9-1-1994

Connecting Defendant's Contact and Plaintiff's Claim: The Doctrine of Specific Jurisdiction and the Matrimonial Domicile Provisions of the Georgia Long-Arm Statute

E. R. Lanier

Follow this and additional works at: https://readingroom.law.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation

Available at: https://readingroom.law.gsu.edu/gsulr/vol11/iss2/4

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.
CONNECTING DEFENDANT’S CONTACT AND PLAINTIFF’S CLAIM: THE DOCTRINE OF SPECIFIC JURISDICTION AND THE MATRIMONIAL DOMICILE PROVISIONS OF THE GEORGIA LONG-ARM STATUTE

E. R. Lanier†

INTRODUCTION

A full decade has now gone by since the Georgia General Assembly amended the long-arm statute to provide a statutory basis for the assertion of matrimonial and other family-related claims against nonresidents of this state. In that relatively brief period of time, the appellate courts of Georgia have, through a dozen or more decisions construing and applying the statute, provided considerable guidance and direction to the Georgia trial bench and bar on the use and application of that legislative extension of the extraterritorial personal jurisdiction of our courts. It comes as no surprise, however—given the uncertainty and comparative sophistication that characterizes this branch of procedural and constitutional law—that issues as to the interpretation of the statute still remain and, with the passage of time, new questions as to its use have emerged. One such debate, imbedded in the very terms of the statute and exacerbated by some of the more recent decisions of the Georgia Supreme Court and Georgia Court of Appeals, centers on the degree of “connexity”¹ required by Georgia law between the claim of the plaintiff advanced under the long-arm statute and the nonresident defendant’s contact with this state sufficient to

† Of the Monticello Bar. Professor of Law, Georgia State University. A.B., University of North Carolina at Chapel Hill; M.Sc., Georgia State University; J.D., Emory University. The author is grateful to Mr. Charles Kelley of the Gainesville Bar for his editorial assistance in the preparation of this Essay.

¹ The term is conceded a bit awkward and perhaps pedantic. It is, moreover, a generally unfamiliar one, at least within the context of Georgia case law. Nonetheless, it is a current one in other states and is a handy way to abbreviate the constitutional and, when applicable, statutory necessity of nexus between plaintiff’s claim and nonresident defendant’s contact with the forum state in the assertion of state court judicial power against parties who cannot be found and served within the territorial boundaries of the forum.

303
support a Georgia court’s exercise of extraterritorial personal jurisdiction under subsection (5) of Code section 9-10-91.\(^2\) That the plaintiff’s claim and the defendant’s forum affiliation must bear a certain relationship—whether of fact, of law, or of a mixed character—is a statutory necessity that has its historical and doctrinal roots in some of the more familiar chapters of our constitutional and procedural past.

I. **Specific Jurisdiction: The Requirement of Connection Between Plaintiff’s Claim and Defendant’s Contact**

In *International Shoe Co. v. Washington*,\(^3\) the United States Supreme Court relaxed long-standing territorial restrictions on the exercise of state court in personam power over defendants not served with civil process within the political boundaries of the state. These territorial restrictions had been the central core of jurisdictional law since the Court’s decision in *Pennoyer v. Neff*\(^4\) almost seven decades earlier. The Court in *International Shoe* approved the assertion of such power against out-of-state parties whenever not inconsistent with “traditional notions of fair play and substantial justice.”\(^5\) In doing so, the Court approved the exercise of extraterritorial power over a defendant not found and served in the state if that defendant had generated an affiliation with the forum state of such a character and nature that it would not be *unfair* for the defendant to respond to an action there. Fairness was, in the conceptual framework of *International Shoe* as it was handed down in 1945 and as reiterated by the Court since that time, the constitutional touchstone of valid assertions of state court judicial authority against parties not found within the state.

*Pennoyer*, at its most basic level, had created a jurisdictional measuring rod with but a single unit of measure. It recognized a single primary factor affiliating defendant with the forum, virtually to the exclusion of all others,\(^6\) as constitutionally

\(^2\) O.C.G.A. § 9-10-91 (Supp. 1994) (Georgia’s long-arm statute).

\(^3\) 326 U.S. 310 (1945).


\(^5\) *International Shoe*, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

\(^6\) To be sure, *Pennoyer* countenanced a variety of other factors as being adequate to vest a state court with jurisdictional power over one not within the borders of its sovereign. These factors include consent and waiver on the part of the defendant, the enjoyment by the defendant of a status created by the laws of the forum, and the
sufficient to subject a defendant to the power of the local court: physical presence at the time of the initiation of the suit through service of process. It held that due process required the physical presence of the defendant in the jurisdiction at the time of service as the single legitimating element for the exercise of state power that would render the use of that power "fair" in the constitutional sense.\(^7\)

The rule of *International Shoe* left intact many of the basic assumptions which undergirded *Pennoyer*, especially the function of the Fourteenth Amendment as a fundamental limitation on the judicial power of the state. The new jurisdictional standard, however, radically expanded the catalogue of constitutionally permissible affiliating factors that would legitimate the use of state power over those outside the political boundaries of the state. Under the new rule, said the Court, the monopoly of physical presence as a legitimating link between defendant and forum would be irrevocably broken; all that would henceforth be required was that the use of such power not be offensive to the Fourteenth Amendment.\(^8\) By definition, there would be no offense to the Fourteenth Amendment and that Amendment would not limit state judicial power when the defendant had generated "minimum contacts" with the forum.\(^9\)

The Court's employment of the indeterminate and undefined standard of "minimum" as a description of the requisite degree of "contact" or forum affiliation by the defendant—while laudable from the point of view of introducing a modicum of necessary flexibility into the new rule—led inexorably to the Court's

---

7. *Id.* at 733-34. There was, of course, no novelty in the proposition that one within the political boundaries of the state was subject to service of process in a civil action while there, a tenet long recognized in American jurisprudence even in 1877. *See*, e.g., *Dearing v. Bank of Charleston*, 5 Ga. 497, 515 (1848); *see also* *Burnham v. Superior Court*, 495 U.S. 604, 610-16 (1990). More innovative was the Court's enlistment of the Due Process Clause of the "new" Fourteenth Amendment in support of the existing principle and in support of the rule that a judgment unenforceable in a sister state for lack of proper personal jurisdiction—measured by the sole test of presence in the state at the time of service of process—was not, by operation of the Clause, entitled to enforcement even in the state rendering it. *Pennoyer*, 95 U.S. at 733.


9. *Id.* at 316-17.
consideration of the quantitative and qualitative nature of the contact that would be accepted as minimum, or constitutionally sufficient, under the new limiting test. The Court disclaimed any attempt at concrete precision in this respect:

It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.¹⁰

From a purely doctrinal perspective, one may well imagine that the Court in 1945, having just overturned the hoary territorial standard of Pennoyer, might have been content to leave the statement of the new jurisdictional rule to an unadorned assessment of “the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.”¹¹ The demands of the administration of an active judicial system, however, coupled with the need of the federal bench and bar for guidance in this critical respect, pressed the Court to provide more substance and direction in its definition of the novel standard of minimum contacts. The Court did so in terms that spawned the jurisdictional dichotomy of “general” and “specific” personal jurisdiction and, in addition, set the parameters of the debate regarding the required degree of connexity with regard to the latter category in modern procedural law. The Court reasoned that general jurisdiction was appropriate:

[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that

---

¹⁰ Id. at 319 (citations omitted); cf. Pennoyer, 95 U.S. 714 (requiring physical presence at the time suit is initiated through service of process).
¹¹ International Shoe, 326 U.S. at 319.
privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.\textsuperscript{12}

The due process significance of the relation between plaintiff's claim and the nonresident's contact with the forum state was also, in the view of the Court, a factor that had induced earlier courts to sustain personal jurisdiction over corporate defendants on the basis of "presence" under the rule of Pennoyer v. Neff:\textsuperscript{13}

