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# Sovereign Immunity-Sovereignty of a State Does Not Extend Into the Territory of Another State so as to Create Immunity from Suit Arising Out of the Sister State's Activities Within the Boundaries of the Forum State

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SOVEREIGN IMMUNITY—SOVEREIGNTY OF A STATE DOES NOT EXTEND INTO THE TERRITORY OF ANOTHER STATE SO AS TO CREATE IMMUNITY FROM SUIT ARISING OUT OF THE SISTER STATE'S ACTIVITIES WITHIN THE BOUNDARIES OF THE FORUM STATE—*Hall v. University of Nevada*, 8 Cal. 3d 522, 503 P.2d 1363, 105 Cal. Rptr. 355 (1972).

Service of process on the University of Nevada and the state of Nevada was made pursuant to section 17450 *et seq.* of the California Vehicle Code<sup>1</sup> in a personal injury action. The suit arose from an automobile accident in California allegedly involving an automobile owned by the defendants and operated by their agent, acting within the scope of his authority. The trial court entered an order to quash service on the ground that California courts did not have jurisdiction over the state of Nevada and its governmental agencies. The plaintiffs appealed the order to the California supreme court.

Nevada urged that the doctrine of sovereign immunity precluded suit against it or its agents in another state, even if the suit arose from Nevada's activities within that state. This assertion was examined by the court from perspectives of both legal precedent and comity. Reversing the order of the lower court in a unanimous decision, the supreme court concluded that sister states which engaged in activities within California are subject to California law regarding those activities and subject to suit in California courts with respect to those activities.<sup>2</sup>

Although sovereign immunity of individual states has long been recognized,<sup>3</sup> decisions in the United States Supreme Court and the courts

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1. CAL. VEH. CODE ANN. § 17450-63 (West 1971). These sections provide the methods for serving nonresident motorists who have operated motor vehicles on the highways of California, whose agents have done so, or who have consented to the use of their vehicles on the state's highways. When accidents occur in California due to such use of the highways by nonresidents, the sections provide for service on the Director of Motor Vehicles and notice of service to the nonresident by registered mail.

2. *Hall v. University of Nevada*, 8 Cal. 3d 522, 524, 503 P.2d 1363, 1364, 105 Cal. Rptr. 355, 356 (1972).

3. The several states possess the authority of independent states except as limited by the federal constitution. *See, e.g., Flexner v. Farson*, 109 N.E. 327 (Ill. 1915), *aff'd*, 248 U.S. 289 (1919). An aspect of this sovereign authority is the state's immunity from liability for actions by agents, unless it consents to suit. *See Gould v. Executive Power of the State*, 112 Cal. App. 2d 890, 891, 247 P.2d 424, 424 (1952); *Liebman v. Richmond*, 103 Cal. App. 354, 359, 284 P. 731, 733 (1930); *Western Assur.*

of other states have held that this sovereignty ends at the state's boundaries. The Supreme Court has held that when a state is engaged in an activity regulated by Congress, such as operating a common carrier in interstate commerce, it is subject to congressional regulation as fully as if it were a private person or corporation; by leaving its own jurisdictional boundaries, the state is deemed to have *impliedly consented* to regulation and any suit arising therefrom.<sup>4</sup> In contrast to this theory, state courts have held that when a state owns property in another state it leaves behind its prerogatives of sovereignty;<sup>5</sup> it is amenable to process in the other state,<sup>6</sup> its property is taxable<sup>7</sup> and subject to eminent domain proceedings.<sup>8</sup> Both these theories were cited by the *Hall* court in support of its determination that, even in a transitory action involving in personam jurisdiction, a sister state's sovereign immunity ends at its borders, and it becomes subject to California law and to suit in California courts with respect to activities occurring within California.<sup>9</sup>

The *Hall* court rejected the principle that sister states should be immune from liability in California as a matter of comity.<sup>10</sup> In *Paulus v. South Dakota*,<sup>11</sup> a North Dakota court held that as a matter of comity it should not exercise jurisdiction over its sister state.<sup>12</sup> The state of South Dakota was sued by one of its own residents in a North Dakota court for personal injuries sustained in a mine owned and operated by South Dakota, but located in North Dakota.<sup>13</sup> In refusing to hear the

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Co. v. Sacramento & San Joaquin Drainage Dist., 72 Cal. App. 68, 75, 237 P. 59, 62 (1925). On the other hand, the rule of governmental immunity for tort has been limited in most states and abolished in others. See, e.g., *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 216, 359 P.2d 457, 460, 11 Cal. Rptr. 89, 92 (1961).

4. *Parden v. Terminal Ry. of the Ala. State Docks Dep't.*, 377 U.S. 184, 197 (1964). In this case consent to suit was implied when Alabama began operation of a railroad. By implying consent the Court left intact the doctrine of a state's sovereign immunity to suit by an individual without its consent.

