Suing Satan: A Jurisdictional Enigma

John J. Little*

American legal systems have witnessed a remarkable growth in the use of litigation as a means of redress for personal grievances and injuries.[1] This expansion has been fueled in part by the adoption of increasingly liberalized rules of procedure[2] and jurisdiction[3] and by the emergence of innovative theories whereunder liability is imposed.[4] Despite

* B.S., Rutgers--The State University (Cook College), 1980; J.D. candidate, Yale Law School, 1983.

1. The increase in the quantity of litigation over the past few decades has been widely documented, particularly as it has greatly increased the workload of the judiciary and led to a need for more judicial clerks. See, e.g., Betten, Institutional Reforms in the Federal Courts, 52 IND. L.J. 63, 63 (1976) (discussing "law explosion" and "overloaded dockets found at all levels of our federal and state judiciaries").

2. For example, the federal rules governing class actions, joinder of claims and parties, and third-party practice have been greatly liberalized to allow all potentially interested parties to resolve common disputes in one proceeding. See FED. R. CIV. P. 1, 13, 14, 18-20, 23; BULL. YALE U., Aug. 20, 1982, at 46 (Yale Law School) (Procedure II course description characterizing "simple bipolar disputes" as "pretty much the stuff of history"). Expanded concepts of standing have also contributed to the boom in litigation. See, e.g., United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973).

3. See, e.g., McGee v. International Life Ins. Co., 355 U.S. 220 (1957). Cf. UNIF. INTERSTATE & INT'L PROCEDURE ACT, 13 U.L.A. 459 (1962). But see Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

4. See, e.g., Langan v. Valicopters, 88 Wash. 2d 855, 567 P.2d 218 (1977) (strict liability extended to action against cropduster and hiring farmer for spraying insecticides on organic crops of adjacent landowner); Bodewig v. K-Mart, Inc., 54 Or. App. 480, 635 P.2d 657 (1981) (department store employee forced to submit to strip search stated cause of action against manager and customer for tort of outrageous conduct); Molien v. Kaiser Found. Hosps., 27 Cal. 3d 916, 167 Cal. Rptr. 831, 616 P.2d 813 (1980) (plaintiff may recover for negligently inflicted psychic injuries without physical injury); Robak v. United States, 658 F.2d 471 (7th Cir. 1981)

this expansion, there remain many well-recognized injuries for which the law provides the injured party with no relief.[5] In a glaring example of this failure to provide a means of redress, no workable theories have been advanced to allow plaintiffs to assert claims against Satan and other netherworld entities, despite the historic and widespread recognition of the injurious activities in which they regularly engage.[6]

In the only reported decision of netherworld litigation, United States ex rel. Mayo v. Satan and His Staff,[7] a plaintiff was denied leave to proceed in forma pauperis on claims arising under 18 U.S.C. § 241 and 42 U.S.C. § 1983.[8] The court, without reaching

(doctors liable to parents for wrongful birth of child with pre-natally diagnosable defects); Turpin v. Sortini, 31 Cal. 3d 220, 182 Cal. Rptr. 351, 643 P.2d 954 (1982) (doctors liable to child for wrongful life).

5. For example, no claim for damages can be brought against a media defendant for an incorrect weather forecast despite the well-recognized and foreseeable injuries which may result from reliance upon an erroneous prediction. Nor does a cause of action lie for the injuries resulting from an erroneous decision by a sports offical. See Georgia High School Ass'n v. Waddell, 248 Ga. 542, 285 S.E.2d 7 (1981); Little, Sports Officiating Decisions and the Limits of Judicial Review, 2 J. ATTEN. SUBT. (1983) (forthcoming).

6. The ability of Satan, evil spirits, poltergeists, and other assorted netherworlders to work havoc on man has long been recounted. See, e.g., Genesis 3:1-15; Matthew 4:1-11; D.P. WALKER, UNCLEAN SPIRITS: POSSESSION AND EXORCISM IN FRANCE AND ENGLAND IN THE LATE SIXTEENTH AND EARLY SEVENTEENTH CENTURIES (1981); M. STARKEY, THE DEVIL IN MASSACHUSETTS (1949). See generally A. GAULD & A. CORNELL, POLTERGEISTS (1979); L. COULANGE, THE LIFE OF THE DEVIL (1930); J. ASHTON, THE DEVIL IN BRITAIN AND AMERICA (1896).

7. 54 F.R.D. 282 (E.D. Pa. 1971). By naming Satan and an unspecified "staff" in his complaint, plaintiff's pleadings were probably sufficient to subject any subordinate fallen angels to his claims, at least until discovery revealed the names of any subordinates. An alternative approach would have been to name as defendants "Satan and unknown devils." Another alternative would be an action against a class of defendants. See Note, Defendant Class Actions, 91 HARV. L. REV. 630 (1978).

