JURISDICTION IN CIVIL ACTIONS

Second Edition

ROBERT C. CASAD

1996
Cumulative Supplement

Michie

JURISDICTION IN CIVIL ACTIONS

Territorial Basis and Process Limitations on Jurisdiction of State and Federal Courts

Second Edition

by

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1996 Cumulative Supplement

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How to Use This Supplement

This 1996 cumulative supplement follows the chapter sequence of the main volume. Each entry is either keyed to a specific chapter and page in the main volume or establishes a new section or subsection within the text of the main volume. The reader using the main volume will find additional material on the points covered there by checking corresponding chapters in this supplement.

This supplement also contains a Table of Cases that includes all cases referenced in this supplement.

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VOLUME 2

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Fundamental Concepts and Terminology

§ 1.01 Jurisdiction

[1] Jurisdiction of the Subject Matter

Add to note 13 after "See, e.g.," page 1–6:

Apparel Resources Int'l, Ltd. V. Amersig Southeast, Inc., 215 Ga App 483, 451 SE2d 113 (1994).

Add to note 17, page 1–6:

See Mann v. Mann, 569 So 2d 415 (Ala App 1990) (challenge to jurisdiction in divorce action on ground that neither party is resident of forum state has to be made in timely manner; otherwise defect is waived); Finnerty v. New York State Thruway Auth., 75 NY2d 721, 550 NE2d 441, 551 NYS2d 188 (1989) (failure to serve copy of claim on Attorney General resulted in lack of subject matter jurisdiction); Grimsley v. United Engr's & Constructors, Inc., 818 F Supp 147 (D SC 1993) (federal court in a diversity case ruled that it lacked "subject matter jurisdiction" over a claim that was barred from South Carolina courts by reason of the "door closing" statute, and that since it lacked "subject matter jurisdiction" it could not transfer the case to another district under 28 USC § 1404a. It did, however, transfer it under 28 USC § 1631); Evergreen Nat'l Corp. v. Killian Constr. Co., 873 SW2d 633 (Mo App 1994) (court had no "subject matter jurisdiction" over a claim that should have been submitted as a compulsory counterclaim in an earlier action).

[3] Jurisdiction Over Property

Add to note 37, page 1–12:

Although jurisdiction in an in rem action generally ends with removal of the res, jurisdiction may be retained where the res was removed accidently, improperly, or fraudulently. United States v. $29,959.00 U.S. Currency, 931 F2d 549 (9th Cir 1991); United States v. Ten Thousand Dollars in U.S. Currency, 860 F2d 1511 (9th Cir 1988).

§ 1.03 Jurisdiction and Venue Distinguished

Add to note 65 after "See also," page 1–18:

Kueper v. Murphy Distrib., 834 SW2d 875 (Mo App 1992).

Add to text after note 65, page 1–18:

The Missouri Supreme Court has now overruled the line of cases that equated personal jurisdiction and venue, in the light of a 1989 statutory amendment.[65.1]

Add new note, page 1–18:

65.1 State ex rel. DePaul Health Center v. Mummert, 870 SW2d 820 (Mo 1994).

[2] Local Actions

Add to text after note 85, page 1–22:

The fact that a claim for trespass to land was joined with some other claims was held by one federal court not to render the whole action local so as to prevent transfer of the action to district where the trial of the whole action would be more convenient, even though the land was not situated there.[85.1]

Add new note, page 1–22:

85.1 Firestone v. Galbreath, 722 F Supp 1020 (SD NY 1989).

Add to note 87, page 1–23:

But see Huzagh v. Damico, 869 F Supp 1302 (ND Ill 1994), where the court said, "In this circuit at least, characterization of the action as local or transitory implicates venue rather than jurisdictional concerns. Raphael J. Mincius, Inc. v. Safeway Stores, Inc., 743 F2d 503 (7th Cir 1984). And new objections can be waived by failing to assert them in a timely fashion."

Add to note 88 after "See also," page 1–23:

General Elec. Capital Corp. v. East Coast Yacht Sales, Inc., 757 F Supp 19 (ED Pa 1991); Kavouras v. Fernandez, 737 F Supp 477 (ND Ill 1989) (mortgage foreclosure).

