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A Reappraisal of General and Limited Jurisdiction in California

THOMAS KALLAY*

*The ability of a California court to assert jurisdiction over business enterprises currently depends upon how the court characterizes the nature and extent of the business's activities within the state. If the in-state business activities of a particular concern are extensive, California courts will exercise all-encompassing general jurisdiction over the cause of action, but if the activities are insufficient to warrant the exercise of general jurisdiction, which has been invariably the case, the court will then turn to a consideration of limited jurisdiction, which jurisdiction depends upon the quality and nature of the business's activities in the forum in relation to the particular cause of action at issue. The author suggests that general-limited jurisdiction is neither a sound theory nor a useful analytical tool. The article notes the historical origins of this two-fold approach, compares it with the current decisions of the United States Supreme Court dealing with a state's ability to gain personal jurisdiction over out-of-state businesses, and suggests viable alternatives to the current California jurisdictional approach. Professor Kallay ultimately concludes that the main focus in jurisdictional questions should not be decided by this two-tier analysis but instead should follow the requirements set down by this nation's Supreme Court in *Shaffer v. Heitner*: jurisdiction must be evaluated solely by the relationships between the litigation, the forum and the defendant.*

INTRODUCTION

The decision of the California Supreme Court in *Cornelison v.*

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*Chaney*¹ presented the bench and bar of the state with a gift of dubious value: a theory that state court jurisdiction² is either general³ or limited in nature.

Cornelison attempted to delineate the differences between general and limited jurisdiction.⁴ The court concluded that general

1. 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976).

2. Jurisdiction throughout this article is intended to refer to personal and not subject matter jurisdiction.

3. It is not the state supreme court but rather the California courts of appeal which have apparently concluded that *Cornelison* announced a general theory of state court jurisdiction. In *Sibley v. Superior Court*, 16 Cal. 3d 442, 546 P.2d 322, 128 Cal. Rptr. 34 (1976) a case decided shortly after *Cornelison*, the supreme court gave *Cornelison* only passing mention even though the facts of *Sibley* warranted the application of the doctrines defined in *Cornelison*. See note 120 *infra* and text accompanying note 121 *infra*. General and limited jurisdiction have not been mentioned by the California Supreme Court since *Cornelison* in any of its decisions relating to state court jurisdiction, *Sibley* and *Kulko v. Superior Court*, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586, (1977) *rev'd* 436 U.S. 84 (1978). *Kulko* was also a decision where the facts permitted the court to apply general and limited jurisdiction. See note 200 *infra* and text accompanying note 121 *infra*. Nonetheless, *Cornelison* is not even cited by the California Supreme Court in *Kulko*. Notwithstanding the state supreme court's lack of enthusiasm for *Cornelison* and the doctrines there announced, thirteen appellate opinions have decided cases in terms of *Cornelison*'s general jurisdiction approach. See notes 33 and 34 *infra*.

Some federal courts applying California law have followed *Cornelison*; *Kipperman v. McCone*, 422 F. Supp. 860 (N.D. Cal. 1976); *Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280, (9th Cir. 1977); *Forsythe v. Overmyer*, 576 F.2d 779 n.4 (9th Cir. 1977); *Wells Fargo & Co. v. Express Co.*, 556 F.2d 406, (9th Cir. 1977).

4. If a nonresident defendant's activities may be described as 'extensive or wideranging' (*Buckeye Boiler v. Superior Court* (1969) 71 Cal. 2d 893, 898-899 [80 Cal. Rptr. 113, 458 P.2d 57] or 'substantial . . . continuous and systematic' (*Perkins v. Benquet Mining Co.*, *supra*, 342 U.S. 437, 447-449 [96 L.Ed. 485, 493-494]), there is a constitutionally sufficient relationship to warrant jurisdiction for all causes of action asserted against him. In such circumstances, it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.

If, however, the defendant's activities in the forum are not so pervasive as to justify the exercise of general jurisdiction over him, then jurisdiction depends upon the quality and nature of his activity in the forum in relation to the particular cause of action. In such a situation, the cause of action must arise out of an act done or transaction consummated in the forum, or defendant must perform some other act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby involving the benefits and protections of its laws. Thus, as the relationship of the defendant with the state seeking to exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts, and fairness is assured by limiting the circumstances under which the plaintiff can compel him to appear and defend. The crucial inquiry concerns the character of defendant's activity in the forum, whether the cause of action arises out of or has a substantial connection with that activity, and upon the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction. (*Hanson v. Denckla*, *supra* 357 U.S. 235, 250-253 [2 L.Ed.2d 1283, 1295-1298]; *McGee v. International Life Ins. Co.*, *supra*, 355 U.S. 220, 223 [2 L.Ed. 2d 223, 226]; *Buckeye Boiler Co. v. Superior Court*, *supra*, 71 Cal. 2d 893, 898-899; see 14 West's Annot. Code Civ. Proc. (1973 ed.) 410.10, p. 459 [Deerings's, Code Civ. Proc. 410.10 p. 667], for the Judicial Council's extensive comment on the bases of jurisdiction.)

16 Cal. 3d at 147-48, 545 P.2d at 266-67, 127 Cal. Rptr. at 354-55.

jurisdiction might be asserted when there are extensive or wide-ranging business activities in California.⁵ A California state court would then have jurisdiction to adjudicate causes of action whether or not they are "connected with the defendant's business relationship to the forum."⁶ If a court is not exercising general jurisdiction, it is asserting limited jurisdiction over the defendant.⁷ In such an instance, jurisdiction to adjudicate is limited to causes of action which arise only out of the defendant's activities in the forum.⁸

Neither general nor limited jurisdiction originated with *Cornelison*, but it was *Cornelison* which set the capstone on the development of these theories of jurisdiction. General jurisdiction in California is traceable to the decision of the court of appeal in *Koninklijke L.M. v. Superior Court*.⁹ However, limited jurisdiction and the interaction of general and limited jurisdiction have a more diffuse history.¹⁰ Both were clearly foreshadowed in such

5. *Id.* at 147, 545 P.2d at 268, 127 Cal. Rptr. at 354.

6. *Id.*

7. Curiously, it was the dissent which coined the phrase "limited jurisdiction" to fit the majority's definition of the concept. The three dissenters (Justices Clark, McComb and Richardson) did not take issue with the majority's formulations of general and limited jurisdiction but with the conclusion that the defendant's activities in California were causally connected with the cause of action sued on. As we will see below (*see* text accompanying notes 156-66 *infra*), the causal connection of the forum-based activities of the defendant to the litigation should not have been at issue in *Cornelison*. Thus, unfortunately, the dissent merely deepened the quagmire.

8. The focus of limited jurisdiction is plainly directed at forum-based activities. So much is clear from such phrases as "the cause of action must arise out of an act done or transaction consummated in the forum" and the "crucial inquiry concerns the character of defendant's activity in the forum." *See* note 4 *supra*. Reference to the test in *Hanson v. Denckla*, 357 U.S. 235 (1958), that the defendant "must perform some other act by which he purposefully avails himself of the privilege of conducting activities in the forum" (*see* note 4 *supra*) could conceivably have expanded limited jurisdiction to include situations where the defendant took "voluntary action calculated to have an effect in the forum state." *Rosenblatt v. American Cyanamid Co.*, 86 S.Ct. 1, 4, 15 L.Ed.2d 39 (Goldberg, Circuit Justice, in chambers), *appeal dismissed*, 382 U.S. 110 (1965), *rehearing denied*, 382 U.S. 1002 (1966) (citing *Currie, The Growth of the Long Arm*, 4 ILL. L.F. 515, 549 (1963)). *See also Kulko v. Superior Court*, 436 U.S. 84 (1978). This link could have been easily forged in the familiar case of the out-of-state manufacturer whose products are sold in the state, *e.g.*, *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969). But the California courts of appeal have not done this and have confined limited jurisdiction to instances where an act or transaction has been consummated in the forum. *See* note 152 *infra*.

9. 107 Cal. App. 2d 495, 237 P.2d 297 (1951).

10. In the sense that limited jurisdiction is predicated on an act or business done in the forum, it has rather prominent parentage. *See* note 38 *infra* and ac-

landmark decisions as *Fisher Governor Co. v. Superior Court*¹¹ and *Buckeye Boiler Co. v. Superior Court*.¹²

This article suggests that general-limited jurisdiction is neither a sound theory nor a useful analytical tool. First, this article will briefly note the historical origins of general and limited jurisdiction as those concepts have been articulated by California courts. Second, both concepts will be compared with the current law of personal jurisdiction. Third, several California appellate decisions which have applied general and limited jurisdiction will be analyzed to substantiate the thesis of this article. Finally, the alternatives to general and limited jurisdiction will be noted.

I. HISTORY

A. General Jurisdiction

*Koninklijke L.M. v. Superior Court*¹³ was the first modern case which expressly grounded the jurisdiction of a California court on what the *Cornelison* court called "general jurisdiction" twenty-five years later.¹⁴ In *Koninklijke*, an airplane crash occurred in England and an action was filed in California by the heirs of the persons killed in the accident. After concluding that the defendant airline's substantial and longstanding activity in California established its corporate presence in California for jurisdictional purposes, the court found it to be immaterial that the subject mat-

companying text. In the sense that it is seen as an alternative to general jurisdiction it is traceable to a few decisions (*see* note 39 *infra*) which include most prominently *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969).

11. 53 Cal. 2d 222, 347 P.2d 1, 1 Cal. Rptr. 1 (1959).

12. 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969).

13. 107 Cal. App. 2d 495, 237 P.2d 297 (1951).

14. 16 Cal. 3d at 147, 545 P.2d at 267, 127 Cal. Rptr. at 355. It is noteworthy that the reference to general jurisdiction in *Cornelison* is rather casual: it comes as something of an aside. *See* note 4 *supra*. It was, in fact, not the first time that the term general jurisdiction was used by a California court. The court of appeal in *Arnesen v. Raymond Lee Organization, Inc.*, 31 Cal. App. 3d 991, 107 Cal. Rptr. 744 (1973), after noting that the regular, continuous and substantial conduct of business within a state subjects that foreign corporation to that state's jurisdiction, observed that the trial court had impliedly found that appellant had failed to establish the factual predicate for general jurisdiction of the forum over the person of respondents based upon the concept of doing business within the state. However, *Arnesen*, unlike *Cornelison*, did not relate general jurisdiction to *Koninklijke L.M. v. Superior Court*, 107 Cal. App. 2d 495, 237 P.2d 297 (1951) or *Perkins v. Benquet Mining Co.*, 342 U.S. 437 (1962). Furthermore, the *Arnesen* reference to general jurisdiction has been ignored in favor of *Cornelison's* more elaborate statement by the California courts of appeal. *See* notes 33 and 34 *infra*. As will be developed below, California's general jurisdiction is substantially different from the term by the same name originated by Professors von Mehren and Trautman in *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966). *See* text accompanying notes 57-62 *infra*.

ter of the action was "wholly unrelated to any of the business conducted by the [airline] in this state." The court held the corporation to be subject to the jurisdiction of California courts.¹⁵

Koninklijke represents a significant break with a line of California decisions which had held that jurisdiction over a foreign corporation could be asserted only if the cause of action sued on arose from business transacted within the state.¹⁶ There is, however, no suggestion in the opinion that the court intended to do anything other than announce that corporate presence could confer jurisdiction over causes of action having no nexus to the forum.¹⁷ Yet six years before the *Koninklijke* opinion, the United States Supreme Court declared in *International Shoe Co. v. Washington*¹⁸ that to say the corporation is "present . . . is to beg the question to be decided."¹⁹ "Presence," the Court had declared, was only "symbolic" of the activities of the foreign corporation. The "quality and nature" of those activities were to be determinative of the question of jurisdiction.²⁰ However in spite of, or per-

15. 107 Cal. App. 2d at 501, 237 P.2d at 333.

16. The decision in *Koninklijke* turned on the court's refusal to follow *Fry v. Denver & R.E. Ry.*, 226 F. 893 (9th Cir. 1915), which held that jurisdiction could be asserted over a foreign corporation doing business in California only if the cause of action arose from business done in the state. In so holding, *Fry* followed *Old Wayne Mutual Ass'n v. McDonough*, 204 U.S. 8 (1907) and *Simon v. Southern Ry.*, 236 U.S. 115 (1915) which, as noted in the *Koninklijke* decision, had not gone unchallenged for the thirty-six years they had held sway in California. In rejecting *Fry*, *Koninklijke* relied on *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E. 915, 159 N.Y.S. 1145 (1917), an opinion authored by Justice Cardozo, which held that if a corporation was engaged in business within the forum state, "jurisdiction does not fail because the cause of action sued upon has no relation in its origin to the business here transacted." *Tauza* did in fact have a west coast predecessor in *Denver & R.G.R. Co. v. Roller*, 100 F. 738 (9th Cir. 1900) where the court, construing California law, had held that jurisdiction could be asserted over a cause of action which had arisen wholly in Colorado as long as the defendant corporation had been doing business in California. *Roller*, however, was not followed in California. For an excellent history of *Denver*, *Fry* and *Koninklijke*, see *The Development of In Personam Jurisdiction Over Individuals and Corporations in California: 1849-1970*, 21 HASTINGS L.J. 1105, 1136-39 (1970).

