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NOTES

VIRGINIA'S DOMESTIC RELATIONS LONG-ARM LEGISLATION: DOES ITS REACH EXCEED ITS DUE PROCESS GRASP?

Virginia recently enacted long-arm legislation authorizing personal jurisdiction over nonresident defendants in certain spousal support, child support, separate maintenance, and divorce suits.¹ The Commonwealth first enacted a domestic relations long-arm statute in 1978,² which the General Assembly amended in 1982.³ A second domestic relations long-arm statute was enacted in 1981⁴ and amended in 1982;⁵ this statute increased substantially the

1. In the 1983 session of the Virginia Assembly, Delegate Mary Sue Terry of the Twelfth District of Virginia will introduce an amendment to Virginia's domestic relations long-arm statutes substantially similar to the amendment proposed in this Note, *supra* text accompanying note 137. See H.B. 49, Va. Assembly (1983). See also Letter from Mary Sue Terry, Delegate, Virginia General Assembly, to Doug Rendleman, Professor of Law, Marshall-Wythe School of Law, College of William and Mary (Aug. 27, 1982). Adoption of this amendment would transform Virginia's domestic relations long-arm statutes into model legislation for all states.

2. VA. CODE § 8.01-328.1.A(8) (1977 & Supp. 1981). This statute permits a Virginia court to exercise personal jurisdiction over a nonresident in actions arising from that person's having been ordered to pay spousal or child support in a Virginia divorce suit in which the court exercised personal jurisdiction.

3. VA. CODE § 8.01-328.1.A(8) (1977 & Supp. 1982). See *infra* text accompanying note 109. The 1982 amendment authorizes jurisdiction over nonresidents who have executed agreements in Virginia obligating them to pay spousal or child support either to a domiciliary of Virginia or to a resident of Virginia complying with certain statutory requirements. For an analysis of this statute, see *infra* notes 109-33 and accompanying text.

4. VA. CODE § 8.01-328.1.A(9) (1977 & Supp. 1981). This statute allows a Virginia court to exercise personal jurisdiction over certain nonresidents in divorce proceedings.

5. VA. CODE § 8.01-328.1.A(9) (1977 & Supp. 1982). The 1982 amendment changes only the language and not the substance of this long-arm statute. The statute authorizes Virginia courts to exercise personal jurisdiction over a nonresident in causes of action arising from that person's

[h]aving maintained within this Commonwealth a matrimonial domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of action arose for divorce or

scope of personal jurisdiction that Virginia courts can exercise over nonresident litigants in domestic relations suits.

Prior to the passage of these long-arm statutes, the permissible scope of state court jurisdiction over nonresidents was expanding pursuant to a nationwide judicial trend.⁶ This trend seemed to herald the eventual demise of all restrictions on state court jurisdiction.⁷ Recent United States Supreme Court decisions, however, curtailed this trend⁸ by heightening the jurisdictional hurdle that state courts must overcome to exercise personal jurisdiction over nonresidents.⁹ Consequently, states must be sensitive not to exceed due process limits in formulating new long-arm legislation. Additionally, existing long-arm statutes should be examined to ensure that they comply with due process limitations described in recent Supreme Court opinions.

This Note examines Virginia's domestic relations long-arm statutes in light of due process requirements. First, the Note examines the special policy considerations highlighting the need for domestic relations long-arm statutes. Next, recent Supreme Court jurisdictional decisions are examined to identify due process principles restricting a state's ability to exercise personal jurisdiction over nonresident defendants. Finally, Virginia's statutes are analyzed against this backdrop of policy and due process, both to determine

separate maintenance or at the time of commencement of such suit, if the other party to the matrimonial relationship resides herein; provided that proof of service of process in person on the nonresident party is obtained. Service of process under this paragraph may be made by a law-enforcement officer authorized to serve process in the jurisdiction where the nonresident party is located.

Id.

6. In *Hanson v. Denckla*, 357 U.S. 235 (1958), the Supreme Court noted that "the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff* to the flexible standard of *International Shoe Co. v. State of Washington*." *Id.* at 251. The Court continued this judicial expansion of due process in decisions following *International Shoe*. See, e.g., *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952); *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950).

7. See *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

8. See *Rush v. Savchuk*, 444 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Kulko v. Superior Court of California*, 436 U.S. 84 (1978); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *Hanson v. Denckla*, 357 U.S. 235 (1958).

9. See generally Weintraub, *Texas Long-Arm Jurisdiction in Family Law Cases*, 32 Sw. L.J. 965, 966 (1978).

their validity and to suggest modifications. This Note concludes that the reach of Virginia's long-arm statutes does not exceed their due process grasp. Recent precedent, however, indicates that the statutes' specific enumeration of circumstances in which the Commonwealth is authorized to exercise personal jurisdiction may constrain, contrary to legislative intent, the reach of these statutes.¹⁰ The Virginia Assembly, therefore, should amend these statutes to ensure their judicial application to the full extent permissible commensurate with due process principles.¹¹

THE NEED FOR DOMESTIC RELATIONS LONG-ARM LEGISLATION

Judicial and Legislative Policies Highlighting the Need for Personal Jurisdiction Over the Nonresident Spouse

In *Williams v. North Carolina*,¹² the United States Supreme Court held that a valid divorce can be granted by a court in the state where either spouse is domiciled.¹³ By providing a domicile to either spouse, a state may grant a binding divorce decree even though the other spouse is absent from the state and not subject to its personal jurisdiction. Despite the ability of a state court to grant a divorce based on personal jurisdiction over only one spouse, compelling judicial and legislative policies illustrate the

10. See *infra* notes 126-29 and accompanying text.

11. See *supra* note 1.

12. 317 U.S. 287 (1942) (*Williams I*). In *Williams I*, the petitioners, domiciled in North Carolina, left their respective spouses in that state, obtained divorces and married each other in Nevada, and returned to live in North Carolina. *Id.* at 289-90. Convicted by North Carolina of bigamous cohabitation, the petitioners claimed that the Nevada divorces were valid. *Id.* at 290-91. The United States Supreme Court held that if a divorce decree is valid in the state where granted to one domiciled therein, and is rendered according to due process principles, that decree is binding upon other states. *Id.* at 299.

13. The Court in *Williams I* said:

Each state as a sovereign has a rightful and legitimate concern in the marital status of persons domiciled within its borders. The marriage relation creates problems of large social importance. Protection of offspring, property interests, and the enforcement of marital responsibilities are but a few of commanding problems in the field of domestic relations with which the state must deal. Thus it is plain that each state, by virtue of its command over its domiciliaries and its large interest in the institution of marriage, can alter within its own borders the marriage status of the spouse domiciled there, even though the other spouse is absent.

Id. at 289-99.

need for state courts to exercise personal jurisdiction over both spouses in domestic relations litigation.¹⁴

First, if a court awarding a divorce decree does not have personal jurisdiction over a nonresident spouse, that spouse can collaterally attack the court's finding that the petitioning spouse was a domiciliary.¹⁵ The divorce decree constitutes a conclusive adjudication of all facts except jurisdictional facts, and domicile is a jurisdictional fact.¹⁶ Therefore, although the collateral attack is not aimed expressly at nullifying the divorce decree, a collateral attack has that practical result.

For example, if a Virginia husband leaves his wife in Virginia, goes to Nevada exclusively to obtain a divorce, and intends to return to Virginia immediately thereafter, he neither loses his Virginia domiciliary status nor acquires new domicile in Nevada.¹⁷ Consequently, his wife may launch a successful collateral attack in a Virginia court against the Nevada divorce decree by demonstrating the fraudulent nature of her husband's purported domicile in Nevada.¹⁸ The anomalous result is that although each state is empowered to grant valid divorce decrees upon finding that one spouse is domiciled within its boundaries, that decree may be voided through a collateral attack by the absent spouse, over whom

14. See generally Weintraub, *supra* note 9, at 967-73.

15. *Williams v. North Carolina*, 325 U.S. 226 (1945) (*Williams II*). The North Carolina Supreme Court, upon reviewing the remanded *Williams I*, see *supra* note 12, affirmed the petitioners' convictions of bigamous cohabitation. The United States Supreme Court in 1945 again reviewed petitioners' convictions in *Williams II* and held that a divorce decree can be collaterally attacked if the rendering state did not have jurisdiction. 325 U.S. at 229. See also *Esenwein v. Commonwealth*, 325 U.S. 279 (1945).

