

**Civil Procedure  
Law School Legends  
Professor Richard D. Freer**

**I. Personal Jurisdiction** (court's power over the parties)

A. In Personam Jurisdiction

1. Constitutional Standard – Due Process Analysis – series of cases.

Pennoyer v. Neff – Four traditional bases of in personam jurisdiction

- a. D was served with process in the forum – general jurisdiction (presence as the basis of jurisdiction)
- b. D's agent was served while in the forum
- c. D is domiciled in the forum
- d. D consents to personal jurisdiction

Hess v. Pawloski – Supreme Court expanded personal jurisdiction by expanding traditional bases

International Shoe Co. v. Washington – The court has jurisdiction if D has such minimum contacts with the forum so that exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

McGee v. International Life Ins. Co. – Importance of state's interest.

Hanson v. Denckla – Purposeful availment. To be a contact, it must result from the D's purposeful availment of the forum.

World-Wide Volkswagen v. Woodson – It must be foreseeable that D could get sued in the forum.

Calder v. Jones and Walden v. Fiori – Contacts based upon causing an effect in the forum.

Burger King Corp. v. Rudzewicz – International Shoe consists of two parts. (1) contact, and (2) fairness. To show jurisdiction is unfair, D must show that defending the case is so gravely difficult and inconvenient that D is at a severe disadvantage in the litigation. However, the relative wealth of the parties is irrelevant.

Asahi Metal Industry v. Superior Court – Stream of commerce case, on which Court fails to give a majority opinion but sets forth two competing theories for what constitutes a "contact."

J. McIntyre Mfg. Co. v. Nicastro – Court revisits stream of commerce and again fails to set forth a majority test for “contact” in stream of commerce cases.

Burnham v. Superior Court – Upholds general jurisdiction in California but fails to generate a majority on whether such jurisdiction is because service of process in the forum is a traditional basis or because it meets International Shoe.

Goodyear and Daimler – Court limits general jurisdiction to cases in which D is “at home” in the forum. An individual is “at home” where domiciled and a corporation is “at home” both in the state of incorporation and the state of its principal place of business.

Recap. Lecture provides an analytical framework for assessing the constitutionality of personal jurisdiction.

## 2. Statutory Standard.

Every state claims general jurisdiction over D served with process in the forum.

Every state has a statute that gives general jurisdiction over D domiciled in the forum.

Every state has a non-resident motorist act.

Long-Arm Statute – Every state has one, to allow jurisdiction over non-residents.

Two types:

- i. California statute – Statute reaches to the full extent of due process
- ii. Laundry list statute – A non-resident D can be sued in the state on a claim that arises from D doing something specific in the forum.

B. In Rem and Quasi-in-Rem Jurisdiction. Here, the court’s power is over the D’s real or personal property, not over D herself.

In Rem Jurisdiction – The case is about ownership of the property itself.

Quasi-In-Rem Jurisdiction – Lawsuit has nothing to do with ownership of the property, but property is used for a jurisdictional basis.

There must be an attachment statute, which allows court seizure of property as a jurisdictional predicate.

Constitutionally, property must be attached at the outset of the case and, under Shaffer v. Heitner, D must be subject to jurisdiction under International Shoe.

## II. Notice and the Opportunity to Be Heard

### A. Service of Process

1. Process – Process consists of a summons and a copy of the complaint.
2. Rule 4(c)(2) – Service can be effected by any non-party who is at least eighteen years old.
3. Process must be served within 90 days after filing the complaint. Rule 4(m).
4. Service of process on an individual. There are 3 alternative methods for service of process:
  - a. Personal Service – Deliver the papers directly to D – can be done anywhere in the forum state.
  - b. Substituted Service – D’s dwelling or usual abode, AND serve someone of suitable age and discretion who resides there.
  - c. Agent Service – Serve D’s agent.
  - d. Rule 4(e)(1) – The court may also use any method for service of process that is allowed by state law of the state where the federal court sits OR in which service was effected.
5. Service of process on a business. Serve an officer or managing or general agent of that corporation. Also, Rule 4(e)(1) applies.
6. Geographically, service may be made anywhere in the forum state; it may be made out of state only if a state court in that state could do so.
7. Waiver of service – Method for waiving formal service of process. Send process and two copies of a waiver form to D with a self-addressed stamped envelope. If she returns it, then she waives service of process. If she does not waive formal service of process in this way, then P must will have service affected formally. Then, though, D will have to pay for the service.

