THE IOWA "LONG-ARM" STATUTE— TEN YEARS AFTER

I. INTRODUCTION

> *"The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse."* Pennoyer v. Neff.[1]

Such was the rule of law established in the United States which remained firmly entrenched for nearly seventy years. As a matter of due process under the fourteenth amendment, a court could not render a personal judgment against a nonresident without having jurisdiction over him and such jurisdiction could not be acquired by serving process upon him outside of the forum or by publication. However, the changing nature of our national economy, the increased use of the corporate entity, and the expansion of transportation and communication facilities has led the courts to a reappraisal of the *Pennoyer* doctrine and an expansion of the scope of personal jurisdiction over nonresidents.[2]

Expansion of state jurisdiction over nonresidents was given a significant boost in 1945. In *International Shoe Co. v. Washington*[3] the United States Supreme Court held that a foreign corporation, employing salesmen residing and working in the state of the forum, could be sued in that state to recover contributions to the state's unemployment compensation fund without violating the due process requirements. The old test of requiring a corporation to be doing a fixed amount of specified activity within the state in order to be "doing business" was replaced by a new, more flexible standard. In essence, the new test required only that there be "certain minimum contacts" within the territory of the forum so that maintenance of the suit did not "offend traditional notions of fair play and substantial justice."[4] Henceforth, the quality and nature of the contacts, rather than the mere quantity of contacts, was to be emphasized.[5]

The Court took yet another step in broadening the scope of state jurisdiction over nonresidents with its decision in *McGee v. International Life Insurance Co.*[6] That case involved a single life insurance contract held by a Cali-

1. 95 U.S. 714, 720 (1877).
2. *See* McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Great Atlantic & Pacific Tea Co., Inc. v. Hill-Dodge Banking Co., 255 Iowa 272, 122 N.W.2d 337 (1963); Hill v. Electronics Corp. of America, 253 Iowa 581, 113 N.W.2d 313 (1962).
3. 326 U.S. 310 (1945).
4. *Id.* at 316.
5. For a good discussion of this aspect, *see* Sporcam, Inc. v. Greenman Bros., Inc., 340 F. Supp. 1168, 1177-78 (S.D. Iowa 1972).
6. 355 U.S. 220 (1957).

fornia resident at his death. A California statute subjected foreign corporations to suit in California on insurance contracts issued or delivered to residents of the state. Except for this one policy, the insurance company had not conducted any business within the state. Service of process was accomplished outside of the state. The Court held, however, that the due process clause was not violated by such assertion of jurisdiction over a foreign corporation on the basis of a single contract which had a "substantial connection" with the state.[7] It was pointed out that the state had a manifest interest in providing a means of redress for its residents when an insurer refuses to pay claims, especially in light of the burden it would place on such individual residents to plead their cause in a foreign jurisdiction.[8] Thus, the concept of "minimum contacts" was expanded to include a single transaction within the forum state.

Although the foregoing has not signaled "the demise of all restrictions on the personal jurisdiction of state courts,"[9] it has ushered in a much expanded scope of personal jurisdiction. It is in light of the foregoing, however, that the various states, including Iowa, have enacted what have become known as "single-act" or "long-arm" statutes. These statutes, in general, make it possible for a court to render personal judgments against foreign corporations or nonresident persons. Iowa's first "long-arm" statute was incorporated into section 617.3 of the *Code of Iowa* in 1961.[10] However, this particular statute failed to provide a means by which a defendant was to be notified of the pending action. Therefore, the 1961 "long-arm" statute was repealed and an almost identical statute which provided such a means of notifying a defendant was simultaneously enacted in 1963.[11] It is the 1963 "long-arm" statute, as amended, that this Note is intended to explore and which includes discussions of its constitutionality, modes of attacking jurisdiction, the clear and complete compliance requirement, its prospective application, the contract and tort provisions, and a step-by-step approach for filing.

II. Constitutionality

The constitutionality of Iowa's "long-arm" statute is no longer subject to serious doubt. Both the tort and contract provisions have been declared constitutional by the Supreme Court of Iowa. In *Tice v. Wilmington Chemical Corporation*[12] the court noted that the 1961 version of the "long-arm" statute

7. *Id.* at 223.
8. *Id.*
9. Hanson v. Denkla, 357 U.S. 235, 251 (1958). In *Hanson* the Court stated that it would require more than unilateral activity on the part of those who claim a relationship with a nonresident. It also found that it was essential "that there be some act by which the nonresident defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* at 253. It goes without saying that this added requirement might seriously impede the expansion of personal jurisdiction over nonresidents. However, in light of the Iowa cases decided since *Hanson*, discussed *infra*, which deal with this subject, it does not appear that it has been a serious impediment to finding personal jurisdiction.
10. Ch. 287, § 1 [1961] Iowa Acts.
11. Iowa Code § 617.3 (1973).
12. 259 Iowa 27, 141 N.W.2d 616, *supp. op.*, 259 Iowa 47, 143 N.W.2d 86 (1966).