16. 325 U.S. at 232.

17. The Supreme Court stated that the critical element in establishing domicile is the absence of any intention to live elsewhere. See *id.* at 236. A short stay in a state is not necessarily fatal to the existence of domicile; the current intention to stay for an indefinite length of time is sufficient. See 317 U.S. at 298 n.9. See also 325 U.S. at 236.

18. The wife may attack the Nevada court's assertion of jurisdiction over her husband notwithstanding that court's express ruling that her husband had acquired domiciliary status.

As to the truth or existence of a fact, like that of domicile, upon which depends the power to exert judicial authority, a State not a party to the exertion of such judicial authority in another State but seriously affected by it has a right, when asserting its own unquestioned authority, to ascertain the truth or existence of that crucial fact.

325 U.S. at 230.

the forum had no personal jurisdiction.¹⁹ Thus, personal jurisdiction over both parties to a divorce proceeding is essential to prevent collateral attacks based on the jurisdictional finding of domicile.

The divisible divorce doctrine provides a second reason for favoring judicial exercise of personal jurisdiction over nonresident spouses in divorce proceedings. This doctrine prohibits the forum state granting the divorce from determining the absent spouse's rights to alimony or support unless the forum exercises personal jurisdiction over that spouse.²⁰ The absent spouse's financial interests are thus protected regardless of the forum state's dissolution of the marriage.²¹

Accordingly, a Virginia husband may leave his wife in Virginia and acquire a valid *ex parte* divorce in Nevada; however, because the Virginia wife is not subject to jurisdiction in Nevada, the Nevada court has no power to determine her rights under Virginia law to financial support.²² The divisible divorce doctrine, therefore, accommodates the interests of both Nevada and Virginia in this divorce setting: the doctrine gives effect to Nevada's divorce decree insofar as it alters the marital status, yet the doctrine protects Virginia's interest in its citizens' welfare by ignoring the decree's effect on the issues of support and alimony.²³ Consequently, the exercise of personal jurisdiction over the nonresident spouse in divorce cases promotes settlement, in one judicial proceeding, of both spouses' individual rights and obligations with respect to future financial support.

A third reason that a state court should exercise personal jurisdiction over the nonresident spouse in divorce proceedings is to ensure the binding effect of custody awards. In *May v. Anderson*,²⁴ the United States Supreme Court held that a state court may not

19. The Supreme Court suggested that this anomalous situation "is merely one of those untoward results inevitable in a federal system in which regulation of domestic relations has been left with the States and not given to the national authority." *Id.* at 237.

20. *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957); *Estin v. Estin*, 334 U.S. 541 (1948).

21. See 334 U.S. at 546.

22. The Virginia court has a legitimate concern in protecting the livelihood and ensuring the support of its domiciliaries; otherwise, the abandoned spouse may be left impoverished to become a public charge. See *Newport v. Newport*, 219 Va. 48, 245 S.E.2d 134 (1978).

23. 334 U.S. at 549.

24. 345 U.S. 528 (1953).

terminate an absent parent's right to the care, custody, management, and companionship of minor children unless that court exercises personal jurisdiction over both parents.²⁵ To illustrate, if a Virginia husband leaves his wife and child in Virginia and obtains a divorce decree and a child custody decree in Nevada, a Virginia court would not find this custody decree binding on his wife in Virginia, because the Nevada court did not obtain personal jurisdiction over the wife.²⁶ A parent's right to child custody is a personal right entitled to as much protection as a spouse's right to financial support;²⁷ consequently, a state must exercise personal jurisdiction over both parents to ensure the binding effect of a custody award.

Moreover, custody decrees are subject to modification, making their entitlement to full faith and credit tenuous.²⁸ Courts issuing custody decrees invariably retain the right to modify the decrees upon a showing of significantly changed circumstances.²⁹ Because the full faith and credit clause³⁰ requires only that states give a judgment the same effect as that judgment would have in the state where the judgment was rendered, most states claim the right to modify out-of-state custody decrees when they find that circumstances have changed since the original judgment.³¹ Nevertheless states generally are reluctant to overturn considered custody decrees, or those decrees with which they agree.³² Absent changed

25. *Id.* at 533.

26. In his concurring opinion in *Mays*, Justice Frankfurter indicated that disregard of another state's child custody decree is not compelled as a matter of law. *Id.* at 535 (Frankfurter, J., concurring). In the example given in text, the Virginia court thus could recognize the Nevada child custody decree. In contrast, Justice Jackson, in his dissent in *Mays*, implied that Virginia would be prohibited from recognizing the Nevada child custody decree. *Id.* at 536-37 (Jackson, J., dissenting).

27. *Id.* at 534. The Court reasoned that the child's domicile was not a determinative factor in legitimizing custody awards. Consequently, although the child's domicile was the forum state, the forum did not have the personal jurisdiction necessary to deprive the non-resident parent of the personal right to immediate possession of the child. *Id.*

28. See generally Murchison, *Jurisdiction Over Persons, Things and Status*, 41 LA. L. REV. 1053, 1122-23 (1981); Wadlington, *Domestic Relations*, 55 VA. L. REV. 1201, 1204-05 (1969); Weintraub, *supra* note 8, at 972.

29. See Murchison, *supra* note 28, at 1077.

30. U.S. CONST. art. IV, § 1.

31. Murchison, *supra* note 28, at 1077. See also Wadlington, *supra* note 28, at 1205.

32. See H. CLARK, *LAW OF DOMESTIC RELATIONS* 325 (1968); Murchison, *supra* note 28 at 1123. See also Weintraub, *supra* note 9, at 972. Courts generally determine the existence of

circumstances requiring custody modification to protect the child, a custody decree issued by a court exercising personal jurisdiction over both parents presumably would be viewed as a considered custody decree, because all parties subject to the decree had the opportunity to disclose the facts necessary to reach a just determination.

The Uniform Reciprocal Enforcement of Support Act (URESA)³³ provides a fourth reason for preferring the exercise of personal jurisdiction over nonresident spouses in domestic relations litigation. URESA enables a spouse to collect child support payments from a nonresident spouse by authorizing a "two-state suit" procedure.³⁴ Pursuant to URESA, a custodial Virginia parent may file a petition in Virginia (the initiating state) to secure child support payments from an absent parent who left Virginia to avoid such payments. This petition is mailed to the state where the absent parent resides (the responding state). Under URESA, the responding state exercises personal jurisdiction over that parent, grants him a hearing, and is empowered to collect any money due to the family in the initiating state.

The parent in the responding state, however, may have moved to that state because of its lenient child support laws, and he may invoke these laws at his hearing to reduce or renounce the support payments.³⁵ Nevertheless, if the responding state has adopted the

jurisdiction before they examine the merits of a case. In custody cases, however, courts tend first to determine the merits of the case by considering which forum will best protect the child's interest. Courts then justify their exercise of jurisdiction by marshalling whatever jurisdictional contacts exist with the forum in the particular situation. *See* H. CLARK, *supra*, at 320. Upon review of these custody decrees by other forums, the decision to enforce the decree will depend upon several factors: whether the reviewing court is satisfied with the original disposition of the case; whether a party to the litigation wrongfully violated the original custody order and now is asking the court to enforce that violation; and whether the child's welfare, in light of changed circumstances, requires that the original custody order be modified. *Id.* at 325.

33. 9A UNIFORM LAWS ANN. 647 (West 1979). This Act, or one substantially similar in nature, has been passed in all fifty states, the organized territories, and the District of Columbia. *Id.* at 748. *See, e.g.,* VA. CODE §§ 20-88.12 through 20-88.31 (1975).

34. *See* Note, *Securing Personal Jurisdiction Over Nonresidents in Spousal and Child Support Suits: Is California's Long-Arm Too Short?*, 17 SAN DIEGO L. REV. 895, 907-08 (1980) [hereinafter cited as *Securing Personal Jurisdiction*]; Comment, *Enforcement of Child Support Obligations of Absent Parents—Social Services Amendments of 1974*, 30 SW. L.J. 625, 629-31 (1976).

