The Shortcomings of New York's Long-Arm Statute: Defamation in the Age of Technology

Robert D. Nussbaum
THE SHORTCOMINGS OF NEW YORK'S LONG-ARM STATUTE: DEFAMATION IN THE AGE OF TECHNOLOGY

ROBERT D. NUSSBAUM†

“He who steals my purse, steals trash; but, he who steals my reputation steals my life.”¹

INTRODUCTION

“I have no doubt in my mind that I saw the coach guzzling beer at the party.”² That is what Patricia MacLaren, a California resident, said about Leon Talbot, the head coach of the men’s basketball team at St. Lawrence University in upstate New York.³ The accusation was printed in a New York newspaper⁴ and had the potential to destroy Talbot’s reputation and ruin his career. However, when Talbot sued MacLaren for defamation in New York, the case was dismissed as a matter of law.⁵ The New York Court of Appeals held that the court lacked personal jurisdiction pursuant to New York Civil Practice Law and Rules (“CPLR”) section 302—New York’s long-arm jurisdiction statute.⁶

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³ Id. at 828–29, 522 N.E.2d at 1028, 527 N.Y.S.2d at 730.

⁴ See id.

⁵ Id. at 829, 522 N.E.2d at 1028, 527 N.Y.S.2d at 731.

⁶ Id.
Long-arm jurisdiction statutes have existed for more than half a century, and dictate when a state may exercise jurisdiction over non-domiciliaries—individuals who are not permanent residents of the state. Section 302 of the New York CPLR specifically enumerates the situations in which a New York court may exercise jurisdiction over non-domiciliaries. For example, jurisdiction may be exercised over a non-domiciliary who "commits a tortious act within the state," or who "commits a tortious act without the state causing injury to person or property within the state." However, there is an exception to these rules: If the tort committed is defamation, jurisdiction shall not be exercised.

The decision to exclude acts of defamation from the confines of CPLR section 302 was a policy decision of the New York legislature when the law was first enacted in 1962. Primarily, the legislature was concerned with the potential infringement of First Amendment protections and did not want to inhibit free speech by making individuals defend themselves in states "where

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8 See David C. Tunick, Up Close and Personal: A Close-Up Look at Personal Jurisdiction, 29 CREIGHTON L. REV. 1157, 1158-59 (1996) (noting that to be able to assert jurisdiction over a non-domiciliary, "a state court must satisfy federal due process and the state's personal jurisdiction statute, known as the long-arm statute").
9 BLACK'S LAW DICTIONARY 559 (9th ed. 2009) (defining a domiciliary as "[a] person who resides in a particular place with the intention of making it a principal place of abode").
11 Id.
12 Id. § 302(a)(2).
13 Id. § 302(a)(3).
14 See id. § 302(a)(2)-(3). ("As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who . . . commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act." (emphasis added)).
15 See Vincent C. Alexander, Practice Commentaries, N.Y. C.P.L.R. § 302, at C302:10 (McKinney 2008) ("The exclusion is based on a policy decision that recognizes the ease with which a written or oral utterance may occur in New York, thereby subjecting numerous individuals and media organizations to suit in New York despite their potentially remote connection to the state.").
they had no substantial interests."\textsuperscript{16} This means that domiciliaries like Talbot, who have been defamed by non-domiciliaries, cannot obtain redress in New York, despite the fact that New York is where they have been defamed.\textsuperscript{17} Meanwhile, if a non-domiciliary commits any other tort in New York, or commits any other tort causing injury to a New York citizen, jurisdiction would be proper and the non-domiciliary can be held liable in a New York court of law.\textsuperscript{18}

Given the technological age that we live in, the statute is woefully out of date.\textsuperscript{19} With such widespread access to the Internet and the growing popularity of social media, individuals can defame New York citizens from outside of the state with just a few quick keystrokes.\textsuperscript{20} Consequently, the effects of defamation are that much more detrimental, given the ease with which so many people have access to defamatory statements.\textsuperscript{21} Additionally, the statute does not seem to be fair on its face or to serve justice. Why should a New York court have jurisdiction over a non-domiciliary who batters someone in the state, intentionally inflicts emotional distress upon someone in the state, or who sends a defective product into the state that causes injury to an individual or property within the state, but not have jurisdiction over the non-domiciliary who defames someone in the state? This seems to go against the whole purpose of having a long-arm statute—to be able to exert jurisdiction over those who inflict harm within the state's borders.\textsuperscript{22}

\textsuperscript{16} See Robert D. Sack, Sack on Defamation: Libel, Slander, and Related Problems 15-8 (4th ed. 2012) (noting that the statute was "intended 'to avoid unnecessary inhibitions on freedom of speech or the press'") (citing 2 Jack B. Weinstein et al., New York Civil Practice § 302.15 (2d ed. 2004)).

\textsuperscript{17} See C.P.L.R. § 302(a)(2)-(3); see also Talbot v. Johnson Newspaper Corp., 71 N.Y.2d 827, 829, 522 N.E.2d 1027, 1028, 527 N.Y.S.2d 729, 731 (1988) (holding that "CPLR 302(a)(1) . . . does not support the exercise of personal jurisdiction over the MacLarens," who are residents of California).

