FEDERAL JURISDICTION AND PROCEDURE

TABLE OF CONTENTS

I. PERSONAL JURISDICTION 1
- A. OVERVIEW 1
  - 1. Limitations on Personal Jurisdiction 1
  - 2. Three Types of Jurisdiction 1
- B. STATUTORY LIMITATIONS ON IN PERSONAM JURISDICTION 1
  - 1. Defendant Is Present in Forum State and Is Personally Served with Process . 1
  - 2. Defendant Is Domiciled in Forum State 1
  - 3. Defendant Is a Citizen 1
  - 4. Defendant Consents to Jurisdiction 2
  - 5. Defendant Has Committed Acts Bringing Him Within Forum State's Long Arm Statutes 2
- C. CONSTITUTIONAL LIMITATIONS ON IN PERSONAM JURISDICTION 2
  - 1. Sufficient Nexus with the Forum 2
  - 2. Notice 4
- D. IN REM JURISDICTION 4
- E. QUASI IN REM ACTIONS 4

II. DIVERSITY OF CITIZENSHIP JURISDICTION 4
- A. DIVERSITY AMONG THE PARTIES 4
  - 1. Complete Diversity When Action Commenced 4
  - 2. Questions of Citizenship 5
  - 3. Collusion and Devices to Create or Defeat Diversity 6
  - 4. Realignment According to Interest 6
  - 5. Ancillary (Supplemental) Jurisdiction 6
  - 6. Subsequent Addition of Parties 7
- B. JURISDICTIONAL AMOUNT—IN EXCESS OF $75,000 7
  - 1. What Is "In Controversy"? 7
  - 2. Aggregation of Separate Claims 8
  - 3. Supplemental Jurisdiction over Claims Not Exceeding $75,000 in Diversity Cases 8
  - 4. Counterclaims 8
- C. *ERIE* DOCTRINE 8
- D. EXCEPTIONS TO DIVERSITY OF CITIZENSHIP JURISDICTION 8
- E. MULTIPARTY, MULTIFORUM TRIAL JURISDICTION ACT OF 2002 8

III. FEDERAL QUESTION JURISDICTION 10
- A. FEDERAL QUESTION MUST APPEAR IN COMPLAINT 10
- B. IMPLIED FEDERAL RIGHT OF ACTION 10
- C. FEDERAL CORPORATIONS 10
- D. PENDENT (SUPPLEMENTAL) JURISDICTION 10
  - 1. Pendent Claims 10
  - 2. Pendent Parties 10
- E. SPECIFIC STATUTORY GRANTS 11

IV. VENUE 11
A. SUBJECT MATTER JURISDICTION DISTINGUISHED 11
B. GENERAL RULES 11
C. RESIDENCE 11
1. Individuals 12
2. Corporations 12
3. Unincorporated Associations 12
D. VENUE IN "LOCAL ACTIONS" 12
E. IMPROPER VENUE MAY BE WAIVED 12
F. TRANSFER 12
G. LAW APPLICABLE UPON TRANSFER 12

V. REMOVAL JURISDICTION 12
A. ORIGINAL JURISDICTION NECESSARY 12
1. Federal Defense Insufficient 12
2. State Court Need Not Have Had Jurisdiction 13
B. ONLY DEFENDANTS MAY REMOVE 13
C. VENUE 13
D. DEFENDANT MAY REMOVE SEPARATE AND INDEPENDENT CLAIM . . . 13
E. DISMISSAL OF NONDIVERSE PARTY ALLOWS REMOVAL 13
1. Limitations on Removal in Diversity of Citizenship Cases 13
F. PROCEDURE FOR REMOVAL 13
1. Time 13
2. Remand 13

VI. CONFLICT OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS . . . 14
A. INJUNCTIONS AGAINST STATE COURT PROCEEDINGS 14
1. Pending State Proceedings 14
2. Threatened State Proceedings 14
B. ABSTENTION 14
1. Grounds 15
2. Procedure 15
3. Federal Intervention 15

VII. FEDERAL RULES OF CIVIL PROCEDURE 15
A. COMMENCEMENT OF ACTION 15
B. SERVICE OF PROCESS 15
1. How Service Is Made 15
2. Parties Served Outside State 15
3. Immunity from Process 15
C. EXTENSION OF TIME PERIODS 16
D. INTERLOCUTORY 16
1. Preliminary Injunctions 16
2. Temporary Restraining Orders 16
E. PLEADINGS 16
1. Notice Pleading 16
2. Pleading a Cause of Action 16
3. Pre-Answer Motion 16
4. Answer 17