35. *See Securing Personal Jurisdiction, supra* note 34, at 908.

1958 URESA amendments,³⁶ the initiating state's support order will bind the responding state if the former has a long-arm statute authorizing personal jurisdiction.³⁷ Thus, the existence of domestic relations long-arm legislation in the initiating state is a critical factor in obtaining support payments under URESA.³⁸

Similarly, in light of the United States Supreme Court's decision in *Shaffer v. Heitner*,³⁹ a state court's ability to exercise personal jurisdiction over a nonresident spouse is essential if the resident spouse seeks a valid money judgment entitled to full faith and credit. Prior to *Shaffer*, courts permitted a plaintiff who was unable to obtain personal jurisdiction over an absent defendant to obtain *quasi in rem* jurisdiction based on any property located in the forum owned by the defendant.⁴⁰ Typically, plaintiff attached defendant's property, adjudicated the claim, and then applied the proceeds of the judicial sale of the property to his claim. Courts allowed this practice even though plaintiff's claim against the defendant did not concern the attached property.⁴¹

The decision in *Shaffer*, however, eliminated *quasi in rem* jurisdiction unless the plaintiff's claim related directly to the defendant's property. Following *Shaffer*, courts evaluated all jurisdictional assertions according to the standards set forth in *International Shoe Co. v. Washington*⁴² and its progeny. Accordingly, a wife who seeks to enforce a support agreement against her nonresident husband can no longer obtain *quasi in rem* jurisdic-

36. See Comment, *supra* note 34.

37. See generally Note, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289, 306-07 (1973).

38. Some critics, however, have suggested that URESA makes an expansion of personal jurisdiction over nonresidents unnecessary because the responding state must exercise personal jurisdiction over the resident parent and litigate the support award issue. Unfortunately, the responding state is likely to be less sympathetic to the dependent family than the initiating state which has a vested interest in the welfare of its residents; hence, the initiating state's exercise of personal jurisdiction over the absent parent is imperative, especially in light of URESA's 1958 amendments. See generally *Securing Personal Jurisdiction*, *supra* note 34, at 907-08; Comment, *supra* note 34, at 630-31.

39. 433 U.S. 186 (1977). For a more detailed discussion of *Shaffer*, see *infra* notes 76-80 and accompanying text.

40. See generally *infra* notes 76-80 and accompanying text.

41. *Id.*

42. 326 U.S. 310 (1945). For the *International Shoe* standards, see *infra* notes 52-58 and accompanying text.

tion over him merely by seizing his property located in the forum. Without the availability of *quasi in rem* jurisdiction as a method for facilitating enforcement of support agreements, the importance of obtaining personal jurisdiction over the nonresident spouse is increased substantially.

Thus, the exercise of personal jurisdiction over a nonresident spouse is imperative in domestic relations litigation. In divorce cases, personal jurisdiction over both spouses cuts off collateral attack on the jurisdictional finding of domicile and ensures that a valid alimony or support judgment will not be subject to a divisible divorce doctrine challenge. Similarly, personal jurisdiction over both parents ensures binding child custody awards, because a parent's right to custody is entitled to at least as much protection as are financial support rights. Additionally, a spouse's ability to enforce full support payments under URESA is enhanced substantially through the initiating state's exercise of personal jurisdiction over the nonresident spouse. Finally, the Court's interpretation in *Shaffer* of *quasi in rem* jurisdiction necessitates the exercise of personal jurisdiction over the nonresident spouse to aid in the enforcement of support agreements.

Socio-Economic Policies Highlighting the Need for Domestic Relations Long-Arm Legislation

Several socio-economic policies supplement the judicial and legislative mandates for domestic relations long-arm legislation previously outlined. These policy considerations include the special intimacy of the parent-child relationship, the unique vulnerability of children, and the strong interest of the forum state in the outcome of domestic relations litigation.⁴³

The United States Supreme Court consistently has given special consideration to the intimacy of the parent-child relationship, suggesting that this relationship may have constitutional dimensions.⁴⁴ In *Bellotti v. Baird*,⁴⁵ for example, the Court stated that "[t]he unique role in our society of the family . . . requires that constitutional principles be applied with sensitivity and flexibility

43. See generally *Securing Personal Jurisdiction*, *supra* note 34, at 901-10.

44. See generally 345 U.S. at 533.

45. 443 U.S. 622, *reh'g denied*, 444 U.S. 887 (1979).

to the special needs of parents and children.”⁴⁶ Because the parent-child relationship is of paramount importance in our law and our society, states should avoid the due process pitfalls inherent in child custody and support orders involving nonresident parents. States with domestic relations long-arm legislation avoid these pitfalls, because their judgments are more likely to receive full faith and credit.⁴⁷

Another policy consideration necessitating domestic relations long-arm legislation is the unique vulnerability of children. Children often are the mute and involuntary objects of custody and support decrees, and must rely on one of their parents to judicially enforce their rights under these decrees. Unfortunately, when the forum in which the custodial parent brings suit cannot exercise personal jurisdiction over the absent parent, the custodial parent's motivation to sue decreases proportionately with the increased burden of pursuing the suit in a foreign state. The adverse consequences of the decision not to sue then fall upon the innocent and vulnerable child. In *May v. Anderson*,⁴⁸ Justice Frankfurter stated that the law should reflect the special place in life that children occupy.⁴⁹ Domestic relations long-arm legislation promotes Justice Frankfurter's statement by encouraging parents to pursue enforcement or modification of custody and support decrees within their domicile, thereby assuaging concerns for children's unique vulnerability.

Furthermore, the strong interest of the forum state in the outcome of domestic relations litigation is protected by the use of long-arm statutes in actions against nonresident spouses. Each state has a paramount interest in the regulation of domestic relations, including the creation and dissolution of marital status, the custody and support of children, and the distribution of property interests.⁵⁰ The Supreme Court consistently has noted that each state has legitimate interests in providing for the support of abandoned spouses and for the maintenance of children of divorced

46. *Id.* at 634.

47. *See supra* notes 24-42 and accompanying text.

48. 345 U.S. 528 (1953).

49. *Id.* at 536 (Frankfurter, J., concurring).

50. 317 U.S. at 298.

couples.⁵¹ The magnitude of these interests demands that states provide their residents with an effective forum for domestic relations litigation. The effectiveness of the forum is enhanced immeasurably when the court exercises personal jurisdiction over nonresident litigants pursuant to long-arm statutes.

DUE PROCESS LIMITATIONS ON DOMESTIC RELATIONS LONG-ARM LEGISLATION

Expanding the Permissible Scope of State Jurisdiction Over Nonresidents: International Shoe Through McGee

Despite policy considerations that seemingly demand domestic relations long-arm legislation, states must be careful not to exceed due process limitations imposed by the fourteenth amendment. Although the United States Supreme Court's landmark decision in *International Shoe Co. v. Washington*⁵² suggested that the contours of due process were expansive and limited only by the standard of reasonableness, recent Court decisions have restricted and redefined these boundaries. To measure Virginia's long-arm statutes against the elusive due process parameters, the jurisdictional principles embodied in *International Shoe* and its progeny must be examined.

In *International Shoe*, the Supreme Court established the general criteria for determining whether a state court may exercise personal jurisdiction over a nonresident defendant. In holding that a Washington court properly exercised personal jurisdiction over a Delaware corporation, the Court formulated a minimum contacts test:

[D]ue process requires only that in order to subject a defendant

51. See, e.g., *Estin v. Estin*, 334 U.S. 541, 547 (1948). In *Yarborough v. Yarborough*, 290 U.S. 202 (1933), Justice Stone, in his dissent, stated that the support of children is a matter in which states have a particularly strong interest:

The maintenance and support of children domiciled within a state, like their education and custody, is a subject in which government itself is deemed to have a peculiar interest and concern. Their tender years, their inability to provide for themselves, the importance to the state that its future citizens should be clothed, nourished and suitably educated, are considerations which lead all civilized countries to assume some control over the maintenance of minors.