\textsuperscript{18} C.P.L.R. § 302(a)(1)-(2).

\textsuperscript{19} See Stephen W. Bosky, Note, Defamation in the Internet Age: Missouri's Jurisdictional Fight Begins with Baldwin v. Fischer-Smith, 56 St. Louis U. L.J. 587, 587 (2012) (noting how the increase in technology has allowed easy communication across state lines, creating new issues for jurisdiction).

\textsuperscript{20} See id. ("[W]orldwide communication is available to anyone with a computer and an Internet connection.").

\textsuperscript{21} See id. at 587–88 (noting how "the impact of Internet activity is felt in the real world" and how "[t]he Internet has created a global village where information can travel quickly around the world").

\textsuperscript{22} See Vincent C. Alexander, Practice Commentaries, N.Y. C.P.L.R. § 302, at C302:10 ("The modern rationale of CPLR 302(a)(2) is based on the fairness of
This Note suggests that the New York legislature amend New York’s long-arm statute so that it no longer excludes the tort of defamation as a basis for long-arm jurisdiction. Part I provides a brief background and history of jurisdiction and long-arm statutes in general. It also focuses on New York’s statute more specifically. Part II focuses on the arguments for excluding acts of defamation from long-arm jurisdiction and compares New York’s statute to those of other states. Finally, Part III examines the different policy reasons for changing the statute and argues that such a change will not offend Due Process or First Amendment protections of free speech.

I. BACKGROUND AND HISTORY OF LONG-ARM STATUTES

A. Jurisdiction and Long-Arm Statutes

Before a court may act to resolve a case, the court must first possess jurisdiction over the subject matter of the dispute and over the individuals involved. Jurisdiction “denotes the court’s power to award a judgment which imposes personal liability upon the defendant.” In Pennoyer v. Neff, the Supreme Court first established that states automatically possess jurisdiction over individuals and property residing within that state. However, the rise of interstate commerce and travel called for an expansion of jurisdiction, which the Supreme Court recognized in International Shoe Company v. Washington.
International Shoe established the “minimum contacts” standard, which dictates that a court may exercise jurisdiction when an out-of-state defendant has certain minimum contacts with the forum state—the state in which the suit is filed. The reasoning behind this standard is that certain minimum contacts with the forum state show that the defendant availed itself of the benefits of that state and therefore it should be reasonably foreseeable that the defendant could be haled into court there. Therefore, under this test, haling an out-of-state defendant into court “does not offend ‘traditional notions of fair play and substantial justice.’” Thus, International Shoe laid the foundation for states to enact their own long-arm statutes, giving states the ability to exercise jurisdiction over non-domiciliaries without offending Due Process.

Since the landmark decision of International Shoe, most states have adopted their own long-arm statutes, dictating the specific conditions under which a particular state may exercise jurisdiction over a non-domiciliary. These long-arm statutes generally fall under one of two categories. The first category consists of statutes that allow for jurisdiction to the full extent permitted by Due Process under the Constitution. In other words, jurisdiction would be permitted over a non-domiciliary so long as it did not offend the Constitution or the “minimum contacts” standard established by International Shoe. The second category consists of statutes that enumerate certain conditions that must be satisfied in order for jurisdiction to be

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29 See id. at 316 (“[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940))).
30 Id. at 316.
31 BLACK'S LAW DICTIONARY 726 (9th ed. 2009).
32 Int'l Shoe Co., 326 U.S. at 319.
33 Id. at 316 (quoting Milliken, 311 U.S. at 463).
34 Id. (“[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it.”).
36 See Tunick, supra note 8, at 1159.
37 Id.
38 Int'l Shoe Co., 326 U.S. at 316.
exercised. Under these types of statutes, personal jurisdiction may not be exercised unless one of the specific requirements is met, even though Due Process may otherwise be satisfied.

B. New York's Long-Arm Statute

New York's long-arm statute falls into the second category, as it highlights a number of specific situations under which a New York court may exercise jurisdiction over a non-domiciliary. Section 302 of the CPLR lays out these requirements. It states that a New York court may exercise personal jurisdiction over a non-domiciliary who: (1) transacts business within the state; (2) commits a tortious act within the state; (3) commits a tortious act outside of the state causing injury to an individual or property within the state; or (4) owns or uses any real property within the state. However, there is one key exception to the two provisions concerning tortious acts. A New York court shall not have jurisdiction over a non-domiciliary if the tortious act committed is defamation.

A New York court shall not have jurisdiction over a non-domiciliary if the tortious act committed is defamation. Section 302(a)(2) specifically states that a New York court “may exercise personal jurisdiction over any non-domiciliary” who “commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act.” Similarly, section 302(a)(3) states that a New York court “may exercise personal jurisdiction over any non-domiciliary” who “commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act.” Therefore, if a non-domiciliary defames a New York citizen, while either in the state or outside of the state, a New York court will not be able to exercise jurisdiction solely on that ground.