### B. Constitutional Standard for Notice

Mullane v. Central Hanover Bank – Notice must be reasonably calculated under the circumstances to apprise D of the suit.

Jones v. Flowers – usually it is not required that D actually receive the service; but if P is aware that D has not, due process may require that P make further effort to ensure notice.

Notice by publication – Usually in the newspaper. This type of notice might be permitted depending on the facts, but is a last resort.

### C. Opportunity to Be Heard

Factors to protect D:

1. D gets a hearing on the merits at some point.
2. P must give an affidavit of its claim.
3. May require that P's affidavit state the facts in specificity.
4. Get a writ of possession from a judge, not a sheriff.
5. P may be required to post a bond.
6. D gets the property back pending litigation by posting a bond.

### III. Subject Matter Jurisdiction (court's power over the case)

#### A. Diversity of Citizenship. Two requirements under § 1332(a)(1):

##### 1. Case must be between citizens of different states.

A. Complete diversity rule

B. Test for diversity when the case is filed.

C. A human U.S. Citizen is a citizen of the U.S. state in which she is domiciled.

D. A corporation is a citizen of all states where incorporated, and the one state where it has its principal place of business (defined as nerve center)

E. Citizenship of an unincorporated business, such as partnerships or limited liability companies (LLCs). Look to the citizenship of all members.

F. Suits on behalf of decedents, minors, and incompetents – In those cases, look to the citizenship of the person being represented.

##### 2. Amount in controversy must exceed \$75,000.

A. The amount must exceed \$75,000, not counting interest on the claim or costs.

B. P's claim governs unless legal certainty not exceed \$75,000.

C. P's ultimate recovery is irrelevant to subject matter jurisdiction.

D. Aggregation adding multiple claims to get over \$75,000. We aggregate claims if there is one P versus one D. Cannot aggregate if there are multiple parties on either side. However, if there have joint claims, consider total value of claim.

#### B. Federal Question jurisdiction. Under §1331, P's must "arise under" federal law.

Citizenship is irrelevant and amount in controversy does not matter.

Well-pleaded complaint rule: is P enforcing a federal right?

#### C. Supplemental Jurisdiction

United Mine Workers of America v. Gibbs recognizes supplemental jurisdiction.

§ 1367 codifies the doctrine today

##### 1. Does §1367(a) grant supplemental jurisdiction to this claim? i. Yes, if it meets Gibbs.

##### 2. §1367(b) – Eviscerates supplemental jurisdiction, but only in some situations.

§ 1367(b) applies only in diversity cases to the following claims:

a. Claims by P's against parties joined under Rule 14, 19, 20, or 24

b. Claims by Rule 19 P's.

c. Claims by Rule 24 intervening P's.

D. Removal jurisdiction.

1. General rule: removable if case could have been heard in federal court.
2. May remove only to district embracing the state court.
3. File notice of removal in federal court within 30 days of service of the document that first made the case removable.
4. All Ds served with process must join in the notice of removal
5. Motion to remand.
6. Exceptions to general rule in cases invoking diversity of citizenship jurisdiction:  
(A) No removal if any D is a citizen of forum; (B) Cannot remove more than one year after the case was filed in state court.

**IV. Venue**

A. Basic Provisions

1. In removal cases, venue is in the district embracing the state court.
2. In cases filed initially in federal court, P has two venue choices:
  - a. Any district where all D's reside, or
  - b. Any district where a substantial part of the claim arose.

B. Transfer of Venue

1. Terminology
  - a. Transferor court – The court from which case is transferred.
  - b. Transferee court – The court to which the case is transferred.
2. Two Transfer Statutes in the Federal System
  - a. §1404(a) – The transferor court is a proper venue.
  - b. §1406(a) – The transferor court is an improper venue.