may have been defective in that it failed to provide a procedural requirement making it probable a nonresident defendant would receive notice of the pending action.[13] This case involved the tort provison of section 617.3 under the 1963 version. The court held that the statute contained a procedure whereby it was probable that a nonresident defendant would receive notice and that such provision satisfied the due process requirements of both the state and federal constitutions.[14]

In *Miller v. Vitalife Corporation of America*[15] the court held that the contract provisions of section 617.3 were also constitutional.[16] Noting the *McGee* case,[17] the court stated that the due process requirements were satisfied if the contract had a "substantial connection" with the state.[18] In this case there was a bulk sale of an Iowa business, a visit to Iowa by defendant's representative, delivery of a check in Iowa, subsequent performance of operations in Iowa contemplated by the parties, a covenant not to compete in any state of the Union, and an election by plaintiff to take payments on the contract price in her Iowa town. All of these actions were said to provide minimum contact with the state of Iowa which satisfied the due process requirements.[19]

III. Jurisdiction Under the "Long-Arm" Statute

A. *Mode of Attacking Jurisdiction*

Whenever a foreign corporation or nonresident person is served with process or original notice under the "long-arm" statute an attack on the court's jurisdiction, be it a state or federal district court,[20] can be expected. If the action is brought in a district court of Iowa the foreign corporation or nonresident person will undoubtedly enter a special appearance.[21] If, however, the action is brought in a federal district court sitting in Iowa there will be a motion to dismiss for lack of jurisdiction over the person[22] or for insufficiency of service of process.[23] In either case, the court will proceed on the motion in the same manner. The allegations of the plaintiff's petition (or complaint, as the case may be) are accepted as true. Plaintiff has the burden of establishing and sustaining the requisite jurisdiction over the defendant. The bur-

13. *Id.* at 37, 141 N.W.2d at 623.
14. *Id.* at 37-38, 141 N.W.2d at 623. Iowa Code § 617.3 (1973) provides, in pertinent part, that service of process or original notice is made by filing duplicate copies with the secretary of state and "(2) by mailing to the defendant . . . by registered or certified mail, a notification of said filing with the secretary of state . . . ."
15. 173 N.W.2d 91 (Iowa 1969).
16. *Id.* at 95.
17. McGee v. International Life Ins. Co., 355 U.S. 220 (1957).
18. Miller v. Vitalife Corp. of America, 173 N.W.2d 91, 94 (Iowa 1969).
19. *Id.* at 95.
20. Fed. R. Civ. P. 4(d)(7) provides, in part, that service of process in federal courts may be obtained "in the manner prescribed by the law of the state in which the district court is held . . . ."
21. Iowa R. Civ. P. 66.
22. Fed. R. Civ. P. 12(b)(2).
23. *Id.* 12(b)(5).

den is then on the defendant to rebut or overcome this prima facie showing.[24] On appeal to the Supreme Court of Iowa the proceeding is not triable de novo and the interpretation given to disputed facts by the trial court is accepted, the findings of the trial court having the force and effect of a jury verdict.[25]

B. *Clear and Complete Compliance*

The "long-arm" statute is an extraordinary method for obtaining jurisdiction over a foreign corporation or nonresident person. As such there must be "clear and complete compliance" with the statutory provisions.[26] The court has been very strict in interpreting the statutory requirements. "Substantial" compliance with the provisions is not sufficient to bestow jurisdiction on the court.[27]

As a result of this requirement, plaintiffs' attorneys may be faced with a serious dilemma. An example of this problem can be seen in the case of *Powers v. Iowa Harvestor Systems, Inc.*[28] In that case plaintiff's attorney was faced with the problem of serving two dissolved foreign corporations in a personal injury action. The statute makes no specific provisions for the procedure to be followed in order to effect notice upon and secure jurisdiction over dissolved foreign corporations. The corporations having been incorporated in Illinois, notices were mailed to these dissolved corporations in care of the Secretary of State of Illinois. However, the statute, in pertinent part, states: "[N]otification shall be mailed to each such [foreign] corporation at the address of its principal office in the state or country under the laws of which it is incorporated. . . ."[29] Since plaintiff's attorney had not mailed these notices in accordance with the statutory provision, the court held that it had no jurisdiction over these dissolved foreign corporations.

Even where plaintiffs' attorneys rely upon information that everyone seem-

---

24. Tice v. Wilmington Chem. Corp., 259 Iowa 27, 34-35, 141 N.W.2d 616, 621 (1966). *See* Edmundson v. Miley Trailer Co., No. 55596 (Iowa Oct. 17, 1973); Rath Packing Co. v. Intercontinental Meat Traders, Inc., 181 N.W.2d 184, 185 (Iowa 1970); Miller v. Vitalife Corp. of America, 173 N.W.2d 91, 92 (Iowa 1969); Sporcam, Inc. v. Greenman Bros., Inc., 340 F. Supp. 1168, 1175 (S.D. Iowa 1972); Fisher v. First Nat'l Bank of Omaha, 338 F. Supp. 525, 527 (S.D. Iowa 1972); Midwest Packaging Corp. v. Oerlikon Plastics, Ltd., 279 F. Supp. 816, 818 (S.D. Iowa 1968).