Id. at 220 (Stone, J., dissenting).

52. 326 U.S. 310 (1945).

to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."⁵³

The Court provided several guidelines for determining the existence of minimum contacts. When the nonresident defendant's activities in the forum are continuous, systematic, and give rise to the present cause of action, minimum contacts ordinarily exist and justify the forum's exercise of personal jurisdiction.⁵⁴ Furthermore, a nonresident defendant's continuous activities in the forum may be substantial enough to justify the forum's exercise of personal jurisdiction on a cause of action entirely distinct from the defendant's activities.⁵⁵ In contrast, the casual presence of a defendant performing a single act or isolated activities in the forum is insufficient to subject him to a personal suit arising from a cause of action unrelated to that activity;⁵⁶ however, a defendant's single act in the forum may be sufficient, because of its nature, quality, and the circumstances of its commission, to create minimum contacts to support personal jurisdiction in a suit arising from that act.⁵⁷ Finally, a defendant receiving legal benefits and protection from a forum may be within the jurisdiction of the forum's courts.⁵⁸

From 1945 through 1958, the Supreme Court applied the expansive reasonableness standard⁵⁹ to minimum contacts analysis and established a trend broadening the permissible scope of state courts' exercise of personal jurisdiction over nonresident defendants. In *Travelers Health Ass'n v. Virginia*,⁶⁰ the Court held that

53. *Id.* at 316 (citations omitted). The Court indicated that the minimum contacts test was neither "mechanical" nor "quantitative." *Id.* "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Id.* at 319.

54. *Id.* at 317.

55. *Id.* at 318.

56. *Id.* at 317.

57. *Id.* at 318.

58. *Id.* at 319.

59. *Id.* at 317, 320. The Court reasoned that due process requirements are "met by such contacts of the [defendant] with the state of the forum as make it reasonable, in the context of our federal system of government, to require the [defendant] to defend the particular suit which is brought there." *Id.* at 317.

60. 339 U.S. 643 (1950).

Virginia properly exercised personal jurisdiction over a foreign mail-order health insurance business that issued policies to Virginia residents.⁶¹ The contractual obligations of the insurance company to Virginia residents, coupled with Virginia's interest in protecting its citizens and ensuring the fulfillment of these contractual obligations, constituted sufficient contacts between the insurer and Virginia to justify the state's exercise of personal jurisdiction.⁶²

In *Perkins v. Benguet Consol. Mining Co.*,⁶³ the Supreme Court held that the forum state constitutionally could exercise personal jurisdiction over a foreign corporation to enforce a cause of action not arising in the forum and unrelated to the business or activities of the corporation in the forum.⁶⁴ The Court found that the foreign corporation's activities within the forum represented contacts sufficient to enable the forum to exercise personal jurisdiction over the corporation consistent with the reasonableness standards outlined in *International Shoe*.⁶⁵

Finally, the Court in *McGee v. International Life Insurance Co.*⁶⁶ further expanded the boundaries of due process. In this decision involving a suit by an insurance policy beneficiary against a nonresident insurer, the Court permitted the forum to assert personal jurisdiction over the insurer despite very attenuated contacts with the forum. The insurer maintained no office or agent in the forum and, except for the contract upon which plaintiff sued, had never solicited nor transacted any business in the forum.⁶⁷ Nevertheless, the Court held that due process concerns had been satisfied because the suit arose from a contract having a substantial connection with the forum. Factors cited as supporting this finding

61. *Id.* at 649.

62. *Id.* at 648. Additionally, the Court noted the unfairness and injustice of requiring local policy holders to seek redress in the distant state in which the insurance company was incorporated. *Id.* at 649.

63. 342 U.S. 437 (1952).

64. *Id.* at 446. The Court also stated that the forum was not constitutionally compelled to exercise personal jurisdiction if local laws prohibited jurisdiction. *Id.*

65. *Id.* at 445. The Court maintained that the minimum contacts determination turned on the facts of each case. In *Perkins*, a corporate officer conducted a continuous and systematic supervision of corporate activities within the forum and enjoyed legal benefits and protection provided by the forum. *Id.* at 447, 448.

66. 355 U.S. 220 (1957).

67. *Id.* at 222.

of a substantial connection included the contract's delivery in the forum, the mailing of the premiums from the forum, the insured's residence in the forum when he died, and the forum's manifest interest in providing effective redress for its residents when insurers refused to pay claims.⁶⁸

The analysis in *McGee* encouraged state courts to view due process in jurisdictional cases as an extraordinarily expansive principle that eventually would permit limitless jurisdiction over nonresidents. In less than a year, however, the Supreme Court in *Hanson v. Denckla*⁶⁹ provided an important counterweight to the expansive implications of *McGee*. *Hanson* commenced a new trend of defining and delimiting the scope of jurisdictional due process.

Delimiting the Permissible Scope of State Jurisdiction Over Nonresidents: Hanson Through Rush

In 1958, the Supreme Court in *Hanson v. Denckla* retreated from the expansive implications of *McGee* and began to impose definitive limits on state judicial assertions of jurisdiction.⁷⁰ In *Hanson*, the Florida executrix of an estate brought suit in that forum against a Delaware corporation that had executed a trust agreement with plaintiff's testatrix while the latter resided in Pennsylvania.⁷¹ The testatrix subsequently moved to Florida and remained there until her death.⁷² The Delaware corporation's only contacts with Florida consisted of transacting "several bits of trust

68. *Id.* at 223. Furthermore, the Court examined and justified the "clearly discernable" trend toward expanding the scope of state jurisdiction over nonresidents:

In part this [expansion of jurisdiction over nonresidents] is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

Id. at 222-23.

69. 357 U.S. 235 (1958).

70. See Nordenberg, *State Courts, Personal Jurisdiction and the Evolutionary Process*, 54 NOTRE DAME LAW. 587, 588 (1979).

71. 357 U.S. at 238.

72. *Id.* at 239.

administration" and remitting the trust income to the settlor.⁷³ In rejecting Florida's claim of personal jurisdiction over the nonresident corporation, the Supreme Court formulated "purposeful availment" criteria for determining whether the minimum contacts required by *International Shoe* existed:

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.⁷⁴

Thus, the Court initiated a trend toward restricting states' exercise of personal jurisdiction over nonresident defendants through its fundamental reinterpretation of *International Shoe*'s minimum contacts test.⁷⁵

Similarly, in *Shaffer v. Heitner*,⁷⁶ the Supreme Court held that Delaware could not exercise jurisdiction over the nonresident officers of a Delaware corporation.⁷⁷ In *Shaffer*, the Delaware Corporation was headquartered in Arizona and had engaged in activities in Oregon that subjected the corporation to criminal and civil anti-trust penalties; the plaintiffs in Delaware sought to recover dam-

73. *Id.* at 252. The Court noted that the nonresident defendant had no office in Florida, transacted no business in Florida, and never solicited any business in Florida; furthermore, no trust assets were ever held or administered in Florida. *Id.* at 251.

74. *Id.* at 253. The Court stated that the previous trend toward expansion of state court jurisdiction over nonresidents did not herald the eventual demise of all restrictions on the exercise of jurisdiction. These restrictions represented more than a guarantee of immunity from inconvenient or distant litigation; they flowed from territorial limitations on the powers of the states. *Id.* at 251. Consequently, a state did not acquire jurisdiction merely by being the most convenient location for litigation. *Id.* at 254.

75. The Court distinguished *McGee* from *Hanson*. In *McGee*, the Court found the contractual transaction to have a substantial connection with the forum because it was solicited, accepted, and executed in the forum; consequently, the forum had an interest in providing effective redress for its residents. In contrast, *Hanson* involved the validity of an agreement into which the parties entered without regard to the forum. *Id.* at 252.

76. 433 U.S. 186 (1977). For further discussion of *Shaffer*, see *supra* notes 39-42 and accompanying text.