8. Plaintiff's claims that defendants on "numerous occasions caused misery and unwarranted threats," had "placed deliberate obstacles" in plaintiff's path, and had "caused his downfall," were of little merit. 18 U.S.C. § 241 (1976) is a criminal statute and of no use to plaintiff in a civil action. See, e.g., Agnew v. Compton, 239 F.2d 226 (9th Cir. 1956), cert. denied, 353 U.S. 959 (1957). Similarly, plaintiff's claim under 42 U.S.C. § 1983 (1976) was insufficient as it did not allege that defendants acted under color of state law.

The court also noted, while not basing its decision on these factors, that it might be difficult to manage plaintiff's suit if it were later urged as a class action in favor of all those with similar claims against Satan, and that no instructions for service of process were included. In discussing a class action, the court was overreaching; no such action was

the merits of these claims, rested its decision upon the unlikelihood of establishing personal jurisdiction in the district. Such procedural problems, together with the limited jurisdiction of federal courts to hear non-federal causes of action,[9] make it unlikely that many civil claims could be asserted against Satan or similar defendants in a federal district court.[10] Since most injured plaintiffs must thus look to state courts for relief, this Article proposes an analysis under which a state court can hear claims against Satan.[11]

before it. Some writers have placed undue emphasis on the court's remarks regarding service of process. J. LANDERS & J. MARTIN, CIVIL PROCEDURE 176 (1981) (characterizing failure to include instructions for service as partial basis for dismissal).

9. Absent a statutory or constitutional cause of action, federal jusridiction over Satan would have to rest upon diversity. However, use of diversity presents several problems. First, it is unclear whether Satan is a citizen of any state or a "citizen or subject of a foreign state." 28 U.S.C. § 1332 (1976). If he does not fit one of these categories, diversity is not available; if he does fit either category, plaintiff has further problems, for he must specifically plead defendant's place of residence in a diversity action. FED. R. CIV. P. 8(a)(1); see Jackson v. Twentyman, 27 U.S. (2 Pet.) 136 (1829). Finally, an unusually large number of problems arise in trying to determine whether the amount in controversy satisfies the $10,000 requirement of 28 U.S.C. § 1332 (1976). This is particularly true in disputes arising out of contracts to sell a soul.

10. Because of the difficulty of obtaining federal jurisdiction for these actions, this Article is based on the assumption that actions against Satan will be brought in state courts. However, to the extent that federal subject matter jurisdiction can be obtained, similar questions of personal jurisdiction will arise.

11. The variety of possible claims which could be brought against such defendants is vast. Tort claims, similar to those pressed in Mayo, are obvious examples. A variety of contract claims could arise from attempts to enforce or to rescind a "sale-of-soul" contract. See, e.g., C. MARLOWE, THE TRAGICAL HISTORY OF THE LIFE AND DEATH OF DOCTOR FAUSTUS (1592) (contract between Lucifer and Faustus exchanging soul for unlimited knowledge and services of one Mephistophilis); Scratch v. Stone, described in S. BENET, The Devil and Daniel Webster, in 2 SELECTED WORKS OF STEPHEN VINCENT BENET 32 (1942) (alluded to in Mayo, 54 F.R.D. at 283); G. ABBOTT & D. WALLOP, DAMN YANKEES (1955) (contract between Devil and Washington Senators fan exchanging soul for American League pennant). Similarly, Satan might be subject to suit for property damage. See J. ANSON, THE AMITYVILLE HORROR (1977) (spirits in home damaged property and lowered property value). Finally, third-party complaints might be brought against netherworlders for contribution or indemnification, based upon the "the Devil made me do it" theory. See F. WILSON, THE DEVIL MADE ME BUY THIS DRESS (n.d.) (phonorecord).

There are, however, some Satanic contracts that would be unenforceable as contrary to public policy. One example is the wager for a soul. See, e.g., Daniels, The Devil Went Down to Georgia, in CHARLIE DANIELS BAND,

The primary obstacle to hearing such claims is the need of the forum state court to establish personal jurisdiction over the defendant.[12] The International Shoe decision[13] and its progeny,[14] governing the reach of a forum state's jurisdiction, mandate that the defendant have sufficient "minimum contacts" with the forum state so that "traditional notions of fair play and substantial justice" are not offended by requiring the defendant to defend a suit in that state.[15] Applying this test to Satan and similar defendants, a court should exercise jurisdiction if the plaintiff can show that the defendants maintained certain "minimum evil contacts" with that state.[16]

MILLION MILE REFLECTIONS 2, track 1 (1979) (phonorecord). While the courts will not enforce such gambling contracts, evidence of such activity could be offered to show that Satan had contacts in a given state. See infra notes 15 & 16 and accompanying text.

12. Prior to Shaffer v. Heitner, 433 U.S. 186 (1977), quasi-in-rem jurisdiction could be obtained over Satan by attaching souls owed to him under contracts of sale. See Harris v. Balk, 198 U.S. 215 (1905). However, Shaffer requires that "contacts" with the forum exist before any form of jurisdiction can be exercised; the presence of assets belonging to a potential defendant is not enough to subject him to jurisdiction to decide an unrelated cause of action. See Brilmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1982 SUP. CT. REV. 77, 96-105; see generally R. CRAMPTON, D. CURRIE & H. KAY, CONFLICT OF LAWS 585-93 (1981).

13. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

14. See, e.g., Ohio v. Wyandotte Chem. Corp., 401 U.S. 493 (1971); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

15. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). In applying this test, the courts have held that sufficient "minimum contacts" exist where a non-resident executes a contract in the forum state, Product Promotions, Inc. v. Cousteau, 495 F.2d 483 (5th Cir. 1974), or where a plaintiff is injured in the forum state by a product produced by a non-resident, Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (defendant could reasonably anticipate product's use in forum).

16. Cf. UNIF. INTERSTATE & INT'L PROCEDURE ACT § 1.03(b), 13 U.L.A. 459 (1962). Jurisdiction could be exercised over a claim arising from a contract between Satan and plaintiff if execution occurred in the forum, or if delivery of the soul was to occur there. For tort claims, plaintiff might show that defendant performed acts or caused results within the forum state, and that the injuries arose from these activities. The form of personal jurisdiction that would result in such cases is "specific" jurisdiction; the jurisdiction would extend only to causes of action which were related in some manner to the contacts which allow the exercise of personal jurisdiction. See Brilmayer, supra note 12.

To some extent, all states should be able to exercise jurisdiction over

Having established jurisdiction under the "minimum evil contacts" analysis, a plaintiff need only satisfy the forum state's requirements for service of process before proceeding. Personal service would of course present great difficulties; however, most jurisdictions authorize some alternatives,[17] such as substituted service[18] or service by publication.[19] In some cases, service may only require service upon the forum state's secretary of state;[20] however, states often require that service by publication or substituted service occur in the county or district in which the defendant resides or in which the action arose.[21] Plaintiffs bringing suit against Satan could satisfy these requirements by publishing notice in the county or district in which Satan maintains "maximum evil contacts."[22] For these

some claims against Satan and other netherworlders. It may be necessary for plaintiffs to rest jurisdiction on defendant's temptation centered activities rather than acts of a patently immoral character which can be attributed to defendants. Such acts--prostitution, gambling, drug abuse, political corruption--are potentially rare in some jurisdictions. For example, jurisdiction over Satan in Utah may be mainly based on temptation.

17. Personal service is not always constitutionally required. See Jacob v. Roberts, 223 U.S. 261 (1912) (when authorized by statute, substituted service constitutionally permissible when impractical or impossible to use actual personal service); 62 AM. JUR. 2D Process § 65. But cf. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) (due process requires individual, mailed notice of action to settle accounting to known beneficiaries of trust).

18. See, e.g., S.D. COMP. LAWS ANN. § 15-6-4(e) (1967); see generally 62 AM. JUR. 2D Process § 66 (1972).

19. See, e.g., S.D. COMP. LAWS ANN. § 15-9-7 (1967) (authorizing service by publication in various circumstances in which defendant not within state); see generally 62 AM. JUR. 2D Process § 109 (1972).

20. This is often the case for actions against non-resident motorists and foreign corporations. See 8 AM. JUR. 2D Automobiles and Highway Traffic § 935 et seq. (1980); 26 AM. JUR. 2D Foreign Corporations § 516 et seq. (1968); cf. Burgess v. Ancillary Acceptance Corp., 543 S.W.2d 738 (Tex. Civ. App. 1976) (suit dismissed for failure to allege corporation non-resident).

21. Because service by publication is designed to provide actual notice, the requirement that publication occur in the locality in which defendant resides or has maximum contacts is sound. See, e.g., S.D. COMP. LAWS ANN. § 15-9-17 (1967) (publication in newspaper in county in which action pending).

22. It would be difficult to pinpoint the residence of Satan. This doubtless was part of relator's problem in Mayo. 54 F.R.D. at 283. However, one can replace the inquiry into "residence" with inquiry into where defendant has "maximum contacts" with the state. By providing for service in this location, defendants will be most likely to receive actual notice.

purposes, the courts should adopt a presumption that maximum evil contacts are maintained in the county or district that contains the forum state's capital city.[23]

The jurisdictional problems referred to in Mayo, then, are easily resolvable. Courts that use the approach suggested in this Article need not hide behind procedural technicalities; rather, they bravely can press on to reach the merits of claims against netherworlders.[24]

23. The county in which the state capital is located will often be the place of "maximum evil contacts." The potential for political corruption, graft, prostitution, bribery, and drug use in such areas and the corresponding temptation to engage in such activities is high. However, plaintiffs should be free to adduce evidence that other areas of the state are in fact the centers of "maximum evil contact." States in which such a showing is likely to be made include California (both San Francisco and Los Angeles are potentially more evil than Sacramento), New York (New York City clearly more evil than Albany), and New Jersey (almost any part of the state--Atlantic City, Newark, Jersey City, or Camden--more evil than Trenton).

24. This Article does not deal with the difficult problems of executing any judgment obtained against Satan. It is unlikely that any tangible assets can be found to have sold at an execution sale. However, it should be possible to garnishee ~~debts~~ souls owed to Satan, compelling payment to the judgment creditor instead of the contract creditor. Cf. supra note 12.

32