

## CIVIL PROCEDURES OUTLINE I

### PERSONAL JURISDICTION

#### I. Issues (1) In Personam (2) In Rem (3) Notice

#### II. Rule

1. When a court may exercise jurisdiction over a non-present defendant
2.  $\Pi$  picks a location: Favorable laws, hometown, less travel expense
3. Constitutional Requirement
  - 14<sup>th</sup> Amendment- *Nor shall any State deprive any person of life, liberty, or property, without due process of law*
4. To Perfect the judgment in another state
  - Full faith and credit clause: a judgment in one state shall be upheld in another
  - But, Due Process Clause trumps full faith and credit clause

#### In Personam (jurisdiction over the person)

5. Pennoyer Rule : State court does not have personal jurisdiction over a person not physically present in the state
  1. Except- a lawsuit involves property within state
  - ii. Elements
    1. Proper Service
    2. Status of a nonresident in relation to resident (ie. Marriage)
    3. Consent- files an answer or appoints an agent
    4. Residency - resides or plans on residing in near future
    5. Attachment of land (overruled in Shaffer)
  - iii. Problem: modern travel, interstate commerce

#### II. Minimum Contacts Test (International Shoe- Abolishes Pennoyer)

- a. Rule- A court has personal jurisdiction over a defendant who has certain minimum contacts with the forum state and does not offend ' traditional notions of fair play and substantial justice'
  - i. General jurisdiction- continuous and systematic minimum contacts
  - ii. Specific- lawsuit arises out of the contact
    1. Requires only one contact
- b. Arguments for Minimum Contact- defendant can be hauled into court when:
  - i. Purposeful availment
    1. invoking the benefits and protection of its laws
    2. Voluntarily reaching into the state
    3. Do business in the state
    4. Travel to the state
    5. Reasonably anticipate being hauled into court there
    6. Product in the stream of commerce
      - a. reasonable to think product will land in forum state
    7. Contracts with Choice of Forum Clause, even if done electronically
  - ii. Fair play and substantial justice
    1. State has manifest interest in case
    2. Injury/tort occurs in state

- 3. Location of essential witnesses and evidence
- 4. Burden of travel
- 5. Collect revenues from the state
- 6. Enjoy protection of the law in that state
- iii. Foreseeable
  - 1. Nexus= connection
- c. Arguments against Minimum contacts
  - i. Parade of horribles
  - ii. Offends traditional notions of fair play and substantial judgment
  - iii. Not enough
  - iv. Protects Δ from burden of distant or inconvenient forum
  - v. Insure that the states do not reach out beyond its limits
- III. Long Arm Statutes
  - a. In order to meet personal jurisdiction, Π has to Satisfy state's long arm statute
    - i. Different states have different lengths that they are willing to go to establish personal jurisdiction
    - ii. Some states have shorter arms- creates a laundry list
    - iii. Others reach all the way to the 14<sup>th</sup> amendment
- IV. Challenging Personal Jurisdiction
  - a. Default then collaterally attack- risky; or
  - b. File a motion to make a special appearance- best option

#### In Rem Jurisdiction

- I. Issue:
  - a. If property is physically present in jurisdiction, are the two parties and their location relevant?
  - b. Seizing property in order to obtain jurisdiction over the property
  - c. Title not in dispute
- II. Rule:
  - a. Pennoyer: no minimum contacts for in rem jurisdiction
    - i. Location of the two parties is irrelevant
  - b. Shaffer: Overturned Pennoyer
    - i. jurisdiction must be evaluated according to the standard of "fair play and substantial justice" as governs personam jurisdiction in International shoe
    - ii. Must comply with fairness test
    - iii. Must still have minimum contacts
- III. Pure in rem action
  - a. To decide valid title of property, ie. Heirs to will, owner of chattel
  - b. Property in a state- court gets to determine jurisdiction
  - c. Minimum contacts does not apply here

#### Notice (Service)

- I. Courts have jurisdiction over non-residences who are physically within the state when served (tag jurisdiction)
  - a. no minimum contacts requirement

