held that the Pennsylvania long-arm provides jurisdiction to the full extent permitted by the Constitution, McAndrew might later be distinguished as a case that was in reality based solely upon due process grounds.

92. Id. at 463.
93. Id.
94. Id.
95. Id.
96. 459 F.2d 287 (9th Cir. 1972).
97. Id. at 288. In Wright, an Idaho resident brought suit against a South Dakota doctor. The original treatment was in South Dakota. Four months after the patient moved to Idaho, the doctor, at the patient's request and without charge, sent her copies of the original prescription. She was allegedly injured by the use of the prescribed drugs. Id.

98. Id. The court assumed that a tortious act had been committed within Idaho under the relevant long-arm provision, which provides for jurisdiction over any person who "commits [a] tortious act within this state." Idaho Code § 5-514(b) (Supp. 1975).

99. 459 F.2d at 288.
100. Id. at 289.
101. Id.
102. Id. at 289-90.
doctor's concerns as to where the patient may carry the consequences of his treatment and in what distant lands he may be called upon to defend it,"108 the court held that jurisdiction over the doctor was unreasonable and thus unconstitutional.104

Section 8305, however, does not distinguish between the tortious performance of personal services and any other tortious activity. It is submitted, therefore, that the special due process rules developed by Wright to deal with personal service cases supported only McAndrew's constitutional analysis,105 but did not aid the McAndrew court in its conclusion that jurisdiction over the New York doctor was inconsistent with the language of section 8305.106 It would seem that the statutory problem faced by the McAndrew court — whether the locus of "any harm" was within Pennsylvania — was not due to the fact that the case involved personal services, but to the fact that the allegedly negligent act was committed in New York, by a New York doctor, upon a New York patient.107 The court concluded that it was in New York that the harm was suffered because it was in that state that the hemostat was left in the patient's body.108 However, it appears that the harm to the patient in McAndrew was not the act of leaving the hemostat in his body during the operation, but the effects which that act had upon him. Although the plaintiff's harm arguably manifested itself initially in New York where the patient first felt pain and discomfort,109 the language of section 8305 is very broad, requiring only that "any" harm was suffered by the plaintiff within Pennsylvania. Because the plaintiff clearly suffered harm — in the way of "much expense, pain, and ultimately death" — within the state,110 it is submitted that this requirement of the section's language was satisfied.111

This interpretation of section 8305 — i.e., that "any harm" includes the initial manifestation of injury or any subsequently manifested injury — appears to have been adopted by a federal district court in Miller v. Ameri-

103. Id. at 290.
104. Id. at 291. The court concluded that "no tort was committed within the State of Idaho which would constitutionally confer jurisdiction under that state's long-arm statute." Id. The court found support for its constitutional analysis in the Restatement (Second) of Conflict of Laws § 37 (1971). Id.
105. The court in McAndrew held that jurisdiction over the nonresident doctor was inconsistent with due process, 374 F. Supp. at 462, and then analyzed the requirements of the long-arm provisions in light of the factual situation.
106. The court in Wright assumed that the requirements of a long-arm provision totally dissimilar to section 8305 were satisfied. See note 98 supra.
107. 374 F. Supp. at 463.
108. Id.
109. Id. at 461. However, it was not until the patient had moved to Pennsylvania that the X-ray was taken which revealed the existence of the hemostat. Id.
110. Id.
111. It would seem that McAndrew reached the correct result — that jurisdiction over the nonresident doctor was improper — but it is submitted that it should have avoided its statutory interpretation and simply based its decision on the fact that jurisdiction would clearly have violated due process. See Miller v. American Tel. & Tel. Co., 394 F. Supp. 58, 63 n.4 (E.D. Pa. 1975); note 113 infra.
can Telegraph & Telephone Co. In Miller, the court stated in dictum that "[s]ection 8305 requires only that 'any harm' within Pennsylvania be evident which was caused by the same conduct from which the pending cause of action arises."\(^{113}\)

Therefore, it is submitted that the fact that the plaintiff received negligently performed services or purchased defectively manufactured goods outside of Pennsylvania does not mean that the plaintiff could not have suffered harm within the state for purposes of section 8305, although the mere fact that the plaintiff is a Pennsylvania resident would not be sufficient for jurisdiction under the section. For example, if a Pennsylvania resident had the brakes of his automobile negligently serviced in New York — or purchased defectively manufactured brakes in that state — and then returned to Pennsylvania where his brakes failed, causing an accident which resulted in injury to the plaintiff, it is submitted that harm was suffered within Pennsylvania for the purposes of section 8305 because the injury manifested itself within the state. However, if a Pennsylvania resident had his automobile damaged in an accident in New York, it would seem that no section 8305 harm occurred in Pennsylvania since all of the plaintiff's injuries manifested themselves outside of the state. The most difficult problem analytically would seem to present itself in the situation where the Pennsylvania resident suffered physical injuries in the automobile accident in New York, and then returned to Pennsylvania where he lost wages or suffered other related economic injury as a result of the injury suffered in New York. It would seem, even in this situation, that a literal interpretation of the section's language would indicate that harm was suffered within Pennsylvania, thus satisfying section 8305.