25. Tice v. Wilmington Chem. Corp., 259 Iowa 27, 34-35, 141 N.W.2d 616, 621-22 (1966). *See* Edmundson v. Miley Trailer Co., No. 55596 (Iowa Oct. 17, 1973); Rath Packing Co. v. Intercontinental Meat Traders, Inc., 181 N.W.2d 184, 185 (1970); Miller v. Vitalife Corp. of America, 173 N.W.2d 91, 92 (1969).

26. *See* Powers v. Iowa Harvestor Systems, Inc., 204 N.W.2d 623, 624 (Iowa 1973); Bentley v. Allen-Sherman-Hoff Pump Co., 203 N.W.2d 312, 313 (Iowa 1972); Bauer v. Stern Finance Co., 169 N.W.2d 850, 857 (Iowa 1969); Boyer v. Broadwater, 168 N.W. 2d 799, 800 (Iowa 1969); Fagan v. Fletcher, 257 Iowa 449, 133 N.W.2d 116 (1965).

27. Powers v. Iowa Harvestor Systems, Inc., 204 N.W.2d 623 (Iowa 1973).

28. *Id.* The dilemma presents itself in the form of several questions facing the attorney. If the corporation is dissolved what address could it possibly have for purposes of mailing the notification? If there is no actual address for such a dissolved corporation must he forego any cause of action against it? Or, is there some reasonable alternative for mailing the notification which is sufficient for purposes of obtaining personal jurisdiction over such dissolved foreign corporation?

29. IOWA CODE § 617.3 (1973).

ingly must be expected to rely upon, it is possible to run amiss. In *Bentley v. Allen-Sherman-Hoff Pump Co.*[30] plaintiff's attorney did everything that could be reasonably expected to effectuate service and obtain jurisdiction over a Pennsylvania corporation. Knowing that the notice of filing with the Secretary of State had to be mailed to the defendant at the address of its principal office in Pennsylvania,[31] the attorney contacted the Corporation Bureau of the Department of State of Pennsylvania. An employee in that department furnished the attorney with an address appearing in its records. Plaintiff's attorney then mailed the required notification to that address. Return receipts were signed and returned to the attorney. All seemed well until defendant filed a special appearance and plaintiff's attorney sought to verify the information given to him. At that point he learned that the defendant was no longer located at the address to which the notification had been mailed and that the corporation had, in fact, duly changed its address with the Department of State of Pennsylvania. Apparently the Department of State employee had merely overlooked the document filed by the defendant which changed its address. The attorney had not discovered this change of address sooner because a postal employee did not deliver the notice to defendant-addressee, but had handed it to an individual employee of another corporation then at that address. That individual signed the return receipt and forwarded the notice to defendant's new address. Even though plaintiff's attorney acted responsibly and, through no fault of his own, relied on misinformation, the court found that the defendant had not attempted to mislead anyone and held that it lacked jurisdiction over the defendant because there had not been clear and complete compliance with the statutory provisions.[32]

There can also be no "better" method of service than that provided in the statute. Such was the contention in *Bauer v. Stern Finance Co.*[33] where the defendant was served with original notice in the state of Nebraska. The "long-arm" statute, however, clearly requires service to be made "(1) by filing duplicate copies of said process or original notice with said secretary of state . . . and (2) by mailing to the defendant . . . by registered or certified mail, a notification of said filing with the secretary of state. . . ."[34] Since service was obviously accomplished in a manner not set forth in the statute, the court held that it had no jurisdiction over the defendant.[35]

Another demonstration of the strictness with which the statutory language is applied can be seen in *Fagan v. Fletcher.*[36] In that case plaintiff sought to secure substituted service on defendants who were Iowa residents at the time of the alleged tort but who had subsequently moved to Michigan prior to

30. 203 N.W.2d 312 (Iowa 1972).
31. IOWA CODE § 617.3 (1973).
32. Bentley v. Allen-Sherman-Hoff Pump Co., 203 N.W.2d 312, 314 (Iowa 1972).
33. 169 N.W.2d 850 (Iowa 1969).
34. IOWA CODE § 617.3 (1973).
35. Bauer v. Stern Finance Co., 169 N.W.2d 850, 857 (Iowa 1969).
36. 257 Iowa 449, 133 N.W.2d 116 (1965).

commencement of the action. The statute, in pertinent part, reads: "If a nonresident person . . . commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such person for the purpose of service of process or original notice on such person. . . ."[37] The court found that the words "nonresident person" did not include a person who was a resident of Iowa at the time of the alleged tort but who subsequently moved to another state prior to commencement of the action.[38]

Apparently as a result of the court's decision in *Fagan,* however, section 617.3 was amended in 1965, and now reads, in material part, as follows:

> The term "nonresident person" shall include any person who was, at the time of the tort, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings and ceased to be a resident of Iowa or, a resident who has remained continuously absent from the state for at least a period of six months following commission of the tort.[39]

The court took a somewhat less formal stance in *Boyer v. Broadwater,*[40] noting, however, that the actual requirements of the statute had been met. In this case plaintiff's attorney mailed two copies of the original notice to the defendant, one copy of which contained the following language: "You will take notice that an original notice of suit against you, a copy of which is hereto attached was duly served upon you at Des Moines, Iowa by filing a copy of said notice on the 31st of July, 1968 with the Secretary of State of the State of Iowa."[41] The court noted that the better practice might be to draft a separate instrument but that the method employed would suffice because the precise language of the statute was used which gave defendant the necessary notice.