- b. Balancing efficient administration of justice and due process opportunity to be heard
- II. Rule
- a. Due process clause of 14<sup>th</sup> amendment to the U.S constitution requires that the defendant receives adequate notice of litigation. Due Process requires Contacts and notice.
  - b. Service in Federal Court (FRCP 4)
    - i. have 120 days to serve after you have filed complaint
    - ii. 18 years old, not a party in the suit
    - iii. Can use certified USPS
    - iv. Defendant within US, service can be made 4(e):
      - 1. By hand
      - 2. Leaving process at Defendants usual place of abode with someone of suitable age
      - 3. Serving an agent authorized by contractual arrangement or law
      - 4. Any method authorized by the state
    - v. Corporations
      - 1. Delivering to a managing or general agent
      - 2. Contact secretary of state for info
    - vi. Waiving Service 4(d)- waives requirement of actual service
      - 1. Plaintiff can ask defendant to waive by *mailing a written request for a waiver with a complaint and prepaid means of return*
      - 2. Can't be used with a government unit or officer
      - 3. D has 30 days to return if in US, 60 days if abroad
      - 4. Failure to return is not a waiver
      - 5. If D waives, get an extension on the answer from 20days to 60days
        - a. Outside US 90 days until they must file an answer
      - 6. If they don't waive, must reimburse plaintiff for cost of service.
  - c. Service in State court- see state statute
    - i. Or any of the following:
      - 1. Personal Delivery
      - 2. Dwelling
      - 3. Authorized by the court
- III. Analysis
- a. Service by publication
    - i. If beneficiaries are known, then serve by publication is unconstitutional
      - 1. Δ won't see it and won't have the opportunity to be heard
    - ii. when unknown, publication is ok because it would be a burden
  - b. Automobile accident
    - i. Actual service within the state of notice is not necessary in the case of an automobile accident
    - ii. Implied consent to be sued when on highway of another state
      - 1. question of justice and fairness

- c. Evasive Defendant
  - i. other reasonably effective means can be authorized
- d. Improper service
  - i. Can't be served inside a court house
  - ii. A fraud affecting the jurisdiction is equivalent to a lack of jurisdiction
  - iii. An Indian reservation is not a territory of the state
  - iv. Cannot serve an attorney
    - 1. Except if designated as an agent or with court order
  - v. File motion to quash service

#### Forum Nonconveniens

- I. Rule
  - a. Common law- gives discretion to judge to dismiss the case because there is a more convenient forum where a lawsuit can be brought
    - i. Court will balance factors to determine if the chosen forum is grossly inconvenient
    - ii. Conditions
      - 1. Waves personal jurisdiction statute of limitation and agrees to service
    - iii. have to be raised by  $\Delta$ , or waived
- II. Balancing test
  - a. Availability of proof, witnesses, Jury view of premises
  - b. Language or choice of law issues
  - c. Inexpensive and expedition trial
  - d. Public interest consideration
  - e. Interest of  $\Pi$  in the choice of forum
  - f. Danger of  $\Pi$  being denied all remedy or being treated unjustly
  - g. Local interest in having controversy decided
  - h. Backlog in court chosen by plaintiff
- III. Analysis
  - a. Trying to get cause moved to forum that will be more  $\Delta$  friendly or dismiss
  - b. Can't deny dismissal just because other forum has less favorable laws
  - c. More convenient forum must have subject matter and personal jurisdiction

#### Venue

- I. Issue:
  - a. P or D file motion for transfer of venue to within to another federal court
  - b. Gives district court wide discretion to transfer, in the interest of justice
- II. Rule:
  - a. 28 USC 1391- Venue
    - i. Any venue in which D resides, if all D reside in same state; or
    - ii. District in which substantial portions of event giving rise to claim occurred; or
    - iii. any district in which any D may be found
  - b. Corporations

- i. any judicial district in which it is subject to personal jurisdiction at the time the action is commenced
    - ii. Each district is treated like a district state, must have minimum contacts with that district
      - 1. If district doesn't have sufficient contacts, but sufficient contacts with the state as a whole, then district with must significant contacts of that state
    - iii. Also, any district in its state of incorporation
  - c. Aliens
    - i. Can be sued in any district where they have personal jurisdiction
    - ii. If Alien is sued along with citizen, venue would be proper where US citizen resides
  - d. 28 USC 1404-change of venue
    - i. *For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought (originally)*
      - 1. Done usually for strategic purposes
      - 2. Use the law where the original action was filed
    - ii. Must be upheld on appeal, unless judge abused their discretion
  - e. Balancing Factors:
    - i. Convenience of witnesses, plaintiff, and defendant
    - ii. where the claim arose
    - iii. Location of physical evidence
    - iv. If there is a forum selection clause
    - v. Effective administration of judgment; whether judges will be familiar with governing law
    - vi. Local interest in deciding the issue
    - vii. Plaintiff's choice is strongly considered