In each of the above hypothetical situations, assuming that the respective defendants had no other contacts with Pennsylvania, it would seem that jurisdiction over the nonresident would be constitutionally suspect. The advantage of interpreting section 8305 in this manner, however, and then applying due process requirements to limit the instances in which jurisdiction would actually be exercised over a nonresident defendant, is that it would seem to simplify the analysis of the section and at least result in consistent interpretation of its language.


\(^{113}\) Id. at 63 n.4. Miller involved a derivative suit brought by shareholders of AT&T concerning a $1,500,000.00 debt allegedly due AT&T from the Democratic National Committee. Id. at 60. The individual defendants were directors of AT&T, none of whom were residents of Pennsylvania. Id. at 61. The court, assuming that AT&T, as a corporation, was harmed in Pennsylvania, stated that the plaintiff shareholders were thus harmed to some extent. Id. at 63 n.4. However, the court had doubts that the section 8305 was intended to take cognizance of such indirect harm. Id. It thus based its decision denying jurisdiction upon the unconstitutionality of the assertion of jurisdiction over the individual defendants, id. at 63, and avoided having to definitively construe the section's language. Id. at 63 n.4.
4. Causation

In *Stifel v. Lindhorst*, a federal district court complicated matters even further by holding that section 8305 requires an additional inquiry beyond the determination that harm was suffered within Pennsylvania. *Stifel* involved a suit brought by a convicted murderer against his attorneys for allegedly violating his civil rights. After his trial and conviction in Ohio — the state where the murder had occurred — the plaintiff had been sent to federal prison in Pennsylvania. *While in Pennsylvania*, the plaintiff was allegedly harmed by certain conduct of his attorneys which took place in Ohio. The court, however, construed the language of section 8305 to require "the cause of the harm, not merely its effect, to occur within Pennsylvania though the actor is outside the state." Because the cause of the plaintiff's alleged harm was in Ohio, the court held that section 8305 did not support jurisdiction.

*Stifel* was the first and only decision to state that section 8305 requires a determination of the locus of the "cause" of plaintiff's harm. This interpretation of the section's language would seem to present a major obstacle to the application of the section. Although the court gave an example of a situation where it thought that its new requirement would be satisfied — a libelous letter written outside of Pennsylvania and mailed into the state — it is indicated that in most cases the cause of the plain-

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115. Id. at 1087. The plaintiff contended that his attorneys had sabotaged his murder trial by turning confidential information over to the F.B.I. Id. at 1086. His attorney in a subsequent civil suit in Ohio allegedly joined in a conspiracy to cover up the prior conduct in violation of 42 U.S.C. § 1985(2) (1970). Id. at 1087. The complaint alleged a conspiracy which continued to the date of the instant decision. Id.

116. After being convicted for violating 18 U.S.C. § 1716 (1970), the plaintiff was sentenced to life in prison and sent to the United States Penitentiary at Lewisburg, Pennsylvania. Id.

117. Id. at 1087. The alleged harm caused to the plaintiff within Pennsylvania consisted of:
   1) Unmeritorious motions filed in Ohio courts which caused the plaintiff, *while in Pennsylvania*, to expend time and money;
   2) Threats against [plaintiff's witness] which were communicated (apparently by [the witness]) to the plaintiff *in Pennsylvania*;
   3) General mental anguish caused by the frustration of dealing with bad faith attempts to circumvent the plaintiff's civil suits in Ohio.

118. Id. at 1087 (emphasis added).

119. Id. at 1088.

120. Id. at 1088 n.7.
tiff's harm, at least from his perspective, would be properly considered to be the defendant's activity. Because the section expressly requires the defendant's activity to occur outside of Pennsylvania, Stifel's requirement that the cause occur within the state would seem to present a "Catch-22" situation. Thus, it is submitted that, in order to achieve its purpose, section 8305 must require only the determination that any injury was suffered within Pennsylvania which had a causal connection with the defendant's out-of-state conduct. That is, the causal nexus between the activity and harm must be found, but the section does not, and could not without being rendered nugatory, require a determination that the locus of the cause of the plaintiff's harm was within Pennsylvania.