Another issue confronting the court in *Boyer* was the provision in section 617.3 for proof of service. The statute, in pertinent part reads: "Proof of service shall be made by filing in court the duplicate copy of the process or original notice with the secretary of state's certificate of filing, and the affidavit of the plaintiff or his attorney of compliance herewith."[42] In this case, proof of service was first attempted by affidavit of the secretary of plaintiff's attorney. This was clearly not in keeping with the statutory requirements. However, prior to the hearing on defendant's special appearance, plaintiff's attorney did file his own affidavit which the court found sufficient to comply with the statute.[43] The court also noted that the affidavit need not be made by the person who actually mailed the notification.[44]

---

37. Iowa Code § 617.3 (1973).
38. Fagan v. Fletcher, 257 Iowa 449, 453, 133 N.W.2d 116, 118 (1965).
39. Iowa Code § 617.3 (1973).
40. 168 N.W.2d 799 (Iowa 1969).
41. *Id.* at 801.
42. Iowa Code § 617.3 (1973).
43. Boyer v. Broadwater, 168 N.W.2d 799, 802 (Iowa 1969).
44. *Id.* This is merely to say that the affiant need not be the individual who actually places the notification in the hands of the mail carrier.

From the foregoing discussion of cases it is plain that the court is unwilling to deviate in the slightest from the language of the statute. Counsel would be well-advised to study the statute carefully and follow the prescribed procedures to the letter when commencing an action under the Iowa "long-arm" statute. Failure to do so can be disastrous.

C. *Prospective Application*

Early federal court decisions expressed the opinion that Iowa's "long-arm" statute would be applied retrospectively.[45] Indeed, in the Iowa supreme court's initial consideration of the issue it appeared that such would be the case.[46] However, later decisions held to the contrary and it is now firmly established that the "long-arm" statute is to be applied prospectively only.[47] Although the issue of prospective application might seemingly be moot due to the various statutes of limitations on tort[48] and contract[49] actions, it is, in reality, still with us in 1973.[50]

In arriving at the conclusion that section 617.3 was limited to prospective application only, the court, in *Krueger v. Rheem Manufacturing Co.*,[51] noted that laws providing for substituted service are held to be substantive and must be applied prospectively.[52] The statute's theory of due process rests on the concept of implied consent to the appointment of the Secretary of State as agent for service of process or original notice. It is, therefore, a law providing for substituted service and, as such, must be limited to prospective application.[53]

The implied consent theory was adopted again in *Chrischilles v. Griswold*[54] which went on to say that consent must be implied from and based upon affirmative acts of negligence and not the resulting injury or damage.[55] For purposes of determining whether "consent" has been given and, therefore, whether the statute is applicable to the defendant, the date of the affirmative act of negligence, and not the date of the injury, is crucial. If the affirmative

45. *See* Pingel v. Coleman Co., Inc., 250 F. Supp. 521 (N.D. Iowa 1965) (tort); Cedar Rapids Community School Dist. v. R.F. Ball Constr. Co., Inc., 237 F. Supp. 965 (N.D. Iowa 1965) (contract).

46. *See* Tice v. Wilmington Chem. Corp., 259 Iowa 27, 141 N.W.2d 616, *supp. op.*, 259 Iowa 47, 143 N.W.2d 86 (1966). The court felt that the statute was merely procedural.

47. *See* Iowa v. Midwest Dev. Corp., No. 55629 (Iowa Sept. 19, 1973); Marshfield Homes, Inc. v. Eichmeier, 176 N.W.2d 850 (Iowa 1970); Schnebly v. St. Joseph Mercy Hosp. of Dubuque, 166 N.W.2d 780 (Iowa 1969); Snakenburg v. Jason Mfg., Inc. 261 Iowa 1083, 157 N.W.2d 110 (1968); Krueger v. Rheem Mfg. Co., 260 Iowa 678, 149 N.W.2d 142 (1967); Chrischilles v. Griswold, 260 Iowa 543, 150 N.W.2d 94 (1967); Bishop v. Emerson Elec. Co., 284 F. Supp. 760 (S.D. Iowa 1968).

48. IOWA CODE § 614.1(2) (1973) (generally two years).

49. *Id.* § 614.1(4) and (5) (five years for unwritten contracts and ten years for written contracts).

50. *See* Iowa v. Midwest Dev. Corp., No. 55629 (Iowa Sept. 19, 1973) (tort).

51. 260 Iowa 678, 149 N.W.2d 142 (1967).