5. Counterclaims 18
6. Inconsistent Claims or Defenses 18
7. Reply 18
8. Amendments and Supplemental Pleadings 18
9. Rule 11 18

F. JOINDER 19
1. Joinder of Parties 19
2. Joinder of Claims 20

G. DUTY OF DISCLOSURE; DISCOVERY 24
1. Disclosure Requirements 24
2. Scope of Disclosure and Discovery 25
3. Types of Discovery 26
4. Enforcing Disclosure and Discovery 26
5. Use of Depositions at Trial or Hearing 27

H. PRETRIAL CONFERENCES 27
1. Rule 26(f) Conference of Parties—Planning for Discovery 27
2. Rule 16(b) Scheduling Conference 27
3. Pretrial Conferences 27
4. Sanctions 27

I. ALTERNATIVE DISPUTE RESOLUTION 28
1. Contractual Arbitration 28
2. Judicial Arbitration 28
3. Mediation 28

J. TRIAL 28
1. Jury Trial Problems 28
2. Consolidation and Separate Trials 29
3. Voluntary Dismissal by Plaintiff 29
4. Judgment as a Matter of Law (Formerly Directed Verdict) 29
5. Renewed Motion for Judgment as a Matter of Law (Formerly Judgment Notwithstanding the Verdict) 29
6. Motion for New Trial 29
7. Effect of Failure to Move for a Renewed Judgment as a Matter of Law or for a New Trial 31
8. Judgment on Partial Findings 31
9. Summary Judgment 31

VIII. ATTACK ON THE JUDGMENT AT THE TRIAL COURT LEVEL 31
A. RELIEF FROM JUDGMENT OR ORDER 31
1. Clerical Mistakes 31
2. Other Grounds for Relief from Judgment 31

B. INDEPENDENT ACTION IN EQUITY TO SET ASIDE THE JUDGMENT 31

IX. FINAL JUDGMENT AND APPELLATE REVIEW 32
A. JUDGMENT 32
1. Relief that May Be Given 32
2. Multiple Claims or Parties 32
3. Final Decision on Merits May Be Valid Despite Lack of Subject Matter Jurisdiction 32

B. TIME FOR APPEALS 32

C. REVIEWABLE ORDER 32
1. Interlocutory Orders as of Right 32
2. Interlocutory Appeals Act 33
3. Collateral Order Rule 33
4. Certification of Class Actions 33
5. Orders Made Appealable (or Nonappealable) by Writ 33
D. STAY PENDING APPEAL 33
E. SUPREME COURT JURISDICTION 33

X. EFFECTS OF JUDGMENT ON FUTURE CASES 33
A. RES JUDICATA (CLAIM PRECLUSION) 33
B. COLLATERAL ESTOPPEL (ISSUE PRECLUSION) 34
C. WHICH PERSONS ARE BOUND BY A JUDGMENT? 34

FEDERAL JURISDICTION AND PROCEDURE

I. PERSONAL JURISDICTION

A. OVERVIEW

Personal jurisdiction refers to the ability of the court having subject matter jurisdiction (*i.e.,* jurisdiction over the type of case) to exercise power over a particular defendant or item of property.

1. Limitations on Personal Jurisdiction

An exercise of personal jurisdiction must not exceed the limitations of either state statutes or the United States Constitution. If no state statute grants the court the power over the parties before the court, then the court lacks personal jurisdiction. Under the Due Process Clause, parties directly affected by the court action must receive fair and adequate notice of the action. Furthermore, there must be minimum contacts between the defendant or property and the forum state so that the assumption of jurisdiction is fair and reasonable. 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***.

2. Three Types of Jurisdiction

In personam jurisdiction exists when the forum has power over the ***person of a particular defendant***. An in personam judgment is entitled to full faith and credit in all other states. ***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. ***Quasi in rem*** jurisdiction exists when the court has power to determine the rights of ***particular individuals*** with respect to ***specific property*** within the court's control. Unlike in rem jurisdiction, quasi in rem jurisdiction does not permit the court to determine the rights of all persons in the world. A quasi in rem 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

Most states have statutes granting their courts in personam jurisdiction based on the following five situations:

1. Defendant Is Present in Forum State and Is Personally Served with Process

Service plus even transitory presence may be a sufficient basis for in personam jurisdiction. Service by fraud or force is invalid. Most states grant immunity from personal jurisdiction to nonresidents who are parties or witnesses in a judicial proceeding.

2. Defendant Is Domiciled in Forum State

Domicile refers to the place where a person maintains her permanent home. If a person lacks capacity, domicile is determined by law.

