

# CIVIL PROCEDURE



## PERSONAL JURISDICTION

### BASIS

- Court has the power to enforce judgments on involved parties.
- Plaintiff submits to jurisdiction by seeking relief, while defendant is subject to rules of resident state.
- Corporations subject to jurisdiction under laws of incorporation.

### SERVICE OF PROCESS

- Local statutes determine the type authorized.
- Federal Rule 4 governs how federal process is served.
- Federal courts may use applicable state law methods.
- Service involves in-hand delivery of the summons and complaint.
- May be substituted by notification without personal delivery.
- Plaintiff must include acknowledgment form in a postage prepaid return envelope.
- Constructive service by publication, where defendant's location is unknown.
- Means cannot cause defendant to accept service, nor can it invite defendant into the jurisdiction for sole purpose of service to state.
- Those deemed immune include participants involved in proceedings, attorneys, parties, witnesses in unrelated action, and persons in the state discussing out-of-court settlements.

### STATE COURTS

- Long-arm statutes must meet constitutional requirements.
- Assertion of jurisdiction whenever defendant has required minimum contacts with state.

### CONSTITUTIONAL CONSIDERATIONS

- Divorce suit for violation of due process and right to be heard.
- Individual notice must be sent when the identity and location of the defendant is known.
- Flaw in formalities of how notice is given will not suggest a violation of constitutional rights.
- Court has the power to ensure the defendant that judgment is final and no further liability will be incurred in another court.
- Absent parties cannot be bound by judgment out of jurisdiction.
- Limitation on the exercise of a state's substantial jurisdiction.

### FEDERAL COURTS

- Without federal legislation, each federal court must refer to state's laws governing out of state service.
- Procedures part of specific federal causes of action.
- Federal courts may use long-arm statutes.
- Federal Rule 4(e) allows service of process within 100 miles of federal courthouse for specific additional parties to action.

## STANDARDS

### SOVEREIGNTY

- In personam** State has exclusive power over all people within its borders.
  - Court may render binding judgments in any suit. • Defendant must have been present in the state at the time. • Defendant does not have to be a citizen.
- In rem** State has exclusive power over all in-state property. • Court may render judgments concerning ownership.
- Quasi in rem** State property may be used to reach the defendant. • May be used to secure a preexisting claim to property. • Involves an uninvolved to property.
- Attachment** Validates the state's claim of power. • Ensures that enforcement of any judgment is fulfilled.

### REASONABLE

- Location, determining factor of state power.
- Example: stocks exist wherever the stock certificates are located.

### CONTACT

- At any time, party may accede to a court's binding authority.

### EXTRINSIC DECISIONS

- Jurisdiction depends on something that does not, and may never, exist.

### MINIMUM CONTACT

- International Shoe case underlines due process approach to its personal jurisdiction.
- Defendant should have ample minimum contact with the state so that justice would not be precluded in the assertion of jurisdiction.
- Court must be fair to state so that defendant may be heard.
- Overlapping and independent requirements.
- Continuous and systematic activities involving the state.
- Worldwide Volkswagen case states that deliberate activity out of state that is aimed at obtaining benefit, direct or indirect, from that forum will be enough.
- Butler Court states mere presence of property in forum is not sufficient to confer jurisdiction.

## JUDGMENTS AND VERDICTS

### RELIANCE

- Principles** Party may seek to set aside judgment and obtain a new trial.
- Procedures** Timing restrictions may vary. • Right to due process.
- Grounds**
  - Independent action on grounds of equity.
  - Federal Rule 60(b) • Party moves within one year to show that evidence exists, or fraud occurred or mistake, new material need or settled. • Circumstances may have changed.

### REPRESENTS

- General** Judge instructs jury on the law, which is applied to facts. • Choose which party wins and what relief will be awarded. • Minimal jury control.
- Special** Court requests specific findings of fact. • Trial process is more precise. • Jury cannot act on law or ignore the law.
- Interrogatories** Judge instructs jury on law and requests a general verdict. • Specific non-check questions are submitted. • Ensure that the law was applied properly.
- Impeachment** Jury did not function properly. • Judgment must be set aside. • Parties may have been deprived of right to impartial jury.

### REQUIREMENT

- Want prevent the defendant from hiding or moving assets in order to prevent party from defying the court's order.
- Procedure pointing of bond to prevent frivolous cases that would only serve to clog the court system.

# Municipal Office Procedure Study Guide For Test

**Clemens Wendtner**



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