77. *Id.* at 216.

ages to the corporation resulting from these activities.⁷⁸ The Court stated that the plaintiffs failed to establish that the nonresident corporate officers had the requisite minimum contacts with Delaware. Furthermore, the Court rejected plaintiffs' assertion that the defendants, in accepting positions as officers of a Delaware corporation, had "purposefully availed themselves of the privilege of conducting activities" in Delaware.⁷⁹ The Court refused to interpret the defendants' mere acceptance of corporate directorships as an implied consent to jurisdiction on any cause of action, because the corporate officers had no reason to expect to be haled before a Delaware court.⁸⁰

In *Kulko v. Superior Court of California*,⁸¹ the Supreme Court held that California could not exercise personal jurisdiction over a nonresident parent in a child custody and support suit, because sufficient contacts did not exist between the nonresident parent and the forum.⁸² Mr. and Mrs. Kulko maintained a marital domicile in New York and were the parents of a son and daughter.⁸³ After agreeing to a separation, Mrs. Kulko moved to California while Mr. Kulko remained in New York.⁸⁴ The Kulkos drafted and executed a separation agreement in New York.⁸⁵ This agreement stated that the children would remain with their father during the school year and spend vacations with their mother, and it also stipulated the amount of child support payments that the father would provide.⁸⁶ After executing the agreement in New York, Mrs.

78. *Id.* at 190.

79. *Id.* at 216 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). The Court's conclusion seemed to discount the strong interest of Delaware in supervising the management of Delaware corporations, the intimate role of Delaware law in regulating the obligations of Delaware corporations, and the substantial benefits that corporate officers received under Delaware laws. *See id.* at 214.

80. *Id.* at 216. The Court expressly noted, however, that Delaware, unlike some states, had no statute treating acceptance of a corporate directorship as consent to jurisdiction. *Id.* Such a law arguably would have provided the minimum contacts required under *International Shoe*, because the state's interest in resolving this type of dispute would have been explicit and the defendants would have been on notice that they were subject to personal jurisdiction in the forum.

81. 436 U.S. 84 (1978).

82. *Id.* at 92-93.

83. *Id.* at 86-87.

84. *Id.* at 87.

85. *Id.* Mrs. Kulko returned to New York from California to execute the agreement. *Id.*

86. *Id.*

Kulko obtained an *ex parte* Haitian divorce decree incorporating the terms of the separation agreement, and then she returned to California.⁸⁷ Almost one year later, Mr. Kulko permitted his daughter to move to California and live with her mother during the school year, and he paid for her trip to California.⁸⁸ Approximately two years later, the son, without Mr. Kulko's knowledge or permission, also joined his mother in California.⁸⁹ Shortly thereafter, Mrs. Kulko commenced an action in California seeking to establish the Haitian divorce decree as a California judgment, to obtain full custody of the children, and to increase Mr. Kulko's child support payments.⁹⁰

The United States Supreme Court held that Mr. Kulko's contacts with California were inadequate for California to exercise personal jurisdiction. In merely acquiescing to his daughter's desire to live in California with her mother and in purchasing her plane ticket, Mr. Kulko did not perform a "purposeful act" constituting a minimum contact with California.⁹¹ He could not reasonably have foreseen that allowing his daughter to join her mother in California would subject him to personal jurisdiction in California: "[t]his single act is surely not one that a reasonable parent would expect to result in the substantial financial burden and personal strain of litigating a child support suit in a forum 3,000 miles away."⁹² Mr. Kulko also did not purposefully derive benefits from the forum as a result of his activities; public services provided by the forum accrued to the benefit of the children, not the father.⁹³ Moreover, any diminution in Mr. Kulko's household expenses re-

87. *Id.*

88. *Id.*

89. *Id.* at 88.

90. *Id.*

91. The Court stated: "A father who agrees, in the interests of family harmony and his children's preferences, to allow them to spend more time in California than was required under a separation agreement can hardly be said to have 'purposefully availed himself' of the 'benefits and protections' of California's laws." *Id.* at 94.

92. *Id.* at 97. The Court emphasized that California had enacted no specific long-arm statute authorizing jurisdiction covering this set of facts. Such a statute would have evidenced California's particularized interest in adjudicating this case. *Id.* at 98. Additionally, such a statute arguably would have tipped the scales in favor of recognizing the existence of the minimum contacts required under *International Shoe* by making California a foreseeable forum for this litigation. *See id.*

93. *Id.* at 94 n.7.

sulted not from his children's presence in California, but in their absence from his home.⁹⁴

In January 1980, the Supreme Court decided its most recent jurisdictional cases. In both *World-Wide Volkswagen Corp. v. Woodson*⁹⁵ and *Rush v. Savchuck*,⁹⁶ the Court again prevented states from exercising jurisdiction over nonresident defendants because of the paucity of contacts between the defendants and the forums. In *World-Wide Volkswagen*, plaintiff initiated a products liability action in an Oklahoma court against a nonresident car retailer and its wholesale distributor.⁹⁷ The defendants' only connection with Oklahoma was the fact that a car they sold in New York to a New York resident became involved in an accident in Oklahoma.⁹⁸ The Court found that this connection was insufficient to establish the requisite minimum contacts between the forum and the defendant, and held that the Oklahoma court could not exercise personal jurisdiction over the defendants.⁹⁹ Similarly, in *Rush*, the Court held

94. *Id.* at 95. The Court stated that California's reliance on the "effect" test for asserting jurisdiction was misplaced. The "effect" test—examining a party's activity to see if it caused an effect in the forum—historically has been used to justify the exercise of personal jurisdiction over nonresident defendants whose wrongful activity outside the forum caused injury within the forum, or whose commercial activity affected forum residents. *Id.* at 96 (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971)). This cause of action arose from neither of these situations, but rather from Mr. Kulko's private and personal domestic relations. *Id.* at 97.

Mrs. Kulko asserted that California had a substantial interest in protecting its minor residents' welfare. Although agreeing, the Court noted that these interests were factors in choice of law, not jurisdictional, questions. *Id.* at 98. Additionally, the state had not enacted a long-arm statute and thus had not exhibited a particularized interest in such cases. *Id.* Finally, California's interest in its young residents' welfare was served adequately by the state's participation in the Revised Uniform Reciprocal Enforcement of Support Act of 1968 (RURESA). *Id.* at 98-99.

95. 444 U.S. 286 (1980).

96. 444 U.S. 320 (1980).

97. 444 U.S. at 288.

98. *Id.* at 289.

99. *Id.* at 298-99. The Court identified factors important in determining whether a non-resident defendant had sufficient contacts with the forum to warrant the forum's exercise of personal jurisdiction:

The relationship between the defendant and the forum must be such that it is "reasonable to require the corporation to defend the particular suit which is brought there." Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute; the plaintiff's

that a Minnesota court could not exercise *quasi in rem* jurisdiction over a nonresident defendant merely by attaching the contractual obligation of his insurer who was licensed to do business in the forum.¹⁰⁰ The Court stated that the presence of defendant's insurer in Minnesota in itself did not constitute sufficient contacts between defendant and Minnesota.¹⁰¹

Thus, the Supreme Court has indicated that due process substantially limits the ability of state courts to exercise jurisdiction over nonresident defendants, because due process requires minimum contacts between the defendant, the forum, and the cause of action.¹⁰² A distillation of Supreme Court decisions suggests that three broad factors should be considered in determining the limits of due process: the purposefulness of the defendant's conduct either within or affecting the forum; the foreseeability of a suit in the forum; and the nature and extent of the forum's interest in the litigation.¹⁰³

Virginia's domestic relations long-arm statutes must be analyzed in light of these factors. The contours of due process admittedly are elusive because the minimum contacts test requires consideration of a number of factors, no one of which is controlling.¹⁰⁴ Nevertheless, an analysis is imperative because recent Supreme Court decisions indicate that due process imposes strict limitations on the exercise of jurisdiction over nonresidents. Consequently, Virginia's long-arm statutes must be examined to ensure that their jurisdictional reach does not exceed their due process grasp.

interest in obtaining convenient and effective relief . . . , the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.

Id. at 292 (citations omitted).

100. 444 U.S. at 333.