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39 Tunick, supra note 8, at 1159.
40 Id.
41 See generally N.Y. C.P.L.R. § 302 (McKinney 2008).
42 Id.
43 Id. § 302(a).
44 Id. § 302(a)(2)–(3).
45 Id.
46 Id. § 302(a)(2).
47 Id. § 302(a)(3).
48 Id. § 302(a)(2)–(3).
C. What Is Defamation?

Defamation involves the expression of a false statement to another, which causes injury to the reputation of the individual about whom the false statement was made. More generally, defamatory statements have been viewed as a means to expose an individual “to public contempt, ridicule, aversion, or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society.” Defamation includes both slander, an oral misstatement of fact, and libel, a written or published misstatement of fact. In New York, in order to be successful in a defamation suit, a plaintiff must bring suit within one year of the defamatory remarks and must prove six elements beyond a preponderance of the evidence.

First, there must be a defamatory statement of fact. The statement cannot be one of opinion. Second, the statement must regard the plaintiff. Third, the defendant must publish or speak the misstatement of fact to a third party. Fourth, the statement must be false. If the statement is found to be true, no matter how horrible, the plaintiff will no longer have a cause of action for defamation. Fifth, there must be some degree of fault on the part of the defendant. In other words, the defendant must have known that the statement was false or must have acted negligently or recklessly in making the statement. Finally, and most importantly, the plaintiff must

49 BLACK’S LAW DICTIONARY 479 (9th ed. 2009) (defining defamation as “[t]he act of harming the reputation of another by making a false statement to a third person”).
53 NEW YORK PATTERN JURY INSTRUCTIONS-CIVIL, supra note 51, at 222.
54 Id.
55 See id.
56 Id.
57 Id. at 220, 222.
58 Id. at 222.
59 See id.
60 Id.
61 Id. at 234.
prove an injury as a result of the defamatory remark.\textsuperscript{62} In addition, if the plaintiff is a public official, someone who has responsibilities relating to governmental affairs, or a public figure in general, there is a slightly higher burden of proof and the plaintiff must prove that the defendant made the defamatory statement out of actual malice.\textsuperscript{63}

In defamation suits, injury to the plaintiff consists of damage to reputation.\textsuperscript{64} This is often a difficult element to prove, given the intangible nature of an individual's reputation, and the difficulty with assessing the damage done to it.\textsuperscript{65} Sometimes, monetary damages may be easily ascertained if the defamed individual is unable to work or loses a job as a result of the defamation, thereby resulting in lost earnings.\textsuperscript{66} Similarly, the plaintiff may become so emotionally distraught so as to require medical treatment, resulting in medical expenses for which the plaintiff may be compensated.\textsuperscript{67} Other times, injury to reputation may be solely emotional and it may be highly difficult to assess a monetary value for such injury.\textsuperscript{68} Regardless, the Supreme Court has recognized that there is a "strong and legitimate state interest in compensating...individuals for injury to reputation."\textsuperscript{69} This is because reputation ultimately affects the way in which individuals choose to interact with each other, and

\textsuperscript{62} See id. at 222 ("[T]he law does not assume an injury to reputation, but insists on some confirmation of such injury.").

\textsuperscript{63} See N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) ("The constitutional guarantees require...a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."); see also id. at 293 (Black, J., concurring) ("The requirement that malice be proved provides at best an evanescent protection for the right critically to discuss public affairs.").

\textsuperscript{64} NEW YORK PATTERN JURY INSTRUCTIONS-CIVIL, supra note 51, at 221–22.

\textsuperscript{65} See id. at 222 ("[C]onfirmation of injury to reputation is supplied by...proof of special harm.").

\textsuperscript{66} Id.

\textsuperscript{67} Id.


the damage done to an individual's reputation can result in a "loss of self and separation from the basic norms that govern human life."

Because defamation is comprised of speech, defamation law has constantly clashed with First Amendment jurisprudence. Since 1964 and the Supreme Court decision in *New York Times Company v. Sullivan*, the Supreme Court has significantly changed the common law notions of defamation by holding that the First Amendment limits the state's ability to impose liability for defamation under certain circumstances. Specifically, the Court held that when the plaintiff is a public official, the plaintiff must also prove that the defamatory statements were made with actual malice. The Court has since struggled to balance First Amendment protections against the interests of individuals who have been defamed. Nevertheless, while one of the central purposes of the First Amendment is to protect an individual's right to free speech, the amendment is not unlimited and it is well-established doctrine that the First Amendment does not grant individuals the freedom to make defamatory remarks against others.