Add to note 92, page 1–24, after "e.g.":

Crowe v. Smith, 603 So 2d 301 (Miss 1992); Ely v. Smith, 764 F Supp 1413 (D Kan 1991); Keller v. Millice, 838 F Supp 1163 (SD Tex 1993); Hartman v. Sirgo Operating, Inc., 863 SW2d 764 (Tex App 1993).

Add to note 94, page 1–24:

See also Central Wesleyan College v. W.R. Grace & Co., 6 F3d 177 (4th Cir 1993) (product liability class action on behalf of colleges and universities for damages based on installation of asbestos in buildings was not a local action).

Add to end of note 96, page 1–25:

In Trust Co. Bank v. United States Gypsum Co., 950 F2d 1144, 1149 (5th Cir 1992) the court said, "The use of state law to determine whether a federal court can resolve a local action is difficult to support." Nevertheless, the court felt bound by stare decisis to follow the state's law in that diversity of citizenship case. See also Box v. Ameritrust Texas, N.A., 810 F Supp 776 (ED Tex 1992), suggesting that the Fifth Circuit interpretation rests on an erroneous reading of *Livingston v. Jefferson*, but nevertheless applying Texas law to resolve the question. See also Keller v. Millice, note 92 supra.

[3] Effect of Improper Venue

Add to note 101 after "But see," page 1–26:

Kueper v. Murphy Distrib., 834 SW2d 875 (Mo App 1992).

§ 1.04 Forum Non Conveniens

Replace sentence in text before note 104, page 1–28, with the following:

Before 1991, no procedure existed for transferring an action from one state court to another.[104]

Add to note 104, page 1–28:

See also In the Interest of Armell, 194 Ill App 3d 31, 550 NE2d 1060 (1990).

Add to note 105, page 1–28:

A dismissal that leaves the plaintiff free to commence the action again in another court is almost everywhere decreed a dismissal "without prejudice." However, some New York cases have referred to a forum non conveniens dismissal as a dismissal "with prejudice." See Purgatorio v. Trump, 198 AD2d 37, 603 NYS2d 462 (1993). What the court meant was that a dismissal for forum non conveniens precludes a party from commencing a suit on the same claim again in the courts of New York. Rather than calling such a dismissal "with prejudice," a term associated with the claim preclusion aspect of res judicata, the courts should have used the language of issue preclusion or collateral estoppel: a later suit in New York is precluded because the *issue* of the inconvenience of New York has already been adjudicated.

Add to note 106, page 1–28:

Rutledge v. Scott Chotin, Inc., 972 F2d 820 (7th Cir 1992); Delfosse v. C.A.C.I., Inc.-Federal, 218 Cal App 3d 683, 267 Cal Rptr 224 (1990).

Add to note 107 after "See," page 1–28:

Hurst v. General Dynamics Corp., 583 A2d 1334 (Del Ch 1990).

Add to text after note 107, page 1–28:

In 1991, however, the Commissioners on Uniform State Laws approved and recommended for enactment a Uniform Transfer of Litigation Act. If this act is widely adopted, interstate transfer may largely displace the doctrine of forum non conveniens in state courts as well as federal courts.[107.1]

Add new note, page 1–29:

[107.1] See text main volume infra at note 131 et seq.

Add to note 108, page 1–29:

The Uniform Child Custody Jurisdiction Act, § 7 (b), authorizes a court on its own motion to decline jurisdiction on grounds of inconvenient forum. See In re Adoption of K.S., 399 Pa Super 29, 581 A2d 659 (1990). But cf. Werner v. Wal-Mart Stores, Inc., 116 NM 229, 861 P2d 270 (NM App 1993) (trial court should not have ruled without giving plaintiff a chance to rebut the contention of inconvenient forum).

Add to note 110, page 1–29:

Ex parte Ben-Acadia, Ltd., 566 So 2d 286 (Ala 1990).

Add to note 111, page 1–29:

Denial of dismissal upheld: Morton Int'l, Inc. v. Harbor Ins. Co., 79 Ohio App 3d 183, 607 NE2d 28 (1992); Thompson v. Illinois Power Co., 237 Ill App 3d 273, 603 NE2d 1303 (1992); Anglim v. Missouri Pac. R. R., 832 SW2d 298 (Mo 1992), cert. denied, ____ US ____, 113 S Ct 831, 121 L Ed 2d 701.