"Presence" in the state in this sense has never been doubted when the activities of the corporation there [in the forum state] have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.\textsuperscript{13}

In broad terms, then, the Court envisaged that minimum contacts sufficient to pass muster under the constitutional limitation could manifest themselves in at least two different ways. First, the defendant could have such numerous and pervasive relations with the forum state that it would be fair to call on the defendant to answer a lawsuit there, whether the claims advanced in that action were somehow related to the defendant's in-forum activities or not.\textsuperscript{14}

\textsuperscript{12} Id. at 319 (emphasis added).
\textsuperscript{13} Id. at 317 (emphasis added) (citations omitted).
\textsuperscript{14} Writing of decisional law handed down under the rule of Pennoyer, the Court observed:

While it has been held, in cases on which appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a
Alternatively, it would be fair (and, hence, a satisfaction of the minimum contacts limitation on state court authority) to require a defendant to respond in the forum even if contacts with it were few, if there was a relation between the plaintiff’s claims and the defendant’s in-forum contact.15

The latter form of extraterritorial state court personal jurisdiction has been labeled in the subsequent literature “specific jurisdiction,” and the former “general jurisdiction.”16

The key feature in the doctrine of specific jurisdiction as a constitutional boundary to state court power, then, is the necessity of nexus between the plaintiff’s claim and the defendant’s contact with the forum state. This requirement, given

nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.

Id. at 318 (citations omitted). The intent of the Court that this rule was to extend into the new jurisdictional era governed by its principle of minimum contacts was clear. Id.

15. See id. at 319. The Court dismissed summarily a third theoretical possibility, that a defendant could be amenable to personal jurisdiction in a forum with which it had no contacts. Id.


[These terms have become the touchstones of contemporary personal jurisdiction analysis.

The terms were coined in 1965 to help courts break free of the constraints that the traditional jurisdiction model imposed on the development of jurisdiction theory. Although states had markedly expanded their adjudicatory jurisdiction in the past century, jurisdiction theory had not kept up with these advances. Professors Arthur von Mehren and Donald Trautman believed that the traditional jurisdiction categories—in personam, in rem, and quasi in rem—obscured the nature of this jurisdictional expansion: American courts were recognizing the fairness of exercising jurisdiction over particular disputes based on the relationship between the dispute and the defendant’s forum activities. To clarify this development, they suggested that courts think in terms of two categories of adjudicatory jurisdiction, “general” and “specific.” If a court asserted jurisdiction based on the affiliations between the forum and one of the parties without regard to the nature of the dispute, it was exercising general jurisdiction. If, on the other hand, a court asserted jurisdiction based on affiliations between the forum and the controversy, as was usually the case in the twentieth century, it was exercising specific jurisdiction.

Lanier: Connecting Defendant's Contact and Plaintiff's Claim: The Doctrin

its origins in constitutional mandates of due process, is more than simply an analytical tool; it amounts to a constitutional imperative.

The concept of specific jurisdiction has its doctrinal origins in federal appellate opinions decided under the Fourteenth Amendment; that is, the concept is most at home as an elaboration of the constitutional limits placed on state court power under the Due Process Clause of that Amendment. Used in this fashion, specific jurisdiction is a way of describing a negative limitation on state courts. However, as state legislatures adopted statutes authorizing their courts to take advantage of the reduced limitations on their powers represented by the shift from the Pennoyer territorial limit to the more flexible outer boundary represented by the minimum contacts test of International Shoe, it was natural for state legislatures to fashion affirmative grants of authority to their courts in general terms conforming to the known limitations imposed by federal constitutional law. Hence, many state statutes by their very terms authorized the courts to assert extraterritorial power only with respect to claims arising out of in-state affiliations of nonresident defendants.

While some states have adopted long-arm statutes that exhaust jurisdictional possibilities to the outermost limits of due process to encompass both specific and general forms of extraterritorial personal jurisdiction, others—Georgia among them—have contented themselves with statutes that are essentially limited to forms of specific jurisdiction. In these states, it is necessary that the claim of the plaintiff asserted under the long-arm statute demonstrate the statutorily required degree of nexus (typically, that it arise from or out of with the forum affiliations generated by the nonresident defendant and identified in the long-arm statute as a permissible basis for the use of extraterritorial personal jurisdictional power over nonresidents. In the absence of this close connection, personal jurisdiction is lacking.

18. Under the Georgia long-arm statute, it is necessary that the claim asserted be one "arising from" the defendant's act or omission. The statute nowhere suggests that a simple connection between claim and contact will suffice for this purpose; nor will a mere "relation" between the two meet the statutory standard. See O.C.G.A. § 9-10-91 (Supp. 1994).
II. THE GEORGIA LONG-ARM STATUTE AND THE DOCTRINE OF SPECIFIC JURISDICTION

Georgia, like many other states, has a long-arm statute which relies solely on the doctrinal underpinnings of specific jurisdiction and does not purport to authorize its courts a basis of judicial power under the theory of general jurisdiction. As a

19. The Georgia long-arm statute was first adopted in 1966 and now appears as O.C.G.A. §§ 9-10-90 to -94. 1966 Ga. Laws 343; see also O.C.G.A. §§ 9-10-90 to -94 (1982 & Supp. 1994). When first enacted, that law permitted the assertion of extraterritorial personal jurisdiction only against those nonresidents who had transacted any business in Georgia (O.C.G.A. § 9-10-91(1)); who had committed a tortious act or omission within the state (O.C.G.A. § 9-10-91(2)); or who owned, used, or possessed any real property in Georgia (O.C.G.A. § 9-10-91(4)) regarding claims arising from those specified affiliations with the state. 1966 Ga. Laws 343-344. In 1983, the General Assembly—prompted by the none too subtle recommendations of the Georgia Supreme Court in Whitaker v. Whitaker, 230 S.E.2d 486 (Ga. 1976), and Warren v. Warren, 287 S.E.2d 524 (Ga. 1982)—amended the Georgia long-arm statute to add O.C.G.A. § 9-10-91(5), permitting courts of the state to exercise personal jurisdiction over nonresidents who

[with respect to proceedings for alimony, child support, or division of property in connection with an action for divorce or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not.

1983 Ga. Laws 1304 (codified at O.C.G.A. § 9-10-91(5) (Supp. 1994)). Nothing in the 1983 amendment altered the general requirement of the Georgia long-arm statute articulated in the preamble of O.C.G.A. § 9-10-91 that the claim asserted by the plaintiff must arise from the “acts [or] omissions” delineated in O.C.G.A. § 9-10-91(5), which are specifically restricted to either (1) the maintenance by defendant of a marital domicile in Georgia at the time of the commencement of the plaintiff’s action; or (2) the residence of the defendant in Georgia preceding the commencement of plaintiff’s action, whether cohabiting during that time or not. Id.; see also O.C.G.A. § 9-10-91 (Supp. 1994).

20. Florida is, of course, peculiarly significant in this regard since the Georgia statute is based upon the one adopted in that state in 1973. See also Fla. STAT. ch. 48.193(1)(e) (1994); Warren, 287 S.E.2d at 526. The so-called “domestic relations” provision of the Florida long-arm statute had been ruled constitutionally offensive under the Fourteenth Amendment by Justice Gunter in Whitaker, in which a judgment secured under its terms was held a res judicata bar to a subsequent attempt by a Georgia resident to re litigate issues already addressed in a prior Florida suit. Whitaker, 230 S.E.2d at 488. When Justice George T. Smith—a former Speaker of the Georgia House and, as Lieutenant Governor of the state, the president of the Georgia Senate—in Warren, chastised the General Assembly for its failure to enact a similar provision into Georgia law and in the same opinion again spoke approvingly of the Florida model, the General Assembly was quick to act. Within a year the Florida statute, virtually verbatim, became the law of Georgia. 1983 Ga. Laws 1304. The Florida origins of the Georgia law were traced by Justice Smith in Smith v. Smith, 330 S.E.2d 706, 707 (Ga. 1985).