However, under the confines of New York's long-arm statute, if a non-domiciliary defames a New York citizen, a New York court will not have jurisdiction solely on that ground due to the exceptions found in both CPLR section 302(a)(2) and section 302(a)(3). Therefore, in order for a New York court to be able to exercise jurisdiction over a non-domiciliary who has engaged in defamatory remarks, it must also be established that the defendant either transacts business within New York or owns, uses, or possesses any real property within New York. Often,

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70 Post, supra note 1, at 701.
72 *NEW YORK PATTERN JURY INSTRUCTIONS-CIVIL*, supra note 51, at 223–24.
73 See id. at 224–26.
74 *U.S. CONST. amend. I.*
75 *NEW YORK PATTERN JURY INSTRUCTIONS-CIVIL*, supra note 51, at 224–25; *Post*, supra note 1, at 691.
76 *N.Y. C.P.L.R. § 302(a)(2)–(3) (McKinney 2008).*
77 *Id. § 302(a)(1), (a)(4); see also SPCA of Upstate N.Y., Inc. v. Am. Working Collie Ass'n*, 18 N.Y.3d 400, 403, 963 N.E.2d 1226, 1228, 940 N.Y.S.2d 525, 527 (2012) ("[D]efamation claims . . . cannot form the basis for 'tortious act' jurisdiction, [but] such claims may proceed against non-domiciliaries who transact business within the state.").
this is an impossible obstacle to overcome, as was recently the case in *SPCA of Upstate New York, Inc. v. American Working Collie Association*.

In *SPCA*, the Society for the Prevention of Cruelty to Animals ("SPCA"), a New York corporation, sued the American Working Collie Association ("AWCA"), an Ohio corporation, in a New York state court for defamatory remarks made by the AWCA against the SPCA on the AWCA's website. After visiting the SPCA, Jean Levitt, the President of the AWCA, wrote on her organization’s website that many of the dogs at the SPCA “were held in a crowded, cluttered storage room,” that one of the dogs had “urine-soaked paws,” and that the dogs at the SPCA “have been denied rehabilitation, foster or adoptive homes, and the dignity every living creature deserves.” The New York Supreme Court held that jurisdiction was proper and refused to dismiss the suit. However, the Appellate Division reversed, refusing to exercise jurisdiction pursuant to CPLR section 302 because it could not also be established that the AWCA transacted business within New York. The New York Court of Appeals affirmed, holding that defamation alone cannot be the basis for jurisdiction over a non-domiciliary, given the statutory exception found in CPLR section 302. Meanwhile, had the defendant committed any other tort causing injury to the New York plaintiff—trespass, misappropriation of a trade secret, invasion of privacy, nuisance, etc.—that would have been sufficient for a New York court to have exercised jurisdiction.

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78 18 N.Y.3d 400, 963 N.E.2d 1226, 940 N.Y.S.2d 525.
79 Id. at 402, 963 N.E.2d at 1227, 940 N.Y.S.2d at 526.
81 Id.
82 Id.
85 *SPCA of Upstate N.Y., Inc.*, 18 N.Y.3d at 403, 963 N.E.2d at 1228, 940 N.Y.S.2d at 527.
II. WHY EXCLUDE DEFAMATION?

Historically, several policy arguments have been made in support of excluding defamation actions from the reach of New York’s long-arm jurisdiction statute. These arguments primarily deal with the First Amendment, as the New York legislature did not want to inhibit the free speech that it saw the First Amendment to protect by allowing the exercise of jurisdiction over non-domiciliaries in defamation actions.\(^87\) The legislature was particularly influenced by several libel actions that were brought in the early sixties by southern states against northern newspapers.\(^88\) One such case was *The New York Times Company v. Sullivan*,\(^89\) where The New York Times, a New York corporation, was forced to defend itself in a libel action all the way in Alabama.\(^90\) In light of such cases, the New York legislature did not wish “to force newspapers published in other states to defend themselves in states where they had no substantial interests.”\(^91\) Thus, the statute as codified was intended “to avoid unnecessary inhibitions on freedom of speech or the press.”\(^92\)

In drafting New York’s long-arm statute, the legislature was also influenced by the guarantee of free speech provided in Article I, Section 8 of the New York State Constitution, which was first adopted in the early nineteenth century.\(^93\) As the New York Court of Appeals stated in *Immuno AG. v. Moor-Jankowski*, “This State . . . has long provided a hospitable climate for the free exchange of ideas.”\(^94\) This idea was adopted by New York long before the Supreme Court decided to apply the First Amendment to the states, recognizing “the sensitive role of gathering and

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\(^{87}\) See SACK, supra note 16, at 15-7-15-9 (noting how the drafters’ decision to exclude defamation as a basis for long-arm jurisdiction was “consistent with New York’s general statutory policy seeking to avoid jurisdictional overreaching when First Amendment considerations are implicated”).

\(^{88}\) Id. at 15-7.


\(^{90}\) Id. at 256.

\(^{91}\) See SACK, supra note 16, at 15-7-15-8.

\(^{92}\) See id. at 15-8.

\(^{93}\) See Immuno AG. v. Moor-Jankowski, 77 N.Y.2d 235, 249, 567 N.E.2d 1270, 1277, 566 N.Y.S.2d 906, 913 (1991) (“[T]he free speech guarantee of the New York State Constitution, begins with the ringing declaration that ‘[e]very citizen may freely speak, write and publish . . . sentiments on all subjects.’ ” (citing N.Y. CONST. art. I, § 8)).