Dismissal upheld: Mercier v. Sheraton Int'l, Inc., 981 F2d 1345 (1st Cir 1992), cert. denied, ____ US ____, 113 S Ct 2346, 124 L Ed 2d 255 (1993); Certain Underwriters at Lloyd's, London v. Bertrand Goldberg Assoc., Inc., 238 Ill App 3d 692, 606 NE2d 541 (1992); Lynch v. Pack, 68 Wash App 626, 846 P2d 542 (1993); Sussman v. Bank of Israel, 990 F2d 71 (2d Cir 1993); Carr v. Integon Gen. Ins. Corp., 185 AD2d 831, 586 NYS2d 986 (1992); Manaster v. Northstar Tours, Inc., 193 AD2d 651, 598 NYS2d 7 (1993); Environmental Ventures, Inc. v. Alda Servs. Corp., 19 Kan App 2d 292, 868 P2d 540 (1994).

Add to note 112, page 1–30:

Abuse of discretion to dismiss or stay: Lony v. E.I. DuPont de Nemours & Co., 886 F2d 628 (3d Cir. 1989); Northrop Corp. v. American Motorists Ins. Co., 220 Cal App 3d 1553, 270 Cal Rptr 233 (1990); Picketts v. International Playtex, Inc., 215 Conn 490, 576 A2d 518 (1990); Tempmaster Corp. v. Elmsford Sheet Metal Works, Inc., 800 SW2d 45 (Mo App 1990); Mercier v. Sheraton Int'l, Inc., 935 F2d 419 (1st Cir 1991); Lony v. E.I. Du Pont de Nemours & Co., 935 F2d 604 (3d Cir 1991); Reid-Walen v. Hansen, 933 F2d 1390 (8th Cir 1991); Lacey v. Cessna Aircraft Co., 932 F2d 170 (3d Cir 1991); Baris v. Suplicio Lines, Inc., 932 F2d 1540 (5th Cir 1991); Star Video Entertainment, L.P. v. Video USA Assoc., 253 NJ Super 216, 601 A2d 724 (1992); Page v. Ekbladh, 404 Pa Super 368, 590 A2d 1278 (1991); Berkrot v. National Car Rental, 175 AD2d 80, 573 NYS2d 171 (1991);

Waterways Ltd. v. Barclays Bank PLC, 174 AD2d 324, 571 NYS2d 208 (1991); Horlander v. Horlander, 579 NE2d 91 (Ind App 1991); Simantz v. Prime Morot Inns, Inc., 213 Ill App 3d 813, 573 NE2d 234 (1992); Donald v. Transport Life Ins. Co., 595 So2d 865 (Ala 1991); Plywood Panels, Inc. v. Hood, 590 So 2d 852 (La App 1991); Sarieddine v. Moussa, 820 SW2d 837 (Tex App 1991); Beckman v. Thompson, 4 Cal App 4th 481, 6 Cal Rptr 2d 60 (1992); Herman v. Spartinelli, 176 AD2d 1238, 576 NYS2d 734 (1991); Shepherd v. Maritime Overseas Corp., 614 So2d 1048 (Ala 1993); Rivendell Forest Prods., Ltd. v. Canadian Pac. Ltd., 2 F3d 990 (10th Cir. 1993); Ceramic Corp. of Am. v. Inka Maritime Corp., 1 F3d 947 (9th Cir. 1993); Spruyt v. Spruyt, 115 NM 405, 851 P2d 1072 (1993); Creative Business Decisions, Inc. v. Magnum Communications Ltd., 267 NJ Super 560, 632 A2d 298 (1993).

Abuse of discretion to deny dismissal or stay: Kaiser Found. Health Plan v. Rose, 583 A2d 156 (DC App 1990); Dunkwu v. Neville, 575 A2d 293 (DC App 1990); Vinson v. Allstate, 144 Ill 2d 306, 579 NE2d 857 (1991); Kourdoglanian v. Yannoulis, 227 Ill App 3d 898, 592 NE2d 322 (1992); Hulsey v. Scheidt, 258 Ill App 3d 567, 630 NE2d 905 (1994).