21. This despite the fact that a number of federal courts have insisted on
consequence, states having such statutes will permit the assertion of claims against nonresidents under their respective "matrimonial domicile" long-arm provisions only when the claims asserted by the plaintiff arise from or out of the


22. Although the practice at the bar and on the bench in Georgia is to refer to O.C.G.A. § 9-10-91(6) as the "domestic relations" provision of the long-arm statute, the phrase is not a particularly apt nomen. See, e.g., Frasca v. Frasca, 330 S.E.2d 889, 892 (Ga. 1985). A close analysis of the section affirms that the conduct enumerated in subsection five which permits the invocation of personal jurisdiction over those whose residence is, alternatively, (1) the maintenance of a matrimonial domicile in the state at the time of commencement of the action or (2) residence in the state before the commencement of the action, whether or not the residents were cohabiting during that time. Id. Engaging in "domestic relations" in the state—to the extent that such relations differ from the maintenance of a marital domicile at the time of the institution of the suit or the defendant’s residence in the state prior thereto—is not enumerated by the statute as grounds for personal jurisdiction and, unless qualified severely, might well be an overly broad basis upon which to premise a constitutionally required contact minimally sufficient to support a proper exercise of extraterritorial personal jurisdiction. Id. Moreover, the legislature’s decision to include simple residence in the state by the defendant, without the necessity for cohabitation during that residency, as a basis for extraterritorial personal jurisdiction, makes the generic label "domestic relations" singularly inappropriate for this statutory subsection. Id.

23. The introductory clause of O.C.G.A. § 9-10-91 stipulates that "[a] court of this state may exercise personal jurisdiction over any nonresident . . . as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section . . . ." O.C.G.A. § 9-10-91 (Supp. 1994) (emphasis added). This provision appeared in the original, unamended statute as adopted by the legislature in 1966, and it was not amended when O.C.G.A. § 9-10-91(3) (commission of a tortious injury in this state caused by an act or omission outside this state as a basis for extraterritorial personal jurisdiction) was added in 1970 or when the matrimonial domicile provision was adopted in 1983. See 1966 Ga. Laws 343; 1983 Ga. Laws 1304; see also O.C.G.A. § 9-10-91(3) (1982 & Supp. 1994). Given the broad terms of the clause, particularly its reference to "any of the acts . . . enumerated" in the remaining sections of the law, no modification of its language was required to incorporate the substance of the added sections. The corresponding provisions of the Florida law, while using different terminology, are to the same effect: a nonresident who does any of the acts enumerated in the statute thereby submits himself to the jurisdiction of the Florida courts "for any cause of action arising from the doing of any" of the acts described in the law. Fla. Stat. ch. 48.193(1) (1994). Finding the limitations of specific jurisdiction overly restrictive with respect to nonresidents "engaged in substantial and not isolated activity" in the state, the Florida legislature amended its long-arm statute in 1984 to provide for general jurisdiction over them. 1984 Fla. Laws ch. 84-2, § 3 (codified at Fla. Stat. ch. 48-193(2) (1994)). Although
contacts of the nonresident with the forum state of the kind and variety enumerated in its respective long-arm statute. The courts of both Georgia and other states have grappled with—but not necessarily resolved—issues touching on the nature of this statutorily mandated connection between plaintiff’s claim and defendant’s contact and its sufficiency to support the assertion of extraterritorial in personam jurisdiction against a defendant who cannot be served with process within the territorial boundaries of the state. 24

24. In a very real sense, the key factor in invoking the extraterritorial reach afforded by the long-arm statute has little to do with the “residency” or “nonresidency” of the defendant; of more critical concern is the ability (or, more typically, the inability) of the complaining party to secure service of process on the defendant within the geographical boundaries of the forum state. “The true test of [personal] jurisdiction is not residence or non-residence of the plaintiff, or the place where the cause of action originated, but whether the defendant can be found and served within the jurisdiction where the cause of action is asserted.” Harry S. Peterson Co. v. National Union Fire Ins. Co., 434 S.E.2d 778, 780 (Ga. Ct. App. 1993) (quoting Reeves v. Southern Ry., 49 S.E. 674, 675 (Ga. 1905)). In Burnham v. Superior Court, the United States Supreme Court reaffirmed the traditional principle that service of process on one found physically within the state is sufficient to reduce that party to the full in personam power of the forum and that, accordingly, a minimum contact analysis under International Shoe is neither necessary nor appropriate in such circumstances. 495 U.S. 604 (1990). Accordingly, service on a defendant within the forum state is valid without regard to the status of that party as a resident or a nonresident. Id. This ruling is in accord with the long-standing position of Georgia law on this point. See Hutto v. Plagens, 330 S.E.2d 341, 343 (Ga. 1985); Humphrey v. Langford, 273 S.E.2d 22 (Ga. 1980); see also Allstate Ins. Co. v. Klein, 422 S.E.2d 863, 865 (Ga. 1992) (holding that a foreign corporation registered to do business in Georgia is “present” for purposes of in-state service of process and resort to the long-arm statute is not necessary); Hirsch v. Shepherd Lumber Corp., 20 S.E.2d 575, 576 (Ga. 1942) (holding that a foreign corporation registered to do business in Georgia is “a resident” for purposes of in-state service of process and resort to the Nonresident Motorists Act is not necessary); cf. O.C.G.A. §§ 50-2-20 to -21 (1994) (establishing the general extent of Georgia’s jurisdiction and sovereignty). The nonresident who cannot be personally served within the state must be served outside the state in accordance with statutory provisions allowing for such service; this is, of course, a primary function and office of the long-arm statute. A resident of Georgia absent from the state does not fall under the statutory definition of “nonresident” for purposes of service under the long-arm statute. O.C.G.A. § 9-10-90 (1982). However, one who is a resident in the state at the time a cause of action arises, but becomes a nonresident before service may be perfected in-state, does come within the specific terms of the statute, and may be served outside the state under its provisions. Crowder v. Ginn, 286 S.E.2d 706 (Ga. 1982); see O.C.G.A. § 9-10-90 (1982 & Supp. 1984) (providing that the term “nonresident” includes “an individual . . . who, at the time a claim or cause of action arises . . . was residing,
The application of the contact-claim connection requirement of the statute is typically easier to recognize and implement under the tort, business transaction, and real property categories of long-arm jurisdiction than it is under the Act’s matrimonial domicile provisions, a fact flowing naturally from the more specific and defined nature of the “acts or omissions” contemplated in those respects as the bases of long-arm jurisdiction. When, for instance, the resident plaintiff asserts a breach of contract claim against the nonresident defendant under the “transacts any business within this state” section of the Georgia long-arm statute, it is a comparatively simple matter to determine if the claim lodged “aris[es] from” the alleged business association or the contractual terms agreed upon by the parties. Similarly, little question as to contact-claim relationship will normally be present when a plaintiff complains of tortious injury caused by a nonresident either within or outside Georgia or when the plaintiff’s claim stems from the nonresident’s ownership, use, or possession of any real property situated in Georgia. The comparative clarity which distinguishes the nexus of claim and contact under these forms of long-arm jurisdiction is lacking, however, under subsection (5) of Code section 9-10-91.

Additional obscurity clouds this issue when it is recalled that a nonresident defendant’s affiliations or “contacts” with the forum serve two distinct but interrelated functions in establishing personal jurisdiction under a specific jurisdiction form of long-arm statute. First, the existence of constitutionally sufficient, defendant-generated relations with the forum are fundamental in finding that the defendant has “purposefully availed” himself of the protections and benefits of the laws of the forum state such domiciled, . . . or existing outside of this state as of the date of perfection of service of process”.

