

# CIVIL PROCEDURE



## PERSONAL JURISDICTION

### BASICS

- 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, nonresidents, attorneys, parties, witnesses in a unrelated action, and persons in the state discussing out-of-court settlements

### STATE SUMMONS

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

### CONSTITUTIONAL CONSIDERATIONS

- 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
- 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
- Prohibited: 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

### OVERLAP

- In personam** State has exclusive power over all people within its borders. • Court may render judgments in any suits • 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

### REQUIREMENTS

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

### CONTACT

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

### CONTINUING OBLIGATIONS

- 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 benefit, 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

### RELIEF

- Principles** Party may seek to set aside judgment and obtain a new trial
- Procedures** Timing restrictions may vary • Right to due process
- Grounds** • Discretion 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 evidence exists, or fraud occurred • Judgment may be deemed void or set aside • Circumstances may have changed

### JURISTS

- General** Judge instructs jury on the law, which is applied to facts • Choose which party • Minimal 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
- Impeachment** Jury did not function properly • Judgment must be set aside • Parties may have been deprived of right to impartial jury

### NOCKOUT

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

# Federal Civil Service Law And Procedures A Basic Guide

**Gregory C. Sisk**



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