Add to note 113, page 1–31:

Murdoch v. A.P. Green Indus., Inc., 603 So 2d 655 (Fla App 1992). It has been held that forum non conveniens does not apply when a foreign corporate defendant's principal place of business is in Florida. Piper Aircraft Corp. v. Schwendermann, 578 So 2d 319 (Fla App 1991). However, the fact that a foreign corporation is qualified to do business in Florida does not make it a resident for forum non conveniens purposes. National Rifle Ass'n v. Linotype Co., 591 So 2d 1021 (Fla App 1991). Michigan Courts, too, have followed the same limitation as Florida. See Witt v. C.J. Barrymore's, 195 Mich App 517, 491 NW2d 871 (1992).

Add to note 114, page 1–31:

The California Code of Civil Procedure, § 410.30, legislatively overruled the line of cases that flatly precluded forum non conveniens dismissal if the plaintiff was a California resident. Nevertheless, the fact that the plaintiff is a resident remained a strong factor arguing against dismissal. See Northrop Corp. v. American Motorists Ins. Co., note 112 supra.

Add to note 116, page 1–32:

Prado v. Sloman Neptun Schiffahrts, A.G., 611 So 2d 691 (La App 1992); Royal Caribbean Cruises, Ltd. v. Payumo, 608 So 2d 862 (Fla App 1992). Cf. Ikopentakis v. Thalassic Steamship Agency, 915 F2d 176 (5th Cir 1990) (trial court erred in denying defendant's motion to dismiss for forum non conveniens and allowing plaintiff to dismiss Jones Act case voluntarily so that case could be brought in Louisiana state court, where doctrine of forum non conveniens could not be involved).

Add to text after footnote 116, page 1–32:

However, the Supreme Court has held that the state courts are free to apply their own forum non conveniens rules in Jones Act cases brought in state courts under the "saving to suitors" clause.[116.1]

Add new note, page 1–32:

[116.1] American Dredging Co. v. Miller, ____ US ____, 114 S Ct 981, 127 L Ed 2d 285 (1994).

Add to note 117, page 1–32:

A Texas court has ruled that a state trial court could not apply forum non conveniens to defer to a federal court to litigate a wrongful death claim, even though a related wrongful death action under the federal Tort Claims Act was pending in federal court. Trapnell v. Hunter, 785 SW2d 426 (Tex App 1990).

Add to note 118, page 1–32:

But cf. Missouri Pac. R. Co. v. Tircuit, 554 So 2d 878 (Miss 1989), reversing the trial court and ordering dismissal of FELA case on forum non conveniens ground. State ex rel. Burlington Northern R. Co. v. District Court, 52 Mont St Rep 118, 891 P2d 493 (1995).

Add to note 119, page 1–32:

Fox v. Board of Supervisors of La. State Univ., 559 So 2d 850 (La App 1990).

Add to note 120, page 1–32:

Norfolk S. Ry. Co. v. Maynard, 190 W. Va. 113, 437 SE2d 277 (1993).

Add to note 122, page 1–33:

Trapnell v. Hunter, note 117 supra. See also Eddy v. Inland Bay Drilling & Workover, Inc., 784 F Supp 370 (SD Tex 1992) (opinion includes extensive discussion of origins of doctrine of forum non conveniens); Owens-Illinois, Inc. v. Webb, 809 SW2d 899 (Tex App 1991). Texas continues to recognize the validity of the doctrine in cases other than those involving personal injury or death. Sarieddine v. Moussa, note 112 supra.

Add to text after note 122, page 1–33:

Forum non conveniens is foreign to Louisiana jurisprudence, and so Louisiana courts cannot dismiss a case on that ground except where authorized by Article 123 of the Louisiana Code of Civil Procedures.[122.1]

Add new note, page 1–33:

122.1 See Miller v. American Dredging Co., 595 So 2d 615 (La 1992). But cf. Barcelona v. Sea Victory Maritime, Inc., 619 So 2d 741 (La App 1993) (forum selection clause calling for trial in the Philippines was enforced, because Philippine, not Louisiana, law controlled); State in re M.A.R., 633 So 2d 814 (La App 1994) (Uniform Child Custody Jurisdiction Act controlled).