25. This observation was confirmed by the Supreme Court of Georgia in Beasley v. Beasley, 396 S.E.2d 222, 225 (Ga. 1990). The Beasley decision is discussed more fully at infra notes 69-77 and accompanying text.

26. Despite the fact that the Georgia long-arm statute is generally available for use by both resident and nonresident plaintiffs alike, Schuehler v. Pait, 238 S.E.2d 65, 68 (Ga. 1977), access to the extended jurisdictional reach afforded by O.C.G.A. § 9-10-91(5) now appears limited in some instances to residents of Georgia. See Meredith v. Meredith, 360 S.E.2d 586, 587 (Ga. 1987). Nevertheless, most claimants resorting to use of the 1983 amendment to the statute will, as a practical matter, be Georgia residents.

that the exercise of personal jurisdiction over him is inoffensive to "traditional notions of fair play and substantial justice" inherent in the Due Process Clause of the Fourteenth Amendment to the United States Constitution.\(^{28}\) In this regard, the role of the defendant's forum-related contact is essentially negative and centers on the necessity of defining the constitutional limitations—often, but not always, expressed in federal judicial elaboration of the Due Process Clause—on the court's authority.

Second, an analytically separate function of defendant's forum-affiliated contact is its role in triggering the application of the state's long-arm statute, particularly when it is of the specific jurisdiction type as in Georgia. Here, the necessity is of a statutory character: unless (a) the nonresident has committed one or more or the "acts or omissions" enumerated in the law, and (b) the plaintiff's cause of action arises from or out of that act or omission, long-arm jurisdiction is not authorized and the statute will afford the plaintiff no extraterritorial reach over the nonresident party. The role of "contact" in this regard is, then, essentially statutory (and not constitutional), affirmative and enabling.

Couched in the terms of Code section 9-10-91(5), the statutory inquiry as to connexity runs as follows: when does a claim of a resident plaintiff for alimony, child support, or division of property made in connection with an action for divorce or, alternatively, a claim of a resident plaintiff for support of dependents made in connection with an independent action brought for that purpose constitute a "cause of action arising from" the maintenance by the nonresident party of a matrimonial domicile in this state at the time of the commencement of the action or that party's residence in this state preceding the commencement of the action? That inquiry—convoluted and intimidating as it may be—is one which, directly or impliedly, has faced every Georgia court ever called upon to invoke and apply the matrimonial domicile provisions of the Georgia long-arm statute. It is not one that has to this point been answered with total clarity or precision by our courts or by their

countersparts in other American jurisdictions faced with similar issues of statutory construction and constitutional law.

III. CASE APPLICATIONS

A. The Early Decisions: Lee, Smith, and Marbury

The first reported opinion of the Georgia Supreme Court applying the 1983 amendment to the long-arm statute was *Lee v. Pace.* There, the resident wife filed an action for formal custody of her children then living with her, child support, and payment by her nonresident former husband of certain medical expenses that she had incurred on behalf of the children. Holding that jurisdiction as to the child custody claim of the wife existed by virtue of the Uniform Child Custody Jurisdiction Act, the court contented itself with respect to the jurisdictional issue regarding the child support and expense claims of plaintiff asserted under the Georgia long-arm statute by simply noting the 1983 amendment allowing the assertion of "independent actions for support of dependents," concluding without comment that "[a] modification action for custody and child support is an independent action within the contemplation of the statute" and the unadorned determination that "personal jurisdiction may be exercised over this defendant under the long arm statute as amended." The court gave no explicit attention to the threshold issue of whether the defendant's contacts with the forum (presumably the fact of a Georgia divorce and subsequent modification of the original decree by a superior court of this state, the only connections of the nonresident defendant with Georgia noted in the court's opinion) in themselves satisfied the statute's demand for a showing of "matrimonial domicile in this state at the time of the commencement of [the] action" or residence in the state "preceding the commencement of the action, whether cohabiting during that time or not." Having disregarded the basic question of the defendant's commission of an act that would trigger application of subsection (5), it comes as no surprise that the court failed to give any attention to the correlative statutory inquiry, whether or not the plaintiff's claims

arose from that contact. That issue came into more concentrated focus the following year in the court’s next major jurisdictional decision in a domestic relations case under the long-arm statute, *Smith v. Smith*.33

In *Smith*, the parties had maintained a matrimonial domicile in Georgia for two years until their divorce in 1982 when, in addition to a dissolution of the marriage, the superior court had awarded the wife permanent alimony and a percentage of the husband’s future bonuses.34 The former husband left Georgia in 1983 and, according to the former wife, thereafter failed to pay her certain alimony entitlements, specifically the percentage of bonuses stipulated by the court’s order, or to provide her with documentation regarding the bonuses as required by the decree.35 As a result, the former wife filed an action for contempt and for modification of the original decree in DeKalb County Superior Court, the forum that had issued the 1982 judgment. She asserted that the court had personal jurisdiction over the husband, by that time a resident of New Jersey, under the “domestic relations” provision of the Georgia long-arm statute. The defendant husband appealed an order of the trial court denying his motion to dismiss for lack of personal jurisdiction.36

The primary significance of the decision in *Smith* lies in its construction of subsection (5) of Code section 9-10-91 and its interpretation of the terms “independent action for support of dependents” and “proceedings for alimony, child support, or division of property in connection with an action for divorce.”37

33. 330 S.E.2d 706 (Ga. 1985).
34. Id.
35. Id. at 707.
36. The trial court’s order, which was the springboard of appeal in *Smith*, took only glancing notice of the issue of connexity present in the case, and then only in relation to the question of impermissible application of the 1983 amendment that added subsection (5) to the existing text of O.C.G.A. § 9-10-91. Smith v. Smith, No. 84-3053, slip op. at 10 (Super. Ct. DeKalb County Ga. Nov. 15, 1984) (citing Ballew v. Riggs, 259 S.E.2d 482 (Ga. 1979) and J. C. Penney v. Malouf Co., 196 S.E.2d 145 (Ga. 1973)); see also 1983 Ga. Laws 1304, § 1 (session law replaced all of O.C.G.A. § 9-10-91 and added subsection (5)). Noting that “[t]he defendant was a Georgia resident on March 29, 1983, the effective date of the amendment” and that the defendant “moved to Colorado and ceased paying alimony sometime after September, 1983,” the superior court concluded that there was no impermissible retroactive application of the statute, finding it “clear that the acts giving rise to the Plaintiff’s cause of action did not occur until after the effective date of the amendment.” *Smith*, No. 84-3053, slip op. at 10.
37. *Smith*, 330 S.E.2d at 708. In that regard, the court held that a former spouse
entitled to alimony under an existing decree was a “dependent” within the meaning of the statute and that, in addition, a contempt citation stemming from alleged disobedience of that decree was ancillary to the divorce and thus a claim “in connection with an action for divorce” within contemplation of the act. *Id.* In its order denying the defendant husband’s motion to dismiss for lack of personal jurisdiction under the amended long-arm statute, the DeKalb County Superior Court indicated its belief that the statutorily required nexus with an action for divorce was more apparent with respect to the contempt action against the defendant than with the petition for modification:

It is entirely possible that an action solely for modification would be analyzed differently than a contempt action as far as due process minimum contacts are concerned. However, in the typical contempt action arising under the Long Arm, there will be a nonresident defendant who fails to make support payments. No matter whether the plaintiff’s action is ultimately a modification or a contempt action, the Court will analyze it as if it were a contempt because for whatever reason, the Defendant has stopped making alimony payments to the plaintiff. The fact that the Defendant may ultimately prevail on the merits does not change the fact that a portion of the Plaintiff’s alimony has been cut off.

