

Civil Procedure Outline

Personal Jurisdiction

- I. In personam jurisdiction exercised over the defendant himself because he has an appropriate connection with the forum.
 - a. Resides and intends to remain (domicile).
 - b. Acts committed in state.
 - c. Committed an act which impacted the state
- I. In rem and quasi-in-rem jurisdiction is when there is jurisdiction because the defendant's property is located in the forum and that property may give the court its jurisdiction.
 - a. Tangible-houses, buildings, boats, books
 - b. Intangible-stocks and bonds, accounts.
 - c. Real property
- II. 5th and 14th Amendments are the outer limits of personal jurisdiction over the defendant.
- III. Long arm statutes can restrict when a court can have jurisdiction over a defendant further.
- IV. Personal jurisdiction is always proper when the defendant:
 - a. Is served process in the forum state.
 - b. Resides in the forum state.
 - c. Is a business which is incorporated or has its principal place of business in that State.
- V. Absence is not a defenses. If you are domiciled in a state that is sufficient to allow service.
- VI. Domiciliary means that you have consented to State's benefits and protections
- VII. Black Letter Law:
 - a. **Minimum contacts** with it such that maintenance of the suit **does not offend traditional notions of fair play and substantial justice**.
 - b. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond...can hardly be said to be undue.
 - c. The activities were systematic and continuous...**to establish sufficient contacts or ties with the state of the forum to make it reasonable and just**, according to our...conception of fair play and justice, to permit the state it enforce is obligations which the appellant has incurred there.

VIII.

	Activities of the non-resident defendant give rise to the cause of action	Causes of action are unconnected with the forum
Contacts with the forum is continuous and systematic.	Yes, Proper jurisdiction	Maybe, general jurisdiction
Contacts with the forum is single or isolated.	Maybe, specific jurisdiction	No, improper jurisdiction

- IX. Transient jurisdiction is serving a nonresident defendant in the jurisdiction.
- X. Minimum contacts test
 - a. Minimum contacts (must be done before fairness test)
 - i. Relevant contacts to Forum State.

- ii. Relatedness to the cause of action
 - b. Fairness factors
 - i. Burden on the defendant.
 - ii. Foreign State's interest.
 - iii. Plaintiff's convenience
 - iv. Interstate judicial system's interest in obtaining the most efficient resolution of controversies.
 - v. The shared interest of the several States in furnishing fundamental substantive social policies.
 - c. Purposefully availed themselves so that they could reasonably anticipate being haled into court.
- XI. Contract provisions alone are not sufficient to establish personal jurisdiction.
- XII. A unilateral act by the plaintiff is not sufficient to establish personal jurisdiction.
- XIII. In product liability cases, stream of commerce, it is the defendant's purposeful availment that makes jurisdiction consistent with traditional notions of fair play and substantial justice.

Notice

- I. Notice is a full opportunity to appear and be heard.
- II. Black Letter Law:
 - a. Notice reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.
- III. Rule 4
 - a. Process is a summons and a complaint.
 - b. Plaintiff has 120 days to serve after filing a complaint or the complaint will be dismissed without prejudice.
 - c. Rule 4(e) allows service at:
 - i. According to State law.
 - ii. Personal service
 - iii. At their abode(substitute)
 - iv. By an authorized agent.
 - d. "Actual" Notice (telling them without a summons and complaint) not proper service.
 - e. Waiver of service:
 - i. Defendant has an advantage of more time to respond to the complaint.
 - ii. Defendant could incur the costs if not waived.
 - iii. Plaintiff can proceed with other service when there is no defendant response.
 - f. Statute of limitations ends when the complaint is filed. If the defendant is not served and the claim is dismissed after, it is done so without prejudice. The plaintiff might be barred from bringing a second suit, though, unless they can show good cause.

Venue

- I. §1391
 - (b)(1) Any district where a defendant resides, if all are residents of the same state.

(b)(2) Substantial events or omissions or a substantial part of the property that is the subject of the suit.

(b)(3) If no district, where the defendant is subject to the court's personal jurisdiction (residual clause).

(c)(1) Domiciliary is equal to residency for a person.

(c)(2) Where an entity is subject to a court's personal jurisdiction.

Subject Matter Jurisdiction

I. Federal Question

a. Well pleaded complaint rule:

i. Court only looks to the plaintiff's initial complaint to determine subject matter jurisdiction and only those which support the cause of action.

ii. Possible defenses and counterclaims are not allowed.

b. Is there a federal issue at all.

c. If so, does it give rise to plaintiff's complaint?

d. When a complaint is dismissed for lack of subject matter jurisdiction [12(b)(6)], it is done so without prejudice, allowing another suit to be brought in State court.