Add to note 123, page 1–33:

Manfredi v. Johnson Controls, Inc. 194 Mich App 519, 487 NW2d 475 (1992).

Add to text after note 123, page 1–33:

An Indiana court interpreted its forum non conveniens rule as having no application except where the jurisdiction over the defendant was acquired in the manner specified in Trial Rule 4.4(A). Thus, the doctrine could not be invoked by a defendant who submitted to personal jurisdiction but was never properly served.[123.1]

Add new note, page 1–33:

123.1 Adams v. Budgetel Inns, Inc., 550 NE2d 346 (Ind App 1990).

Add to note 125, page 1–33:

See also Highgate Pictures, Inc. v. DePaul, 153 AD2d 126, 549 NYS2d 386 (1990); Metcalf v. Turner, 154 AD2d 792, 546 NYS2d 466 (1989); Cadet v. Short Line Terminal Agency, Inc., 173 AD2d 270, 569 NYS2d 662 (1991).

Add to note 126, page 1–34:

Brodherson v. V. Ponte & Sons, 209 AD2d 276, 618 NYS2d 350 (1994).

Add to note 129, page 1–34:

Manfredi v. Johnson Controls, Inc., note 123 supra; Bock v. Rockwell Mfg. Co., 151 AD2d 629, 543 NYS2d 89 (1989).

Add to note 130, page 1–35:

Neofotistos v. Center Ridge Co., 241 Ill App 3d 951, 609 NE2d 806 (1993); City of Fayette v. Wilson, 611 So 2d 1032 (Ala 1992).

Add to note 130 after the first paragraph, page 1–35:

In Kennedy v. Henderson, 794 P2d 754 (Okla 1990), the Oklahoma Supreme Court ruled that the common law doctrine of intrastate forum non conveniens remained effective despite legislative changes in the venue statutes.

Other intrastate forum non conveniens cases include: Laird v. Illinois Cent. Gulf R. Co., 208 Ill App 3d 51, 566 NE2d 944 (1991); Shaffer v. CSX Transp., Inc., 224 Ill App 3d 769, 587 NE2d 1161 (1992).

Add to note 136 after the first sentence, page 1–37:

Other states adopting the doctrine by statute include Alabama, Ex parte Employers Ins. of Wausau, 590 So 2d 888 (Ala 1991), and Louisiana, Fox v. Board of Supervisors of La. State University, 576 So 2d 978 (La 1991).

Add to note 137, page 1–37:

Cf. Allstate Life Ins. Co. v. Linter Group LTD, 782 F Supp 215 (SD NY 1992) (plaintiff's forum choice is entitled to greater deference if plaintiff is resident of forum state).

Add to note 138, pages 1–37 and 1–38:

Defendant a resident or resident corporation: Abbott v. Owens-Corning Fiberglass Corp., 191 W Va 198, 444 SE2d 285 (1994); Ernst v. Ernst, 722 F Supp 61 (SD NY 1989).

Plaintiff a resident or resident corporation: Contact Lumber Co. v. P.T. Moges Shipping Co., 918 F2d 1446 (9th Cir 1990); Stephens Cattle Co. v. Hollingsworth, 14 Kan App 2d 812, 799 P2d 527 (1990); H. K. Enters., Inc. v. Royal Int'l Ins. Holdings, Ltd., 766 F Supp 581 (ND Ohio 1991).

Add to note 139, page 1–38:

In the aftermath of the Piper case, a number of courts have now declared that the plaintiff's choice of forum is entitled to significantly less deference when the plaintiff is not a resident of the forum state. See Jeha v. Arabian American Oil

