

# CIVIL PROCEDURE



## PERSONAL JURISDICTION

### BASIS

- Court has the power to enforce judgment 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 insured 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 make defendant enter the jurisdiction for service for state
- These deemed proper 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 CONSTRAINTS

- Due process: full 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
- Error in formulation of these 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 persons cannot be bound by judgment out of jurisdiction
- Limitation on the exercise of a state's constitutional jurisdiction

### FEDERAL COURTS

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

## STANDARDS

### PERSONAL

- In personam**
  - State has exclusive power over all people within its borders
  - Court may render binding judgments in any state • 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 underlying right • May be used when personal rights are unrelated to property
- Attachment**
  - Validates the state's claim of power • Ensures that enforcement of any judgment is fulfilled

### MINIMUM

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

### MINIMUM

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

### CONSTITUTIONAL

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

### MINIMUM CONTACT

- International Shoe case underlines due process approach to in personam jurisdiction
- Defendant should have ample minimum contact with the state so that justice would not be impeded in the assertion of jurisdiction
- Court must be fair forum 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 benefits, direct or indirect, from that forum will be enough
- Shaffer Court states mere presence of property in forum is not sufficient to confer jurisdiction

## JUDGMENTS AND VERDICTS

### RULES

- Principles**
  - Party may seek to set aside judgment and obtain a new trial
  - Timing restrictions may vary • Right to due process
- Procedures**
  - Motion for relief • Discretion of the court to grant or deny relief
- Grounds**
  - Independent action on grounds of equity
  - Federal Rule 60(b) • Party moves within one year to show that judgment was entered due to neglect or mistake, new material used or withheld • Circumstances may have changed

### VERDICTS

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

### DECISIONS

- Want prevent the defendant from finding or moving assets in order to prevent party from defying the court's order
- Procedure: posting of bond to prevent further cases that would only serve to clog the court system

# Blonde Civil Guide Law Procedure

**S Ben Porath**



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