II. Diversity Jurisdiction

a. 2 requirements

i. Complete diversity between the parties on both sides of the aisle.

1. Based off of residency not citizenship.

a) Individual is based off of residency and intent.

b) Corporation citizenship is based off of State of incorporation and the principal place of business (where the business is directed, controlled, and coordinated from).

2. Determined at the time the suit is filed.

3. Trial court has discretion to sever defendants to establish complete diversity.

ii. Amount in Controversy must exceed \$75,000

1. Does not include interest for delay.

2. Amount collected does not matter.

3. Plaintiff's good faith allegations that the requirement is satisfied controls unless it "appears to a legal certainty" that the claim is really for less.

4. Counterclaim does not offset the AIC stated by plaintiff.

5. Aggregation rules

a) $P(C1+C2)$ v. D.=Yes

b) $P1(C1)+P2(C2)$ v. D.=No

c) $P1(\text{Claim1}>\$75)+P2(\text{Claim2}\leq\$75)$ v. D=yes in a class action suit.

d) $(P1+P2)(C1)$ v. D.=yes if based on a common undivided interest.

e) $P(C1)$ v. D1+ $P(C2)$ v. D2=No

f) $P(\text{Joint liability claim})$ v. D1+D2=yes

III. Supplemental Jurisdiction

- a. Every single claim (not just plaintiff's claim) must assert subject matter jurisdiction.
- b. Supplemental not available when there is an original basis of Federal subject matter jurisdiction.
- c. The general rule for supplemental jurisdiction is that claims which form part of the same cases.
- d. Supplemental jurisdiction under 1367
 - (a) Requires the same common nucleus of operative facts and must be met no matter what.
 - (b) When the original cause of action is based solely on diversity jurisdiction and arises from the common nucleus of operative facts, prohibits the plaintiff attempting to bring claims or parties in under Rules 14, 19, 20 or 24.

Pleading

- I. Have to state a cognizable claim; one in which relief can be granted.
- II. If the defendant fails to answer, there will be a default judgment against the defendant.
- III. Rule 8 requirements for pleading
 - a. Establish jurisdictions
 - b. Short and plain statement of claim showing that plaintiff is entitled to relief
 - c. A demand for judgment being sought.
- IV. 2 kinds of sufficiency to satisfy Rule 12(b)(6):
 - a. Legal sufficient: if plaintiff proved everything, would they win?
 - b. Factual sufficiency:
 - i. BLL:
 - 1. First, the tenet that a court must accept as true all of the allegations in a complaint is inapplicable to legal conclusions.
 - 2. Second, only a claim that states a plausible claim for relief survives motion to dismiss. [This is a] context specific task...But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not shown that the pleader is entitled to relief.
- V. Rule 8(d) allows a party to plead alternative claims or defenses and consistency does not matter.

Rule 11

- I. Special requirements
 - a. By signing a document, the lawyer assures that he has made an inquiry reasonable under the circumstances and that all the statements are true.
 - b. Not being presented for an improper purpose. (b)(1).
 - c. Warranted by law or to modify, extend, or reverse existing law or strong argument to establish new law. (b)(2).
 - d. Factual contentions have evidentiary support. (b)(3).
- II. 2 ways to bring forth violations:
 - a. Sua sponte-Court brings it up from the bench.
 - b. Opposing party brings it up.

Response/Answer

- I. No answer leads to a default judgment.
- II. Answers require due diligence.
- III. 12(b)(1) can be brought at any time.
- IV. 12(b)(2)-(5) must be presented in first defensive response, whether in a motion or an answer. If they are not presented then, they will be waived.
- V. 12(b)(6) & (7) can be presented as late as at trial before the judgment.
- VI. Rule 12(e) motion for a more definitive statement:
 - a. Complaint cannot be understood.
 - b. Must be made in a pre-answer motion.
 - c. Will be provided with 14 days to amend the complaint.
- VII. Rule 12(f) motion to strike
 - a. Must be made before answer within 21 days.
- VIII. Rule 12(b)(c) motion for a judgment on the pleadings.
 - a. Similar to a 12(b)(6) motion.
- IX. Response to claims and affirmative defenses (Rule 8(c)(1)).
 - a. Admit allegations.
 - b. Deny allegations
 - c. Lack sufficient knowledge; an effective denial. Rule 8(b)(5).
- X. You must admit what is true and use specificity when you deny. A general denial is not enough.
- XI. BLL:
 - a. When a pleader intends in good faith to deny only a part...he shall specify so much as is true and material and shall deny only the remainder.
 - b. The doctrine of equitable estoppel will be applied to prevent a party from taking advantage of the statute of limitations where the plaintiff has been misled by the conduct of such party.
- XII. All allegations not properly denied are deemed to be admitted.
- XIII. Nonresponse is treated as an admission.
- XIV. Affirmative defenses (Rule 8(c)(1)):
 - a. Have to put in facts to support why the defendant is not liable, even if he actually did the act.
 - b. Parties or court can raise affirmative defense.
 - c. Must come in answer and defendant has the burden.