Co., 751 F Supp 122 (SD Tex 1990); Banco Nominees Ltd. v. Iroquois Brands, Ltd., 748 F Supp 1070 (D Del 1990); Chierchia v. Treasure Cay Servs., 738 F Supp 1386 (SD Fla 1990); Stangvik v. Shiley Inc., 230 Cal App 3d 1688, 273 Cal Rptr 179 (1990); Picketts v. International Playtex, Inc., 215 Conn 490, 576 A2d 518 (1990); Dunkwu v. Neville, 575 A2d 293 (DC App 1990); Myers v. Boeing Co., 115 Wash 2d 123, 794 P2d 1272 (1990); Empresa Lineas Maritimas Argentinas, S.A., v. Schichau-Unterweser, A.G., 955 F2d 368 (5th Cir 1992); Mediterranean Golf, Inc. v. Hirsh, 783 F Supp 835 (D NJ 1991); Dowling v. Hyland Therapeutics Divs., Travenol Lab., Inc. 767 F. Supp 57 (SD NY 1991). But cf. Mercier v. Sheraton Int'l, Inc., 935 F2d 419 (1st Cir 1991); Nolan v. Boeing Co., 762 F Supp 680 (ED La 1989); Stangvik v. Shiley, Inc., 1 Cal Rptr 2d 556, 819 P2d 14 (1991); In re Silicone Breast Implants Prod. Liab. Litigation v. Dow Corning Corp., et al., 887 F Supp 1469 (ND Ala 1995); Virgin Atlantic Airways, Ltd. v. British Airways PLC, 872 F Supp 52 (SD NY 1994); Marchman v. NCNB Texas Nat'l Bank, 120 NM 74, 898 P2d 709 (1995).

Add to note 141, page 1–38:

Actions for personal injuries received outside forum state:

Dismissal granted: Jeha v. Arabian Am. Oil Co., 751 F Supp 122 (SD Tex 1990); Chierchia v. Treasure Cay Servs., 738 F Supp 1386 (SD Fla 1990); Guevara v. Reed, 598 A2d 1157 (DC 1991); Cinousis v. Hechiner Dep't Store, 406 Pa Super 500, 594 A2d 731 (1991); Stangvik v. Shiley, Inc., 1 Cal Rptr 2d 556, 819 P2d 14 (1991); Wolf v. Boeing Co., 61 Wash App 316, 810 P2d 943 (1991); Villar v. Crowley Maritime Corp., 990 F2d 1489 (5th Cir 1993), reh'g denied, 997 F2d 883, petition for cert. filed, 62 USCW 3350 (Sept. 28, 1993); Rudisill v. Sheraton Copenhagen Corp., 817 F Supp 443 (D Del 1993); Jose v. M/V Fir Grove, 801 F Supp 349 (D Or 1991); Shears v. Rigley, 424 Pa Super 559, 623 A2d 821 (1993); Shiley, Inc. v. Superior Court, 4 Cal App 4th 126, 6 Cal Rptr 2d 38 (1992); De Aguilar v. Boeing Co., 11 F3d 55 (5th Cir 1993); Simcox v. McDermott Int'l, Inc., 152 FRD 689 (SD Tex 1994); Hopper v. Ford Motor Co., 837 F Supp 840 (SD Tex 1993).

Dismissal not granted: Wilson v. Humphreys (Cayman) Ltd., 916 F2d 1239 (7th Cir 1990); Picketts v. International Playtex, Inc., 215 Conn 490, 576 A2d 518 (1990); Bahsoon v. Pezetel, Ltd., 768 F Supp 507 (ED NC 1991); Flynn v. General Motors, Inc., 141 FRD 5 (ED NY 1992); Bhatnagar v. Surrendra Overseas Ltd., 820 F Supp 958 (ED Pa 1993); Herman v. Spartinelli, 176 AD2d 1237, 576 NYS2d 734 (1991); Mejia v. Car Trucking, Inc., 176 AD2d 592, 575 NYS2d 35 (1991); Munoz v. American Pac. Mining, New York, Inc., 176 AD2d 624, 575 NYS2d 67 (1991); Lacey v. Cessna Aircraft Co., 849 F Supp 394 (WD Pa 1994); Marriott v. Sedco Forex Int'l Resources, Ltd., 827 F Supp 59 (D Mass 1993).

Product liability claims for injuries received in foreign countries:

Dismissal granted: Baumgart v. Fairchild Aircraft Corp., 981 F2d 824 (5th Cir 1993), cert denied, ____ US ____, 113 S Ct 2963, 125 L Ed 2d 663; Doe v. Hyland Therapeutics Div., 807 F Supp 1117 (SD NY 1992); Mowrey v. Duriron Co., 260 NJ Super 402, 616 A2d 1300 (1992).