52. *Id.* at 687, 149 N.W.2d at 144-45.

53. *Id.* at 688, 149 N.W.2d at 148.

54. 260 Iowa 543, 150 N.W.2d 94 (1967).

55. *Id.*; Snakenburg v. Jason Mfg., Inc., 261 Iowa 1083, 157 N.W.2d 110 (1968). *See also* Schnebly v. St. Joseph Mercy Hosp. of Dubuque, 166 N.W.2d 780 (Iowa 1969).

act of negligence occurred prior to the effective date of the provision no consent could have been given and jurisdiction cannot be obtained over the tortfeasor.[56]

Should further amendments be enacted consideration will again have to be given to the effect of prospective application. Thus far, only the 1965 amendment, defining a "nonresident person" to include an Iowa resident who subsequently moved out of the state,[57] has been considered by the court. In *Schnebly v. St. Joseph Mercy Hospital of Dubuque*[58] an alleged tort was committed in 1964 by an Iowa resident who subsequently left the state. The court found that the amendment had to be applied prospectively to determine whether the nonresident could be served. Since the alleged tort occurred prior to enactment of the amendment, jurisdiction over the defendant could not be obtained. The court noted that the statute is aimed at the commission of the tort and not the removal of the tortfeasor from Iowa.[59]

It remains to be seen whether any other portions of section 617.3 or any future amendments will be applied retrospectively. However, in light of the implied consent theory and the substantive nature of the act, prospects for any retrospective application seem quite unlikely.

D. *Contracts—Performance In Whole or In Part in Iowa*

If a foreign corporation or nonresident person makes a contract with an Iowa resident which is to be performed in whole or in part in Iowa, the Iowa resident can employ the "long-arm" statute to subject the defendant to personal jurisdiction in Iowa.[60] To satisfy the requirements of due process the defendant must have had "certain minimum contacts" with the state and the contract must have a "substantial connection with the state."[61] A variety of activities carried on between the parties to contracts have been explored by the courts sitting in Iowa. To determine whether or not the due process requirements have been met and personal jurisdiction obtained pursuant to section 617.3, the court must look to the facts of each case.[62] An overview of the activities passed upon by the courts sitting in Iowa is presented below.

In an action for breach of express and implied warranties in the construction of school buildings in Cedar Rapids, plaintiff alleged a written contract with the defendant foreign corporation whereby the corporation was to design, supervise and inspect the construction of the buildings. The buildings were constructed with defective roofs. The federal district court found that the

---

56. *See generally* 54 IOWA L. REV. 166 (1968).
57. *See* text accompanying notes 36-39, *supra*.
58. 166 N.W.2d 780 (Iowa 1969).
59. *Id.* at 784. *See* Iowa v. Midwest Dev. Corp., No. 55629 (Iowa Sept. 19, 1973).
60. IOWA CODE § 617.3 (1973).
61. *See* text accompanying notes 3-7, *supra*. *See generally* Annot., 23 A.L.R.3d 551 (1969).
62. *See* Edmundson v. Miley Trailer Co., No. 55596 (Iowa Oct. 17, 1973); Great Atlantic & Pacific Tea Co. v. Hill-Dodge Banking Co., 255 Iowa 272, 279, 122 N.W.2d 337, 341 (1963).

foreign corporation was subject to service of process under the Iowa "long-arm" statute.[63]

Where defendant foreign corporation took an assignment of present and future interests in and patent rights to an invention from an Iowa resident, various contacts were found to provide a substantial connection with the state of Iowa. The contract provided that all payments were to be made by defendant to plaintiff at plaintiff's address in Iowa and that consultations with defendant's representatives were to be held at plaintiff's residence. In addition, two payments were made to plaintiff at his residence and on at least three occasions defendant sent employees to Iowa for consultations with plaintiff. Such contract provisions and actions by defendant were sufficient to subject it to jurisdiction in the Federal District Court for the Northern District of Iowa.[64]

In an action for breach of an exclusive distributorship brought in Puerto Rico further light was shed on the Iowa "long-arm" statute. The plaintiff was the exclusive distributor of defendant's products within Puerto Rico. Upon defendant's termination of the agreement, plaintiff threatened suit. Defendant then sued in Iowa seeking declaratory relief as to the rights, status and legal obligations of the parties, employing section 617.3 to secure service. Plaintiff ignored the Iowa proceedings and filed suit in Puerto Rico seeking damages. A default judgment was entered in Iowa and defendant contended that such judgment was a bar to the Puerto Rico proceedings. The federal district court in Puerto Rico extended full faith and credit to the Iowa judgment and in so doing found that the findings of fact by the Iowa court supported jurisdiction over the plaintiff in this action. In support of its jurisdiction the Iowa court had found that the plaintiff (defendant in the Puerto Rico proceeding) had agreed to provide shop drawings of its products, manufacture its products in accordance with the orders it received from Puerto Rico, and formulate conditions of sale. All of these activities were performed in Iowa and were sufficient to give the Iowa court jurisdiction.[65]