\(^{94}\) Id.
disseminating news of public events." Therefore, there is a long history in New York of "safeguarding the free press against undue interference." The New York Court of Appeals has also recognized that the "protection afforded by the guarantees of free press and speech in the New York Constitution is often broader than the minimum required by" the Federal Constitution. Consequently, the New York legislature did not wish to offend the state's long recognized tradition of support for free speech when it enacted New York's long-arm statute in 1962.

Aside from the written word, the ease with which a slanderous statement can leave one's mouth has also been noted as reason for excluding acts of defamation from New York's long-arm statute. Consequently, the legislature felt that a non-domiciliary's mere oral utterance should not automatically subject that individual to New York jurisdiction, particularly when the individual's other connections to the state are so far removed. With these policy arguments in mind, the drafters of the statute hoped "that other states would reciprocate by enacting statutes, or amending existing statutes, to respect the First Amendment freedoms" that they so desperately wished to protect.

Subliminally, the New York legislature may have intended to protect New York organizations specifically. By enacting a statute that made an exclusive exemption for defamation, the New York legislature may have hoped to shield certain New York organizations, like newspapers and publishing companies, from having to defend themselves in defamation suits in other states if

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95 Id. (citing O'Neill v. Oakgrove Constr., Inc., 71 N.Y.2d 521, 528–29, 523 N.E.2d 277, 280–81, 528 N.Y.S.2d 1, 4–5 (1998)).
96 Id.
97 Id.
98 See Vincent C. Alexander, Practice Commentaries, N.Y. C.P.L.R. § 302, at C302:10 (McKinney 2008) ("The exclusion is based on a policy decision that recognizes the ease with which a written or oral utterance may occur in New York, thereby subjecting numerous individuals and media organizations to suit in New York despite their potentially remote connection to the state.").
99 Id.
100 See SACK, supra note 16, at 15-9.
other states were to follow in New York’s footsteps. Since the middle of the twentieth century has been coined “the golden age of publishing,” this very well may have been a factor.

A. Other States’ Long-Arm Statutes

In fact, some other states did copy New York’s long-arm statute, or had already enacted a long-arm statute similar to that of New York, by highlighting a specific exclusion for defamation actions within their respective statutes. For example, Georgia’s long-arm statute, enacted in 1966, allows for jurisdiction over a non-domiciliary who “[c]ommits a tortious act or omission within the state, except as to a cause of action for defamation.” However, the statute differs from New York’s long-arm statute in that the defamation exception does not extend to the provision concerning jurisdiction over an individual who commits a tortious act outside of the state, causing injury to an individual within the state. Connecticut’s long-arm statute, enacted in 1969, also has a defamation exclusion. Under Connecticut’s long-arm statute, the defamation exclusion applies to both tortious acts committed within the state, as well as tortious acts committed outside of the state, causing injury to an individual within the state. Connecticut courts have strictly applied this rule, and have refused to “favor subjecting an


102 See GA. CODE ANN. § 9-10-91(2) (West 2011) (“A court of this state may exercise personal jurisdiction over any nonresident . . . if he or she . . . [c]ommits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act.”); see also CONN. GEN. STAT. ANN. § 52-59b(a)(2)–(3) (West 2004) (“[A] court may exercise personal jurisdiction over any nonresident individual . . . who . . . commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or [c]ommits a tortious act outside the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act.”).

103 GA. CODE ANN. § 9-10-91(2).

104 Id. § 9-10-91(3) (noting that a Georgia court may exercise jurisdiction over a non-domiciliary who “[c]ommits a tortious injury in the state caused by an act or omission outside the state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct”).

105 CONN. GEN. STAT. ANN. § 52-59b(a)(2)–(3).

106 Id.
individual nonresident utterer of defamation [to jurisdiction], however hurtful or unfair" the defamatory statements may have been.\textsuperscript{107}

Conversely, there are other states that have declined to make such exceptions for defamation actions within their long-arm statutes.\textsuperscript{108} For example, Illinois, which in 1957 became the first state to enact a comprehensive long-arm jurisdiction statute,\textsuperscript{109} allows for jurisdiction over non-domiciliaries to the full extent permitted by Due Process.\textsuperscript{110} According to the statute, "[a] court may... exercise jurisdiction on any... basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States."\textsuperscript{111} Similarly, California's long-arm statute, enacted in 1969, allows for jurisdiction over a non-domiciliary "on any basis not inconsistent with the Constitution of the state or of the United States."\textsuperscript{112} Finally, other states, like Florida, allow for jurisdiction over non-domiciliaries under certain enumerated situations, but fail to make any exceptions for defamation actions.\textsuperscript{113}

Many states have therefore permitted jurisdiction over out-of-state defendants who have allegedly defamed in-state plaintiffs. Doing so has not only been held to be in line with First Amendment protections, but has also been held not to offend this country's Constitution.\textsuperscript{114} Such was the case in \textit{Obsidian Finance