IV. Conclusion

Because of the patent ambiguity of the language of section 8305, any court interpretation would arguably be subject to criticism for being contrary to legislative intent. Certainly this holds true for those decisions which thus far have dealt with the scope of the term "harm"121 or the question of whether the section should be limited to tortious activity.122 This Comment, however, is not meant as a criticism of those courts which have interpreted section 8305, but rather of the Pennsylvania legislature for its failure to be more precise in the language of the entire personal injury long-arm statute.

The trend of most recent cases is clearly in the direction of interpreting the Pennsylvania long-arm statute to provide for jurisdiction over nonresident individuals to the full extent permitted by constitutional due process.123 Confronted with the present statutory language, it is submitted that the courts have reacted normally by interpreting the statute to cover situations which clearly satisfy the "fundamental fairness" concepts of due process. However, the state legislature has expressly provided for jurisdiction coterminously with the Constitution only with respect to suits against foreign corporations.124 Nowhere in the long-arm scheme was an equivalent provision made applicable to individuals. This dichotomy in treatment between individuals and corporations is underscored by the general rule that a single act is insufficient to confer jurisdiction over an individual under the "doing business" provisions of the statute.125 It would seem, therefore, that the legislature did intend to restrict its courts' jurisdiction over nonresident individuals in some manner.

121. See notes 80-85 and accompanying text supra.
122. See notes 66-79 and accompanying text supra.
123. Some courts have expressly stated that the Pennsylvania long-arm statute provides jurisdiction over nonresident individuals to the full extent permitted by the Constitution. See, e.g., McAndrew v. Burnett, 374 F. Supp. 460, 462 (M.D. Pa. 1974).
125. See notes 58-60 and accompanying text supra.
A legislative decision not to provide for long-arm jurisdiction to the fullest extent permissible under the Constitution is certainly defensible. Maintaining specific statutory jurisdictional provisions allows a state to provide that certain connections with the state greater than those required to satisfy due process should be necessary for some policy reason to confer jurisdiction over a nonresident individual. Well-defined statutory requirements also afford a certain amount of notice to potential litigants of the likelihood that a court will exercise jurisdiction on a particular set of facts. Jurisdiction coextensive with constitutional requirements subjects the parties, as well as the courts, to the rather nebulous and subjective due process concepts of "minimum contacts" and "fundamental fairness." The application of these concepts may at times result in seemingly inconsistent decisions and a corresponding difficulty in predicting whether certain activity will be determined by a court to have satisfied constitutional requirements. Further, restrictive long-arm jurisdiction may be reflective of a state's legitimate desire to avoid the greater burden of cases which would fall upon its courts if jurisdiction were extended. Whatever advantages that may inhere in restricted statutory jurisdiction, however, are lost when the language is as vague as in Pennsylvania's long-arm statute.

In view of the questionable judicial decisions concerning the proper scope of section 8305, particularly by federal courts within the Commonwealth, it is submitted that the legislature should either amend the current long-arm statute to make the desired limitations upon personal jurisdiction over nonresident individuals explicit, or enact a new statute providing that such jurisdiction should extend to the fullest extent permissible under the Constitution. It is submitted that the latter alternative is desirable because, despite all of the problems inherent in having jurisdiction limited only by due process, it would allow the courts to make a decision based upon the particular facts involved in each case. This would simplify a court's inquiry because it would no longer have to decide whether it had statutory power, but would be required to answer only the constitutional questions. Further, courts would not have to stretch or reshape statutory language, as it is submitted is often done in this area, in order to find statutory jurisdiction in a situation that clearly satisfies due process.

126. See Comment, International Shoe and Long-Arm Jurisdiction — How About Pennsylvania?, 8 Duquesne L. Rev. 319 (1970). While the authors accepted in principle the position that Pennsylvania's long-arm jurisdiction should be extended to the maximum extent allowed by due process, they felt that a statute which would subject nonresidents to the jurisdiction of Pennsylvania's courts to the extent permitted by the Constitution would result in too much uncertainty. Id. at 328, 352. Instead, they concluded that a comprehensive long-arm statute, along the lines of the Uniform Act, would best serve Pennsylvania's interests. Id. at 352.

127. See Developments — Jurisdiction, supra note 1, at 1001. Pennsylvania's interests. Id. at 352.

128. See note 126 and accompanying text supra.

129. See note 11 supra.
Finally, the legislature's decision that individuals and corporations should be treated differently may be understandable, but it does not seem that this necessitates a statute restricting jurisdiction over nonresident individuals to specifically enumerated situations. It would appear that, while applying the principles of due process to the situation before it, a court would clearly be able to recognize any inherent differences which there may be between corporations and individuals.

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130. See Developments — Jurisdiction, supra note 1, at 1006.

131. It has been cogently argued that due process requires more substantial contact with the forum state when jurisdiction is sought over a nonresident individual rather than a foreign corporation because individuals as a class are less likely to be able to litigate in a distant forum. See id. at 935-36.