### SUBJECT MATTER JURISDICTION

- I. Issues:
  - a. Federal Question ("Arising Under") Jurisdiction
  - b. Diversity Jurisdiction
  - c. Supplemental Jurisdiction
  - d. Removal
- II. Rule:
  - a. Courts having power to decide a particular type of dispute
  - b. Federal Court- limited jurisdiction
  - c. Raised on its own, or raised on appeal
- III. Analysis
  - a. Federal court- different rules for evidence and larger jury pool

### Federal Question ("Arising Under") Jurisdiction

- I. Rule
  - a. 28 USC §1331: District courts will have original jurisdiction of all civil actions arising under constitution, laws, treaties of the US, or federal common law

- i. Or against a federal entity
    - b. Federal question must be inherent in the claim and on the face of a well pleaded complaint, or of government interest
      - i. federal element has to be pivotal, at the heart of the claim
      - ii. Well Pleased Complaint (FRCP 8)
        - 1. The complaint must contain a short and plain statement of:
          - a. the claim showing that the pleader is entitled to relief
          - b. the grounds for jurisdiction
          - c. demand for the relief sought
    - c. A state law claim can raise a stated federal issue
- II. Tests
  - a. Creation Test: federal law creates the cause of action
  - b. Dependency test: plaintiffs right to relief depends upon resolution of a substantial issue of federal law

#### Diversity Jurisdiction

- I. Rule
  - a. 28 USC §1332: Must have complete diversity among the parties and the amount in controversy must exceed \$75,000
  - b. Can be heard in state or federal court
- II. Amount in controversy exceeds \$75,000
  - a. Made in good faith in a well pleaded complaint
  - b. Can be awarded less, but doesn't get recovery of costs
  - c. Single  $\Pi$  v. Single  $\Delta$ 
    - i. One claim over \$75k or can add up multiple claims to be over \$75k
    - ii. Many  $\Pi$ - one has to be above \$75k and the others can join.
  - d. For non-monetary relief
    - i. Courts must place a value on relief sought

#### III. Citizenship

- a. Must have complete diversity among all parties
  - i. Citizens of different states or of a foreign state
    - 1. Does not allow legislation of pure aliens
  - ii. Must exist at the commencement of an action
- b. A person must be both a citizen of the US and be domiciled in a state
  - i. Domicile test: actual residence plus the intent to remain
    - 1. You can have many residences, but just one domicile
    - 2. Ie. Drivers license, Bank, Registered to vote, gyms
- c. 1332©- citizenship of corporations
  - i. A corporation is a citizen of both the state that incorporated in and the state in which it has its principal place of business
- d. Representatives- deemed to have the same citizenship as the deceased, infant or incompetent

#### Supplemental Jurisdiction

- I. Rule
  - a. 28 USC §1367

- i. Supplemental Jurisdiction exists when a state claim is *so related to the claim of action that they form part of the same case or controversy*
    - 1. Arise out of a common nucleus of operative facts
      - a. Involve same witnesses or evidence
      - b. Stems from the same transaction or occurrence
    - 2. State claim can be joined for efficiency
  - ii. *shall include claims that involve the joinder or intervention of additional parties*
    - 1. If a 3<sup>rd</sup> party does not meet federal court jurisdiction, can still be heard in federal court if arising from the same incident
      - a. Even if it fails diversity
      - b. Ie. Third party claim, intervene, compulsory joiner
- e. Exceptions
- i. 1367(b)- limits the use of supplemental jurisdiction in certain cases where the jurisdiction over the federal claim is based solely on diversity
    - 1. Bars state law claims against parties who are made parties under FRCP 14, 19,20, or 24
    - 2. If diversity is destroyed, remanded to state court
  - ii. 1367©- situation where a court may, in its discretion, refuse to exercise jurisdiction
    - 1. if state claim raises a novel or complex issue of state law
    - 2. substantially predominates federal claim
    - 3. for any other compelling reason

## Removal

### I. Rule

- a. §1441- provides that Δ in a state law case can remove a case “of which district courts have original jurisdiction”
  - i. Only Δ can remove
    - 1. If multiple Δ, they all need to sign a notice of removal
  - ii. District courts must have been able to have original jurisdiction
  - iii. Will be removed to the district court embracing the place where such action is pending
- b. If diversity
  - i. 1441 (b)- doesn’t allow removal if any Δ is citizen of state in which state court action is pending
  - ii. A local citizen lacks the “local prejudice” argument
  - iii. Must exist when the case was filed and at the time of removal
- c. If federal question
  - i. Can be removed, citizenship doesn’t matter
  - ii. Has to be in the complaint
- d. Timing
  - i. 30 days after Δ receives notice that action can be filed in federal court
    - 1. If multiple Δ, begins when first Δ receives notice
  - ii. can’t be removed more than one year after originally commenced