# CIVIL PROCEDURE

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# I. PERSONAL JURISDICTION

## A. OVERVIEW

There are two branches of jurisdiction: subject matter jurisdiction and personal jurisdiction. ***Subject matter jurisdiction*** involves the court's power over a particular ***type of case***. ***Personal jurisdiction*** involves the ability of a court having subject matter jurisdiction to exercise power over a ***particular defendant or item of property***. This section discusses personal jurisdiction.

### 1. Limitations on Personal Jurisdiction

Limitations on a court's personal jurisdiction arise from two sources: state statutes and the United States Constitution. An exercise of personal jurisdiction must not exceed the limitations of either source.

#### a. Statutory Limitations

States have the power to decide over whom their courts may exercise jurisdiction. Therefore, the first place to look to determine whether the court has properly exercised personal jurisdiction is state law. If no state statute grants the court the power over the parties before the court, then the court lacks personal jurisdiction. On the other hand, an exercise of jurisdiction will not be proper merely because it comports with a state statute; it must also be within the limitations set by the Constitution (below).

#### b. Constitutional Limitations

The Due Process Clause of the Constitution places two restrictions on the exercise of personal jurisdiction. First, the defendant must have such contacts with the forum state that the exercise of jurisdiction would be fair and reasonable. Second, the defendant must be given appropriate notice of the action and an opportunity to be heard. Note that these requirements are the outer limits to which a state may reach in exercising jurisdiction over a person. A state statute cannot exceed these constitutional boundaries, but is not required to exercise the full limit of constitutional power. Thus, in evaluating jurisdiction over a person, both constitutional and statutory limitations must be considered.

#### c. Personal Jurisdiction in Federal Courts

The main jurisdictional problem in state courts arises when the defendant over whom power is sought lives in another state. Since the federal borders encompass all states, one might expect that federal courts would encounter problems of personal jurisdiction only when the defendants were foreign nationals. However, Rule 4 of the Federal Rules provides that (absent some special federal provision) each federal court must analyze personal jurisdiction ***as if it were a court of the state in which it is located***. Thus, in nearly every case, the assessment of whether the court has personal jurisdiction over the defendant will be exactly the same in federal court as it is in state court.

### 2. Three Types of Personal Jurisdiction

#### a. In Personam Jurisdiction

In personam jurisdiction exists when the forum has power over the person of a particular defendant. (Jurisdiction over a plaintiff is generally not an issue because the plaintiff accedes to the court's jurisdiction by bringing suit in that court.) In these cases, the court may render a money judgment against the defendant or may order the defendant

to perform acts or refrain from acting. Such a judgment creates a personal obligation on the defendant and is entitled to full faith and credit in all other states; *i.e.,* if a defendant is ordered to pay a sum of money to a plaintiff, the plaintiff may enforce the judgment against the defendant's property in any other state where that property is located.

**b. In Rem Jurisdiction**

In rem jurisdiction exists when the court has power to adjudicate the rights of all persons in the world with respect to a ***particular item*** of property. This jurisdiction is limited to situations where the property is located within the physical borders of the state and where it is necessary for the state to be able to bind all persons regarding the property's ownership and use. This occurs with respect to actions for condemnation (eminent domain cases), forfeiture of property to the state (*e.g.,* when the property is used for the unlawful transportation of narcotics), and settlement of decedents' estates.

**c. Quasi In Rem Jurisdiction**

One type of quasi in rem jurisdiction exists when the court has power to determine whether particular individuals own specific property within the court's control. Unlike in rem jurisdiction, however, it does not permit the court to determine the rights of all persons in the world with respect to the property. A second type of quasi in rem jurisdiction permits the court to adjudicate disputes other than ownership based on the presence of the defendant's property in the forum (*see* E.2.a.2), *infra,* regarding applicable constitutional limitations).

**1) Defendant Is Not Bound Personally**

The basis of a court's power to exercise quasi in rem jurisdiction is the property within the state. (*See* E., *infra*.) The judgment does not bind the defendant ***personally*** and cannot be enforced against any other property belonging to the defendant.

## B. STATUTORY LIMITATIONS ON IN PERSONAM JURISDICTION

Each state is free to prescribe its own statutory bases for personal jurisdiction. Of course, the exercise of jurisdiction in a given case must also satisfy the constitutional requirements. (*See* C., *infra*.) Most states have statutes granting their courts in personam jurisdiction in the following four situations:

(i) Where the defendant is present in the forum state and is personally served with process;

(ii) Where the defendant is domiciled in the forum state;

(iii) Where the defendant consents to jurisdiction; and

(iv) Where the defendant has committed acts bringing him within the forum state's long arm statutes.

Each of these bases of in personam jurisdiction will be discussed in detail below.

### 1. Physical Presence at Time of Personal Service

Most states grant their courts in personam jurisdiction over any defendant who can be served with process within the borders of the state, no matter how long he was present (*i.e.,*

even if merely passing through). The Supreme Court has upheld this type of jurisdiction, allowing a transient defendant to be served with process for a cause of action unrelated to his brief presence in the state. [Burnham v. Superior Court, 495 U.S. 604 (1990)]

**2. State Law Exceptions to Traditional Rule**

Even though jurisdiction through presence at the time of service has been upheld under the Constitution, state statutes and court decisions have limited the power of their courts in certain situations.

**a. Service by Fraud or Force Invalid**

If a plaintiff brings a defendant into a state by fraud or force to serve process, most courts will find the service invalid. [*See, e.g.,* Copas v. Anglo-American Provision Co., 73 Mich. 541 (1889)]

**b. Immunity of Parties and Witnesses**

Most states likewise grant immunity from personal jurisdiction to nonresidents who are present in the state solely to take part in a judicial proceeding, or who are passing through the state on their way to a judicial proceeding elsewhere.

**3. Domicile**

Most states grant their courts in personam jurisdiction over persons who are domiciliaries of the state, even when the defendant is not physically within the state when served with process.

**a. Defined**

Domicile refers to the place where a person maintains her permanent home. If a person has legal capacity, her domicile is the place she has chosen through presence (even for a moment), coupled with the intention to make that place her home. If a person lacks capacity, domicile is determined by law (*e.g.,* infant is domiciliary of custodial parent's home state).

**b. Citizenship**

A United States citizen, even though domiciled abroad, is subject to personal jurisdiction in the United States. The scope of this basis for jurisdiction is unclear, because states have never attempted to enact laws or rules enabling their courts to obtain jurisdiction solely on the basis of citizenship. However, the power of federal courts to subpoena a United States citizen domiciled abroad to return to the United States to give testimony has been upheld by the Supreme Court.

**4. Consent**

Virtually every state provides for in personam jurisdiction through the defendant's consent. Such consent may be express or implied or through the making of a general appearance.

**a. Express Consent**

A party's express consent to the jurisdiction of local courts, whether given before or after suit is commenced, serves as a sufficient basis for in personam jurisdiction.

**1) By Contract**

A person can, by contract, give advance consent to jurisdiction in the event a suit is brought against him.