3. Defendant Is a Citizen

A United States citizen, even though domiciled abroad, is subject to personal jurisdiction in the United States. The extent of this jurisdiction is unclear, because no state has ever attempted to enact a law or rule that enables such jurisdiction. The Supreme Court, however, has ruled that a federal court may subpoena a United States citizen domiciled abroad to return to give testimony.

4. Defendant Consents to Jurisdiction
Consent may be express or implied, or through the making of a general appearance. A person can give advance consent by contract or by appointment of an agent to accept service of process. Many states allow "special appearances" through which a defendant can object to the court's exercise of jurisdiction. This special appearance must be made in the defendant's initial pleading to the court.

5. Defendant Has Committed Acts Bringing Him Within Forum State's Long Arm Statutes
The long arm statutes of a few states give their courts power over any person or property over which the state can constitutionally exercise jurisdiction. Most states, however, have long arm statutes that specify in detail the situations in which their courts can exercise jurisdiction, *e.g.,* a "tort" occurs within the state, or a cause of action arises out of the "transaction of business" or ownership of property in the state.

C. CONSTITUTIONAL LIMITATIONS ON IN PERSONAM JURISDICTION

1. Sufficient Nexus with the Forum

a. Traditional Rule: Physical Power
Traditionally, jurisdiction was based on the power to arrest the person (based on presence, residence, or consent) to force compliance with a judgment.

b. Modern Due Process Standard: Contact and Fairness
The Supreme Court has listed several factors to use to assess the constitutionality of personal jurisdiction. In general, the factors fall under two headings: ***contact*** and ***fairness***.

1) Contact
In personam jurisdiction requires that the defendant have "such ***minimum contacts***" with the forum such that the exercise of jurisdiction would be fair and reasonable. The contacts cannot be accidental; the court must find that, through these contacts, the defendant ***purposefully availed*** herself "of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws." The defendant also ***must know or reasonably anticipate*** that her activities in the forum render it ***foreseeable*** that she may be "haled into court" there.

2) Fairness
The exercise of jurisdiction also must not offend the "traditional notions of fair play and substantial justice." The court has listed several factors relevant to fairness. One factor is whether the claim arises from the defendant's contacts with the forum. If the claim is ***related to the defendant's contacts*** with the forum, a court is more likely to find that jurisdiction as to that claim ("specific jurisdiction") is fair and reasonable. If the defendant engages ***in systematic and continuous activity*** in the forum state, the court could find this activity a sufficient basis for exercising in personam jurisdiction over any cause of action ("general jurisdiction"). ***Convenience*** to the defendant is another factor. A forum is constitutionally acceptable unless it is "so gravely difficult and inconvenient" that the defendant is put at a severe disadvantage. The forum state may also have a ***legitimate interest*** in providing redress for its resident. Other factors include the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in efficiency, and the shared interest of the states in furthering social policies.

CMR SUMMARY CHART

LIMITS ON IN PERSONAM JURISDICTION

Statutory

States generally require that defendant:

1. Is ***present*** in the forum state at the time of service;
2. Is ***domiciled*** in the forum state;
3. Has given express or implied ***consent*** to jurisdiction; or
4. Meets the requirements of the forum state's ***long arm or other statute***.

Constitutional

There must be sufficient minimum contacts so that the exercise of in personam jurisdiction over the defendant is fair.

1. **Contacts**

   The contacts must show that the defendant:

   a. ***Purposefully availed*** herself of the forum state's laws; and

   b. ***Knew or reasonably should have anticipated*** that her activities in the forum made it ***foreseeable*** that she may be "haled into court" there.

2. **Fairness**

   a. If the claim is ***related to the defendant's contact*** with the forum, a court is more likely to find that jurisdiction as to that claim ("specific jurisdiction") is fair and reasonable; or

   b. If the defendant engages in ***systematic and continuous activity*** in the forum state, the court could find this activity a sufficient basis for exercising in personam jurisdiction over any cause of action ("general jurisdiction"); and

   c. The court will consider ***other factors***:

      - Whether the ***forum is "so gravely difficult and inconvenient"*** that the defendant is put at a severe disadvantage;
      - The ***forum state's legitimate interest*** in providing redress for its resident;
      - The ***plaintiff's interest*** in obtaining convenient and effective relief;
      - The ***interstate judicial system's interest in efficiency***; and
      - The shared interest of the states in ***furthering social policies***.

3. **Notice**

   Defendant must be ***notified*** of the lawsuit by a ***reasonable method*** and given an ***opportunity to appear and be heard***.