17. In holding that presence was an appropriate basis for the assertion of state court jurisdiction, *Koninklijke* relied on *West Publishing Co. v. Superior Court*, 20 Cal. 2d 720, 182 P.2d 777 (1942) which had signalled the rejection of the consent theory of jurisdiction over foreign corporations in favor of the notion that extensive business activities created a corporate presence in this state. The step which *Koninklijke* took was to hold that such presence supported the assertion of jurisdiction over causes of action without any nexus or affiliation to the California forum.

18. 18 U.S. 310 (1945).

19. *Id.* at 316.

20. *Id.* at 316-17.

haps because of this holding, the *Koninklijke* court stoutly managed to ignore *International Shoe*: it was not cited nor was a trace of its philosophy discernible in the opinion.

Fortuitously, *Koninklijke* was followed the very next year by *Perkins v. Benquet Consolidated Mining Co.*²¹ In this case, the United States Supreme Court held that an Ohio court could constitutionally exercise its jurisdiction over a foreign corporation which had conducted systematic and continuous activity in Ohio. However, the cause of action sued on had no connection to the corporation's activities in Ohio nor to the state itself.²² Unlike *Koninklijke L.M. v. Superior Court*, the decision in *Perkins* took explicit account of *International Shoe* in holding that the enforcement of "a cause of action not arising out of the corporation's activities in the state of the forum"²³ met the realistic reasoning of *International Shoe*²⁴ when the foreign defendant engaged in systematic and continuous corporate activities in that state.²⁵ Thus, jurisdiction was upheld despite the fact that the cause of action arose outside the state.

Perkins and *Koninklijke* can be understood in two ways. First, these decisions may mean that systematic activity in the forum

21. 342 U.S. 437 (1952).

22. *Id.* at 447-48. It appears that the Benquet Mining Company could not be sued in the Philippines, its country of incorporation, because of the Japanese occupation of that nation, and Ohio was the only available forum—or the forum which was the most reasonable alternative to the Philippines. See *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 909, 932 (1960). *Koninklijke* involved the Dutch national airline KLM which had done considerable business in California without becoming a California corporation. Circumstances arising from the war could not have affected *Koninklijke*, however, since the litigation seems to have arisen after 1945. Moreover, KLM had maintained an office in California since 1938. For that matter, by the time *Perkins* was decided, the war had ended and the Japanese were gone from the Philippines. Be that as it may, both decisions involved corporations which were foreign nationals and thus relatively difficult to reach in their countries of incorporation. It has been observed in the instance of *Perkins* that this circumstance may have influenced the decision in that case *id.* at 932. See also *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1966).

23. 342 U.S. at 446.

24. *Id.*

25. *Id.* at 448-49. The Court in *International Shoe* had noted that there had been "instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U.S. at 318. In support, the Court cited *Missouri K. & T.R. Co. v. Reynolds*, 255 U.S. 565, (1920) and Justice Cardozo's opinion for the court in *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 115 N.E. 915, 159 N.Y.S. 1145 (1917). Of course, in *International Shoe* the cause of action sued on, i.e. the State of Washington's attempt to collect assessments for the state unemployment compensation fund, arose directly from the corporation's activities in Washington. The Court's comments on these prior decisions are therefore dictum; their continued validity is examined in Part III below.

creates a corporate presence and that jurisdiction can be based solely on this presence. Second, these decisions could be construed to hold that the activities of a foreign corporation, although not connected to the cause of action sued on, could be contacts with the forum which meet the requirements of *International Shoe*. The first explanation is rejected by *International Shoe* itself: the Court declared the quality and nature of the activity rather than fictional "presence" to be determinative.²⁶ The second has been criticized by writers²⁷ and questioned in at least two decisions of the ninth circuit.²⁸ Whether the view upon which the second explanation rests is sound will be examined by this article in Part II below.

It has never been clear whether California adopted the first or the second explanation of *Perkins* and *Koninklijke*.²⁹ What is clear is that since *Koninklijke*, California has consistently fol-

26. *International Shoe*, relying on Judge Learned Hand's opinion written in *Hutchinson v. Chase and Gilbert*, 45 F.2d 319 (2d Cir. 1930) declared "presence" to be merely a symbol or, in Judge Hand's earlier words, shorthand for corporate activities upon which jurisdiction could be predicated in conformance with the requirements of due process, 326 U.S. at 316-17. In the opinion of at least two distinguished commentators, the fiction of corporate presence as conferring jurisdiction was discredited even before *International Shoe* by Judge Hand's reasoning in *Hutchinson*. Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, 273 (1965); Kurland, *The Supreme Court, The Due Process Clause and In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569, 583 (1958). Thus, the conclusion is amply warranted that *International Shoe* meant an abandonment of the corporate presence theory of jurisdiction. See generally *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 909, 923 (1960).

27. Von Mehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1144 (1966); *Development in the Law—State Court Jurisdiction*, supra note 10, at 932; Note, *Jurisdiction Over Nonresident Corporations Based on a Single Act: A New Sole for International Shoe*, 47 GEO. L.J. 342, 353-54 (1958); Note, *Jurisdiction Over Foreign Corporations—An Analysis of Due Process*, 104 U. PA. L. REV. 381, 398 (1955).

28. *Aanestad v. Beech Aircraft Corporation*, 521 F.2d 1298, 1300 (9th Cir. 1974); *L.D. Reeder Contractors v. Higgins Industries*, 265 F.2d 768, 775 (9th Cir. 1959). Research has not uncovered a California state decision questioning *Perkins*. On the contrary, *Perkins* is cited by the California Supreme Court in two decisions important to the subject of this paper: *Cornelison v. Chaney*, 16 Cal. 3d 143, 127 Cal. Rptr. 352 (1976) and *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 222, 347 P.2d 1, 1 Cal. Rptr. 1 (1959). The courts of appeal continue to rely upon *Perkins*, *Sanders v. CEG Corporation*, 95 Cal. App. 3d 779, 157 Cal. Rptr. 252 (1979) and *Star Aviation, Inc. v. Superior Court*, 73 Cal. App. 3d 807, 141 Cal. Rptr. 13 (1977).

29. Some decisions hold presence alone to be sufficient for the assertion of jurisdiction.

The rule equates extensive economic activity within the state with physical presence and adheres to the viewpoint that a nonresident who is present in California, economically, like a person who is present, physically, can be sued in this state's tribunals as to any cause of action arising in

lowed the view that systematic and wide-ranging business activity in this state will allow California courts to assert jurisdiction over causes of action having no connection with those activities inside the state.³⁰ Thus, by the time *Cornelison* was decided, nothing remained but to give the baby a name.³¹ In *Cornelison*, the California Supreme Court did just that, clearly relating the term "general jurisdiction" to the line of decisions commencing with *Koninklijke*.³²

California even though the cause of action is not related to the nonresident's economic activity in California.

Ratcliffe v. Pedersen, 51 Cal. App. 3d 89, 96, 123 Cal. Rptr. 793 (1975); accord, *Messerschmidt Development v. Crutcher Resources*, 84 Cal. App. 3d 819, 149 Cal. Rptr. 35 (1978). Others, including *Cornelison* itself, inquire whether the economic activity is "a constitutionally sufficient relationship to warrant jurisdiction for all causes of action" asserted against the foreign defendant. Accord, *Cornelison v. Chaney*, 16 Cal. 3d 143, 147, 545 P.2d 264, 127 Cal. Rptr. 352 (1976); *Star Aviation, Inc. v. Superior Court*, 73 Cal. App. 3d 807, 141 Cal. Rptr. 13 (1977); *Henderson v. Superior Court*, 77 Cal. App. 3d 583, 142 Cal. Rptr. 478 (1978). Whether extensive business activity is or should be a constitutionally sufficient relationship is examined below. See section II.C.3. *infra*.

30. See generally *Beirut Universal Bank v. Superior Court*, 268 Cal. App. 2d 832, 74 Cal. Rptr. 333 (1969); *Long v. Mishicot Dairy, Inc.*, 252 Cal. App. 2d 425, 60 Cal. Rptr. 432 (1967); *H. Liebes and Co. v. Erica Shoes, Inc.*, 237 Cal. App. 2d 25, 46 Cal. Rptr. 470 (1965); *Waco-Porter Corp. v. Superior Court*, 221 Cal. App. 2d 559, 27 Cal. Rptr. 371 (1963); *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 222, 347 P.2d 1 (1959); *Jeter v. Austin Trailer Equipment Co.*, 122 Cal. App. 2d 376, 265 P.2d 130 (1953); *Schultz v. Union Pac. R. Co.*, 118 Cal. App. 2d 169, 257 P.2d 1003 (1953); *Le Vecke v. Griesedieck Western Brewing Co.*, 233 F.2d 772 (9th Cir. 1956) (applying California law); *Kenny v. Alaska Airlines*, 132 F. Supp. 838 (S.D. Cal. 1955) (applying California law). Cf. *Pope v. National Aero Finance Co.*, 220 Cal. App. 2d 709, 33 Cal. Rptr. 889 (1963).

Of these cases, *Fisher Governor* is particularly authoritative; speaking for the court was Mr. Justice Traynor. *Buckeye Boiler* also confirmed the point. Post-*Buckeye* cases supporting this principle are: *Ratcliffe v. Pedersen*, 51 Cal. App. 3d 89, 123 Cal. Rptr. 793 (1975); *Arnesen v. Raymond Lee Organization, Inc.*, 31 Cal. App. 3d 991, 107 Cal. Rptr. 744 (1973); *Vibration Isolation Products, Inc. v. American Nat. Rubber Co.*, 23 Cal. App. 3d 480, 100 Cal. Rptr. 269 (1972). For other post *Cornelison* cases in accord, see note 34 *infra*.

31. As noted, it was actually *Arnesen v. Raymond Lee Organization, Inc.*, 31 Cal. App. 3d 991, 107 Cal. Rptr. 744 (1973), which first appears to have used the term general jurisdiction in the sense in which *Cornelison* employed it. See note 14 *supra*. To what extent either the *Arnesen* or *Cornelison* court was influenced by von Mehren and Trautman, *supra* note 14, in the choice of this term is impossible to say. Professors von Mehren's and Trautman's important work was cited by the California Supreme Court in *Buckeye Boiler*, but only generally for its views on the question of *forum conveniens*. *Arnesen* does not cite von Mehren's and Trautman's article but *Cornelison* does for the proposition that the interstate nature of the defendant's business, as in *Cornelison*, could tip the balance in favor of requiring him to defend in California. 16 Cal. 3d at 151, 545 P.2d at 268, 127 Cal. Rptr. at 356. It may well be, although this is pure speculation, that the term "general jurisdiction" to describe assertions of state court jurisdiction over causes of action unrelated to the forum found its way from von Mehren's and Trautman's article into California case law. The article was obviously known to California appellate courts.

32. 16 Cal. 3d at 147-48, 545 P.2d at 268, 127 Cal. Rptr. at 356 (1976).

B. Limited Jurisdiction

Limited jurisdiction is everything general jurisdiction is not. As the court of appeal stated in *Henderson v. Superior Court*: "Jurisdiction over a nonresident defendant served with process outside the state is classified as *either general or limited*."³³ Other recent decisions are in accord.³⁴ Though it may not be helpful, California's limited jurisdiction can be easily defined as all assertions of jurisdiction except those where jurisdiction is based on systematic and continuous business activity.

The origin of the notion that limited jurisdiction is the exclusive alternative to general jurisdiction is traceable to *Buckeye Boiler v. Superior Court*:

[U]nless the defendant's forum-related activity reaches such extensive or wide-ranging proportions as to make the defendant sufficiently 'present' in the forum state to support jurisdiction over it concerning causes of action which are unrelated to that activity . . . the particular cause of action must arise out of or be connected with the defendant's forum-related ac-

33. 77 Cal. App. 3d 583, 590, 142 Cal. Rptr. 478, 482 (1978) (emphasis added). Reference to either general or limited jurisdiction as applicable to jurisdiction over a nonresident defendant served with process outside the state might suggest, however indirectly, that general and limited jurisdiction are thought to be applicable only when the transactional event giving rise to the cause of action occurred outside California. This possibility is discussed below, *see* text accompanying notes 118-38 *infra*. Suffice it to say here that no such limitation is placed on these terms by *Cornelison* nor any cases decided by the courts of appeal in terms of *Cornelison*. *See* note 34 *infra*. That, of course, does not preclude the possibility that the courts make reference to these terms only when the transactional event occurred outside California. In fact, that is the case; *see* note 120 *infra*.