*Smith*, No. 84-3053, slip op. at 12 n.5. The Georgia Supreme Court, in upholding the statutory right of the plaintiff to assert a contempt citation against the nonresident, noted that “[t]he contempt action being an ‘incident of the divorce and alimony action,’ necessarily is a ‘cause of action arising from . . . proceedings . . . in connection with an action for divorce . . . .’” *Smith*, 330 S.E.2d at 708. The provisions of the statute not reproduced by the court, however, explicitly limit the reach of the long-arm statute only to claims for alimony, child support, or division of property advanced in connection with a divorce action. In addition, given the court’s sanction of a contempt action relating to unpaid alimony “in connection with an action for divorce” under clause one of O.C.G.A. § 9-10-91(5), the court left open the issue of whether it would extend such a right to a contempt action filed for the defendant’s disobedience of an order issued *not* in connection with a divorce, *i.e.*, with respect to an order relating to an independent action for support of dependents under clause two of that subsection. This question has not been directly addressed in any reported opinion of the court as of this date, but the Georgia Supreme Court and the Court of Appeals have both held that contempt actions for denial of visitation privileges filed by residents of the state and directed to nonresident defendants under the long-arm statute are not sustainable under the act because they are not proceedings “for alimony, child support, or division of property in connection with a divorce or with respect to an independent action for support of dependents, so personal service outside Georgia would not [in these circumstances] give the Georgia court [personal] jurisdiction [over the nonresident defendant] under OCGA § 9-10-94 [which provides for personal service on the nonresident in the same manner as service of process within the state].” Paul v. Paul, 361 S.E.2d 221, 222 (Ga. Ct. App. 1987) (quoting Ashburn v. Baker, 350 S.E.2d 437, 439 (Ga. 1986) (citing the court of appeals decision in Baker v. Ashburn, 347 S.E.2d 660, 661-62 (Ga. Ct. App. 1986))). The Georgia Court of Appeals in *Baker* reasoned that “O.C.G.A. § 9-10-91(5) provides jurisdiction [in its second clause providing for proceedings other than those in connection with divorce] only over nonresident defendants in independent actions for *support* of dependents.” *Baker*, 347 S.E.2d at 662. The court concluded that “the trial court erred in basing its jurisdiction over the [nonresident custodial] mother on *Smith v. Smith*, as that case involved a post-judgment modification of alimony [under clause one of O.C.G.A. § 9-10-91(5)].” *Id.* (citations omitted).
Nonetheless, the opinion provides valuable insights into the court’s approach to the required connection between the nonresident’s contact with the forum and the plaintiff’s claim. These insights are best gleaned from the court’s response to the constitutional challenge to Code section 9-10-91(5) mounted by the nonresident defendant.

In resolving the constitutional issues raised in *Smith*, the court adopted the general analytical framework employed by Judge Braswell Deen in *Shellenberger v. Tanner*. This is a three-part test intended to integrate the positive requirements for the use of long-arm authority as expressed in Georgia statutory law with the limitations on that authority stemming from federal constructions of the Fourteenth Amendment, principally *International Shoe* and its progeny. As formulated in *Shellenberger* and recited by the court in *Smith*, it is necessary that:

(1) The nonresident must purposefully avail himself of the privilege of doing some act or consummating some transaction with or in the forum . . . ; (2) The plaintiff must have a legal cause of action against the nonresident, which arises out of, or results from, the activity or activities of the defendant within the forum; and (3) If (and only if) the requirements of Rules 1 and 2 are established, a “minimum contact” between the nonresident and the forum exists; the assumption of [personal] jurisdiction must be found to be consonant with the due process notions of “fair play” and “substantial justice.” In other words, the exercise of jurisdiction based upon the “minimum contact” must be “reasonable.”

The court experienced little difficulty in concluding, on both sound factual bases and unimpeachable policy grounds, that prongs (1) and (3) of *Shellenberger* had been met and exceeded in the circumstances present in *Smith*. Its rationale in finding that the demands of prong (2)—the connexity requirement—had been satisfied were less than compelling. Noting first that the “appellee has a legal cause of action . . . which “[a]rises out of

---

39. Id. at 273 (footnotes omitted).
41. Id. at 709-10 & n.5.
42. Judge Deen, in penning the tripartite test of *Shellenberger*, stated the connexity
or results from their matrimonial domicile and their Georgia divorce, the court justified this conclusion by underscoring the fact that "Georgia has a strong state interest in the litigation. The strongest governmental purpose for Georgia's alimony laws is the provision of support for a needy spouse." This observation, while relevant perhaps to the legality of the requirement of prong (2) as demanding that the plaintiff "have a legal cause of action against the nonresident, which arises out of, or results from, the activity or activities of the defendant within the forum." Shellenberger, 227 S.E.2d at 272. Unfortunately, that analysis (which, significantly, was conducted under a subheading of the Shellenberger decision entitled "B. Legal Cause of Action") concentrated solely on the issue of the validity of the plaintiff's cause of action against the nonresident defendant and failed to examine the unquestionably more important issue in this context: whether the cause of action arose from contacts of the defendant with the state. In essence, this approach functionally converted prong (2) of Shellenberger into a basis on which to dismiss an action for failure to state a claim upon which relief could be granted, more properly the province of a motion under O.C.G.A. § 9-11-12(b)(6) than one brought under O.C.G.A. § 9-11-12(b)(2) for lack of personal jurisdiction. Nonetheless, a whole generation of Georgia appellate judges, dutifully following the precedent of Shellenberger, has now carefully performed substantive legal analyses of the underlying claims of plaintiffs who would assert their causes of action against nonresidents under the Georgia long-arm statute, all in the name of the presumed demands of procedural due process. See, e.g., Kendrick v. Parker, 367 S.E.2d 544, 545-46 (Ga. 1988). In Kendrick, the court's discussion of the connectivity wing of Shellenberger was limited almost exclusively to an examination of the legality of the plaintiff's claim, and virtually no attention was paid to the central issue of whether that claim arose from or out of the defendant's statutorily enumerated contacts with Georgia. Id. To the extent that connectivity was considered at all, it was restricted to the observation that plaintiff's "legal cause of action...[arose] out of the earlier domestication and contempt action," despite the fact that neither domestication nor contempt actions involving nonresidents are among the "acts or omissions" enumerated in O.C.G.A. § 9-10-91(5) as bases for the use of the long-arm statute. Id. at 546. It can be effectively argued that the phrase "legal cause of action," as used in Shellenberger and later in Smith, is in fact a redundancy, and that the qualifier "legal," when used to modify the expression "cause of action" or "claim," is wholly unnecessary and, as Shellenberger and its progeny demonstrate, misleading. To state that a cause of action is "legal" is as redundant as the statement that a cause of action is "illegal" is oxymoronic.

43. Smith, 330 S.E.2d at 709-10 (emphasis added). Obtaining a divorce in Georgia or, for that matter, seeking any form of judicial relief from a court of this state with respect to a right, duty, or obligation relating to domestic relations, is not enumerated in any provision of the Georgia long-arm statute as a basis for the assertion of extraterritorial personal jurisdiction.

44. Id. (quoting Sims v. Sims, 226 S.E.2d 493, 495 (Ga. 1980)).

45. The court's concern for and emphasis on the validity of the plaintiff's claim is an echo, distant but still reverberating in Georgia law, of the language of Shellenberger. See the discussion in supra note 37. Thus, in Smith—just as in Shellenberger itself—the court avoided a direct confrontation with the connectivity requirement of the second prong by means of an essentially superfluous discussion of claim validity.
plaintiff’s cause of action, does little to explain or elucidate the mandatory nexus of claim and contact demanded by the long-arm statute. No further effort was expended by the Smith court to explain its apparent belief that Mrs. Smith’s claim for contempt and modification arose out of Mr. Smith’s former matrimonial domicile in Georgia. While, perhaps under the facts of Smith, no further elaboration was necessary in this respect, the court’s inference that the defendant’s former in-state matrimonial domicile and the fact of a “Georgia divorce” were “acts” of the nonresident equally sufficient and available to support long-arm jurisdiction under subsection (5) of the statute remains rather questionable, especially in view of the explicit statutory terms.46

Marbury v. Marbury47 was the first decision of the Georgia Supreme Court under the 1983 amendment to the long-arm statute in which the issue of connexity was dispositive of the issues before the court. There, the parties married in Georgia in 1970 and remained in the state as husband and wife for a period of approximately fifteen months, after which they moved out of state. They subsequently separated and the wife returned to reside in Georgia after 1977. The husband visited his children in the state on five occasions over the next few years, but never resided in or maintained a marital domicile in Georgia after his departure from the state in 1971. In 1985, the wife filed an action for divorce in Georgia, asserting personal jurisdiction over the husband, then residing in Connecticut, under Code section 9-10-91(5). In a unanimous decision, the Georgia Supreme Court reversed an order of the Superior Court of Muscogee County denying the husband’s motion to dismiss for lack of personal jurisdiction.