The breach of an exclusive sales franchise gave rise to an action in the federal district court in Iowa wherein the court broadened the concept of "performance in whole or in part" significantly. Initial contact with the defendant foreign corporation occurred in Europe. When plaintiff's president returned to Iowa, correspondence was begun with the defendant to consummate a distributorship agreement. Defendant sent representatives to Iowa on at least one occasion to discuss such an agreement with plaintiff. Aside from these facts, however, the court stated: "Plaintiff is an Iowa corporation with its principal place of business in Iowa. Therefore, by necessity, many of the acts required for performance of the alleged exclusive sales contract would take

63. Cedar Rapids Community School Dist. v. R.F. Ball Constr. Co., Inc., 237 F. Supp. 965 (N.D. Iowa 1965).

64. Lundell v. Massey Fergusen Servs. N.V., 277 F. Supp. 940 (N.D. Iowa 1967).

65. Brau-Guasp d/b/a American Architectural Prods. (ARCTEX) v. Rolscreen Co., 299 F. Supp. 459 (Puerto Rico 1969).

place in Iowa."[66] Further, assuming that a distributorship agreement existed, the court noted that "it [the distributorship agreement] contemplated a continuing relationship between the parties with performance on the part of plaintiff within this jurisdiction."[67] Thus, it appears from the foregoing that plaintiff is well on his way to establishing a prima facie case for jurisdiction under section 617.3 if it is an Iowa corporation with its principal office in Iowa and that the contract contemplated substantial activity to be performed in Iowa *in the future*.

The Supreme Court of Iowa had its first opportunity to pass on the contract provisions of section 617.3 in a case involving the bulk sale of an Iowa based business to a Florida corporation. The court noted the legitimate interest of the state in such bulk transfers but did not limit itself or place the decision on the bulk sales nature of the transaction only. In addition to the nature of the transaction, the purchaser had visited Iowa to inspect the operation, there was delivery of a $3,500 check in Iowa upon the claimed conclusion of a preliminary oral contract, the seller-plaintiff subsequently performed substantial operations allegedly contemplated by the parties, there was a covenant not to compete in any state including Iowa, and there was an election by seller-plaintiff to take payment on the notes due at her residence in Iowa. The court stated that all of the foregoing provide sufficient minimum contact with the state to subject the defendant to jurisdiction.[68]

A wholly owned subsidiary which secures contracts with Iowa residents for its parent will subject its foreign parent corporation to the jurisdiction of Iowa courts under the "long-arm" statute, even though the contracts thus secured are to be performed by both parties outside of Iowa. The parent corporation's actions, in and of themselves, do not subject it to jurisdiction. However, the subsidiary acts as an adjunct of the parent and is, therefore, an agent. The making of contracts to be performed in whole or in part in Iowa by the subsidiary constitutes doing business in Iowa by the parent, subjecting it to service under section 617.3.[69]

In *Sporcam, Inc. v. Greenman Brothers, Inc.*,[70] the federal district court set forth the five factors used by the Court of Appeals for the Eighth Circuit to determine whether fair play and substantial justice requirements are satisfied. The factors to consider are: "(1) the nature and quality of the contacts with the forum state; (2) the quantity of contacts with the forum state; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties."[71]

---

66. Midwest Packaging Corp. v. Oerlikon Plastics, Ltd., 279 F. Supp. 816, 818 (S.D. Iowa 1968).
67. *Id.* at 819.
68. Miller v. Vitalife Corp. of America, 173 N.W.2d 91, 94 (Iowa 1969).
69. Fisher v. First Nat'l Bank of Omaha, 338 F. Supp. 525, 529-30 (S.D. Iowa 1972).
70. 340 F. Supp. 1168 (S.D. Iowa 1972).
71. *Id.* at 1176. *See* Electro-Craft Corp. v. Maxwell Electronics Corp., 417 F.2d

The *Sporcam* case was an action for alleged breach of contract. The alleged contract involved the sale of certain leasehold interests in Florida and Georgia held by the Iowa plaintiff to a New York corporation. The contract contemplated nearly complete control of the Iowa corporation by the New York corporation for a substantial time and would require the New York corporation to conduct substantial activities in Iowa to facilitate the transfer of assets. The court held that it had jurisdiction over the defendant and, in so doing, commented on the considerations it used in reaching its decision. In addition to defendant's voluntary affirmative economic activity, the court also felt that defendant could reasonably anticipate that its activities would have consequences in Iowa. The court also stated that it could look to future activity contemplated in the contract and the number of contacts which it would have in carrying out the business at hand. Defendant also availed itself of the privilege of doing business in Iowa in that it would have to use the Iowa courts to enforce the agreement with plaintiff. The transaction would obviously have a substantial impact on commerce in Iowa. In light of the above, the court was satisfied that the fair play and substantial justice requirements of due process had been met.[72]