Reply

- I. Only if required by the court, the plaintiff will respond to defendant's answer.
- II. If not required, an allegation is considered denied or avoided.

Discovery

- I. Scope of Discovery (Rule 26(b)):
 - a. All information which is relevant to a claim or defense of a party.
 - b. With court's permission, can gather information related to the subject matter of the litigation.
 - c. Relevant information need not be admissible at trial if is reasonably calculated to lead to admissible evidence.

II. Spoliation

a. BLL:

- i. Spoliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation.
- ii. The trial court has discretion to pursue a wide range of responses...But dismissal should be avoided if a lesser sanction will perform the necessary function.
- iii. The duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation.
- iv. Dismissal is justified only in circumstances of **bad faith or if the prejudice to the defendant is extraordinary**, denying it the ability to adequately defend its case.

III. Initial disclosures [Rule 26(a)(1)]:

- a. Must disclose certain information without being asked.
- b. Rule 26(f) discovery conference gives 14 days for disclosure (30 if the party has been joined).
 - i. Witness names, telephone numbers, and addresses.
 - ii. Documents, including electronically stored information, and tangible things.
 - iii. Computation information.
 - iv. Insurance information
- c. Only requires information that supports your claims or defenses.
- d. Information which is to be solely used for impeachment does not need to be disclosed.
- e. Disclosure of information reasonably available after due diligence.
- f. Failure to disclose can result in the exclusion of the evidence, unless the failure was harmless or with justification.

IV. Production of documents (Rule 34):

- a. Can be requested specifically or as a part of a category.
- b. Documents only need to be provided as they were kept in the usual course of business.
- c. Responding party may produce or object.
- d. Forms of production:
 - i. If no agreement, the requesting party can specify the form.
 - ii. Responder may object and provide notice of how they will produce.
 - iii. Electronically stored information need only be provided in ordinarily maintained form or the form(s) that are reasonably useable.
- e. Metadata:
 - i. Must provide when requested; not privileged.
 - ii. Party may not produce in a manner which is not reasonably accessible or causes an undue burden.

V. Physical or Medical Exams (Rule 35):

- a. Must be requested of a party or person under control of a party.
- b. Mental or physical condition of a party must be a part of the controversy.

- c. Requesting party must demonstrate good cause to justify the examination.
 - i. The examined party may request a copy of the report and party requesting may get copies of any reports arising from any similar examination.
- VI. Interrogatories (Rule 33):
 - a. A party may send written questions to the opposing party.
 - b. Limited to 25 interrogatories unless the court otherwise orders.
 - c. Allows for the questioning party to view the respondent's business records to figure out the answers themselves.
- VII. Admissions (Rule 36):
 - a. Matter is admitted unless a written answer or objection is served.
 - b. A party may qualify an answer when good faith requires it.
- VIII. Deposition (Rule 30):
 - a. Any person with testimony can be called; need not be a party.
 - b. Objection-confusing question, privilege, confidential, and relevance.
 - c. May instruct a client not to answer when preserving a privilege.
 - d. Limited to 1 day of 7 hours.
- IX. Privileges [Rule 26(b)(3)]:
 - a. Work Product-Materials assembled in the ordinary course of business or pursuant to a litigation or other no litigation purposes.
 - i. If requested, claim a privilege under 26(b)(5) and ask for a protective order under Rule (26)(c)(1).
 - b. Attorney-client privilege
 - i. Assert the holder is or is seeking to be a client.
 - ii. Person to whom the communication was made
 - 1. A member of the bar or his/her subordinate.
 - 2. Is communicating as a lawyer.
 - iii. Communication relates to a fact for the purpose of securing either an opinion of law or legal services.
 - c. Protects communications rather than information or facts.
 - d. BLL:
 - i. This work is reflected...in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways-"work product of a lawyer."

Joinder

- I. Is there a joinder provision which allows assertion of this claim? If yes, move on to establishing subject matter jurisdiction.
- II. Rule 18(a) abolishes prohibition against bringing unrelated claims against defendant.
 - a. It is permissive and does not require a claim be brought.
 - b. The rule does not stop you from bringing a later claim, but if it is transactionally related, you may be barred from later bringing it (claim preclusion).
 - c. There must be an initial claim, counterclaim, or crossclaim before Rule 18 can join any claims.
 - i. Common nucleus of operative facts
 - ii. Solely diverse
 - iii. Supplemental and joinder exceptions.