34. *See generally*, *E.I.C., Inc. v. Bank of Virginia*, 108 Cal. App. 3d 148, 153, 166 Cal. Rptr. 317, 320 (1980); *Spirits, Inc. v. Superior Court*, 104 Cal. App. 3d 918, 923, 164 Cal. Rptr. 101, 104 (1980) ("Personal jurisdiction may be exercised under either of two categories, general or limited."); *Star Aviation, Inc. v. Superior Court*, 73 Cal. App. 3d 807, 811, 141 Cal. Rptr. 13, 15 (1977). The *E.I.C.* and *Spirits, Inc.*, decisions refer to the concepts of general and limited jurisdiction in the alternative either without making it clear that they are thought of as *exclusive alternatives* or without clearly labeling the concept discussed as general or limited jurisdiction. *R.E. Sanders & Co. v. Lincoln Richardson Enterprises, Inc.*, 108 Cal. App. 3d 71, 77-78, 166 Cal. Rptr. 269, 272-73 (1980); *Thomas J. Palmer, Inc. v. Turkiye Is Bankasi A.S.*, 105 Cal. App. 3d 135, 147-48, 164 Cal. Rptr. 181, 188-89 (1980); *Goodyear Tire & Rubber Co. v. Unochrome International, Ltd.*, 104 Cal. App. 3d 518, 524-25, 163 Cal. Rptr. 758, 760-61 (1980); *Sanders v. CEG Corp.*, 95 Cal. App. 3d 779, 784, 157 Cal. Rptr. 252, 255 (1979); *Messerschmidt Development Co. v. Crutcher Resources Corp.*, 84 Cal. App. 3d 819, 825, 149 Cal. Rptr. 35, 38 (1978); *Stanley Consultants, Inc. v. Superior Court*, 77 Cal. App. 3d 444, 449-50, 453 (dissent), 143 Cal. Rptr. 655, 658-59, 660 (dissent); *Mathes v. National Utility Helicopters Ltd.*, 68 Cal. App. 3d 182, 189, 137 Cal. Rptr. 104, 108 (1977); *Spokane Eye Clinic, Inc. v. Superior Court*, 63 Cal. App. 3d 548, 552-53, 133 Cal. Rptr. 838, 839-40 (1976); *Inselberg v. Inselberg*, 56 Cal. App. 3d 484, 490, 128 Cal. Rptr. 578, 581 (1976).

A review of California case law antedating *Buckeye* reveals no precedent for its alternative phrasing: “[U]nless the defendant’s forum-related activity reaches . . . extensive proportions . . . the particular cause of action *must* arise out of *or* be connected with the defendant’s forum-related activity.”³⁶ As we have seen, general jurisdiction established itself prior to *Buckeye* as a doctrine, albeit without that name, and the courts made frequent reference to it.³⁷ However before *Buckeye*, the courts also examined transactions to determine if limited jurisdiction existed, i.e., whether the cause of action sued on arose out of activity in California.³⁸ Sometimes the same decision referred to extensive business activity which would confer jurisdiction over all causes of action *and* inquired whether the cause of action arose out of activity in California.³⁹ It was not until *Buckeye* that it was suggested that one was the exclusive alternative of the other.

The development of a “rule,” especially when it is suggestive of a general theory, can be fatal to analysis. So it was with the juxtaposition of the phrase “the particular cause of action must arise out of or be connected with the defendant’s forum-related activity” to the emerging concept of general jurisdiction. The juxtaposition suggests that the two, when put together, provide a conceptual framework which could accommodate all problems of state court jurisdiction.

35. 71 Cal. 2d at 898-99, 458 P.2d at 62, 80 Cal. Rptr. at 118 (1969) (citations omitted) (emphasis added). In *Fisher Governor*, the supreme court found that the causes of action sued on in that case were not related to any business done in California by the Fisher Governor Company. 53 Cal. 2d at 224, 347 P.2d at 3, 1 Cal. Rptr. at 3. The *Fisher* court went on to state the already familiar principle that if the business activity was extensive enough, jurisdiction could be asserted over causes of action which had no relationship to the defendant’s activities in the state. 53 Cal. 2d at 225, 347 P.2d at 3, 1 Cal. Rptr. at 3. In support, the court cited *Perkins*, *Koninklijke L.M.*, and that portion of *International Shoe* which cited *Tauza*. See note 25 *supra* and *Le Vecke v. Griesedieck Western Brewery Co.*, 233 F.2d 772, 777-78 (9th Cir. 1956), a decision which relied on *Koninklijke* and *Perkins*. Nothing in *Fisher Governor*, or any of the cases which it cited, supported the alternative and exclusive phrasing used by the *Buckeye* court. Certainly, the reference to *Tauza* and other like decisions by *International Shoe* could not be read to suggest the phrasing employed: *Tauza* and company were simply cited as exemplifying one additional form of state court jurisdiction, albeit not one suggested by the facts of the *International Shoe* case.

36. 71 Cal. 2d at 899, 458 P.2d at 62, 80 Cal. Rptr. at 118 (emphasis added).

37. See generally pre-*Buckeye* cases cited in note 30 *supra*.

38. Several prominent predecessors of *Buckeye* did just that: *Empire Steel Corp. v. Superior Court*, 56 Cal. 2d 823, 366 P.2d 502, 17 Cal. Rptr. 150 (1961); *Henry Jahn & Sons v. Superior Court*, 49 Cal. 2d 855, 323 P.2d 437 (1958); *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 346 P.2d 409 (1959).

39. *Fisher Governor Co., v. Superior Court*, 53 Cal. 2d 222, 347 P.2d 1, 1 Cal. Rptr. 1 (1959) and *Jeter v. Austin Trailer Equipment Co.*, 122 Cal. App. 2d 376, 265 P.2d 130 (1953).

While it is altogether probable that the alternative phrasing employed in *Buckeye* was purely unintentional, and while *Cornelison* does not unequivocally refer to general and limited jurisdiction as mutually exclusive and alternative concepts,⁴⁰ the idea suggested by this phrasing was apparently too tempting to ignore. Some of the state courts of appeal and some federal courts applying California law⁴¹ have adopted general-limited jurisdiction as an all-embracing theory of state court jurisdiction. As of this date, thirteen decisions of the California courts of appeal have resorted to the *Cornelison* general-limited jurisdiction scheme.⁴² When guided by this theory, a court will first examine whether the foreign defendant is subject to the general jurisdiction of California courts, i.e., whether it has conducted extensive business activity within the state. If general jurisdiction is not found to exist, *and this has* been invariably the case,⁴³ the court will then consider whether it can exercise limited jurisdiction. As we will see below, the plausibility of this general theory is as deceptive as it is mistaken in its basic assumptions.

II. GENERAL AND LIMITED JURISDICTION AND THE LAW

A. Recent Developments: The Focus on Minimum Contacts

It is not intended here to add to the general literature on *Shaffer v. Heitner*,⁴⁴ but rather to abstract from that important decision and from an even more recent opinion of the United States Supreme Court, *Rush v. Savchuk*,⁴⁵ two principles which bear directly on general and limited jurisdiction. First, the *International Shoe* minimum contacts doctrine is applicable to all assertions of state court jurisdiction, and second, jurisdictional analysis must

40. It is possible to construe *Cornelison's* exposition of limited jurisdiction to have been intended as an exclusive alternative to general jurisdiction: "If . . . the activities . . . [do] not . . . justify the exercise of general jurisdiction . . . then jurisdiction depends on the quality and nature of his activity in the forum in relation to the particular cause of action." 16 Cal. 3d at 147-48, 545 P.2d at 356, 127 Cal. Rptr. at 356 (emphasis added) cited without deletions in note 4 *supra*. However, if one is to give the benefit of the doubt to the *Buckeye* court that the alternative phrasing may have been unintentional, there is no reason to be any less generous with *Cornelison*.

41. See note 3 *supra*.

42. See notes 33 and 34 *supra*.

43. This point is discussed in section II.C.4. *infra*.

44. 433 U.S. 186 (1977).

45. 100 S.Ct. 571 (1980).

focus on the relationship between the defendant, the forum and the litigation.

Shaffer could not be clearer on the first point. In rejecting the mere presence of property as a sufficient basis to assert jurisdiction over the absent owner, the Court held that all assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny.⁴⁶ If there had been any doubts that the Supreme Court meant what it said,⁴⁷ *Rush* set those doubts to rest. In *Rush*, the Court swept aside *Seider v. Roth*⁴⁸ and *Harris v. Balk*⁴⁹ or what remained of either by clearly holding that even assertions of quasi in rem jurisdiction are to be subjected to the minimum contacts analysis.⁵⁰ Therefore, we should take as settled that California's general and limited jurisdiction must conform to the constitutional minimum contacts standard.⁵¹

Shaffer also clearly holds,⁵² and *Rush* reaffirms,⁵³ that in determining whether a particular exercise of state court jurisdiction is consistent with due process, the inquiry must focus on the relationship between the litigation, the forum and the defendant. To illustrate this concept, in *Rush* the litigation was based on a vehicular accident which had occurred in Indiana. The forum chosen by the plaintiff was Minnesota. The defendant, originally an Indiana resident as was plaintiff, had moved to Pennsylvania after the Minnesota action had been commenced. The defendant minor's father was the owner of the car involved in the accident. State Farm, insurer of the vehicle,⁵⁴ transacted business in Min-

46. 433 U.S. at 212.

47. As a sampling of courts and commentators shows, the cited holding was generally accepted at face value. *E.g.*, *Intermeat, Inc. v. American Poultry, Inc.* 575 F.2d 1017 (2d Cir. 1978); *Drexel Burnham Lambert, Inc. v. D'Angelo*, 453 F. Supp. 1294 (S.D.N.Y. 1978); *Engineering Equipment Co. v. S.S. Selene*, 446 F. Supp. 706 (S.D.N.Y. 1978); *National American Corp. v. Federal Republic of Nigeria* 448 F. Supp. 622 (S.D.N.Y. 1978); *Feder v. Turkish Airlines*, 441 F. Supp. 1273 (S.D.N.Y. 1977). *Cf.* *Driver v. Helms*, 577 F.2d 147 (1st Cir. 1978). *Riesenfeld, Shaffer v. Heitner: Holding, Implications, Forebodings*, 30 HASTINGS L.J. 1183, 1203-04 (1979); *Vernon, State-Court Jurisdiction: A Preliminary Inquiry into the Impact of Shaffer v. Heitner*, 63 IOWA L.R. 997 (1978); *Silberman, Shaffer v. Heitner: The End of an Era*, 53 N.Y.U. L. REV. 33, 64-65 (1978).

48. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

49. 198 U.S. 215 (1905).

50. 100 S.Ct. at 577-79.

51. This, of course, is especially true by virtue of California's long-arm statute, Code of Civil Procedure section 410.10: "A court of this state may exercise jurisdiction on any basis not inconsistent with the constitution of this State or of the United States." CAL. CIV. PROC. CODE § 410.10 (West 1973).

52. 433 U.S. at 204.

53. 100 S.Ct. at 577.

54. *Id.* at 574.

nesota and in all 50 States and the District of Columbia.⁵⁵ Against this background, the Supreme Court found that there were no contacts between the defendant and the Minnesota forum, and that there were no significant contacts between the state and the litigation.⁵⁶ In other words, the presence of the defendant's insurer in Minnesota did not establish the required relationship between the defendant, the forum and the litigation.

The extension of the minimum contacts theory to all assertions of state court jurisdiction and the formulation that there must be a relationship between the defendant, the forum and the litigation validates the views expressed in Professors von Mehren's and Trautman's *Jurisdiction to Adjudicate: A Suggested Analysis*.⁵⁷ That seminal work focuses its analysis on the question whether a constitutionally sufficient relationship or minimum contact exists between the forum, on the one hand, and the defendant and the litigation, on the other. Rejecting the traditional divisions of in personam, in rem and quasi in rem jurisdiction, von Mehren and Trautman propose a distinction between assertions of jurisdiction based on the relationship of the *legal person* to the forum as opposed to assertions of jurisdiction predicated on the relationship of the *controversy* to the forum.⁵⁸ In the former instance, all causes of action, whether or not they are connected to the forum, may be asserted against the defendant in that forum.⁵⁹ This type of jurisdiction the professors call general jurisdiction.⁶⁰ Specific jurisdiction covers situations where jurisdiction is based on the relationship of the controversy to the forum.⁶¹ In either event, there must be a constitutionally sufficient affiliation, i.e., a minimum contact between the forum on one hand and the defendant or the litigation, on the other. As we will see below,⁶² von Mehren and Trautman further defined the term "constitutionally sufficient affiliation" by distinguishing directly from indirectly affiliating circumstances—a particularly significant distinction which foreshad-

55. *Id.* at 575 n.4.

56. *Id.* at 577-78.

57. Von Mehren and Trautman, *Jurisdiction To Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1966).

58. *Id.* at 1136.