101. *Id.* at 330. Although the relationship between an insured and his insurer may be significant in evaluating their ties to a forum, the adventitious ties of either to a forum cannot automatically be attributed to the other in order to create minimum contacts; the requirements of *International Shoe* must be met independently as to each defendant over whom a forum seeks to exercise jurisdiction. *Id.* at 328-29.

102. 433 U.S. at 204.

103. See *Securing Personal Jurisdiction*, *supra* note 34, at 899. See also *supra* note 99 and accompanying text.

104. See 436 U.S. at 92.

ANALYZING VIRGINIA'S DOMESTIC RELATIONS LONG-ARM STATUTES

Section 8.01-328.1.A(8)

Prior to the 1978 enactment of Virginia's first domestic relations long-arm statute, jurisdiction over nonresidents involved in domestic relations litigation arguably could have been squeezed, through creative advocacy, into the "business,"¹⁰⁵ "contract,"¹⁰⁶ or "tort"¹⁰⁷ provisions of Virginia's long-arm statutes.¹⁰⁸ The Virginia Assembly recognized, however, that creative advocacy is not always reliable advocacy; the unique policy considerations inherent in family law litigation demanded a special long-arm statute.

Consequently, the Virginia Assembly enacted section 8.01-328.1.A(8) in 1978. This statute, as amended in 1982, provides that a Virginia court may exercise personal jurisdiction over a nonresident for causes of action arising from that individual's

[h]aving executed an agreement in this Commonwealth which obligates the person to pay spousal support or child support to a domiciliary of this Commonwealth, or to a person who has satisfied the residency requirements in suits for annulments or divorce for members of the armed forces pursuant to § 20-97 or having been ordered to pay spousal support or child support pursuant to an order entered by any court of competent jurisdiction in this Commonwealth having in personam jurisdiction over such person.¹⁰⁹

This statute, in addition to promoting the special socio-economic considerations inherent in domestic relations litigation,¹¹⁰ also responds to two recent judicial and legislative developments affecting family litigation. The statute enhances Virginia's ability to enforce support payments under URESA,¹¹¹ and also authorizes Virginia to exercise jurisdiction over some absent spouses that *Shaffer* otherwise would have prevented.¹¹²

105. VA. CODE § 8.01-328.1.A(1) (1977).

106. VA. CODE § 8.01-328.1.A(2) (1977).

107. VA. CODE § 8.01-328.1.A(3) (1977).

108. See generally Weintraub, *supra* note 9, at 973.

109. VA. CODE § 8.01-328.1.A(8) (1977 & Supp. 1982).

110. See *supra* text accompanying notes 43-49.

111. See *supra* text accompanying notes 33-38.

112. See *supra* text accompanying notes 39-42 & 76-81.

In conforming to the recently delimited contours of due process,¹¹³ section 8.01-328.1.A(8) requires that the nonresident defendant have substantial contacts with the forum. These contacts include requiring the nonresident to have executed a support agreement in Virginia.¹¹⁴ Presumably, this criterion includes oral as well as written agreements.¹¹⁵ If the agreement is written, the nonresident defendant has established a connection with Virginia because he has exhibited an irrebutable purposefulness of conduct.¹¹⁶ If the agreement is oral, defendant's purposefulness of conduct is manifest through his actions, because an oral agreement remains unexecuted absent both parties' performance.¹¹⁷

Moreover, the nonresident defendant invokes the benefits and protections of Virginia's laws when executing an agreement in Virginia, because an agreement defines and thus limits the scope of his liability.¹¹⁸ If the obligee breaches a support agreement by taking or demanding more than the agreement provides, the obligor may invoke the protection of Virginia law by enforcing the agreement in a Virginia court. Similarly, if the obligor breaches the agreement, the obligee should be able to invoke the protection of Virginia law and not be forced to suffer the financial and personal burdens of suing in a foreign forum. Thus, requiring that the agreement giving rise to the cause of action be executed in Virginia establishes a substantial connection between the defendant, the forum, and the litigation.¹¹⁹

113. See *supra* notes 99-104 and accompanying text.

114. VA. CODE § 8.01-328.1.A(8) (1977 & Supp. 1982).

115. In the absence of a statute requiring that a contract be reduced to writing, a contract containing the elements essential to the formation of a valid contract is binding even if a writing is lacking. See *United States v. Newport News Shipbuilding & Dry Dock Co.*, 571 F.2d 1283 (4th Cir. 1978); *Harris v. Citizens Bank & Trust Co.*, 172 Va. 111, 200 S.E. 652 (1939); *Central Lunatic Asylum v. Flanagan*, 80 Va. 110 (1885).

116. Executing the agreement in Virginia thus complies with the "purposeful availment" criteria articulated in *Hanson*: "[I]t is essential in each case that there be some act by which the defendant purposefully avails [him]self of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." 357 U.S. at 253.

117. See *Harris v. Citizens Bank & Trust Co.*, 172 Va. 111, 200 S.E. 652 (1939).

118. See *supra* note 116.

119. The Supreme Court in *Shaffer* stated that a central concern of the inquiry into personal jurisdiction is "the relationship among the defendant, the forum, and the litigation." 433 U.S. at 204. Additionally, the Court consistently has required that an agreement giving rise to a cause of action have a connection with the forum. See, e.g., *Kulko v. Superior Court of California*, 436 U.S. at 97; *Hanson v. Denckla*, 357 U.S. at 251.

Additionally, the likelihood of a suit in Virginia based on an agreement executed in Virginia is foreseeable. In determining whether a forum may exercise personal jurisdiction over a nonresident defendant, the Supreme Court repeatedly has examined whether the defendant reasonably could anticipate being haled into court in that forum.¹²⁰ This aspect of the due process analysis lends a degree of predictability to the legal system in allowing potential defendants to structure their conduct with some assurance as to where that conduct may render them liable to suit.¹²¹ Section 8.01-328.1.A(8), in requiring that the support agreement be executed in Virginia, provides predictability because it requires that the defendant perform a purposeful act in the forum, that defendant avail himself of the benefits of the laws of the forum, and that the agreement have a substantial connection with the forum. Hence, Virginia is a reasonably foreseeable forum for a suit arising from the agreement.

The Supreme Court also has suggested that the existence of long-arm statutes in a forum may contribute toward creating minimum contacts between the forum and a nonresident.¹²² A particularized long-arm statute evinces an express interest in adjudicating certain cases in which the forum has a pressing interest. Virginia has a paramount socio-economic interest in exercising jurisdiction over nonresident defendants included in section 8.01-328.1.A(8).¹²³

120. In *World-Wide Volkswagen*, the Supreme Court stated that the foreseeability critical to due process analysis is satisfied when "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." 444 U.S. at 297.

121. *Id.*

122. In *Kulko*, the Supreme Court stated that California had a substantial interest in protecting resident children and facilitating child-support actions on behalf of resident children. Nevertheless, the Court held that California did not provide a fair forum in this case because, among other reasons, "California [had] not attempted to assert any particularized interest in trying such cases in its courts by, e.g., enacting a special jurisdictional statute." 436 U.S. at 98. Similarly, in *Shaffer* the Court stated that "[i]f Delaware perceived its interest in securing jurisdiction over corporate fiduciaries to be as great as Heitner suggests, we would expect it to have enacted a statute more clearly designed to protect that interest." 433 U.S. at 214-15.

123. This statute limits its protection to obligees in whom Virginia has a manifest interest, namely domiciliaries and persons who have satisfied the residency requirements of § 20-97. Section 20-97 provides in pertinent part:

For the purposes of this section only, if a member of the armed forces of the United States has been stationed in this State and has lived with his or her

Coupled with the foreseeability of litigation in Virginia engendered by the statute, this expressed jurisdictional interest itself contributes toward establishing Virginia as a fair forum for resolving domestic relations disputes between its citizens and nonresident defendants.