A seeming anomaly to the liberal trend allowing jurisdiction over foreign corporations was the *Rath Packing* decision rendered by the Supreme Court of Iowa in 1970.[73] In that case Rath Packing Company, an Iowa corporation, agreed with defendant Illinois corporation to sell frozen pork skins shipped "F.O.B. Waterloo." During the course of the agreement Rath sent two shipments of skins which were on defendant buyer's accounts to storage facilities in Iowa in order to relieve Rath's own warehouse storage facilities. Defendant began receiving complaints about the quality of the pork and its president made a trip to Iowa to inspect the pork skins at Rath's plants. The court held that it had no jurisdiction over the defendant in this matter. The "F.O.B. Waterloo" provision was merely a device to determine cost. The storage of skins in Waterloo was an accommodation to Rath, and the trip to Iowa by defendant's president was done at the suggestion of Rath's agent to discuss the condition of the skins shipped to defendant. Under these circumstances the court concluded that defendant had not "purposefully availed itself of the privilege of conducting business in Iowa."[74] The court also noted that Rath was a seller seeking jurisdiction over a nonresident buyer and that such a fact was an important consideration in determining the sufficiency of defendant's contacts.[75] It seems, therefore, that a stronger case is made for the due process requirements when a resident buyer is suing a nonresident seller.

365, 368 (8th Cir. 1969); Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965).

72. Sporcam, Inc. v. Greenman Bros., Inc., 340 F. Supp. 1168, 1177 (S.D. Iowa 1972).

73. Rath Packing Co. v. Intercontinental Meat Traders, Inc., 181 N.W.2d 184 (Iowa 1970).

74. *Id.* at 188. The court relied heavily on *Hanson v. Denkla* which is discussed at note 9, *supra*.

75. Rath Packing Co. v. Intercontinental Meat Traders, Inc., 181 N.W.2d 184, 188

E. *Torts—Commission In Whole or In Part in Iowa*

If a foreign corporation or nonresident person commits a tort in whole or in part in Iowa against a resident of Iowa, they can be subjected to the jurisdiction of courts sitting in Iowa.[76] The subject of what constitutes a "tort" and whether such "tort" was committed "in whole or in part in Iowa" has been the source of lively debate in the courts. Below is an overview of the primary cases to date which discuss such issues.

In *Andersen v. National Presto Industries, Inc.*,[77] the plaintiff brought an action for injuries resulting from an allegedly defective coffeemaker manufactured in Wisconsin and sold in Iowa. The court recognized that it was not necessary to have the affirmative act of negligence committed in Iowa in order to subject the defendant to jurisdiction in Iowa under section 617.3. Rather, a tort is committed "in part" in Iowa if an Iowa resident is *injured* in Iowa, even though the negligence occurred in another state.[78] The court noted that the legislature had an actionable tort in mind, rather than an affirmative act of negligence by itself, when it passed the statute.[79] It also stated that the commission of only one tort in whole or in part in Iowa was sufficient to give the court jurisdiction.[80] Since plaintiff was injured in Iowa as a result of defendant's alleged negligence, the tort was committed "in part" in Iowa, thereby subjecting defendant to the jurisdiction of Iowa courts.

The court in *Tice v. Wilmington Chemical Corp.*,[81] expanded the scope of the tort provisions somewhat. Plaintiff alleged that defendant manufactured, produced or distributed a water-repellant solution which was purchased by Iowa residents for resale in Iowa and that plaintiff's decedent purchased the solution which exploded causing her death. Such an allegation was held to be sufficient to satisfy the requirements of the tort provisions and to establish the minimum contacts necessary for due process.[82] The court felt that for purposes of section 617.3 the tort occurred at the time the last event necessary to make the actor liable took place. Thus, the date of injury, rather than the date of manufacture, production or distribution, was felt to be the crucial time in determining whether or not section 617.3 could be applied.[83]

In determining whether the "long-arm" statute had retrospective or prospective application, however, the court found that the "consent" to be served had to be implied from and based upon affirmative acts of negligence, rather

(Iowa 1970). Why this distinction was drawn is not exactly clear. However, in *Sporcam, Inc. v. Greenman Bros., Inc.*, 340 F. Supp. 1168, 1175 (S.D. Iowa 1972), the federal district court noted that the Supreme Court of Iowa used the buyer-seller distinction relative only to the due process argument and not to the applicability of the "long-arm" statute itself.

76. IOWA CODE § 617.3 (1973). *See generally* Annot. 24 A.L.R.3d 532 (1969).
77. 257 Iowa 911, 135 N.W.2d 639 (1965).
78. *Id.* at 916, 135 N.W.2d at 642.
79. *Id.* at 916, 135 N.W.2d at 641.
80. *Id.* at 916, 135 N.W.2d at 642.
81. 259 Iowa 27, 141 N.W.2d 616, *supp. op.*, 259 Iowa 47, 143 N.W.2d 86 (1966).
82. *Id.* at 40, 141 N.W.2d at 625.
83. *Id.* at 45, 141 N.W.2d at 628. *See also* text accompanying notes 56, *supra.*

than the resulting injury or damage.[84] It must be noted, however, that the affirmative acts of negligence were considered only in respect to the implied consent given by the tortfeasor. The concept that a resulting injury constitutes a tort committed "in part" in Iowa apparently remains intact.