59. *Id.*

60. *Id.*

61. *Id.*

62. See text accompanying notes 87-95 *infra*.

owed the decisions of the United States Supreme Court in both *Shaffer* and *Rush*.

Noting the difference between forum-defendant relationships and forum-litigation relationships greatly facilitates analysis. As an example, it clarifies that a court will assert its jurisdiction over the forum's domiciliary for a different reason than over the non-resident who has committed a tort in that forum. In forum-defendant relationships, jurisdiction is exercised possibly because there should be at least one forum which has the power to adjudicate any and all claims against a legal person.⁶³ In forum-litigation relationships, jurisdiction is asserted because the forum has a natural interest in adjudicating controversies that have a relation or effect in the forum.

Even without the benefit of von Mehren's and Trautman's analysis, it is clear that the focus of modern jurisdictional analysis must be on the affiliation of the defendant and the litigation to the *forum*. The importance of this observation will become more evident by analyzing general and limited jurisdiction in terms of current jurisdictional concepts.

B. The Restatement and the Comments of the Judicial Council

Before turning to an analysis of general and limited jurisdiction, it is necessary to sketch the general doctrinal framework within which these concepts should function. In California, that framework is provided by Code of Civil Procedure, section 410.10 and the official Comment of the Judicial Council [hereinafter cited as Comment] to that section.⁶⁴

Section 410.10 explicitly anchors California's law of jurisdiction

63. This is the rationale most commonly given for the assertion of general jurisdiction. See von Mehren and Trautman, *supra* note 14, at 1137; Vernon, *Single-Factor Bases of In Personam Jurisdiction—A Speculation on the Impact of Shaffer v. Heitner*, 1978 *Wash. L.Q.* 273, 304; *Developments in the Law—State-Court Jurisdiction*, *supra* note 26, at 934.

64. [1969] JUD. COUNCIL REP. 33-34, 68-91 [hereinafter cited as Comment]. The Comment is not law in the sense of being an enactment of the legislature. As the court of appeal explained in *Quattrone v. Superior Court*, 44 Cal. App. 3d 296, 302, 118 Cal. Rptr. 548, 554 (1975):

In its 1969 Annual Report to the Governor and the Legislature, the Judicial Council of California commented at length upon the effect of Code of Civil Procedure section 410.10. Its comment in that respect is reprinted as an annotation to Code of Civil Procedure section 410.10 in West's Annotated California Codes. A little over a year after the effective date of section 410.10, the court of appeal in *National Life of Florida v. Superior Court*, 21 Cal. App. 3d 281, 286-87, 98 Cal. Rptr. 435, 442 (1971), analyzed the facts of that case in light of "two of the several bases of judicial jurisdiction spelled out in the approved Judicial Council comments relating to section 410.10." Another early case, *Titus v. Superior Court*, 23 Cal. App. 3d 792, 799, 100 Cal. Rptr. 477, 554 (1972) cited Witkin's conclusion that the "recognized bases of judicial jurisdiction are those listed in the Restatement

to constitutional doctrines.⁶⁵ The Comment, following the lead of the Restatement (Second) of Conflict of Laws [hereinafter cited as Restatement],⁶⁶ lists the so-called bases of jurisdiction over individuals and corporations.⁶⁷ These bases of jurisdiction are illustrative of the affiliations or relationships which will justify the assertion of jurisdiction. As one panel of the California courts of appeal has acutely observed: "[W]hen we speak of the requisite 'minimum contacts' which give a state the power to exercise jurisdiction over an individual we speak in terms of those 'contacts' with the state which the Restatement recognizes as the bases of judicial jurisdiction."⁶⁸

The realization that the Restatement's jurisdictional bases are in effect the recognized form's of minimum contacts is absolutely essential to an understanding of the place which the jurisdictional bases occupy in the framework of jurisdictional concepts. *These jurisdictional bases are particularized illustrations of the inclusive minimum contacts concept.*⁶⁹ In other words, the minimum contacts concept is a common denominator to all of the jurisdictional bases. Thus, a jurisdictional base is a particular kind of minimum contact which is the equivalent of a relationship or affiliation supporting the exercise of jurisdiction.⁷⁰

[RESTATEMENT (SECOND) CONFLICT OF LAWS] and that these have, in essence, been incorporated in Code of Civil Procedure section 410.10."

To the extent that California courts have consistently referred to the Comment as approved or recognized it may be that the Comment has been received as a part of the state's common law. *See also* Judd v. Superior Court, 60 Cal. App. 3d 38, 131 Cal. Rptr. 246 (1976).

65. *See* note 51 *supra*.

66. The bases of jurisdiction over individuals and corporations appearing in the Comment are those listed in the RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 27, 41-52 [hereinafter cited as RESTATEMENT]. The substance of the commentary on these bases of jurisdiction provided by the Judicial Council draws very heavily on the comments to the various sections of the Restatement. *See* Abbott Power Corp. v. Overhead Electric Co., 60 Cal. App. 3d 272, 131 Cal. Rptr. 246 (1976).

67. Comment, *supra* note 64, at 79-82.

68. Titus v. Superior Court, 23 Cal. App. 3d 792, 800, 100 Cal. Rptr. 477, 483 (1972).

69. Writing in 1965, Professor Hazard suggested that the "vagueness of the minimum contacts general principle" could be resolved by a "technique of particularization" within the general minimum-contacts framework. He suggested that this technique is manifested legislatively in the "long-arm" statutes. *A General Theory of State-Court Jurisdiction*, *supra* note 26, at 283. The jurisdictional bases as engrafted onto CAL. CIV. PROC. CODE § 410.10 (West 1973), may be an illustration of this technique of particularization.

70. "Alternative formulations to 'relationship' may, of course, be employed. So in *Hanson v. Denckla*, 357 U.S. 235, 246 (1958), Chief Justice Warren referred to 'af-

C. General Jurisdiction

1. A Constitutional Critique

The opinions of the California Supreme Court in *Buckeye Boiler Co. v. Superior Court*⁷¹ and *Cornelison v. Chaney*⁷² share one interesting characteristic. In both decisions the court refrains from citing *International Shoe* when discussing jurisdiction based on presence, i.e., general jurisdiction. The Court does cite *International Shoe*,⁷³ *Hanson v. Denckla*,⁷⁴ and *McGee v. International Life Ins. Co.*,⁷⁵ but only for the alternative theory, i.e., any jurisdiction related to the defendant's activities within the forum—limited jurisdiction.⁷⁶ This could be dismissed solely as a point of style, were it not for the fact that occasionally the California courts of appeal⁷⁷ and sometimes a federal court applying California law⁷⁸ have made this feature of the two opinions into binding dogma.

Relying on *Cornelison* and *Buckeye Boiler*, some California courts have followed the view that jurisdiction based upon minimum contacts exists only where the underlying controversy is connected with the defendant's forum-related activity.⁷⁹ In other words, it has been held that the minimum contacts required by *International Shoe* as a matter of constitutional imperative apply only to assertions of limited jurisdiction and can be dispensed with when California courts are exercising general jurisdiction.

There is some historic justification for this view. Prior to *Shaffer v. Heitner*,⁸⁰ the conclusion was warranted that physical presence, however transient, was sufficient for the exercise of jurisdiction over all causes of action asserted against the foreign defendant whether or not minimum contacts existed between the legal person and the forum. The Restatement and the Comment still reflect that view despite trenchant criticism.⁸¹ After all, a

filial circumstances' with a state. Other courts speak of a person's 'contacts' with a state." RESTATEMENT, *supra* note 66, § 24, Comment a.

71. 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969).

72. 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976).

73. 326 U.S. 310 (1945).

74. 357 U.S. 235 (1958).

75. 355 U.S. 220 (1957).

76. See note 4 *supra* and text accompanying note 35 *supra*.

77. See generally *Messerschmidt Development v. Crutcher Resources*, 84 Cal. App. 3d 819, 149 Cal. Rptr. 35 (1978); *Arnesen v. Raymond Lee Organization, Inc.*, 31 Cal. App. 3d 991, 107 Cal. Rptr. 744 (1973).

78. *Thelkeld v. Tucher*, 496 F.2d 1101 (9th Cir. 1974).

79. *Arnesen v. Raymond Lee Organization, Inc.*, 31 Cal. App. 3d at 996, 107 Cal. Rptr. at 749.

80. 433 U.S. 186 (1977).

81. Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens*, 65 YALE L.J. 289, 296 (1956). The Restatement, how-

source no less authoritative than *International Shoe* noted that the *capias ad respondendum* [having] given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, *if he be not present within the territory of the forum*, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.⁸²

As we have seen,⁸³ *Shaffer* has made it clear that all assertions of state court jurisdiction must meet constitutional tests.⁸⁴ This must necessarily mean that the *Cornelison* general jurisdiction approach must comport with the *International Shoe* minimum contacts test, i.e., extensive business activity in the forum must meet the minimum contacts test. While prior to *Shaffer*, extensive business activity conferred jurisdiction over causes of action which were not connected to the forum, such activity must now establish a relationship between the defendant and the forum. It is that relationship only which warrants the exercise of jurisdiction.

This raises the question whether jurisdiction may be predicated only on the defendant's relationship with the forum. *Shaffer* clearly held⁸⁵ and *Rush* reiterated,⁸⁶ that the constitutionality of the exercise of state court jurisdiction turns on the relationship among the defendant, the forum and the litigation. Is it ever appropriate to predicate jurisdiction on the *defendant's* relationship with the forum, especially when the litigation has *no* relationship to the forum?

Again, the analytical framework suggested by von Mehren and Trautman is a helpful guide. The professors distinguish between two types of general jurisdiction: *unlimited* general jurisdiction where the ensuing judgment speaks "without restriction to any of the judgment debtor's assets"⁸⁷ and *limited* general jurisdiction

ever, concedes that it may be "inconsistent with the basic principle of reasonableness which underlies the field of judicial jurisdiction" to exempt physical presence from the minimum contacts rule. RESTATEMENT, *supra* note 66, § 27, Comment a.

82. 326 U.S. at 316 (emphasis added).

83. See text accompanying notes 44-56 *supra*.

84. Neither *Buckeye Boiler* nor *Cornelison* expressly hold the physical presence of an individual to be the equivalent of the presence of a corporation brought about by extensive business activity. That was done by the court of appeal in *Ratcliffe v. Pederson*, 51 Cal. App. 3d 89, 123 Cal. Rptr. 793 (1975). See note 29 *supra*; accord, *Messerschmidt Development v. Crutcher Resources*, 84 Cal. App. 3d 819, 825, 149 Cal. Rptr. 35 (1978).

85. 433 U.S. at 204.

86. 100 S. Ct. at 577.

87. Von Meheren and Trautman, *supra* note 14, at 1136.

where the judgment affects only a “specified fund or assets.”⁸⁸ Furthermore, a distinction is made between “directly affiliating circumstances” where the “relationship grounding jurisdiction” is between the person and the forum⁸⁹ and “indirectly affiliating circumstances” where the relationship is between “a person’s assets or other interests in the forum and the forum.”⁹⁰ Directly affiliating circumstances are domicile, habitual residence, presence and consent.⁹¹ As far as indirectly affiliating circumstances are concerned, Professors von Mehren and Trautman observe prophetically that: “To base any form of general jurisdiction on indirectly affiliating circumstances is problematical, particularly in light of the emergence in recent years of a variety of bases of specific jurisdiction.”⁹²

Shaffer and *Rush* have converted the problematical into the actual for both decisions reject indirectly affiliating circumstances as constitutionally insufficient. In *Rush*, the plaintiff sought in substance to invoke limited general jurisdiction since the complaint had been expressly limited to damages not to exceed the policy limits.⁹³ Because of the defendant’s lack of relationship with Minnesota, jurisdiction had to be based on indirectly affiliating circumstances, i.e., on the relationship of the forum and the intangible interest owned by the defendant.⁹⁴ *Shaffer* can also be viewed as a decision rejecting the assertion of this kind of limited general jurisdiction based on indirectly affiliating circumstances because in substance the relationship invoked was between the defendant and the forum state.⁹⁵

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* at 1137.

92. *Id.* at 1139.

93. 100 S. Ct. at 575. The complaint had originally sought damages in excess of the policy limits but was reduced by amendment to claim only up to the limit of the policy. The plaintiff made the nature of the action clear by proceeding under a Minnesota statute permitting garnishment in order to establish quasi in rem jurisdiction over a nonresident defendant. *Id.* at 574 and n.3 accompanying text. This was clearly an assertion of what von Mehren and Trautman have called limited general jurisdiction.

94. *Id.* Again, jurisdiction had to be based on indirectly affiliating circumstances between the policy and the forum.