5. See, e.g., *State v. Holcomb*, 116 P. 251, 254 (Kan. 1911).

6. *People v. Streeper*, 145 N.E.2d 625, 630 (Ill. 1957).

7. *State v. Holcomb*, 116 P. 251, 254 (Kan. 1911).

8. *Georgia v. City of Chattanooga*, 264 U.S. 472, 480 (1924).

9. 8 Cal. 3d at 524-25, 503 P.2d at 1364-65, 105 Cal. Rptr. at 356-57.

10. 8 Cal. 3d at 525, 503 P.2d at 1365, 105 Cal. Rptr. at 357. The observance of comity is not a matter of obligation between states, but is a matter of voluntary courtesy. The privilege granted is not of right, but of grace. *Bloom v. Missouri Bd. for Architects, Prof. Eng'rs, and Land Surveyors*, 474 S.W.2d 861, 865 (Mo. 1971); D. RORER, *AMERICAN INTERSTATE LAW* 4 (1879); J. STORY, *CONFLICTS OF LAWS* § 38 (7th ed. 1872).

11. 201 N.W. 867 (N.D. 1924).

12. *Id.* at 870.

13. *Id.* at 867.

case, the court relied upon the potential embarrassment such an exercise of jurisdiction might cause the states involved.<sup>14</sup> However, the North Dakota court indicated that if North Dakota, or presumably a North Dakota resident, had asked for relief a wholly different proposition would be presented:

Again, we must remember that the plaintiff is a resident of the state of South Dakota and again it seems to us that considerations of comity should impel the courts of this state to refrain from exercising jurisdiction. There is no question of the sovereignty of the state of North Dakota or of the rights of any of its citizens involved in this case.<sup>15</sup>

Since *Hall* involved a California resident, the *Hall* court determined that *Paulus* was not persuasive on the comity issue.<sup>16</sup> Further, the court concluded that the potential of state embarrassment did not outweigh the public policies militating in favor of the exercise of jurisdiction. The court observed that the same policy advanced to uphold the validity of the nonresident motorist statute in *Hess v. Pawloski*<sup>17</sup> was present in *Hall*.<sup>18</sup> That is, an automobile is a dangerous machine and a nonresident should be required to answer for his conduct on the highways in the state where the cause of action against him arose.<sup>19</sup> The court also emphasized the state's substantial interest in providing a forum where a resident may seek whatever redress is due him.<sup>20</sup> Finally, the court determined that the doctrine of sovereign immunity is a suspect principle:

[I]t must be pointed out that in a society such as ours, which places such great value on the dignity of the individual and views the government as an instrument to secure individual rights, the doctrine of sovereign immunity must be deemed suspect.<sup>21</sup>

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14. *Id.* at 869-70.

15. *Id.* at 870.

16. 8 Cal. 3d at 525, 503 P.2d at 1365, 105 Cal. Rptr. at 357.

17. 274 U.S. 352 (1927).

18. 8 Cal. 3d at 525, 503 P.2d at 1365, 105 Cal. Rptr. at 357.

19. 274 U.S. at 356-57.

20. 8 Cal. 3d at 525-26, 503 P.2d at 1365-66, 105 Cal. Rptr. at 357-58; see *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 899, 458 P.2d 57, 62, 80 Cal. Rptr. 113, 118 (1969); *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 222, 225, 347 P.2d 1, 3, 1 Cal. Rptr. 1, 3 (1959).

21. 8 Cal. 3d at 526, 503 P.2d at 1366, 105 Cal. Rptr. at 358, citing *National Bank v. Republic of China*, 348 U.S. 356, 359-61 (1954) and *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 214-16, 359 P.2d 457, 458-59, 11 Cal. Rptr. 89, 90-91 (1961). In *Muskopf*, the California Supreme Court discarded the concept of governmental immunity from liability in tort. Although superseded by the California Tort Claims Act of 1963, CAL. GOV'T CODE ANN. § 900 *et seq.* (West 1970), *Muskopf* is believed to have continuing doctrinal significance. A. VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY § 44 (C.E.B. 1964).

A potential ramification of the *Hall* decision was expressly intimated by the court. It involves the situation where the sister state is immune to suit in her own courts in regard to certain activity, but the activity occurs in California and causes injury to a California resident. The court opined that the sister state would be subject to suit in the California courts because "the sovereignty of one state does not extend into the territory of another."<sup>22</sup> Thus, the California resident has acquired the privilege of circumventing the governmental immunity of a sister state in California courts where the injury causing activity occurs in California.

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22. 8 Cal. 3d at 526 n.4 503 P.2d at 1366 n.4, 105 Cal. Rptr. at 358 n.4. In the instant case, Nevada had abrogated sovereign immunity by statute, permitting action in the courts of Nevada.