Section 8.01-328.1.A(8), therefore, extends Virginia's exercise of personal jurisdiction to a party who executes a support agreement while residing in Virginia and then leaves the state, as well as to a party who resides outside Virginia, returns to Virginia for the sole purpose of signing an agreement, and leaves immediately thereafter.¹²⁴ In so doing, the statute conforms to the contours of jurisdictional due process because it requires a sufficient number of relevant contacts between the defendant, the forum, and the litigation to satisfy the minimum contacts test of *International Shoe*. Thus, the exercise of jurisdiction pursuant to section 8.01-328.1.A(8) over a nonresident defendant does not offend traditional notions of fair play and substantial justice.¹²⁵

The Virginia Assembly, however, in enunciating in section 8.01-328.1.A(8) the required contacts with such particularity, may have shortened unnecessarily the reach of this long-arm statute. The United States District Court for the Western District of Virginia in *Darden v. Heck's, Inc.*¹²⁶ stated:

spouse for a period of six months or more in this State next preceding a separation between such parties, and such service person and spouse continue to live in this State until and at the time a suit for divorce or legal separation is commenced, then such person and his or her spouse shall be presumed to be domiciled in and to have been a bona fide resident of this State during such period of time.

VA. CODE § 20-97 (1975).

124. For example, a Virginia husband leaves his wife in Virginia and becomes a California domiciliary, and his wife then drafts a support agreement to which the husband agrees. If the husband returns to Virginia, signs the agreement, and immediately returns to California, he has placed himself within the reach of Virginia's long-arm statute for causes of action arising from that agreement. Because he executed the agreement in Virginia, that agreement itself establishes his substantial connection with the forum. Moreover, his return to Virginia to sign the agreement constituted a purposeful act whereby he invoked the protection of Virginia's laws. Additionally, the spouses' bilateral execution of the agreement in Virginia makes the Commonwealth a fair and foreseeable forum for litigating actions arising from that agreement. Finally, § 8.01-328.1.A(8) evinces Virginia's particularized interest in adjudicating this case, as well as enhancing the foreseeability of litigating in Virginia.

125. See 326 U.S. at 316.

126. 459 F Supp. 727 (W.D. Va. 1978).

[E]xcept where the General Assembly has placed explicit affirmative limitations on the extent of long-arm jurisdiction in Virginia, as it has in subsections A.4 and A.5 of § 8.01-328.1, the courts of Virginia may take personal jurisdiction over out-of-state defendants under each of the subsections of § 8.01-328.1 to the extent allowed by the due process clause of the fourteenth amendment.¹²⁷

Subsections A(4) and A(5) are distinguishable substantively from A(8) because they deal with "tortious injury" and "breach of warranty" respectively;¹²⁸ however, these three subsections are similar in specifying with particularity the required contacts between the defendant and the forum. Consequently, "insistence that these particulars be satisfied even in those situations where it could plausibly be argued that a lesser standard would meet due process requirements is a course mandated by legislative judgment."¹²⁹ As a result, Virginia courts may not exercise jurisdiction over a non-resident defendant who fails to comply with the specific criteria set out in subsection A(8), notwithstanding the existence of minimum contacts under *International Shoe*.¹³⁰

127. *Id.* at 731-32 (citations omitted).

128. Subsection A(4) authorizes jurisdiction over a nonresident as to a cause of action arising from that person's "[c]ausing tortious injury in this Commonwealth by an act or omission outside this Commonwealth 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 Commonwealth" VA. CODE § 8.01-328.1.A(4) (1977).

Similarly, subsection A(5) authorizes jurisdiction over a nonresident as to a cause of action arising from that person's

[c]ausing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when he might reasonably have expected such person to use, consume, or be affected by the goods in this Commonwealth, provided that he also 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 Commonwealth

VA. CODE § 8.01-328.1.A(5) (1977).

129. *Willes v. Semmes, Bowen & Semmes*, 441 F Supp. 1235, 1243 (E.D. Va. 1977). The court in *Willes* stated that when the legislature has enacted a long-arm statute, even though the statute may not extend to the limits of due process, the courts of that state may not go further and assert jurisdiction over nonresidents not embraced within that statute. *Id.*

130. For example, a Virginia wife's nonresident husband could travel to Virginia to negotiate a support agreement with his wife. After both parties agreed to the support terms, the wife would sign the support agreement. The nonresident husband, familiar with the require-

Arguably, the specific criteria enumerated in § 8.01-328.1.A(8) do not represent legislative limitations on the reach of Virginia's jurisdictional powers under this long-arm statute. The Virginia Supreme Court stated that the purpose of Virginia's long-arm statute is to support assertions of jurisdiction over nonresident defendants to the full extent consistent with due process, especially over non-residents engaged in some purposeful activity in the state who have incurred obligations to Virginia residents.¹³¹ The Virginia Supreme Court derived this statement of the statute's purpose directly from the legislative history accompanying the statute.¹³² Additionally, since 1978 the Virginia Assembly has progressively broadened the scope of *in personam* jurisdiction over nonresidents in domestic relations litigation. This trend indicates that the statute's criteria do not represent a legislative attempt to delimit the outer boundaries of jurisdiction; rather, these criteria represent a checklist of typical circumstances within due process limits in which jurisdiction over the absent party exists.¹³³

Section 8.01-328.1.A(8) should be construed and applied commensurately with the limits of due process; the policy considerations inherent in domestic relations reinforce this conclusion.¹³⁴ Although nothing in the wording of the statute prevents an expansive construction, a supplemental statutory provision expressly construing this statute as broadly as due process principles permit would ensure that legislative intent is effectuated and that the important

ment in subsection A(8) that the agreement be executed in Virginia, could attempt to evade the reach of this long-arm statute by refusing to sign the agreement until his lawyer, located in another forum, had examined the agreement. In this situation, the support agreement would have been negotiated, drafted, and signed by one party in Virginia; however, the non-resident husband, using the pretext that his lawyer should have an opportunity to review the agreement, would sign the agreement outside Virginia. Conceivably, this fact pattern or a similar one could satisfy the minimum contacts test of *International Shoe* and thereby justify Virginia's constitutional exercise of personal jurisdiction over the nonresident husband. Under subsection A(8), however, Virginia may be unable to exercise jurisdiction, because of the husband's clever circumvention of the specific prerequisites set out in that subsection.

131. *John G. Kolbe, Inc. v. Chromodern Chair Co.*, 211 Va. 736, 740, 180 S.E.2d 664, 667 (1971); *Carmichael v. Snyder*, 209 Va. 451, 456, 164 S.E.2d 703, 707 (1968).

132. 441 F. Supp. at 1243.

133. See generally Weintraub, *supra* note 9, at 975.

134. For a discussion of these important policy considerations, see *supra* text accompanying notes 33-49 & 76-80.

policy considerations of domestic relations litigation are fulfilled.¹³⁵ Otherwise, the anomalous situation might arise wherein a nonresident defendant in a Virginia domestic relations suit may have sufficient minimum contacts for Virginia constitutionally to exercise jurisdiction, but he nevertheless could evade the grasp of Virginia's long-arm statute through intentional manipulation of the criteria in section 8.01-328.1.A(8).¹³⁶ Such a result defeats the statute's essential purpose. The Virginia Assembly can avoid this situation by amending section 8.01-328.1.A to read: "A court may exercise personal jurisdiction commensurate with the federal constitutional limits of due process over a person, who acts directly or by an agent, as to a cause of action arising from that person's" "¹³⁷

Section 8.01-328.1.A(9)

The Virginia Assembly enacted section 8.01-328.1.A(9) in 1981.¹³⁸ This statute, as amended in 1982, provides in pertinent part that a Virginia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from that person's

[h]aving maintained within this Commonwealth a matrimonial

135. See *supra* notes 33-49 & 76-80 and accompanying text.

136. The Supreme Court in *Kulko* stated that the minimum contacts test is not susceptible to mechanical application: "[T]he facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present. We recognize that this determination is one in which few answers will be written 'in black and white. The greys are dominant, and even among them the shades are innumerable'" 436 U.S. at 92 (citations omitted).

Similarly, through amendments broadening the scope of Virginia's domestic relations long-arm statutes, the Virginia Assembly demonstrated its realization that the answers to domestic relations jurisdictional questions are not written in "black and white." Therefore, the reach of this statute should not be limited to rigid "black and white" criteria; rather, domestic relations long-arm statutes must be construed commensurately with due process limits.