- III. Rule 13:
 - a. Compulsory counterclaim [Rule 13(a)] is a claim asserted by a defendant that arises out of the **same transaction or occurrences**. If a defendant fails to assert, cannot be asserted later due to claim preclusion.
 - b. Permissive counterclaims [Rule 13(b)] is a claim not related to the same transaction or occurrence and which must have its own independent basis.
 - c. Rule 13(c) allows the counterclaim to exceed the plaintiff's claim and to be of a different type.
 - d. Rule 13(e) allows defendant to assert later claims.
 - e. Crossclaims (Rule 13(g)):
 - i. Permissive
 - ii. Claims against a co-party
 - iii. Must arise from the same transaction or occurrence.
 - iv. May include that co-party is or may be liable.
 - f. Party against whom a crossclaim or counterclaim is brought must respond as the defendant or risk default judgment.
 - g. In crossclaims and counterclaims, we assume the court has jurisdiction over the defendant.
- IV. Rule 20: Joinder of parties
 - a. Trial court has discretion to deny joinder of a party when it might produce jury confusion or misjoinder.
 - b. BLL:
 - i. The purpose of the rule is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits.
 - ii. The rule imposes two specific requisites...: (1) a right to relief must be asserted by, or against, each plaintiff or defendant relating to or arising out of the **same transaction or occurrence**... (2) **Some question of law or fact in common**.
 - c. Misjoinder severs but does not dismiss a claim.
- V. Rule 14: Third party
 - a. Defendant may implead a third party who is or who may be partly or wholly liable.
 - b. Third party defenses:
 - i. Rule 12 defenses
 - ii. Defenses that defendant has to plaintiff's claim
 - iii. Third party may assert claims against plaintiff, defendant, or 4th party defendant.
 - c. Procedure: Defendant impleads within 14 day window or seeks court's permission
 - d. Plaintiff can seek claims against 3rd party.
 - e. Impleading is for contribution or indemnification
 - f. BLL:
 - i. Under 14(a), a defendant may assert a claim against anyone not a party to the original action if that party's liability is in some way dependent on the outcome of the original action.
 - ii. The third party liability must in some way be derivative of the original claim; a third party may be impleaded only when the original defendant is trying to pass all or part of the liability onto that third party.

Summary Judgment

- I. Procedural means by which the defendant prevails when plaintiff cannot prove an element of her claim.
- II. Procedural means by which the plaintiff can prevail when defendant cannot refute an element of plaintiff's claim.
- III. Rule 56:
 - a. No genuine issue as to a material fact means no need for trial.
 - b. Court applies the law to the facts but does not deliberate to them.
- IV. Partial Summary Judgment
 - a. Plaintiff sues defendant on claim with 4 elements: A, B, C, and D.
 - b. A is true and not in dispute
 - i. Case will proceed to trial on B, C, and D and judge will instruct that A is true.
- V. Materials which can be used to move for summary judgment
 - a. Pleadings (can be treated as admissions but not evidence).
 - b. Discovery materials
 - c. Materials disclosed on file
 - d. Affidavits
 - i. Personal knowledge
 - ii. Admissible in evidence
 - iii. Competency
- VI. BLL: Moving party
 - a. Rule 56 mandates the entry of summary judgment after adequate time for discovery **against a party who fails to make a showing sufficient** to establish the existence of an essential element to that party's case and on which that **party will bear the burden of proof at trial.**
 - b. A party seeking summary judgment **always bears the initial responsibility** of informing the court of the basis for its motion, and identifying those portions of the **record which it demonstrates the absence of a genuine dispute.**
 - c. One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.
 - d. As an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.
- VII. Non-moving party
 - a. Argue that movant has not adequately demonstrated a deficiency in the evidence.
 - b. Present evidence to counter movant's evidence in the hopes of demonstrating the existence of a genuine dispute of material fact.
- VIII. Judgment as a matter of law.
 - a. The inquiry is the same as in summary judgment: to determine if there is a dispute for a jury to decide or if it is so one-sided that one party must prevail as a matter of law.
 - b. Procedure:
 - i. Plaintiff
 1. Presents evidence
 2. Rest
 3. Defendant moves for judgment as a matter of law

- ii. Defendant
 - 1. Presents evidence
 - 2. Rests
 - 3. Plaintiff moves for judgment as a matter of law.
- iii. Rebuttal→close evidence
 - 1. plaintiff/defendant moves for judgment as a matter of law
- iv. Verdict
 - 1. Plaintiff/defendant moves for a renewed judgment as a matter of law (judgment notwithstanding the verdict)
 - a. Must have put fourth an earlier motion or it is waived.