

1 **2023 UPDATE -- GILBERT CIVIL PROCEDURE (19TH ED.)**
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8 **Page VIII:** Add the following after para. d:
9

10 **e. Corporate registration**
11

12 In 2023, by a 5-4 vote, the Supreme Court held that
13 corporate registration to do business is sufficient to
14 satisfy Due Process when the state corporate registration
15 statute provides that registration to do business
16 constitutes consent to general jurisdiction in the
17 state's courts.
18

19
20 **Pages 29-30:** Replace para. (b) with the following:
21

22 **(b) Possible Due Process Limitations**
23

24 The Supreme Court has limited general jurisdiction over corporate
25 defendants to states in which the corporation is "essentially at
26 home." See p. 26 *supra*. But in 1917 it held that a state could
27 require a foreign corporation to register to do business in the
28 state and provide that registration constituted consent to general
29 jurisdiction in the courts of the state for any claim against the
30 corporation that so registered. [**Pennsylvania Fire Insurance Co. v.**
31 **Gold Issue Mining & Milling Co.,** *supra*] In 2023, a 5-4 majority
32 held that consent by corporate registration continued to satisfy
33 Due Process limitations on personal jurisdiction. [**Mallory v.**
34 **Norfolk Southern Ry. Co.,** 143 S. Ct. ___, 2023 WL 4187749 (June 27,
35 2023)] A vigorous dissent argued that the 1917 decision had been
36 superseded by the principles of **International Shoe Co. v.**
37 **Washington,** *supra*, and that adhering to the 1917 decision would
38 enable states to "manufacture consent" despite the limits on
39 general jurisdiction.
40

41 **(1) Interpretation of State Registration Statutes**
42

43 In **Mallory v. Norfolk Southern Ry. Co.,** *supra*, the
44 Pennsylvania Supreme Court had interpreted the Pennsylvania
45 corporate registration statute to require submission to the
46 jurisdiction of the state's courts for any claim against the
47 corporation. The registration statutes of other states may be
48 interpreted differently. [*Compare* **Brown v. Lockheed Martin**
49 **Corp.** 814 F.3d 619 (2d Cir. 2016) -- the Connecticut corporate
50 registration statute "nowhere expressly provides that foreign
51 corporations that register to transact business in the state
52 shall be subject to the 'general jurisdiction' of the
53 Connecticut courts."]

54 **(2) Possible Commerce-Clause Limitations**
55

56 Under the "dormant Commerce Clause," see *supra*, para. 1(a),
57 without regard to the Due Process consequences of consent, the
58 power of a state to insist that foreign corporations consent
59 to general jurisdiction may violate the Commerce Clause of the
60 Constitution. [See opinion of Alito, J., in **Mallory v. Norfolk**
61 **Southern Ry. Co.**, *supra*.]
62

63 **Page 73: Insert** the following after para. 7):
64

65 **8) Disclosure Requirement in Diversity Cases**
66

67 Effective Dec. 1, 2022, Fed. R. Civ. P. 7.1 requires
68 every party or intervenor in a diversity case to disclose
69 and identify the citizenship of every individual or
70 entity whose citizenship is attributed to that party or
71 intervenor. This requirement may be of particular
72 importance with limited liability companies, *supra* para
73 2).
74

75 **Page 233: Insert** the following after the second Example in para.
76 (2) (a):
77

78 **Example:** Governmental entities and appropriate officers
79 of those governmental entities have interests in the
80 continued enforcement of their own statutes sufficient to
81 support intervention of right. State law determines which
82 state entities and officers can assert these interests.
83 State law may empower multiple entities or officers to do
84 so, even in the same action. [**Berger v. North Carolina**
85 **State Conference of the NAACP**, 142 S. Ct. 2191 (2022) --
86 Even though the state's Board of Elections was
87 represented by the state Attorney General in a suit
88 challenging legislation requiring voters to present IDs
89 to vote, the Speaker of the State House of
90 Representatives and the President Pro Tem of the State
91 Senate could intervene of right because state law
92 authorized such intervention by these officials.]
93

94 **Page 348: Delete** the second sentence of para. c.
95

96 **Page 348: Delete** the final sentence of para. (1).
97

98 **Page 348: Insert** the following after para. (1):
99

100 **(2) Post-Trial Appeal Permitted Regarding "Purely Legal"**
101 **Issue Resolved on Summary Judgment Motion**
102

103 When a summary-judgment ruling resolves a "purely legal"
104 issue, there would be no reason for the district court to

105 reconsider that resolution in light of the record
106 developed at trial. Therefore, different from an appeal
107 addressing the sufficiency of the evidence (*supra* para.
108 (1)), the issue may be presented on appeal even though no
109 Rule 50 motion was made during the trial. [**Dupree v.**
110 **Younger**, 143 S. Ct. 1382 (2023) -- Even though defendant
111 did not re-raise his defense of exhaustion of
112 administrative remedies at trial or in a Rule 50 motion
113 after his summary-judgment motion raising the defense was
114 denied, the issue could be raised on appeal from an
115 adverse judgment at trial.]
116

117 **Page 405: Insert** the following after para. (1)(a):
118

119 (b) **"Purely legal" issue may be reviewed on appeal**
120 **without post-trial motion if earlier resolved on**
121 **motion for summary judgment**
122

123 Because the denial of a summary-judgment motion
124 based on a "purely legal" issue is not affected by
125 the evidence presented at trial, it may be raised
126 on appeal even though the losing party did not make
127 a Rule 50 motion at trial. [**Dupree v. Younger**,
128 *supra* -- In a prisoner civil rights case, when the
129 district court denied defendant's summary-judgment
130 motion based on failure to exhaust administrative
131 remedies and plaintiff won at trial, defendant
132 could raise that purely legal issue on appeal even
133 though he did not make a Rule 50 motion at trial.
134 Given the purely legal nature of the defense,
135 nothing in the trial record could bear on it.]
136

137 **Page 417: Insert** the following after para. (1):
138

139 **Example: Judge's error of law**
140

141 A judge's error of law is a "mistake" that can support
142 relief under Rule 60(b)(1) and therefore motions made on
143 this ground are subject to Rule 60(c)(1)'s one-year time
144 limitation. [**Kemp v. United States**, 142 S. Ct. 1856
145 (2022) -- The one-year time limit for a motion under Rule
146 60(b)(1) barred petitioner's motion to reopen that was
147 filed more than one year after the original judgment was
148 entered in that case.] **Note:** Even within the one-year
149 time limitation, motions must be made "within a
150 reasonable time." The Supreme Court's opinion noted that
151 some courts of appeals have held that Rule 60(b)(1)
152 motions asserting legal errors must be raised within the
153 time permitted for appeal from those decisions,
154 suggesting a ground for the lower courts to prevent
155 parties from using Rule 60(b)(1) to raise legal errors

156 after they have missed the time to appeal.