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\item \textsuperscript{108} See 735 ILL. COMP. STAT. ANN. 5/2-209(a)(2) (West 2008) (noting that an Illinois court may exercise jurisdiction over a non-domiciliary who commits any "tortious act within the state"); see also FLA. STAT. ANN. § 48.193(1)(b) (West 2013) (noting that a Florida court may exercise jurisdiction over a non-domiciliary who commits any "tortious act within the state").
\item \textsuperscript{109} Kristopher B. Knox, Note, Davis v. St. John's Health System, Inc.: General Jurisdiction, The Door Is Ajar, but How Far Will It Open?, 56 ARK. L. REV. 647, 661 (2003) ("Illinois was the first state to adopt a wide-ranging long-arm statute.").
\item \textsuperscript{110} 735 ILL. COMP. STAT. ANN. 5/2-209(c).
\item \textsuperscript{111} Id.
\item \textsuperscript{112} CAL. CIV. PROC. CODE § 410.10 (West 1970).
\item \textsuperscript{113} See FLA. STAT. ANN. § 48.193(1)(b) (noting that a Florida court may exercise jurisdiction over a non-domiciliary who commits any "tortious act within the state").
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Group LLC v. Cox,115 where an Oregon District Court exercised jurisdiction over an out-of-state defendant who defamed an in-state plaintiff, pursuant to its own long-arm jurisdiction statute.116 The plaintiff, an attorney named Kevin Padrick, filed suit against Crystal Cox, who posted on her online blog that Padrick was “a THUG and a Thief hiding behind the Skirt tails of a corrupt un-monitored bankruptcy court system and protected by Corrupt Bend DA and Corrupt Bend Oregon Judges.”117 Cox also wrote that Padrick “stole money from the United States government”118 and made other remarks about him hiring a hitman.119 Not only did the District Court hold that jurisdiction was proper over Cox, who had to travel from Montana to defend herself in Oregon, but a jury found the defendant liable in the sum of $2.5 million.120

III. WHY NEW YORK'S LONG-ARM STATUTE NEEDS TO CHANGE

New York's long-arm statute needs to change for the same reasons that gave rise to Obsidian Finance121 and other defamation cases—the seriousness of defamation as a tort, and the extent to which defamatory statements can crush an individual’s reputation and have negative effects in many aspects of an individual's life. While defamation has often been cast aside as not being able to induce the same type of damaging effects as other torts, it is important to realize the priority with which most people value their reputations and the harm that defamatory statements can cause. Reputation is “‘essential’ and intrinsic in ‘every human being,’ ”122 and for some, it may be the most important aspect of daily life. Reputation can affect an individual’s career, the way in which others choose to interact with the individual, and ultimately, an individual’s overall self-

115 Obsidian, 812 F. Supp. 2d 1220.
116 Or. R. Civ. P. 4(D) (allowing an Oregon court to exercise jurisdiction over a non-domiciliary who injures a person or property within the state by an act or omission outside of the state). See generally Obsidian, 812 F. Supp. 2d 1220.
117 Obsidian, 812 F. Supp. 2d at 1226.
118 Id. at 1228, 1233; Complaint at 3, Obsidian, 812 F. Supp. 2d 1220 (CV'11-0057 HA).
119 See generally Complaint, supra note 118.
121 Obsidian, 812 F. Supp. 2d 1220.
122 See Post, supra note 1 (citing Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (Stewart, J., concurring)).
esteem. Therefore, New York's long-arm statute, which is meant to protect New Yorkers from harm, or at least provide New Yorkers with a means of redress for harm caused to them, actually has a gaping hole through which New Yorkers have and will continue to experience detrimental consequences.

A. Policy Reasons

Given the technological age that we currently live in, New York's long-arm statute as written presents an immense conflict. With growing access to the Internet and cell phones, and the immense popularity of social media, it is becoming much easier for a non-domiciliary to defame a New York citizen from anywhere outside of the state's borders. Additionally, defamation is that much more detrimental to any given individual, given the vast technology that is so easily at our fingertips. Currently, the Internet connects hundreds of millions of individuals who can essentially "access it from their offices, classrooms, homes and from the road." With online social networking sites such as Facebook and Twitter, "it is getting easier and easier to ruin a regular person's reputation with just a few keystrokes."

The true damaging effects of defamation combined with today's technologies are exemplified by cyberbullying—"instances of individuals willfully and repeatedly inflicting harm [unto others] through the use of technology," often taking place on the Internet and often involving defamatory statements. Cyberbullying has become an effective way for individuals to harass and defame others, often through online social networking websites such as Facebook, Twitter and Instagram. While some may view cyberbullying as harmless, it is becoming "a