Noting that in Smith “sufficient contacts” for the exercise of personal jurisdiction had been found in the defendant’s “availling] himself of the privilege of maintaining a marital domicile in Georgia and of using Georgia courts to dissolve the marriage and of choosing to remain in Georgia for some time after the dissolution of the marriage,”48 the court in Marbury

46. See supra note 18.
47. 352 S.E.2d 564 (Ga. 1987).
48. Id. at 566. A close reading of Smith would indicate that the court found that the defendant satisfied the connexity requirement of the Georgia long-arm statute solely by maintaining a marital domicile in Georgia, and the use of Georgia courts to obtain a divorce. See Smith, 330 S.E.2d at 709 (brief discussion under subheading (b)); see also supra note 40 and accompanying text. The fact of a Georgia matrimonial
determined that the facts were "somewhat different," mandating a result contrary to that reached in Smith. The court conceded that the nonresident's former marital domicile in Georgia was a "contact" and may have been an instance of "purposeful availment" by the defendant of the benefits and protections of Georgia law, but concluded that the exercise of jurisdiction based on these elements alone was improper. The root of the problem was, in the court's analysis, the absence of any relationship between these affiliations with the state and the claims asserted by the plaintiff.

In reaching this conclusion, the court inferred a somewhat narrow and constricted perspective as to the nature of the nexus between contact and claim required by the long-arm statute and was undoubtedly influenced by its applications of the act in contexts other than the domestic relations framework. There was, said the court in Marbury, "no indication that any of the events which led to the dissolution of the marriage occurred in Georgia" and, "[f]urther, there must be a substantial connection between defendant's activities in the forum and the subject matter of the suit," which the court found lacking. Absent an "indication that this activity on the part of Mr. Marbury had any connection with the subject matter of the present litigation, the dissolution of the marriage[,] ... the attempt to exercise personal jurisdiction over [him] was unconstitutional." The court found it especially significant in this regard that the Marburys were newly married during the period of their Georgia marital domicile.

The court conceded that the nonresident "may have" availed himself of the benefit of the laws of Georgia through his former domicile in the state, even though he was married in and a resident of Georgia fourteen years before the divorce was

domicile and divorce was also surveyed by the Smith court, along with additional affiliating factors, in connection with its analysis of prong (1) of Shellenberger (purposeful availment). See Smith, 330 S.E.2d at 709 (text under subheading (a)).
49. Marbury, 352 S.E.2d at 566.
50. Id. at 567.
51. Id.
52. Id. at 566.
53. Id. at 567.
54. Id.
55. Id. at 566. The inference of the court is that, as newlyweds, the Marburys experienced in Georgia none of the "conduct" that later led to the factual disintegration of the marriage. Id.
filed—a concession which should have rendered unnecessary further examination of the case for the presence of purposeful availment by the defendant. Despite this concession, it is patent from a reading of the court’s dicta that the court in Marbury was gravely concerned by the impact of two distinct but interrelated factors on the presence of the constitutionally necessary element of purposeful availment in the application of the Georgia long-arm statute. In the court’s view, both the sheer passage of time and the inability of the plaintiff to show that any “events which led up to the divorce occurred in Georgia” rendered any such “availment” too “unconnected” with plaintiff’s claims to support the assertion of extraterritorial personal jurisdiction under the long-arm statute. Therefore, the court concluded, it was unreasonable as a basis upon which the defendant could “anticipate being haled into court’ in Georgia."

The narrow holding of Marbury—that there was a failure of conneXity between plaintiff’s claim and defendant’s contact—was a sound one, as was the decision’s juxtaposition of the time element and the due process demands of reasonableness in the exercise of extraterritorial personal jurisdiction under the long-arm statute. The passage of time clearly has an important role to play in determining when an exercise of personal jurisdiction is appropriate under a long-arm statute such as Georgia’s. That factor does not, however, have any analytical value with respect to the isolated constitutional requirement of “purposeful availment” as that doctrine has been elaborated at the hands of both federal and state (including Georgia’s) courts. While time as an independent element in extraterritorial jurisdictional analysis may well affect the reasonableness of asserting jurisdiction outside the territorial boundaries of the state based upon a nonresident’s purposeful availment of the benefits and protections of Georgia law, it is difficult to conceive of circumstances when it will bear on the threshold issue of “purposeful availment” vel non. In that regard, the only real inquiry should be limited to the issue of whether or not the defendant has, at any time in the past, engendered a constitutionally and statutorily significant “contact.”

56. Id. at 567.
57. Id. at 566.
58. Id. (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).
B. *Frolic and Detour: From Marbury to Straus*

More suspect, however, was the veiled inference in *Marbury* of a linkage of “bad behavior” (in *Marbury* terms, “events [leading] up to the divorce”) with the necessity of establishing “purposeful availment” and its derivative connexity as a precondition to exercise of long-arm authority. Nothing in Code section 9-10-91(5) would make access to the extended reach of the long-arm statute dependent upon bad behavior of the nonresident party, whether as a matter of “purposeful availment,” “connexity,” or “reasonableness”; neither, conversely, would “good behavior” of the nonresident, in a proper analytical framework, serve to immunize him from the reach of the statute. The search for the situs of “divorce precipitating conduct,” so central to the *ratio decidendi* of *Marbury*, is an inquiry which is essentially irrelevant within the framework of the long-arm concept.

After two rather wooden applications of the *Marbury* rule in *Medeiros v. Tarpley* and *Boyce v. Boyce*, both of which held

---

69. Any insistence on the establishment of “activity on the part of [the nonresident party having] connection with the dissolution of the marriage,” would logically render long-arm reach unavailable in a divorce action premised on the substantive grounds that the marriage is irretrievably broken. *Id.* at 567.

60. Granted, there is an element of substantive “nonresident fault” inherent in the two tort subsections of the Georgia long-arm statute, but this can hardly be considered essential to the procedural function of the act given the fact that subsections (1) (transacting any business in the state) and (4) (ownership, use or possession of real property in the state) are devoid of any such inference. See O.C.G.A § 9-10-91(1)-(4) (Supp. 1994).

61. A third case between the *Marbury* and *Straus* decisions cited *Marbury* and relied on a portion of its rationale, but departed considerably from its basic philosophy. In *Popen v. Popple*, 357 S.E.2d 657 (Ga. 1987), the parties had lived together in Georgia for fourteen years, from 1953 until 1967. They separated and, in 1971, the husband obtained a divorce decree from the wife in an Arkansas action in which the wife appeared and was awarded alimony. 357 S.E.2d at 658. She subsequently filed for a modification of her alimony award in Muscogee Superior Court, asserting long-arm jurisdiction over the husband, then residing in Florida. *Id.* In reversing the trial court’s denial of the husband’s motion to dismiss for lack of personal jurisdiction, the Georgia Supreme Court, in a unanimous decision written by Justice Hunt, relied on the “time” test of *Marbury*, but made no reference to its evil twin, the necessity of showing that events leading to the plaintiff’s claim for relief occurred in Georgia as an aspect of “purposeful availment” of the benefits of Georgia law. *Id.* Moreover, the court assumed, without deciding, that the first two prongs (purposeful availment and connexity) of *Shellenberger*, as presaged in *Davis Metals, Inc. v. Allen*, 198 S.E.2d 285, 287 (Ga. 1973), were satisfied, implying that the court was content with the proposition that the plaintiff’s claim arose out of or from the in-state contact of the defendant, no matter how far distant in the past.