95. In *Shaffer*, the derivative action sought damages arising from the alleged misconduct of corporate officers of Greyhound. The complaint was accompanied by a motion for sequestration which sought to, and did, lead to the seizure of a considerable number of Greyhound common stock as well as options by means of stop transfer orders. 433 U.S. at 190-92. The action as filed by the plaintiff was therefore not one which could be characterized as seeking to assert limited general jurisdiction: it was only the motion for sequestration, and not the complaint, which was limited to the assets present in Delaware. Furthermore, the purpose of the order of sequestration was to compel personal appearances, *id.* at 186, which would have constituted directly affiliating circumstances between the defendants

Although *Rush* and *Shaffer* in effect disapprove of the exercise of limited general jurisdiction based on indirectly affiliating circumstances, these decisions need not be read to proscribe the exercise of *unlimited* general jurisdiction based on *directly* affiliating circumstances such as domicile. There are still compelling arguments supporting the view that certain forms of status indicate such a relationship between the forum and the legal person which fully warrant the assertion of jurisdiction over that person.⁹⁶ Of course, it cannot be assumed without analysis that a particular form of status does indeed justify the conclusion that there is a constitutionally sufficient relationship between the legal person and the forum. Whether extensive business activity should confer such status will be examined below.⁹⁷

2. Cornelison or the Restatement: An Easy Choice

We now come to one of the most curious features of California's doctrine of general jurisdiction: its essential agreement with the Restatement's and the Comment's "doing business" basis of jurisdiction. Compare the *Cornelison* general jurisdiction approach to that portion of the Comment entitled "Doing Business in State - Foreign Corporation." *Cornelison* took the following position:

If a nonresident defendant's activities may be described as 'extensive or wideranging' . . . or 'substantial . . . continuous and systematic' . . . , there is a constitutionally sufficient relationship to warrant jurisdiction for all causes of action asserted against him. In such circumstances, it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.⁹⁸

The Comment took a similar view:

and Delaware. Yet the net effect of the entire proceedings was that property belonging to the nonresident defendants was being seized on the rationale that the property was present in the state. The Court disapproved of the proceedings precisely because that rationale was insufficient in terms of the minimum contacts rule. Thus, even if *Shaffer* is not a case of limited general jurisdiction based on indirectly affiliating circumstances, that practical effect of the tactics there employed by the plaintiff was to bring the case perilously close to both concepts.

96. Among such arguments are that there should be at least one forum where all causes of action may be brought against a legal person, see note 63 *supra*; that a forum has an interest in the "economic health of defendants living, organized and continually functioning in the forum," Vernon, *Single-Factor Bases of In Personam Jurisdiction—A Speculation on the Impact of Shaffer v. Heitner*, 1978 WASH. L.Q. 273, 304 (1978); and arguments to the effect that in the case of presence and consent the legal system is operating with relatively precise and predictable tests accompanied in the usual course by other affiliations to the forum. von Mehren and Trautman, *supra* note 14, at 1137-38.

97. See section II.C.3. *infra*.

98. 16 Cal. 3d at 147, 545 P.2d at 268, 127 Cal. Rptr. at 356 (citations omitted).

(5) Doing Business in State - Foreign Corporation. A state has power to exercise judicial jurisdiction over a foreign corporation which does business in the state with respect to causes of action that do not arise from the business done in the state if this business is so continuous and substantial as to make it reasonable for the state to exercise such jurisdiction.⁹⁹

If general jurisdiction is synonymous with doing extensive or wide-ranging business, as it obviously is, the *Cornelison* general jurisdiction approach is simply one form or type of minimum contact.¹⁰⁰ General jurisdiction then fits comfortably into the scheme of jurisdictional bases enumerated in the Restatement and the Comment. In fact, it fits so well that the question arises why it is necessary to speak of general jurisdiction when it is far more descriptive to use the term "extensive business activity."

The answer is that general jurisdiction is used apparently to underline the consequence of extensive business activity which is, of course, that the forum has jurisdiction to adjudicate causes of action brought against the defendant whether or not those causes of action have any relationship to the forum. Yet the Restatement and the Comment make it clear that extensive business activity is not the only base of jurisdiction which has this consequence.

Drawing heavily on the Restatement, the Comment informs us that in the case of individuals, presence, domicile, residence and, if substantial and continuous, the doing of business in the state, provide such bases as warrant the exercise of jurisdiction over any action brought against that person.¹⁰¹ Corporations are subject to suit as to any and all causes of action if they are incorporated in the state and, under certain circumstances, if they have appointed an agent to accept service of process or if they have done substantial and continuous business in the state.¹⁰² Therefore, several forms of contact with California are thought to confer jurisdiction to adjudicate causes of action which have no connection to the California forum.

The choice between the *Cornelison* general jurisdiction approach and the more broadly gauged view of the Restatement and the Comment, is not difficult to make. Clearly, the *Cornelison* general jurisdiction is simply another name for extensive business activity. The term could be ignored as surplusage were it not for the misleading suggestion, implicit as it may be, that only extensive business activity permits the bringing of all causes of action against the defendant. Plainly, there are other bases of jurisdiction which also allow it.

99. Comment, *supra* note 64, at 87 (citation omitted).

100. See note 70 *supra* and accompanying text.

101. Comment, *supra* note 64, at 71-73, 77.

102. *Id.* at 85-88.

3. Should Extensive Business Activity Confer Status?

If general jurisdiction were to be understood as a classification of the circumstances where courts have exercised a jurisdiction based on the relationship of the *legal person to the forum*, then the term would explain much about the exercise of jurisdiction. It would then refer to all instances where jurisdiction is predicated on the existence of a legal relationship between the legal entity and the forum, i.e., domicile, residence, citizenship in the case of individuals, and incorporation in the state and appointment of an agent in the instance of corporations. The focus will now be on whether or not the affiliation between the legal person and the forum is of a kind which warrants the imposition of general jurisdiction. Thus, the policies at stake will be laid bare to analysis and reasoned critique.

On the other hand, if general jurisdiction is simply the equivalent of sustained economic activity with the effect of forcing a foreign defendant to defend all causes of action brought against it, several serious questions are raised. First, it seems unfair¹⁰³ to impose liability to defend any and all causes of action on the basis of a test as imprecise as what constitutes systematic or wide-ranging doing of business. Incorporation, appointment of an agent, actual consent, domicile, residence and physical presence¹⁰⁴ all require that the legal person affiliate itself intentionally with the forum. No such clear and unequivocal expression of intent is required when the corporation is found to be doing systematic and wide-ranging business. Certainly, no conscious and deliberate choice has been made to establish a legal relationship between the legal person and the forum when a court finds, long after the fact, that the corporation has been doing wide-ranging business and is therefore sufficiently present in the jurisdiction for the exercise of general jurisdiction.

Second, if the reason for endowing a state with general jurisdiction is to provide at least one forum for the resolution of all controversies involving a legal entity,¹⁰⁵ there seems to be very little

103. We have been recently, and prominently, reminded that one of the important components of the minimum contacts concept is "reasonableness" or "fairness." *World-Wide Volkswagen Corp. v. Woodson*, 100 S. Ct. 559, 564 (1980).

104. These bases of jurisdiction are enumerated in the Comment *supra* note 64 at 71, 72, 73, 85, 86.

105. See text accompanying note 63 *supra*.

reason to expand the already lengthy list of forms of status conferring such jurisdiction.

Third, it has been suggested that *Perkins v. Benquet Consolidated Mining Co.* and its advocacy of state jurisdiction for systematic and continuous activity should be limited to its unique facts.¹⁰⁶ It has also been suggested that the decision approves nothing other than the use of a particular forum "as a surrogate for the place of incorporation available to any plaintiff."¹⁰⁷ This, coupled with the unfairness of imposing the wide-ranging liability of general jurisdiction on a foreign entity without the benefit of a predictable measure or standard or of an intentional choice of that forum by the affected entity, should argue against the conferral of such status by virtue of sustained economic activity. The force of these arguments is underlined by the courts' striking reluctance to assert general jurisdiction based on extensive business activity.

4. General Jurisdiction: Rarely Applied but Not Forgotten

Since the adoption of the California Code of Civil Procedure section 410.10 in 1970,¹⁰⁸ only two cases have been decided which were based on whole or in part on a finding that a foreign defendant had engaged in such extensive economic activities as to render it subject to general jurisdiction. Both of these cases were decided before *Cornelison*, and both could have been decided on grounds other than findings of general jurisdiction. In fact, a good case can be made that both would have been better reasoned decisions had the courts isolated the specific bases upon which California jurisdiction rested.

In *Brandenburg v. New York Tel. and Tel. Co.*¹⁰⁹ an employee of Pacific Telephone and Telegraph Company had been injured, evidently in New York, while on loan to New York Telephone from Pacific Telephone. The employee, Brandenburg, sued New York Telephone in California. The California court of appeal reversed the trial court's order granting New York Telephone's motion to dismiss for lack of jurisdiction, holding that the defendant's extensive contacts in California were "substantially in excess of the

106. For the facts of *Perkins*, see note 22 *supra*.

107. Von Mehren and Trautman, *supra* note 14, at 1144; and *Developments in the Law—State-Court Jurisdiction*, *supra* note 22, at 932.

108. For cases prior to 1970 and after *Koninklijke*, which approve, if only by way of dicta, the assertion of California jurisdiction over causes of action unconnected with this forum when the corporate defendant had done extensive business here, see note 30 *supra*. Prior to *Koninklijke*, the rule had been that jurisdiction could only be asserted if the cause of action arose from business done in California. See note 16 *supra*.

109. 49 Cal. App. 3d 893, 123 Cal. Rptr. 255 (1975).

necessary minimum contacts."¹¹⁰ Although the court of appeal did not expressly conclude that New York Telephone's activities in California were systematic or continuous, the decision appears to be based on New York Telephone's extensive California contacts. The court did not relate Brandenburg's cause of action to California. The implication therefore is that jurisdiction was based simply on the defendant's activities in California.

However, New York Telephone's substantial activities in California related directly to the loan of Brandenburg, a Pacific Telephone plant supervisor to New York Telephone which had lost the services of a number of employees due to a labor strike. New York Telephone had established an extensive contractual and administrative network in California with Pacific Telephone providing for the loan of some of the latter's employees to New York Telephone.¹¹¹ Thus, New York Telephone had clearly "done business" in California and a sound argument could be made for the conclusion that Brandenburg's cause of action arose precisely out of that business. Had New York Telephone not established the elaborate machinery in California providing for the loan of Pacific Telephone employees, Brandenburg surely would not have been injured in New York while working for New York Telephone.¹¹²

In *Ratcliffe v. Pedersen*,¹¹³ a case decided shortly after *Brandenburg*, the court of appeal explicitly based its decision on both the presence of the nonresident defendant created by his extensive economic activity in California and on the conclusion that the plaintiff's cause of action was related and arose from the defendant's doing of business in California. The defendant Pedersen, an Idaho resident engaged in the importing and resale of foreign motorcycles, had shipped hundreds of cycles to California, stored them in a warehouse and released them to Wheeler who had held himself out to the plaintiff to be Pedersen's business partner. Ratcliffe's cause of action against Pedersen was for breach of an oral agreement to make Ratcliffe the northern California distributor for Pedersen.¹¹⁴

Of course, the court's express holding that Ratcliffe's cause of action arose from Pedersen's economic activity in California made

110. *Id.* at 897, 123 Cal. Rptr. at 259.

111. *Id.* at 896-97, 123 Cal. Rptr. at 260.

112. *Id.*

113. 51 Cal. App. 3d 89, 123 Cal. Rptr. at 793 (1975).

114. *Id.* at 92, 123 Cal. Rptr. at 794.

it unnecessary to also find that the same economic activity conferred jurisdiction over causes of action not connected with that activity. Since the dealings between the plaintiff Wheeler, and Pedersen were closely intertwined, the court's conclusion that the cause of action arose out of Pedersen's doing business in California was eminently sound.¹¹⁵ Nevertheless, the court felt constrained to declare that "extensive economic activity" is to be equated with physical presence which, in turn, conferred jurisdiction on California courts "as to any cause of action arising in California even though the cause of action is not related to the nonresident's economic activity in California."¹¹⁶

Recourse to "presence" a full thirty years after the decision in *International Shoe* was retrogressive by the time *Ratcliffe* was decided.¹¹⁷ After *Shaffer*, analysis in terms of presence rather than minimum contacts is plainly in error. However most importantly, *Ratcliffe* demonstrates that when the foreign defendant's activities in California are sufficiently extensive to warrant a finding of general jurisdiction, that *relationship* will also be sufficient to support the assertion of jurisdiction when the transactional event has no connection to that relationship. The court did not have to go that far in *Ratcliffe* since the breach of the agreement sued on was related to the defendant's activities in California. However, a relationship which is found sufficient for the *Cornelison* general jurisdiction approach must also be a relationship sufficient to give jurisdiction to California over an act or business done in California. Thus, if Pedersen had been sued on business done in California which was not related to his motorcycle sales in this state, it is hard to imagine that any court would have concluded that he was not subject to California jurisdiction.