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124 See Bosky, supra note 19 ("[W]ith the expansion of the Internet, worldwide communication is available to anyone with a computer and an Internet connection.").
125 Id.
129 Id.
serious legal problem." One example of this concerns a fourteen-year-old girl named Alex Boston. Alex decided to file a libel lawsuit against two of her classmates in response to a fake Facebook page that they created about her, which made it appear as if she smoked marijuana. The Facebook page was also "set up to appear that Alex had left obscene comments on other friends' pages, made frequent sexual references and posted a racist video." This caused Alex a great deal of emotional distress and made it difficult for her to go to school. Another example of cyberbullying involving allegedly defamatory remarks concerned a group of teenagers' private Facebook group that accused the plaintiff of contracting AIDS. According to Stacey Abrams, a Democratic House Representative from Georgia, "[c]yberbullying really goes beyond the four walls of the school or the four corners of the campus, because if you use a cellphone, PDA or social media site, then those activities follow the child both into the school and out of the school." This only goes to show the drastic effects that cyberbullying, and in essence defamation, can have not only on a young adolescent's psyche, but on anyone's psyche. Hence, it is imperative that the New York legislature revise CPLR section 302 so that victims such as Alex Boston can receive justice in a New York court of law if their defamer happens to be from outside of the state.

Another example that highlights the need to change the language of New York's long-arm statute is the tragic story of Tyler Clementi. Tyler was an eighteen-year-old Rutgers University freshman who decided to take his own life after discovering that his roommate had secretly posted a video on the Internet, which featured him romantically involved with another

130 El-Rahman, supra note 127.
132 Id.
133 Id.
134 Id.
136 Bluestein & Turner, supra note 131.
137 Id.
man. While the criminal case that ensued against Tyler's roommate dealt with an invasion of privacy and not defamation, the story surrounding Tyler's death is one that shows just how powerful and widespread the effects of Internet postings can be when it comes to meddling with a person's reputation. Therefore, since the effects of such online activity can essentially be felt from anywhere around the world, it is vital that individuals who have suffered from actionable harm, like defamatory remarks, not be further inconvenienced by not being able to seek redress in a state court where the harm actually took place.

One aspect that may be a contributing factor to the phenomenon of increased online defamation is the fact that the Internet is not regulated or monitored by a single person or entity. While the National Science Foundation funds a substantial portion of the Internet, there is an immense lack of monitoring that makes it even easier for defamatory remarks to appear online because of the inexistence of an official authority to enforce the law in cyberspace. However, this is understandable given the vast amount of information that is constantly being generated online, and the monitoring of such would take up an immeasurable amount of resources. Therefore, while individuals are understandably allowed to roam free on the Internet, they should nonetheless be subject to liability for their own unlawful actions. However, this is currently not the case for non-domiciliaries who have defamed New York citizens, and who are therefore able to get away with such unscrupulous conduct.

Additionally, New York's long-arm statute does not seem to be fair given the damaging effects of defamatory statements and the state's ability to exercise jurisdiction over non-domiciliaries who commit any other tort. Why should jurisdiction be proper in New York when a non-domiciliary tortuously injures a New Yorker in any way except as to defamation—a tort that can be just as damaging as, if not worse than, others? Proponents for the exclusion have argued how easy it is to defame someone,

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139 Id.
140 Id.
141 See Besky, supra note 19 (noting how individuals who post things on the Internet often fail to realize the consequences of their actions—"[w]hat you type today can haunt you tomorrow").
142 Puathasnanon, supra note 126, at 695.
143 Id.
stating that an individual who merely defames a New York citizen should not be forced to travel long distances to defend themselves in a New York court of law.\textsuperscript{144} However, the same can be said about any other tort. Take battery for example—the intentional touching of another that results in harmful or offensive contact.\textsuperscript{145} It would be just as easy for someone who has traveled into the state to batter a New York citizen, as it would be for that same individual to defame somebody in the state. While it may be argued that individuals are more deterred from committing battery as opposed to defamation—given the social norms of society and the potential for criminal sanctions—there are similar deterrents that exist for not defaming others. It is no secret that individuals can be subject to monetary damages for defaming people. Defamation suits have been around for a long time and have constantly been brought to the public's attention, particularly when famous celebrities have been involved. Such was the case when Jerry Seinfeld was sued by Missy Chase Lapine after calling the woman a "nut job," "a wacko," and "hysterical" on David Letterman's "The Late Show."\textsuperscript{146} Additionally, in order for one to be found liable in a defamation action, it must be established that the victim's reputation was damaged.\textsuperscript{147} In this way, being able to satisfy the very elements of the tort provides for a high enough burden that, if met, justifies haling non-domiciliaries into a New York court of law in order to defend themselves.

B. Changing the Statute Would Not Offend Due Process or the First Amendment

In addition to being supported by numerous policy reasons, amending New York's long-arm statute would not offend Due Process or any other provision of the United States Constitution. In \textit{International Shoe Company v. Washington}, the Supreme Court held that in order for a state to be able to exercise jurisdiction over a non-domiciliary, that non-domiciliary must

\textsuperscript{144} Vincent C. Alexander, Practice Commentaries, N.Y. C.P.L.R. § 302, at C302:8 (McKinney 2008).

\textsuperscript{145} BLACK'S LAW DICTIONARY 173 (9th ed. 2009).