62. 369 S.E.2d 482 (Ga. 1988). Here, plaintiff sued a nonresident for a modification
nonresidents not amenable to jurisdiction under the long-arm statute solely on the basis that they were in compliance with existing support orders, the court reassessed this extrapolation from Marbury in Straus v. Straus.84

C. Back to the Drawing Board: Straus and Beasley

The Georgia Supreme Court in Straus affirmed an order of the superior court denying a nonresident former wife’s motion to dismiss that relied on the judicially created immunity from personal jurisdiction—compliance with existing divorce decrees—rooted in Marbury and applied in Medeiros and Boyce. The court found that the wife had “purposefully availed [herself]”965 of Georgia law in a variety of ways: use of a Georgia court in dissolving her marriage to the Georgia plaintiff, continued residence in the state for a substantial period of time after her divorce, and resort to Georgia courts for a contempt action against her former husband after their divorce. These actions, the court ruled, resulted in a “connection with the state sufficient”966 to make constitutionally reasonable her subjection to the personal jurisdiction of the Georgia court with respect to the ex-husband’s complaint in a Georgia court to modify his support obligations. Her relatively brief absence from the state since her divorce in 1986, especially in view of her 1989 contempt

of a child support order entered in connection with their 1974 Georgia divorce. Id. Distinguishing Smith on the basis the defendant there was allegedly in noncompliance with the existing divorce decree, the court in Medeiros found that the exercise of personal jurisdiction would be unreasonable when the nonresident had been in “full and complete compliance” with the standing order. Id. The rationale of Marbury dictated the result in the case, but that decision was not cited by the court as authority for its holding in Medeiros. See id. All of the members of the court concurred in the opinion written by Justice Smith except Justice Hunt, who did not participate. Id.

63. 330 S.E.2d 524 (Ga. 1990). “Because the nonresident ex-husband has lived out of state since 1982 and has been in full and complete compliance with the Georgia divorce decree, we hold that the trial court properly dismissed the ex-wife’s application for modification of child support.” Id. at 525 (citing Medeiros v. Tarpley, 369 S.E.2d 483 (Ga. 1988)). This opinion, relying on both branches of Marbury, (but, again, without citing the decision) and written by Justice Smith, drew concurrence from all of the members of the court except Justice Hunt, who concurred in the judgment only. Id.

64. 393 S.E.2d 248 (Ga. 1990).

65. Id. at 250 (quoting Smith v. Smith, 330 S.E.2d 706 (Ga. 1985)) (alterations in original).

66. Id. at 251.
citation against her husband in a Georgia court, was held insufficient under the Medeiros-Boyce "time-out" test to upset the basic finding of reasonableness as to the former husband's modification complaint, particularly in view of the fact that he filed that action "shortly" after the wife's contempt proceeding. Both Marbury (in which the nonresident had been away from the state for fourteen years) and Popple (an absence of twenty years) were distinguished.67

The court then turned its full attention to the "good conduct" defense of Medeiros and Boyce:

The wife argues that Medeiros v. Tarpley and Boyce v. Boyce hold that compliance by a non-resident with a Georgia divorce decree insulates the non-resident from subjection to jurisdiction in a Georgia court. To the extent those cases so hold, they are overruled and we reaffirm that jurisdiction under the domestic relations long-arm statute, OCGA § 9-10-91(5), is to be determined by the terms of that statute and by the precepts of Intl. Shoe Co. v. Washington.68

The Straus court killed off the good conduct defense first intimated in Marbury and applied full-blown in the Medeiros-Boyce decisions. The Straus court did not, however, indicate any positive guidance as to the connexity issue—the necessity of claim-contact connection in the use of the long-arm statute—that was the fundamental concern expressed in Marbury, which had launched the court off on the Medeiros-Boyce digression in the first place. The court's reaffirmation of the terms of the Georgia long-arm statute and the precepts of International Shoe essentially left Georgia law in limbo in this regard, returning it to its pre-Marbury posture. This slate did not remain clean for long: two months later the court handed down its significant decision in the case of Beasley v. Beasley.69

67. Id.
68. Id. (citations omitted). Justice Weltner, in a dissent joined by Justice Bell, disassociated himself from the majority decision in Straus. "The rule of Medeiros is based upon 'due process notions of fair play and substantial justice' [and] it was reaffirmed in Boyce less than five months ago. It is a good rule, and should not be abandoned." Id. (Weltner, J., dissenting) (citations omitted).
69. 396 S.E.2d 222 (Ga. 1990). Chief Justice Clarke, the author of the court's opinion in Marbury, wrote the decision in Beasley in which Justice Hunt concurred in the judgment only; Justice Bell dissented without filing an opinion; and Justice Weltner did not participate. Id.
Benjamin Beasley, an Army officer stationed at Fort Gillem, had lived in Georgia since 1977, during which time he had divorced his first wife in an action in Clayton County Superior Court. He then married Jane Salter Beasley in South Carolina in 1979. The couple lived in Georgia after the ceremony until 1981 when he was transferred to Dhahran, Saudi Arabia, where they remained until his retirement from the Army in 1982. After a brief post-retirement interlude back in Georgia at the home of Mrs. Beasley's mother in Savannah, the Beasleys returned to Saudi Arabia as civilian employees of the Arabian American Oil Company. Both thereafter made periodic trips to the United States, including at least one visit to the mother's home in Savannah, during which Mr. Beasley raised the prospect of a divorce. After the couple returned to Saudi Arabia, he withdrew his sponsorship of his wife, precipitating her resignation of her employment and subsequent return to Georgia. She then filed suit for divorce in Fulton County Superior Court, obtaining service of process on him under the long-arm statute while he was visiting in Florida. He moved to dismiss the suit for lack of personal jurisdiction and Mrs. Beasley appealed the trial court's order granting the motion.

Applying the tripartite test of *Shellenger*[^70], the court found that the defendant

purposefully availed himself of the privilege of conducting activities in the forum by residing in this state for two years prior to marrying plaintiff, by obtaining a divorce from his former wife in this state, by marrying a resident of this state, by maintaining a marital residence in this state from 1979 to 1981, by returning to Georgia to retire from the military, by residing in Savannah for a short time thereafter, and by returning to Georgia for visits.^[71]

Putting to rest any lingering question remaining from *Marbury* that the sheer passage of time could decay, in and of itself, the sufficiency of an established contact to support the assertion of extraterritorial personal jurisdiction, the court properly assigned the effect of that factor to prong three of *Smith*, reasonableness:

[^70]: By this time, the test had been redesignated a “helpful analytical tool” rather than a due process formula. See *id.* at 224.

[^71]: *Id.*

[^70]: By this time, the test had been redesignated a “helpful analytical tool” rather than a due process formula. See *id.* at 224.