5. General Jurisdiction: The Unnecessary Doctrine

Each of the cases applying *Cornelison's* general jurisdiction, including *Cornelison* itself, could have been decided in the terms of sections 37 and 50 of the Restatement¹¹⁸ and the corresponding

115. *Id.* at 96, 123 Cal. Rptr. at 796.

116. *Id.*

117. See note 26 and accompanying text *supra*.

118. § 37. Causing Effects in State by Act Done Elsewhere

A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable.

RESTATEMENT, *supra* note 66 § 37. Section 37 is applicable to individuals; § 50, which has identical wording, is applicable to corporations.

provisions of the Comment¹¹⁹ without a single reference to general jurisdiction of the *Cornelison* variety.¹²⁰ In each of these

119. Cf. The topical sentence of RESTATEMENT, *supra* note 66 § 37 with that found in Comment, *supra* note 64, at 79:

(9) Causing Effect in State by Act or Omission Elsewhere

A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an omission or act done elsewhere with respect to causes of action arising from these effects, unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable. (Hanson v. Denckla (1958) 357 U.S. 235; McGee v. International Life Ins. Co. (1957) 355 U.S. 220, 78 S. Ct. 199, 2 L.Ed. 2d 223 (other citations omitted)).

120. In each of these cases the transactional event giving rise to the controversy occurred outside California. *Sanders v. CEG Corp.*, 95 Cal. App. 3d 779, 157 Cal. Rptr. 252 (1979) (action for wrongful death against manufacturer of hydrohammer: manufactured outside of California but sold in this state by independent retail sales outlet); *Messerschmidt Development v. Crutcher Resources*, 84 Cal. App. 3d 819, 149 Cal. Rptr. 35 (1978) (action for breach of settlement agreement negotiated, executed and performed outside of California); *Henderson v. Superior Court*, 77 Cal. App. 3d 583, 142 Cal. Rptr. 478 (1978) (action for breach of cohabitation agreement which was entered into and performed solely in Florida); *Stanley Consultants, Inc. v. Superior Court*, 77 Cal. App. 3d 444, 143 Cal. Rptr. 665 (1978) (action for breach of employment agreement which was negotiated between California plaintiff and corporate defendant headquartered in Iowa "either by interstate communications or at petitioner's defendant's office in Iowa."); *Star Aviation, Inc. v. Superior Court*, 73 Cal. App. 3d 807, 141 Cal. Rptr. 13 (1977) (action for wrongful death: airplane crash occurred in Colorado); *Mathes v. National Utility Helicopters Ltd.*, 68 Cal. App. 3d 182, 137 Cal. Rptr. 104 (1977) (action by administratrix for damages arising from deceased's death which occurred in a helicopter crash in Indonesia); *Spokane Eye Clinic, Inc. v. Superior Court*, 63 Cal. App. 3d 548, 133 Cal. Rptr. 838 (1976) (action for medical malpractice arising from allegedly tardy referral of patient to California doctor by State of Washington eye clinic; referral occurred in Washington); *Inselberg v. Inselberg*, 56 Cal. App. 3d 484, 128 Cal. Rptr. 578 (1976) (action for enticement of daughter from father's custody; father resident of California; conduct allegedly amounting to enticement of daughter's affections occurred in Michigan and partly in the course of telephone calls from that state to California); *E.I.C., Inc. v. Bank of Virginia*, 108 Cal. App. 3d 148, 166 Cal. Rptr. 317 (1980) (suit for conspiracy to defraud where all conspiratorial acts occurred outside California); *R. E. Sanders & Co. v. Lincoln-Richardson Enterprises, Inc.*, 108 Cal. App. 3d 71, 166 Cal. Rptr. 269 (1980) (suit, apparently for breach of a sales agency agreement, by a California business broker where the agreement was negotiated and partly executed in Missouri and where the property to be sold, and the defendants were all in Missouri and Arkansas); *Thomas J. Palmer, Inc. v. Turkiye Is Bankasi A.S.*, 105 Cal. App. 3d 135, 164 Cal. Rptr. 181 (1980) (litigation connected with the banking activities in Turkey of the defendant Turkish bank); *Spirits, Inc. v. Superior Court*, 104 Cal. App. 3d 918, 164 Cal. Rptr. 101 (1980) (suit against owner of Arizona liquor store by the buyer of a bottle purchased at the store for injuries sustained when the bottle exploded in Arizona); *Goodyear Tire & Rubber Co. v. Unochrome International, Ltd.*, 104 Cal. App. 3d 518, 163 Cal. Rptr. 758 (1980) (breach of a contract calling for the construction, in Michigan, of a furnace).

Decisions ignoring general-limited jurisdiction even though the transactional

cases the transactional event or act giving rise to the controversy occurred outside California and had an effect in California. Other courts have addressed such cases solely in terms of sections 37 and 50 of the Restatement.¹²¹ This gives us in effect two independent and unrelated lines of authority to deal with the same kind of problem. That is hardly a desirable state of affairs.

a. Section 37

The jurisdictional base found in section 37 of the Restatement entitled "Causing Effect in State by Act or Omission Elsewhere"¹²² requires that the exercise of jurisdiction in such a case be reasonable.¹²³ Citation to *Hanson v. Denckla*¹²⁴ and *McGee v. International Life*¹²⁵ makes it clear that nothing more or less is meant by this than that the constitutional tests of "minimum contacts" be met. This is certainly in accord with the latest pronouncements of the United States Supreme Court.¹²⁶

In establishing a framework for the analysis of the constitutional question, the Restatement distinguishes between:

three possible situations: (1) the act was done with the intention of causing effects in the state; (2) the act, although not done with the intention of causing effects in the state, could reasonably have been expected to do so; and (3) the act was not done with the intention of causing effects in the state and could not reasonably have been expected to do so.¹²⁷

The first situation is equated to those in which the effects had resulted from an act done in the forum.¹²⁸ It is in the discussion of the factors underlying the second situation that the Comment

event occurred outside California are: *United Cal. Bank v. First Bank of Oak Park*, 98 Cal. App. 3d 439, 159 Cal. Rptr. 607 (1979); *In re Marriage of Lontos*, 89 Cal. App. 3d 61, 152 Cal. Rptr. 271 (1979); *Kaiser Aetna v. I.C. Deal*, 86 Cal. App. 3d 896, 150 Cal. Rptr. 615 (1978); *Hill v. Noble Drilling Corp.*, 61 Cal. App. 3d 258, 132 Cal. Rptr. 154 (1976); *Floyd J. Harkness Co. v. Amezcua*, 60 Cal. App. 3d 687, 131 Cal. Rptr. 667 (1976); *Abbott Power Corp. v. Overhead Electric Co.*, 60 Cal. App. 3d 272, 131 Cal. Rptr. 508 (1976); *Judd v. Superior Court*, 60 Cal. App. 3d 38, 131 Cal. Rptr. 246 (1976); *Flick v. Exxon Corp.* 58 Cal. App. 3d 212, 129 Cal. Rptr. 760 (1976); *Kulko v. Superior Court*, 19 Cal. 3d 514, 138 Cal. Rptr. 586 (1977) rev'd. *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Sibley v. Superior Court*, 16 Cal. 3d 442, 128 Cal. Rptr. 34 (1976). In these cases, the courts analyzed the facts in terms of the "jurisdictional base" which permits the assertion of jurisdiction if the act outside the state had an "effect" within the state. Comment, *supra* note 66, 472-74, 481 and the RESTATEMENT.

121. See note 120 *supra*.

122. RESTATEMENT, *supra* note 66, § 37.

123. *Id.*

124. 357 U.S. 235 (1958).

125. 355 U.S. 220 (1957). See e.g., RESTATEMENT, *supra* note 66, Reporter's Note.

126. See text accompanying note 45 *supra*.

127. See generally RESTATEMENT *supra* note 66, § 37, Comment a.

128. See *Abbott Power Corp. v. Overhead Electric Co.*, 60 Cal. App. 3d 272, 131 Cal. Rptr. 508 (1976).

and the Restatement focus on the foreign legal person's relationship to the forum:

The greater the defendant's relationship to the state, the greater is the likelihood that the state may exercise judicial jurisdiction over him as to causes of action arising from the effects of the act in the state. . . . So if the defendant does business in the state, or solicits business extensively in the state, or if a substantial quantity of goods manufactured by him are sold in the state, there is a greater likelihood that the state may exercise judicial jurisdiction over him as to causes of action arising from the effects in the state of an act done by him outside the state than if the defendant did not have this relationship to the state. This is so even though the defendant's relationship to the state is not related in any way to the act or to such of its effects in the state as are involved in the suit.¹²⁹

The last sentence must be considered in tandem with the Restatement's and the Comment's earlier statements that when "jurisdiction over an individual is based solely upon such act or omission [elsewhere], only a claim for relief arising from such act or omission may be asserted against the individual."¹³⁰ The defendant's relationship with the forum is fundamental to the decision whether the transactional event should be affiliated to the forum even though that relationship has no connection with the controversy sued upon. The existence of such a relationship is, however, a question separate from whether or not the transactional event actually caused the controversy which is being sued upon.

The importance of the defendant's relationship to the forum has been long recognized in California. As an example, the relationships created by such factors as solicitation of business or the sale of goods in the state is in substance the same as the economic activity which, according to *Buckeye Boiler*, would support the assertion of California jurisdiction over a foreign manufacturer whose goods had been sold in this state.¹³¹ The test of economic activity established in *Buckeye* goes to the question whether the foreign manufacturer could reasonably have expected to cause effects in California.¹³² This is indistinguishable from the second situation set forth in the cited comment of the

129. Comment, *supra* note 64, at 81; RESTATEMENT, *supra* note 66, § 37, Comment a.

130. *Id.*

131. 71 Cal. 2d at 901-02, 458 P.2d at 66, 80 Cal. Rptr. at 120.

132. "If the manufacturer sells its products in circumstances such that it knows or should reasonably anticipate that they will ultimately be resold in a particular state, it should be held to have purposefully availed itself of the market for its products in that state." *Id.* at 902, 458 P.2d at 64, 80 Cal. Rptr. at 120.

Restatement.¹³³ Thus, whether analysis is based on the Restatement or California decisional law, the relationship of the foreign defendant with California is of critical importance. It is, however, an issue separate and distinct from the question whether the event giving rise to the controversy is in fact causally connected with that controversy.

b. Section 37: The Alternative to General Jurisdiction

Now let us see how *Cornelison* could have been decided in terms of section 37 of the Restatement. The transactional event in *Cornelison* was a vehicular collision which occurred in Nevada.¹³⁴ Plaintiff, wife of the man killed in the accident, was a California resident. The defendant trucker was a resident and domiciliary of Nevada. In terms of section 37 of the Restatement, these facts set the stage for inquiring whether or not the foreign event had any effect in California. If yes, did the defendant intend that they have such an effect? If he did not so intend, was it reasonable or unreasonable to conclude that the event would have such an effect?¹³⁵

It was at this point that the defendant's relationship with California would have become relevant.¹³⁶ Note that the relationship need not have had any nexus with the cause of action. The nature and extent of that relationship would have been considered only to determine whether it was reasonable to affiliate the litigation to the forum. Here the court could have concluded that the defendant's frequent trips to California did in fact establish such a relationship as made it reasonable to affiliate the litigation to the forum.

Instead, the court examined the proposition whether the defendant, an interstate trucker, was subject to the general jurisdiction of California courts. It did so by extensive reference¹³⁷ to *Perkins v. Benquet Mining Co.*¹³⁸ and *Koninklijke L.M. v. Superior Court*.¹³⁹ Yet neither of these cases can be considered modern decisions on the subject of state court jurisdiction.¹⁴⁰ In fact, they

133. See text accompanying note 130 *supra*.

134. 16 Cal. 3d at 146, 545 P.2d at 267, 127 Cal. Rptr. at 355.

135. See text accompanying note 127 *supra*.

136. See text accompanying note 129 *supra*.

137. 16 Cal. 3d at 148-49, 545 P.2d at 266-68, 127 Cal. Rptr. at 354-56.

138. 342 U.S. 437 (1962).

139. 107 Cal. App. 2d 495, 237 P.2d 297 (1951).

140. As we have seen, *Koninklijke* simply ignored *International Shoe* and decided the question of jurisdiction in terms of corporate presence. Even assuming that presence in and of itself was an adequate base for the assertion of jurisdiction over a foreign corporation and this assumption is much in doubt, see note 26 *supra*, it was not a tenable theory after *International Shoe*. See text accompanying notes 18-20 *supra*. *Perkins* has been the subject of scholarly and judicial criti-

should have been replaced in the *Cornelison* decision itself by section 37 of the Restatement.

The most rigorous and intellectually honest application of the theories of general and limited jurisdiction appears in *Henderson v. Superior Court*.¹⁴¹ It is in its very fidelity to *Cornelison* that *Henderson* demonstrates the shortcomings of those theories.