Dismissal denied: Vendetti v. Fiat Auto S.p.A., 802 F Supp 886 (WD NY 1992).

Add to note 142, page 1–41:

David Tunick, Inc. v. Kornfeld, 813 F Supp 988 (SD NY 1993).

Add to note 143, page 1–41:

Package Express Center, Inc. v. Snider Foods, Inc., 788 SW2d 561 (Tenn App 1989). But cf. Rochester Community Savings Bank v. Smith, 172 AD2d 1018, 569 NYS2d 277 (1991); Concord Assets Fin. Corp. v. Radebaugh, 172 AD2d 446, 568 NYS2d 950 (1991).

Add to note 146, page 1–41:

Cf. Stankunas v. Stankunas, 133 NH 643, 582 A2d 280 (1990); Carrigan v. California Horse Racing Bd., 60 Wash App 79, 802 P2d 813 (1990). An earlier filed "preemptive strike" declaratory judgment action may be dismissed for forum non conveniens in deference to a later filed damage action in another state. Coonley & Coonley v. Turck, 173 Ariz 527, 844 P2d 1177 (Ariz App 1993).

Add to note 149, page 1–42:

See also Barlow v. Cappo, 821 P2d 465 (Utah App 1991).

Add to text at end of section, page 1–42:

There is some uncertainty about whether a forum non conveniens dismissal of part of a multiple party action is proper where the chosen forum is inconvenient for some but not all of the joined claims.[150.1]

Add new note, page 1–42:

[150.1] United Technologies Corp. v. Liberty Mutual Ins. Co., 407 Mass 591, 555 NE2d 224 (1990), indicated that part of an action could be dismissed for forum non conveniens even if all the issues could not be resolved in a single forum. But compare W.R. Grace & Co. v. Hartford Accident & Indem. Co., 407 Mass 572, 555 NE2d 214 (1990).

Under New York's statutory provision, NYCPLR 327(a), a court may stay or dismiss an action in whole or in part on the ground of forum non conveniens. See Imperial Imports Co. v. Hugo Neu & Sons, Inc., 161 AD2d 411, 555 NYS2d 323 (1990).

§ 1.05 Fraud, Force, or Artifice in the Invocation of Jurisdiction

Add to note 161, page 1–45:

Cf. Williams v. Brown, 622 So 2d 194 (Fla App 1993).

Add to note 162, page 1–45:

Henkel Corp. v. Degremont, S.A., 136 FRD 88 (ED Pa 1991); Voice Systems Mktg. Co. v. Appropriate Technology Corp., 153 FRD 117 (ED Mich 1994).

§ 1.06 Immunity from Jurisdiction

Add to note 169, page 1–47:

In re Marriage of Gonzales, 584 So 2d 179 (Fla App 1991).

Add to note 170, page 1–48:

Lee v. Stevens of Florida, Inc., 578 So 2d 867 (Fla App 1991) (arbitration).

Add to note 174, page 1–49:

The president of the state bar association was immune from service while he was present in a county other than his home county performing his official duties. Stamper, Otis & Burrage v. Shaffer, 813 P2d 1043 (Okla 1991).

Add to note 175, page 1–49:

See LaCroix v. American Horse Show Ass'n, 853 F Supp 992 (ND Ohio 1994). In Lester v. Lester, 637 So 2d 1374 (Ala App 1994), a party came into the state to make a special appearance to contest jurisdiction obtained through publication service. While in court making the special appearance, she was personally served in connection with the same lawsuit. The appellate court ruled that she was immune from personal service.

Add to note 177, page 1–49:

See Gerritsen v. Consulado Gen. de Mexico, 989 F2d 340 (9th Cir 1993), cert. denied, ____ US ____, 114 S. Ct. 95, 126 L Ed 2d 62.

A Suggestion of Immunity issued by the Department of State is a conclusive determination by the political arm of government that is binding on the courts. Anonymous v. Anonymous, 181 AD2d 629, 581 NYS2d 776 (1992).