

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 purpose of 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 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 unaffected
- 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 consents 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
- Procedures** • Timing restrictions may vary • Right to due process
- Grounds** • Deviation of the court to grant or deny relief • 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 facts 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
- Improvement** Jury did not function properly • Judgment must be set aside • Parties may have been deprived of right to impartial jury

DEFENDANT

- Want prevent the defendant from finding or moving assets in order to prevent party from defying the court's order
- Procedures pending of bond to prevent defendant from fleeing • Court would only serve to stop the court system

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M Tight



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1. Understanding the eBook Blonde Civil Guide Law Procedure
 - The Rise of Digital Reading Blonde Civil Guide Law Procedure
 - Advantages of eBooks Over Traditional Books
2. Identifying Blonde Civil Guide Law Procedure
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Blonde Civil Guide Law Procedure
 - User-Friendly Interface
4. Exploring eBook Recommendations from Blonde Civil Guide Law Procedure
 - Personalized Recommendations
 - Blonde Civil Guide Law Procedure User Reviews and Ratings
 - Blonde Civil Guide Law Procedure and Bestseller Lists
5. Accessing Blonde Civil Guide Law Procedure Free and Paid eBooks

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- Blonde Civil Guide Law Procedure Budget-Friendly Options
- 6. Navigating Blonde Civil Guide Law Procedure eBook Formats
 - ePub, PDF, MOBI, and More
 - Blonde Civil Guide Law Procedure Compatibility with Devices
 - Blonde Civil Guide Law Procedure Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Blonde Civil Guide Law Procedure
 - Highlighting and Note-Taking Blonde Civil Guide Law Procedure
 - Interactive Elements Blonde Civil Guide Law Procedure
- 8. Staying Engaged with Blonde Civil Guide Law Procedure
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Blonde Civil Guide Law Procedure
- 9. Balancing eBooks and Physical Books Blonde Civil Guide Law Procedure
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Blonde Civil Guide Law Procedure
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Blonde Civil Guide Law Procedure
 - Setting Reading Goals Blonde Civil Guide Law Procedure
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Blonde Civil Guide Law Procedure
 - Fact-Checking eBook Content of Blonde Civil Guide Law Procedure
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development

- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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