In *Henderson*, the plaintiff was seeking to take advantage of the *Marvin v. Marvin*¹⁴² decision by suing the defendant, a domiciliary and resident of Florida, for breach of an agreement to cohabit which had been entered into and performed, prior to its breach, in Florida. The California court of appeal noted explicitly that the plaintiff's cause of action was related "in its entirety to an agreement made, activities performed, obligations incurred, and services rendered as a companion and homemaker during an extramarital and nonmarital relationship that took place in Florida."¹⁴³ Thus, the factual predicate for an analysis in light of section 37 of the Restatement and the parallel section of the Comment,¹⁴⁴ was clearly established by the court itself.

Nonetheless, *Henderson* completely ignored section 37 of the Restatement. Instead, guided by *Cornelison*, the decision first tackled the issue of whether or not the defendant's activities in California were extensive enough to warrant the imposition of general jurisdiction. Since the defendant "never came near the state" but had simply allowed the plaintiff to race horses owned by him at various events in California for a few months,¹⁴⁵ this issue was easily resolved in the negative.¹⁴⁶ It is, in fact, resolved by courts applying *Cornelison* so easily and inevitably in favor of the conclusion that general jurisdiction cannot be asserted¹⁴⁷ that it seems somewhat farcical to even pose the question. Of course, if the court had inquired if the activities in Florida had had an effect in California it would have set its feet in the path defined by section 37 and analyzed whether the litigation could be affiliated to the forum. That the result would have been probably the

cism, see notes 27 and 28 *supra*, and the soundness of the policies implicated in the decision are subject to question. See section II.C.3 *supra*.

141. 77 Cal. App. 3d 583, 142 Cal. Rptr. 478 (1978).

142. 18 Cal. 3d 660, 134 Cal. Rptr. 815, 557 P.2d 106 (1977).

143. 77 Cal. App. 3d at 589, 142 Cal. Rptr. at 484 (1978).

144. Comment, *supra* note 64, at 79.

145. 77 Cal. App. 3d 583, 142 Cal. Rptr. 478 (1978).

146. *Id.*

147. See section II.C.4 of the text *supra*.

same¹⁴⁸ does not detract from the sterility of the approach dictated to the *Henderson* court by *Cornelison*.

D. Limited Jurisdiction: The Misplaced Focus

In addition to elevating *Koninklijke L.M. v. Superior Court* to a theory of state court jurisdiction, *Cornelison* also perpetuated a fateful slip in jurisdictional analysis attributable at least in part to *Buckeye Boiler*. This occurred when, after rejecting general jurisdiction over the defendant, the court went on to consider whether or not the "plaintiff's cause of action . . . arises out of or has a substantial connection with a business relationship defendant has purposefully established in California."¹⁴⁹

This formulation is traceable to *Buckeye Boiler* where the court, after noting that presence could confer jurisdiction over causes of action unrelated to the defendant's activity in the forum, concluded that in other instances "the particular cause of action must arise out of or be connected with the defendant's forum-related activity."¹⁵⁰

Yet evolving theories of state court jurisdiction have made it clear that jurisdiction may be asserted over a nonresident defendant even when that defendant has not engaged in any forum-based activities. Jurisdiction may be asserted when the nonresident defendant has done an act outside the jurisdiction which has had an effect in the jurisdiction.¹⁵¹ While it is possible to read *Cornelison* expansively to include as forum-based activities the effects of an act performed outside the state, not a single decision of the courts of appeal or the California Supreme Court has done so. Instead, the appellate courts, in applying *Cornelison*, have emphasized the requirement that in all instances where limited jurisdiction is to be asserted, the cause of action must arise out of an act or transaction consummated in the forum.¹⁵² Thus, Califor-

148. Nothing in the facts suggests that at the time the parties entered into the cohabitation agreement in Florida they intended, or could reasonably be thought to have intended, that the agreement have an effect in California. As a matter of fact, the agreement, and performance thereunder, was terminated when the parties separated prior to the plaintiff's move to California. This then would have been the third type of situation envisaged by the Restatement, see text accompanying note 126 *supra*, which does not warrant the assertion of state court jurisdiction. RESTATEMENT, *supra* note 66, § 37 Comment a.

149. 16 Cal. 3d at 149, 545 P.2d at 270, 127 Cal. Rptr. at 359.

150. 71 Cal. 2d at 899, 458 P.2d at 63, 80 Cal. Rptr. at 119.

151. See text accompanying notes 122-29 *supra*.

152. *Star Aviation, Inc. v. Superior Court*, 73 Cal. App.3d 807, 811, 141 Cal. Rptr. 13, 17: "[L]imited jurisdiction essentially turns upon three factors: (1) whether the cause of action 'arises from' or is otherwise 'connected with' defendant's forum-related activities; (2) the burdens on the parties in trying the action in the forum state; and (3) the interest of the forum state in assuming jurisdiction [citing

nia's limited jurisdiction must be understood to refer to those instances where the foreign defendant has done an act or done business in the jurisdiction. In other words, limited jurisdiction is in reality nothing but the alter ego of two bases of jurisdiction recognized by the Comment and the Restatement: doing an act, and doing business, in the forum state.¹⁵³

If limited jurisdiction is viewed simply as a surrogate for other bases of jurisdiction having to do with the defendant's activities in the forum, then it would be better to analyze the facts by noting that the act or business done in the forum is to be affiliated *to the forum* and not to those activities of the defendant which tend to establish a relationship between the defendant and the forum.¹⁵⁴ However, since it is only this writer who has equated limited jurisdiction to the doing of an act or business in California, it is well to ask whether limited jurisdiction, as formulated by the state supreme court, is a logical concept.¹⁵⁵

We begin and end by noting that the question which is fundamental to all jurisdictional inquiries is whether or not there were such affiliations *to the forum* as would warrant the assertion of jurisdiction *by that forum*.¹⁵⁶ Why then should we ever seek to affiliate the controversy to the *defendant's activities* in the forum? The only possible reason to ask this question is to see whether there is a causal relationship between the acts done in the forum, and the controversy generated by those acts. However, given

Cornelison]." It was the dissenting opinion in *Cornelison* which so handily summarized the lengthy formulation of limited jurisdiction by the majority into the foregoing three separate elements. For the same faithful reliance on the *Cornelison* nexus requirement in *Henderson v. Superior Court*, 77 Cal. App. 3d 583, 142 Cal. Rptr. 478 (1978), see text accompanying notes 167-69 *infra*. Three other decisions follow the nexus rule without referring to limited jurisdiction by that name when generally describing the dichotomy between the two types of jurisdiction. *Sanders v. Arrow Mfg. Co.*, 95 Cal. App. 3d 779, 157 Cal. Rptr. 252 (1979); *Mathes v. National Utility Helicopters Ltd.*, 68 Cal. App. 3d 182, 137 Cal. Rptr. 104 (1977); *Sokane Eye Clinic, Inc. v. Superior Court*, 63 Cal. App. 3d 548, 133 Cal. Rptr. 838 (1976).

153. Comment, *supra* note 64, at 76-79, 88-89; RESTATEMENT, *supra* note 66, §§ 35, 36 (individuals) and §§ 48, 49 (corporations).

154. See text accompanying notes 156 and 157 *infra*. As we have seen, the relationship between the defendant and forum bears on the question whether it is reasonable, i.e., constitutional to affiliate the controversy to the forum. See text accompanying notes 128-33 *supra*.

155. See section I.B. of the text *supra*.

156. See von Mehren and Trautman, *supra* note 14, at 1136; see generally Smit, *Common and Civil Law Rules of In Personam Adjudicatory Authority: An Analysis of Underlying Policies*, 21 INT'L J. COMP. L.Q. 335 (1972).

such a causal connection between the defendant's activities and the cause of action, this still leaves open for decision whether it is constitutionally permissible to affiliate the controversy to the forum and to assert jurisdiction over the foreign defendant. As we have seen the ultimate question is decided by the defendant's relationship to the *forum* as opposed to the defendant's *activities* within the forum.¹⁵⁷ Put another way, it is surely wrong to argue that simply because there is a causal connection between the transactional event and the controversy, the forum may assert its judicial jurisdiction.

Again, a look at the facts in *Cornelison*, and at the court's disposition of those facts, will illustrate this point. After rejecting general jurisdiction as inapplicable, the court turned to consider the "relation between defendant's activities in California and the cause of action alleged by Plaintiff."¹⁵⁸ Such a relationship was established, in the court's opinion, by the defendant's "continuous course of conduct" in driving to and through California.¹⁵⁹ The accident arose out of driving the truck which had been "the very activity which was the essential basis of defendant's contacts with this state."¹⁶⁰ There was therefore "a substantial nexus between plaintiff's cause of action and defendant's activities in California."¹⁶¹

This chain of reasoning,¹⁶² which sparked the dissenting opinion,¹⁶³ omits the important point that the cause of action had to be affiliated *to the forum*, and not to the defendant's *activities* in the forum. The defendant's activity at the time and place of the accident is significant only in the sense that it did or did not give rise to the cause of action. If it did not, the defendant may have a good defense on the merits¹⁶⁴ but that of course does not go to the

157. See text accompanying notes 128-33 *supra*.

158. 16 Cal. 3d at 149, 545 P.2d at 270, 127 Cal. Rptr. at 358.

159. *Id.*

160. *Id.*

161. *Id.*

162. The conclusion that the accident arose out of defendant's activity in the forum confuses causality with relationship. The accident was *caused* in significant part by the defendant having driven his truck to the point of impact. To the extent that the defendant's acts *caused* the accident, those acts were all done outside California. Of course, the defendant had a business relationship with and in California for some time. His drive on the day of the accident was clearly *related* to that business relationship.

163. "The only conceivable connection between plaintiff's cause of action and defendant's activity inside California is that defendant was rolling toward (and plaintiff away from) its border." 16 Cal. 3d at 153, 545 P.2d at 270, 127 Cal. Rptr. at 358 (Clark J. dissenting).

164. Thus, the defendant may not have been at the scene of the accident at all or he may not have been culpable in the sense of having proximately caused the accident even though he was present.

issue of jurisdiction. If the activity did give rise to the cause of action, we can then inquire whether the litigation should be affiliated to the forum. The defendant's activities on past occasions are relevant, as we have seen, in the determination whether his relationship to California is such as to justify the assertion of jurisdiction.¹⁶⁵ However, those activities do not have to be causally connected to the litigation.¹⁶⁶

Again, *Henderson v. Superior Court*¹⁶⁷ illustrates the point. After rejecting general jurisdiction, *Henderson* turned to inquire whether limited jurisdiction could be imposed. This, the court noted, depended on whether or not "a substantial nexus exists between plaintiff's cause of action and defendant's activities in the state."¹⁶⁸ This turned on whether the controversy could be factually linked to the defendant's California based activities. Finding that defendant's only California based activity had been to allow plaintiff to race his horses *after* their cohabitation agreement had been terminated, the court concluded that the controversy was unrelated to the defendant's California activities and the court declined to approve the assertion of jurisdiction for that reason.¹⁶⁹

All that this finding settled, however, was that the acts or business done in California did not give rise to the controversy sued on. Put another way, the inquiry and the conclusion went only to the causal connection or the lack of it. It did not settle whether the controversy could be affiliated to the California forum on jurisdictional bases other than those predicated on the foreign defendant's activities in California. As an example, had the defendant done an act in Florida which had an effect in California? This jurisdictional base does not require that the controversy arise from an act done in the state.¹⁷⁰ Of course, as we have seen, the defendant's forum-related activities will have a bearing on whether it is reasonable to affiliate the controversy to the forum,¹⁷¹ but it is not necessary that these activities be related causally to the controversy sued upon. As we have already noted, the *Henderson* court had clearly found that the series of transac-

165. See text accompanying note 129 *supra*.

166. *Id.*

167. 77 Cal. App. 3d 583, 142 Cal. Rptr. 478 (1978).

168. *Id.* at 590, 142 Cal. Rptr. at 482.

169. *Id.* at 592, 142 Cal. Rptr. at 483.

170. See notes 118 and 119 *supra*.

171. See text accompanying notes 129-34 *supra*.

tions which gave rise to the litigation had occurred in Florida¹⁷² but, unfortunately, the court followed the path prescribed in *Cornelison* rather than section 37 of the Restatement.

However, the case which most clearly demonstrates the error of seeking to establish a nexus between the cause of action and the defendant's activity in the forum is *Spokane Eye Clinic, Inc. v. Superior Court*¹⁷³ where the court of appeal held that the referral of some of its patients to California by an eye clinic in the State of Washington did not confer limited jurisdiction on California courts since there was no nexus between the controversy and the defendant's acts in California.¹⁷⁴ There could hardly have been any other result since the Washington clinic had not done or performed any acts or business in California.¹⁷⁵ In other words, there could be no nexus between the controversy and the defendant's activities for the very good reason that no activities had taken place in California.