In *Williams v. Vick Chemical Co.*[85] plaintiff's decedent died from the effects of aplastic anemia after taking cold tablets manufactured and sold by the defendant foreign corporation. The complaint merely alleged that defendant manufactured and sold for resale such cold tablets and that plaintiff's decedent purchased these tablets from a drug store in Iowa. Such allegations, though minimal, were sufficient to give the federal court sitting in Iowa personal jurisdiction over the defendant.

Tying the above cases on the tort provisions together and further expanding the scope of personal jurisdiction over foreign corporation tortfeasors (which undoubtedly applies to nonresident persons as well) is the recent case of *Edmundson v. Miley Trailer Co.*[86] in which there is a vigorous dissent by four justices. This case involves an automobile accident which occurred in Iowa and was allegedly caused by a defective horse trailer and trailer hitch. The trailer was purchased in Missouri and manufactured in Texas. The trailer hitch was purchased, installed and inspected in Michigan. The accident is the only contact with Iowa which is related to the defendants. The court noted that the trailer and hitch had been placed in the stream of commerce with the knowledge of its intended use in many states and held that the "long-arm" statute could be applied simply on the basis of an injury occurring within the state.

From the foregoing discussion it is apparent that one injury in Iowa resulting from a tort committed outside the state of Iowa constitutes the commission of a tort "in part" in Iowa. Products placed in a market which includes residents of Iowa and which result in injuries to an Iowa resident will subject the manufacturer, producer or distributor to personal jurisdiction in courts sitting in Iowa.

---

84. *See* text accompanying notes 54-55, *supra.*

85. 279 F. Supp. 833 (S.D. Iowa 1967).

86. Edmundson v. Miley Trailer Co., No. 55596 (Iowa Oct. 17, 1973). The dissenting opinion questions the reasonableness of conferring jurisdiction on Iowa courts on the basis of a single injury allegedly caused by defective products of foreign manufacturers, producers or distributors which products had not come into the hands of Iowa retailers. Relying heavily on the *Rath Packing* decision, the dissent felt that the minimum contacts requirement had not been met. *See* text accompanying notes 73-75, *supra.* However, it seems the dissent fails to keep in mind that an injury constitutes the commission of a tort "in part" under previous interpretations of the "long-arm" statute and that affirmative acts of negligence need not be determinative when considering such jurisdiction. *See* text accompanying notes 77-84, *supra.* It must also be kept in mind that *Rath Packing* relates to the contract provisions, rather than the tort provisions, of § 617.3.

Edmundson also presents a good discussion of the residency requirements of § 617.3. The plaintiff's occupation was of such a nature as to require him to constantly travel throughout the country. The district court felt he could not be considered to be an Iowa resident because of his sporadic presence in the state. However, the supreme court was of the opinion that plaintiff's domicile was in Iowa and that, coupled with other factors, was sufficient to make him an Iowa resident.

IV. Conclusion

This Note has attempted to review the decisions rendered which have some bearing on the application of the Iowa "long-arm" statute. It is obvious that this statute has far-reaching effects in preserving the rights of Iowa residents. It is equally obvious that the statute requires strict compliance in order to be effective. Although the language of the statute is sufficiently clear, it can also lead to some confusion when attempting to apply it. To serve as a quick reference to the procedural requirements of the statute, a step-by-step approach to those requirements is set forth below:[87]

(1) prepare and file the petition with the clerk of the appropriate district court;[88]

(2) prepare at least three copies of the original notice;[89]

(3) file duplicate copies of the original notice with the Secretary of State of Iowa along with a filing fee of five dollars;

(4) the Secretary of State will attach time-stamped certificates to the original notices and return one of the copies with the attached certificate;

(5) mail a notification of filing with the Secretary of State by registered or certified mail to the defendant within ten days of said filing;[90] although not required, copies of the original notice and petition should also be mailed to the defendant with this notification;

(6) file with the clerk of the appropriate court the duplicate copy of the original notice which the Secretary of State returned with the certificate of filing attached;

(7) prepare and file with the clerk of the appropriate court an affidavit of the plaintiff or plaintiff's attorney stating that there has been compliance with the statutory requirements.

The above presentation of the procedure to be followed is designed only to give the practitioner a quick reference to the sequence of events. A thorough study of the statute is, of course, necessary before attempting to commence an action pursuant to it.

James E. Ryan

87. The following presentation assumes that there is only one nonresident defendant and that the action is brought in a district court for the state of Iowa.

88. Actions may be brought in the county where plaintiff is a resident, in the county where a contract is or was performed, or in the county in which any part of the tort was committed. Note that for purposes of statutes of limitations the action is deemed commenced upon the filing of the original notice with the secretary of state.

89. The standard form of original notice is to be used up to the point pertaining to the return day. At that point the statute provides specific language to be used. To avoid potential problems this language should be employed to the letter.

90. If dealing with a foreign corporation the notification must be mailed to the corporation at its principal office in the state or country where it is incorporated. If dealing with a nonresident person the notification must be mailed to the person at his address in the state of his residence.