137. A provision substantially similar to this proposed amendment will be introduced to the 1983 session of the Virginia Assembly. See *supra* note 1. This amendment also will lengthen the reach of subsections A(4) and A(5) as currently construed by federal courts in Virginia. See *supra* notes 126-29 and accompanying text. Should the legislature decide to expressly circumscribe the reach of these subsections, an appropriate caveat to their text could be added. Alternatively, a caveat could be added to § 8.01-328.1.A(9) reading: "Subsections A(8) and A(9) authorize personal jurisdiction commensurate with the federal constitutional limits of due process."

138. VA. CODE § 8.01-328.1.A(9) (1977 & Supp. 1982).

domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of action arose for divorce or separate maintenance or at the time of commencement of such suit, if the other party to the matrimonial relationship resides herein¹³⁹

Section 8.01-328.1.A(9) authorizes Virginia courts to exercise personal jurisdiction over the absent spouse in certain divorce and separate maintenance suits. These suits thus will not be vulnerable to collateral attack based on Virginia's jurisdictional finding of domicile.¹⁴⁰ Furthermore, support awards¹⁴¹ and custody awards¹⁴² incident to these suits will be entitled to full faith and credit. This statute also demonstrates the Virginia Assembly's concern for the socio-economic realities of domestic relations litigation.¹⁴³

Like section 8.01-328.1.A(8), this statute ensures compliance with due process safeguards by providing a checklist of typical circumstances within due process limits in which jurisdiction over the absent party exists. Virginia may exercise personal jurisdiction over an absent spouse in a divorce or separate maintenance suit provided that one party to the suit is a Virginia resident and that the parties maintained a matrimonial domicile in Virginia when the cause of action arose or when the suit actually commenced.¹⁴⁴ As in section 8.01-328.1.A(8), the existence of these specifically enumerated circumstances ensures that minimum contacts will exist among the defendant, the forum, and the litigation.¹⁴⁵

By maintaining a matrimonial domicile in Virginia, the nonresident spouse commits a purposeful act wherein he avails himself of the privilege of conducting domestic activities in the forum, "thus invoking the benefits and protections of its laws."¹⁴⁶ Either spouse may invoke the protection of Virginia's domestic relations laws

139. *Id.*

140. *See supra* text accompanying notes 15-19.

141. *See supra* text accompanying notes 20-23.

142. *See supra* text accompanying notes 24-32.

143. *See supra* text accompanying notes 50 & 51.

144. VA. CODE § 8.01-328.1.A(9) (1977 & Supp. 1982).

145. *See* 433 U.S. at 204. For a summary of factors that courts apply in determining the sufficiency of contacts, *see supra* notes 99-104 and accompanying text.

146. *See, e.g.*, 357 U.S. at 253. Virginia provides the married couple with the benefits of, *inter alia*, a state judicial system, police and fire protection, a school system, hospital services, recreational facilities, libraries, and museums. *See* 436 U.S. at 94 n.7.

while maintaining a matrimonial domicile in Virginia; a husband abandoning his wife should not be allowed to terminate unilaterally and automatically her protection under these laws.

Section 8.01-328.1.A(9) also ensures that the absent spouse reasonably can anticipate Virginia's exercise of personal jurisdiction over him in a divorce or separate maintenance suit.¹⁴⁷ In requiring the existence of a marital domicile within the forum at the time a cause of action arises or a suit actually commences,¹⁴⁸ the statute ensures that the absent spouse has a substantial and purposeful connection with the forum. This connection secures a correlative connection between the litigation and the forum, thereby making Virginia a fair and foreseeable forum for litigating a divorce or separate maintenance suit.¹⁴⁹ Moreover, the very existence of this long-arm statute not only announces Virginia's particularized interest in litigating these cases,¹⁵⁰ but also enhances the foreseeability of such litigation in Virginia.

Thus, section 8.01-328.1.A(9) provides specific circumstances in which Virginia may exercise personal jurisdiction over the absent spouse in a divorce or separate maintenance suit well within the minimum contacts standard of *International Shoe*.¹⁵¹ As with section 8.01-328.1.A(8), however, the Virginia Assembly may have restricted unnecessarily the reach of this long-arm statute by enunciating with such particularity the prerequisite contacts between the defendant and the forum.¹⁵² Because the reach of this long-arm statute should be commensurate with the limits of due process, the express statutory provision previously recommended to broaden

147. See, e.g., 444 U.S. at 297.

148. VA. CODE § 8.01-328.1.A(9) (1977 & Supp. 1982).

149. The Supreme Court in *World-Wide Volkswagen* indicated that the following relevant factors can be cited to justify and validate § 8.01-328.1.A(9): Virginia's interest in adjudicating the dispute; the abandoned spouse's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the states in furthering fundamental substantive social policies. See generally 444 U.S. at 292.

150. See *supra* notes 80 & 92 and accompanying text.

151. 326 U.S. 310 (1945).

152. For example, a husband might bring his wife to Virginia, buy her a home, and immediately thereafter desert her. Even if he continued to live in Virginia, he arguably never maintained a matrimonial domicile in Virginia consonant with § 8.01-328.1.A(9). Thus, should his wife initiate divorce proceedings, he could leave Virginia prior to service of process and thereby evade the reach and circumvent the purpose of this long-arm statute.

the scope of section 8.01-328.1.A(8) is also necessary to remedy this similar defect in section 8.01-328.1.A(9).¹⁵³

CONCLUSION

In enacting and amending sections 8.01-328.1.A(8) and (9), the Virginia Assembly responded to numerous policy considerations favoring the creation of specific domestic relations long-arm legislation.¹⁵⁴ By authorizing Virginia courts to exercise personal jurisdiction over nonresidents in certain family litigation suits, the General Assembly prevented collateral jurisdictional attack, ensured the binding effect of financial settlements and custody agreements, enhanced the enforceability of Virginia court judgments under URESA, and compensated for the state's diminished ability under *Shaffer* to exercise *quasi in rem* jurisdiction.¹⁵⁵ Additionally, these statutes constitute a legislative acknowledgement of the unique vulnerability of children and the special intimacy existent in the parent-child relationship.¹⁵⁶ Similarly, these statutes express the strong interest of the Commonwealth in the outcome of domestic relations litigation.

Although recent Supreme Court decisions indicate that due process substantially limits the ability of state courts to exercise personal jurisdiction over nonresidents, sections 8.01-328.1.A(8) and (9) work well within these limits in listing with particularity typical circumstances that satisfy the minimum contacts requirement of *International Shoe*.¹⁵⁷ This listing of typical circumstances, however, should not be construed as a legislative limit on the reach of these long-arm statutes. Rather, the Virginia Supreme Court's expansive construction of Virginia's long-arm legislation, the legislature's broad statement of intent, and the recent liberalizing amendments to these statutes all indicate that sections 8.01-328.1.A(8) and (9) should be construed and applied commensurately with the constitutional limits of due process. The policy con-

153. See *supra* text accompanying note 137.

154. For a discussion of the policy considerations favoring the creation of domestic relations long-arm legislation, see *supra* notes 12-51 and accompanying text.

155. See *supra* notes 15-42 and accompanying text.

156. See *supra* notes 43-51 and accompanying text.

157. 326 U.S. 310 (1945).

siderations inherent in domestic relations litigation demand nothing less.

Nevertheless, federal district courts have construed narrowly two of Virginia's long-arm statutes that provide a particularized listing of circumstances similar to that of sections 8.01-328.1.A(8) and (9).¹⁵⁸ Under such a narrow construction, a nonresident defendant could escape the reach of Virginia's domestic relations long-arm statutes by purposefully failing to comply with the specific criteria in sections 8.01-328.1.A(8) or (9). This could occur even though the nonresident defendant's conduct in the forum satisfied the minimum contacts criteria of *International Shoe*. Such a result frustrates the legislative intent and ignores the policy considerations underlying these statutes. An amendment to these domestic relations long-arm statutes mandating expansive construction commensurate with the limits of due process is essential to prevent this result.¹⁵⁹ Moreover, such an amendment would make Virginia's domestic relations long-arm statutes model legislation for all states.

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158. See *supra* notes 126-29 and accompanying text.

159. See *supra* text accompanying note 137.