C. Forum Non Conveniens. Transfer not possible.

**V. The Erie Doctrine**

A. Hanna v. Plumer

B. Erie Itself

1. Outcome determination – (Guaranty Trust v. York)
  2. Balancing of interests – (Byrd v. Blue Ridge Rural Electric Cooperative)
  3. Twin aims of Erie (Hanna v. Plumer):
    - a. Avoidance of forum shopping.
    - b. Avoidance of the inequitable administration of the law
- C. Hypotheticals

## **VI. Pleadings**

### A. Rule 11

1. Certification:
  - a. The document is not for an improper purpose.
  - b. The legal contentions are warranted by law.
  - c. The factual contentions have evidentiary support.
  - d. The denial of factual contentions has evidentiary support.
2. Three procedural matters for Federal Rule 11:
  - a. “Continuing certification”.
  - b. Sanctions are discretionary and are to be aimed at deterrence.
  - c. 21-day safe harbor.

### B. Complaint – When the complaint is filed, the lawsuit is commenced.

1. Rule 8(a) – Tells what must be in the complaint.
  - a. Grounds for subject matter jurisdiction.
  - b. A short and plain statement of the claim showing that entitled to relief.
  - c. A demand for judgment.
2. Focus on 8(a)(2): legal sufficiency and factual sufficiency.
  - a. “Twiqbal” and “plausibility.”
  - b. Heightened pleading requirements:
    - i. Rule 9(b) – circumstances constituting fraud or mistake.
    - ii. Rule 9(g) – items of special damages.

### C. D’s Response

1. Rule 12 – Within 21 days of service of process, D must answer or bring motion.
2. Answer
  - a. Rule 8(b) – Respond to the allegations of the complaint
    - i. Admit

- ii. Deny
- iii. Lack sufficient information to admit or deny
- b. Failure to deny is treated as an admission on all allegations except damages.
- c. Raise affirmative defenses (e.g., statute of limitations, statute of frauds).

#### D. Amended and Supplemental Pleadings

1. Amendment: Rule 15(a), (b) & (c)
  - a. 15(a) – three basic rules of amendment.
    - i. P right to amend.
    - ii. D right to amend.
    - iii. Otherwise, seek leave (permission) of court.
  - b. 15(b) – Variance: Where the evidence at trial does not match what was pleaded.
  - c. 15(c) – Amendments after the statute of limitations has run
2. Supplemental pleadings (Rule 15(c))

### **VII. Joinder**

- A. Proper parties (Rule 20(a))
- B. Claim joinder by P (Rule 18(a))
- C. Claim joinder by D
  1. Counterclaim (Rules 13(a) 13(b))
  2. Crossclaim (Rule 13(g))
- D. “Necessary” (or “required”) and indispensable parties (Rule 19)
- E. Impleader (third-party practice)(Rule 14(a))
- F. Intervention (Rule 24)
- G. The Class Action (Rule 23)

### **VIII. Discovery**

- A. Required disclosures (Rule 26(a))
- B. Discovery Tools
  1. Depositions (Rules 30 and 31)
  2. Interrogatories (Rule 33)

3. Requests to produce (subpoenas to third parties)(Rule 34)

4. Medical examination (Rule 35)

5. Requests to admit (Rule 36)

C. Scope of Discovery

1. Standard, including proportionality (Rule 26(b)(1))

2. Privilege for certain confidential communications

3. Work Product (“trial preparation materials”)

D. Enforcement of Discovery Rules

E. Conferences and judicial management of litigation

## **IX. Pretrial Adjudication**

A. Voluntary dismissal

B. Involuntary dismissal

C. Default and default judgment

D. Failure to state a claim (Rule 12(b)(6))

E. Motion for summary judgment (Rule 56)

## **X. Trial**

A. Right to jury trial – Seventh Amendment

B. Selection of jury

C. Motions Related to Trial

1. JMOL (Rule 50(a))

2. RJMOL (Rule 50(b))

3. New trial (Rule 59(a))

## **XI. Appellate Review**

A. Final judgment rule

B. Interlocutory review

1. By statute

a. § 1292(a)

b. § 1292(b)

2. By Federal Rule

a. Rule 23(f)

b. Rule 54(a)

3. By common law

4. By extraordinary writs

C. Scope of review

## **XII. Preclusion**

A. What law applies?

B. Claim preclusion: three requirements

C. Issue preclusion: five requirements