[^71]: *Id.*
The fact that defendant’s contacts with this state took place several years ago does not affect the analysis under the first prong of Smith [the in limine issue of purposeful availment vel non]. Under the third prong of Smith, however, the length of time that has elapsed since defendant’s purposeful activity in this forum may impact on the reasonableness of exercising jurisdiction. 72

Finding the exercise of jurisdiction reasonable under the third prong of Smith, the court turned its attention to the connexity requirement of the second element of the test. The defendant had argued that the plaintiff’s action did not arise out of his ties to Georgia and that there was no evidence to show that “the problems between the parties occurred during their residence in Georgia.” 73 This was a clear appeal to the court’s holding in Marbury demanding a showing that “activity [in-state] on the part of [the defendant] had any connection with the subject matter of the... litigation.” 74 The court rejected this reliance on a principle which it had itself brought into being a scant three and one half years before:

[N]o specific set of facts is necessary for the determination that the cause of action arises out of the contacts with the state. Although domestic relations actions, unlike tort or contract cases, do not always yield to a simple determination of what arises out of or results from forum-related activities, we conclude that there is unquestionably a nexus between residence in the forum state with a spouse or family and a domestic relations action to dissolve the relationship or enforce those family obligations. This is especially true when the forum is the last or only state in which the parties resided together. 75

In a coup de grace to defendant’s faith in Marbury that has the potential to do more harm than good, the Chief Justice terminated the connexity analysis by noting that “[w]e do not

72. Id. at 225; Paul v. Paul, 444 S.E.2d 770 (Ga. 1994) (using “reasonableness” prong of Shellenberger to determine whether personal jurisdiction may be asserted over parties that have been nonresidents of Georgia for extended periods subsequent to the “contacts” with the state).
73. Id.
74. Marbury, 352 S.E.2d at 567. Recall that, in dicta of Marbury, Justice Clarke had insisted that “there must be a substantial connection between the defendant’s activities in the forum and the subject matter of the suit.” Id. (emphasis added).
75. Baxley, 396 S.E.2d at 225 (citation omitted).
agree with the trial court’s conclusion that the claim must arise from conduct or acts committed in Georgia.\textsuperscript{76} While the breadth of this peroration lends itself to possible future misinterpretation and misapplication, the Chief Justice almost certainly intended that the emphasis should be placed on the final clause of this sentence: \textit{Georgia does not have to be the situs of any “specific set of facts” that give rise to plaintiff’s claim, a requirement more at home in other long-arm settings where in-state acts or omissions by defendant can be the basis of a proper use of the long-arm statute}.\textsuperscript{77} \textit{Beasley} can only be read to mean that, while the plaintiff’s claim must arise from a Georgia marital domicile or pre-action residence in the state—the specified statutory catalysts for long-arm jurisdiction under Code section 9-10-91(5)—it should not be inferred that there is some necessity to show “divorce precipitating conduct” by the defendant, and even less need to show that such conduct took place in Georgia.

\textbf{D. Beyond Beasley}

With the advent of \textit{Beasley}, Georgia trial courts can, in the application of the matrimonial domicile subdivision of the long-arm statute, proceed safely on the premise that the inherent “nexus between residence in [Georgia] with a spouse or family and a domestic relations action to dissolve the relationship or enforce those family obligations”\textsuperscript{78} will suffice, without further elaboration or explanation, to fulfill the requirement of the statute that the cause of action of the resident plaintiff arise from the nonresident’s matrimonial domicile or residence in this state. The availability of this broad standard to satisfy the claim-contact nexus of the Georgia long-arm statute will do much to enable the courts of this state to serve the legislative policy underlying the 1983 amendment to the long-arm statute, the

\textsuperscript{76} \textit{Id.}

\textsuperscript{77} In this connection it is important to note that O.C.G.A. § 9-10-91(5) is \textit{sui generis} in that it requires a \textit{status} (albeit one which arises out of specific acts producing it) as its statutory trigger—domicile or residence—whereas the other sections of the long-arm statute contemplate the existence of discrete, isolated incidents or occurrences, or perhaps a series of such incidents or occurrences, as the basis for resort to the act's extended jurisdictional reach. In this regard it is important to make a strict distinction between the status which invokes the statute and the acts of the defendant which lead to destruction of this status. The first is essential in the use of the law; the latter are irrelevant to its employment.

\textsuperscript{78} \textit{Beasley}, 396 S.E.2d at 225.
provision of a convenient and efficient remedy to needy spouses and children who are forced to resort to judicial action for the enforcement of their substantive rights to support from those not resident in Georgia or amenable to service of process within her borders.

A danger lurks, however, in the *Beasley* criterion: the sweeping breadth of its formulation will render it susceptible to easy misconstruction and loose usage. An undemanding, less than rigorous application of the principle will inevitably work to sever the close connection of claim and contact that the statutory language suggests was the intent of the legislature in its adoption. In a state with a specific jurisdiction long-arm statute such as ours, and without formal access or resort to the concept of general jurisdiction, there will be a natural tendency on the part of the courts to interpret the specific jurisdiction statute as broadly as possible and in a way that exhausts (and perhaps from time to time exceeds) jurisdictional possibilities within the proper ambit of specific jurisdiction. In a state where the only extraterritorial jurisdictional options are those afforded by a specific jurisdictional variety of long-arm statute, the danger is, of course, that the courts will tend to try to break out of the legislatively imposed strictures by an excessively broad interpretation of their authority under the limiting statute or, in the alternative, demonstrate a willingness to find, even on slim facts supporting the conclusion, physical presence.\(^\text{79}\)

\(^{79}\) And with it, of course, comes the freedom to ignore the issue of connexity altogether. A suggestion of this potential result appeared in *Harry S. Peterson Co. v. National Union Fire Ins. Co.*, 434 S.E.2d 778 (Ga. Ct. App. 1993), in which the court of appeals, faced with the jurisdictional conundrum of a nonresident defendant with numerous contacts in Georgia, none of which gave rise to the plaintiff’s claims in the action, sustained personal jurisdiction over the foreign corporation on the basis that it was qualified to do business in Georgia and had, in the course of registration in this state, appointed an agent for service of process. The court correctly (and with laudable precision in its terms) noted that “as a matter of *federal due process*, the business done by National . . . was sufficiently substantial and of such a nature as to permit Georgia to entertain the cause of action against it, though the cause of action arose from activities entirely distinct from its activities in Georgia.” *Peterson*, 433 S.E.2d at 780-81 (emphasis added). What the court did not underscore or emphasize, of course, is that nothing in the Georgia long-arm statute purports to sanction the exercise of personal jurisdiction over a nonresident defendant not served with process in the state when the plaintiff’s cause of action is unconnected with the defendant’s forum-related activities. This pattern of analysis is reminiscent of the Georgia Supreme Court’s treatment of a similar issue in *Allstate Ins. Co. v. Klein*, 422 S.E.2d 963 (Ga. 1992).
Courts will alleviate this potential frustration of legitimate legislative policy, in the first instance, by developing and adhering strictly to a clear philosophy providing firm guidance as to the required statutory relationship. In Georgia, where the statute is clear in its requirement that the claim arise from the nonresident's contact with the state and is therefore within the more conservative (and restrictive) fold to begin with, it is most likely that the courts—in this attempt to inform the bare bones of the statute with a guiding and directing policy—would probably choose to reject expansive formulations of the necessary nexus such as the “dispute blind/dispute specific” criteria advanced by Professor Twitchell\(^{80}\) or the “weak substantive relevance” standard suggested by Professor Brilmayer\(^{81}\) and opt instead for Brilmayer's philosophically more compatible “substantive legal relevance” test.\(^{82}\) Whatever the relative merits of these various options, what is most important is the adoption of a single coherent philosophy to guide the use of the long-arm statute in order to avoid directionless and vacillating decisions that have sometimes characterized the application of Georgia's long-arm statute.

A more limited suggestion, but one that promises to add much in the way of consistency and clarity to Georgia decisional law under the long-arm statute if adopted, is the simple proposal that our courts become more careful in their use of the phraseology of specific jurisdiction. While they are free to speak of “connection,” “substantial connection,” “relationship,” or “relatedness” when referring to the requirement of connexity inherent in the doctrine of minimum contact under the Fourteenth Amendment—because of the flexibility demonstrated by the federal courts themselves when discussing the connexity requirement in that context—Georgia courts have no such freedom when addressing the tie between claim and contact required in order to invoke affirmative authority of this state's long-arm statute. That statute admits only claims which arise from forum contacts: nothing else will suffice to meet the demands of the statute.

---

80. Twitchell, supra note 16.
82. Id. at 1455.