Understandably, the court seems to have been dissatisfied with this conclusion. After all, an act had occurred outside California which arguably had had an effect in this state. Thus, after analyzing the facts before it in terms of the *Cornelison* general and limited jurisdiction approach and finding both inapplicable,¹⁷⁶ the court turned without explanation to "[another] basis for jurisdiction" which "arises when a defendant has caused an 'effect' in this state by an act or omission which occurs elsewhere."¹⁷⁷ This was arguably the only theory which fit the facts. It is a theory, however, which is excluded by the nexus requirement of *Cornelison*'s limited jurisdiction.

It was, of course, unnecessary to flounder around with general-limited jurisdiction before turning to that "other" basis of jurisdiction. Finding no acts or business done in California, the court could have easily turned to the other basis of jurisdiction without a single reference to limited or general jurisdiction. As it was, this court, like some others,¹⁷⁸ left the reader with the impression that limited jurisdiction was a jurisdictional base on a par with other bases enumerated by the Comment. This is true only if limited jurisdiction boils down to doing business or doing an act in California.

This brings one to a final observation about limited jurisdiction.

172. See text accompanying note 144 *supra*.

173. 63 Cal. App. 3d 548, 133 Cal. Rptr. 838 (1976).

174. *Id.* at 553, 133 Cal. Rptr. at 840.

175. *Id.*

176. *Id.* at 552, 553, 133 Cal. Rptr. at 839, 840.

177. *Id.* at 554, 133 Cal. Rptr. at 841.

178. *Inselberg v. Inselberg*, 56 Cal. App. 3d 484, 128 Cal. Rptr. 578 (1976).

If limited jurisdiction is the alter ego of "doing business" and "doing an act" bases of jurisdiction, what need is there for this term? Why not be satisfied with the Restatement's descriptive and accurate formulations? The adjective "limited" is accurate only in the sense that jurisdiction based on doing business in the forum is limited to the cause of action arising from that business. But as we have seen,¹⁷⁹ that means very little in jurisdictional analysis.

There is little doubt about the enduring fidelity of the California courts of appeal to theories of general-limited jurisdiction.¹⁸⁰ Whether or not its popularity is explained by our affection for the sonorous phrase or our need for the reassuring touch of a "theory" is hard to say. The fact remains that general-limited jurisdiction is not an all-embracing theory of state court jurisdiction. If anything, it is a resurrection of *Koninklijke L.M. v. Superior Court*¹⁸¹ and *Perkins v. Benquet Consolidated Mining Co.*,¹⁸² and an alternative label for the "doing business" or "doing an act" bases of jurisdiction. As such, it provides a remarkably cramped, if not outright erroneous, theory of state court jurisdiction.

III. THE ALTERNATIVE TO GENERAL JURISDICTION

When the transactional event has occurred outside California, general-limited jurisdiction as spawned by *Buckeye Boiler* and

179. See text accompanying notes 162-66 *supra*.

180. *Sanders v. CEG Corp.*, 95 Cal. App. 3d 779, 157 Cal. Rptr. 252 (1979), sets forth the theory of general-limited jurisdiction in extended detail without, however, specifically referring to general and limited jurisdiction:

A distinction is made between a cause of action arising out of or in connection with a non-resident defendant's forum-related economic activity and a cause of action entirely distinct from that activity. When the cause of action *arises out of the forum-related economic activity*, the forum state will entertain jurisdiction over the nonresident defendant. An isolated act of economic activity, such as the making and performance of a contract in the forum state, may be sufficient to accord the forum state jurisdiction over the defendant when the cause of action is related to that isolated act of economic activity Where, however, the cause of action is *entirely distinct from the forum-related economic activity*, the defendant cannot be sued in the forum state unless that economic activity has reached ' . . . such extensive or wide-ranging proportions as to make the defendant sufficiently "present" in the forum state . . . ' to support jurisdiction over him. . . .

These familiar principles have been recently reiterated by the court of appeal in *Goodyear Tire v. Unochrome*, 104 Cal. App. 3d 518, 524-26, 163 Cal. Rptr. 758, 761 (1980). There have been five decisions in 1980 alone which refer to general and limited jurisdiction. See note 34 *supra*.

181. 107 Cal. App. 2d 495, 237 P.2d 297 (1951).

182. 342 U.S. 437 (1962).

perpetuated by *Cornelison* should be aborted in favor of a line of decisions of which *Titus v. Superior Court*¹⁸³ and *Quattrone v. Superior Court*¹⁸⁴ are exemplary.

In *Titus*, the divorced father living in Massachusetts had sent his children to his ex-wife, then living in California, for the summer. However, before the children were scheduled to return to their father, the ex-wife filed an action in California seeking to establish the Massachusetts decree of divorce as a California judgment and further seeking a modification of that judgment awarding her custody of the children.¹⁸⁵ The court considered whether or not the father's act of sending his children to California for the summer fell within the scope of section 37 of the Restatement.

The court adopted the Restatement's advice and first considered if the father had intended that his act of sending the children to their mother have an effect in California. After concluding he had had no such intention,¹⁸⁶ the court inquired if it was reasonable to expect, at the time he sent the children, that his action would have an effect in this state. Assuming, but not deciding, that the answer to this was in the affirmative, the court carefully analyzed whether or not the father's relationship to California was such as to render the assertion of jurisdiction reasonable. Finding that such jurisdiction was not reasonable, the court concluded that this basis of jurisdiction could not be relied upon by the plaintiff.¹⁸⁷

What if general-limited jurisdiction had been applied in *Titus* ? The court undoubtedly would have concluded that general jurisdiction did not exist over the defendant.¹⁸⁸ This follows because there were simply no facts upon which general jurisdiction could have been based; the defendant had no contacts with California other than sending his children there. Thus, the court would have been left with limited jurisdiction as the alternative and here the inquiry would have been whether there was a nexus between the

183. 23 Cal. App. 3d 792, 100 Cal. Rptr. 477 (1972).

184. 44 Cal. App. 3d 296, 118 Cal. Rptr. 548 (1975).

185. 23 Cal. App. 3d 792, 795-96, 100 Cal. Rptr. 477, 480-81 (1975).

186. *Id.* at 802, 100 Cal. Rptr. at 485.

187. *Id.* at 804-05, 100 Cal. Rptr. at 487.

188. Lest it be thought that general jurisdiction has not been applied in family law cases, consider *Inselberg v. Inselberg*, 56 Cal. App. 3d 484, 128 Cal. Rptr. 578 (1976), an action involving the alleged enticement of a child from her natural father. Here the court held that general jurisdiction did not exist, 56 Cal. App. 3d at 490, 128 Cal. Rptr. at 581, and then did as the court in *Spokane Eye Clinic, Inc. v. Superior Court*, 63 Cal. App. 3d 548, 133 Cal. Rptr. 838 (1976). See text accompanying notes 173-77 *supra*. It turned without explanation to section 37 of the Restatement but rejected it as a basis of jurisdiction. 56 Cal. App. 3d at 490-91, 128 Cal. Rptr. at 582.

controversy and the defendant's activities in California. As there were clearly no activities in California, the court would have had to follow the *Henderson*¹⁸⁹ court and abort further analysis at that point. In the alternative, the court would have taken the *Spokane Eye Clinic*¹⁹⁰ option and finally turn to section 37 of the Restatement. In other words, after a great deal of useless talk about general and limited jurisdiction the court would have decided *Titus* on the very basis on which that decision actually rests.

*Quattrone v. Superior Court*¹⁹¹ is another decision admirable in its analysis and application of section 37 of the Restatement. Here the foreign defendant was an individual who had participated in the preparation of misleading financial reports generated by Crown Aluminum Industries Corp., a subsidiary acquired by plaintiff Whittaker Corporation in 1967. Whittaker was a California corporation with its principal office in Los Angeles; Quattrone, the foreign defendant, had worked for Crown from 1963 to 1972 in Pennsylvania and had lived in that state. At the time of the action, he was working in Pennsylvania where he was a registered voter. He denied doing business in California or receiving any income from California corporations or businesses.¹⁹² The acts surrounding the preparation of the financial reports, which had caused Whittaker to issue reserve shares—including some to Quattrone—when none should have been issued, took place in Pennsylvania from 1968 to 1972.¹⁹³ True to section 37 and the analytical scheme there suggested, the *Quattrone* court first inquired whether or not these acts outside California were intended to have an effect in the state. Answering this in the affirmative,¹⁹⁴ the court then examined whether the exercise of jurisdiction over *Quattrone* was reasonable or constitutional.¹⁹⁵ This depended on an analysis of the nature of the effect caused in this state by Quattrone's acts.¹⁹⁶ The court concluded that when the effect, i.e., the issuance of reserve shares, was of a special nature subjected to regulation by the forum state or when, by his acts, the foreign defendant had invoked the protection of the forum's laws, it was

189. 77 Cal. App. 3d 583, 142 Cal. Rptr. 478.

190. 63 Cal. App. 3d 548, 133 Cal. Rptr. 838.

191. 44 Cal. App. 3d 296, 118 Cal. Rptr. 548.

192. *Id.* at 299, 118 Cal. Rptr. at 549.

193. *Id.* at 300, 118 Cal. Rptr. at 550.

194. *Id.* at 303-04, 118 Cal. Rptr. at 552-53.

195. *Id.* at 305, 118 Cal. Rptr. at 553.

196. *Id.* at 306, 118 Cal. Rptr. at 554.

reasonable to assert jurisdiction. The court found that California had subjected the issuance of shares to special regulation and that, by electing to participate in the program allowing the issuance of the reserve shares, Quattrone had invoked the benefits of California law. The court held that it was reasonable to assert California jurisdiction over Quattrone.¹⁹⁷

It is obvious that an analysis of the facts in terms of general-limited jurisdiction would have been as unsatisfactory in *Quattrone* as in *Titus*. In fact, the acuity of the analysis in *Quattrone* which probed the very nature of the effect caused in California, demonstrates the blunderbuss quality of general-limited jurisdiction as an analytical tool. Had the court been forced to analyze the facts in terms of limited jurisdiction, general jurisdiction being typically inapplicable, it would have had to consider the issue whether there was a nexus between Quattrone's activities in California and the controversy. If the court found no such nexus, there being no activities in California, it would never have advanced to the analysis of the effect of Quattrone's Pennsylvania based activities.¹⁹⁸

Although a more extended analysis of *Quattrone* is beyond the scope of this paper, it should be noted that *Quattrone* was approved by the California Supreme Court in *Sibley v. Superior Court*,¹⁹⁹ a case decided a month after *Cornelison*. *Sibley*, where the transactional events occurred outside California,²⁰⁰ disposed of the case without a single reference to general or limited jurisdiction and with only two general, and passing, references to *Cornelison*.²⁰¹ The *Sibley* Court analyzed the problem, which was conceptually the same as that in *Cornelison*, in terms of section 37, and followed the "effects" analysis in *Quattrone*.²⁰² If *Cornelison* really announced the equivalent of a general theory of state court jurisdiction, it is obscure why the supreme court refused to refer to it a month after its birth. Of course, in all likelihood the California Supreme Court had no such express intention. Yet, it is undeniable that *Cornelison* has left the courts of appeal and other inferior courts struggling with a most awkward and substantially erroneous doctrine.

197. *Id.* at 306-07, 118 Cal. Rptr. at 354-55.

198. The court's thorough analysis of the considerations which qualify as an effect under section 37 of the Restatement is probably the main contribution of the *Quattrone* opinion to California law.

199. 16 Cal. 3d 442, 546 P.2d 332, 128 Cal. Rptr. 34 (1976).

200. *Id.* at 444-45, 546 P.2d at 324, 128 Cal. Rptr. at 36.

201. *Id.* at 445, 448, 546 P.2d at 324, 326, 128 Cal. Rptr. at 36, 38. See note 3 *supra*.

202. 16 Cal. 3d at 445-46, 546 P.2d at 324-25, 128 Cal. Rptr. at 36-37.

CONCLUSION

If general jurisdiction is a concept which embraces or describes all those situations where jurisdiction is asserted because of the defendant's affiliation to the forum, it should ideally focus attention on the question of whether or not the particular relationship with the forum (domicile, incorporation, doing business) reasonably supports the assertion of jurisdiction over all causes of action against that defendant.²⁰³

However, if we are going to retain general jurisdiction as defined in *Cornelison*, we should understand it to be nothing more than a resurrection of *Koninklijke L.M. v. Superior Court*²⁰⁴ and of *Perkins v. Benquet Consolidated Mining Co.*²⁰⁵ These decisions, however, are neither modern nor useful. They analyze jurisdictional questions by determining whether the defendant is present in the state instead of addressing the seminal question whether the defendant's relationship to the forum warrants the assertion of jurisdiction.

Despite *Cornelison*, the main focus in jurisdictional questions must follow the requirement set down in *Shaffer*: jurisdiction must be evaluated in terms of the relationship between the litigation, the forum and the defendant.

203. Credit for this theory must be, of course, unreservedly given to Professors von Mehren and Trautman.

204. 107 Cal. App. 495, 237 P.2d 297 (1951).

205. 342 U.S. 437 (1962).