\textsuperscript{147} See supra note 62.
have certain minimum contacts with the forum state, so as to “not offend ‘traditional notions of fair play and substantial justice.’” 148 Additionally, by directing certain activities towards the forum state, a non-domiciliary should expect to be haled into court there.149 Therefore, when one commits a tortious act against a New Yorker, that individual has directed tortious activity towards the forum state. In doing so, it should be reasonably foreseeable that the individual may be haled into court there. Hence, the commission of a tort, including defamation, is enough to fulfill the minimum contacts standard of International Shoe, and the exercise of jurisdiction in such a matter would not offend Due Process. This principle is further evidenced by other states’ long-arm statutes, which allow for the exercise of jurisdiction over non-domiciliaries who commit any tort causing injury to in-state plaintiffs.150 Under such statutes, individuals have been forced to travel to other states to defend themselves in defamation suits, and that practice has not been held to offend the Constitution.151

Amending the statute would also not infringe upon the constitutional protections of free speech. The First Amendment states that “Congress shall make no law... abridging the freedom of speech, or of the press.”152 Similarly, the New York State Constitution guarantees that “no law shall be passed to restrain or abridge the liberty of speech or of the press.”153 However, the United States Supreme Court has held that not all speech is to be protected.154 The Court has recognized that speech that elicits illegal activity or imminent violence is outside

149 Id. at 316–17.
150 See 735 ILL. COMP. STAT. ANN. 5/2-209(a)(2) (West 2008) (noting that an Illinois court may exercise jurisdiction over a non-domiciliary who commits any “tortious act within th[e] State”); see also FLA. STAT. ANN. § 48.193(1)(b) (West 2013) (noting that a Florida court may exercise jurisdiction over a non-domiciliary who commits any “tortious act within th[e] state”).
151 See cases cited supra note 114.
152 U.S. CONST. amend. I.
154 See Cohen v. California, 403 U.S. 15, 19 (1971) (“[T]he First ... Amendment ha[s] never been thought to give absolute protection to every individual to speak whenever or wherever he pleases or to use any form of address in any circumstances that he chooses.”); see also United States v. Stevens, 559 U.S. 460, 469 (2010) (noting how the history of First Amendment jurisprudence has permitted that certain “categories of speech ... be exempted from the First Amendment's protection”).
the boundaries of protection. The same limitation has also been applied to obscenity and defamation. The rationale for these exclusions is to protect individuals from actual harm. Plaintiffs who can show that such speech caused them injury do not face a "constitutional hurdle" as the Court has recognized the "essential dignity and worth of every human being." The New York State Constitution also recognizes an individual's right to bring a libel action, providing that those who engage in such activity will be "responsible for the abuse of that right [of free speech]."

In Rosenblatt v. Baer, Justice Stewart stated in his concurring opinion that "[t]he right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty." Therefore, plaintiffs who are defamed should be compensated for "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." In that sense, amending New York's long-arm statute would not only comport with the First Amendment, but would also reaffirm its very purpose—to

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155 See Chaplinsky v. New Hampshire, 315 U.S. 568, 571–72 (1942) ("There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem . . . [including] the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.").

156 Stevens, 559 U.S. at 468.


158 Id. (quoting Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (Stewart, J., concurring)).

159 See N.Y. CONST. art. I, § 8.

160 Rosenblatt, 383 U.S. 75.

161 Id. at 92 (Stewart, J., concurring).

162 Gertz, 418 U.S. at 350.
promote free expression while still protecting individuals from the actual harm that may be caused by the very freedom the amendment is meant to protect.\footnote{See Rosenblatt, 383 U.S. at 93 (Stewart, J., concurring) ("The First and Fourteenth Amendments have not stripped private citizens of all means of redress for injuries inflicted upon them by careless liars.").}

**CONCLUSION**

Ultimately, when a person commits a tortious act, the tortfeasor causes injury to another who should be able to seek redress in a court of law where the injury took place. Such only seems fair and in accordance with our system of justice. Therefore, it is unfair for a New York court to be unable to exercise jurisdiction over non-domiciliaries who defame New Yorkers, while simultaneously being able to exercise jurisdiction over non-domiciliaries who commit any other tort in New York.

Defamatory statements have the potential to tarnish an individual's reputation and to cause that individual great harm. Additionally, defamatory statements are becoming more prevalent given the technology that surrounds us. Since the advent of the Internet, e-mail, Facebook, Twitter, and smart phones, individuals have had the ability to use such far-reaching technologies with malicious intent. The New York legislature and the New York courts need to recognize "these changing circumstances [and] must adapt and contemporize their former analytic approaches to accommodate modern society, much in the same way the International Shoe [C]ourt confronted the evolving commercial realities of postwar America."\footnote{Puathasnanon, supra note 126, at 716–17.} This can easily be accomplished by removing the language that excludes acts of defamation from New York's long-arm statute in CPLR sections 302(a)(2) and 302(a)(3), thereby granting New York courts the right to exercise jurisdiction over non-domiciliaries who defame people in New York, and subjecting such tortfeasors to liability for their actions which cause harm within the state.