
Jurisdiction In Civil Actions

Second Edition

Robert C. Casad

Butterworth Legal Publishers

JURISDICTION IN CIVIL ACTIONS

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

Second Edition

by

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Volume 1



Butterworth Legal Publishers

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Casad, Robert C.

Jurisdiction in civil actions/Robert C. Casad. — 2nd ed.

p. cm.

Includes index.

ISBN 0-88063-807-9 (Two volumes)

1. Jurisdiction—United States. 2. Civil procedure—United States. I. Title.

KF8858.C33 1991

347.73'12—dc20

[347.30712]

90-22547

CIP

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Printed in the United States of America.

**JURISDICTION
IN
CIVIL ACTIONS**

Second Edition

To Sally Ann McKeighan Casad

PREFACE TO FIRST EDITION

This book attempts a comprehensive treatment of all aspects of the problem of invoking jurisdiction in civil actions. It deals with the constitutional limitations on the basis for jurisdiction over persons and things and on the process by which judicial jurisdiction is exercised. It also deals with common types of statutory restrictions on both the basis and process aspects of jurisdiction. It aims to provide a thorough and reliable guide to the exercise of jurisdiction over non-consenting nonresident persons and corporations — to what has come to be called “long-arm jurisdiction.”

Every state has a statute or court rule permitting its courts to exercise jurisdiction over nonresidents in a fairly broad range of situations. Since 1960, several thousand cases have been reported in which state or federal courts have considered the propriety of the exercise of jurisdiction under such statutes. The idea that led me to undertake the study that produced this book was the belief that some useful generalizations might be drawn from that large body of decided cases.

Most of the long-arm statutes contain provisions that are similar. Moreover, courts in every state are bound to observe the constitutional limitations on the basis of jurisdiction and on the process of invoking it. There are, then, enough common features among the cases decided under different states' laws to warrant a study of jurisdiction on a nationwide basis. That is what this book is: an identification, analysis, and classification of every reported jurisdiction decision since 1960. We may have missed a few, but there are over 3,900 cases included here.

Every year many, many new jurisdiction cases are decided. Every year, it seems, some states amend their long-arm and other jurisdiction statutes. Supplementation to this work will keep it up-to-date by reflecting the new decisions, statutory changes, and the learned commentary on jurisdiction issues appearing in the current legal journals.

Note that on January 12, 1983, Congress enacted amendments to Rule 4. See the addendum to Chapter 5 for notable changes in Rule 4 and the text of the law.

PREFACE

More than four years have elapsed since the Supplement to the original book was published. During that time, several important Supreme Court decisions dealing with aspects of territorial jurisdiction have been handed down. In addition, over 4000 cases have been reported from the state and lower federal courts. Several states have changed their long-arm statutes significantly. It is time for a new edition, incorporating and integrating all these changes and developments.

As I write this preface, I realize that some important changes in the Federal Rules of Civil Procedure have been proposed and probably will be promulgated by the Supreme Court. Some significant changes in Rule 4, the rule governing service of process, probably will be adopted. We do not know that for sure, however, and we do not know when that will occur, if it does. I have tried to make reference to the proposed changes in appropriate places, but the discussion at this point has to be tentative.

The decision in *Burnham v. Superior Court* was handed down after much of this manuscript had been completed, but before it was sent to the publisher. I hope I have corrected all of the statements in the book that were written when I thought the Court would clearly repudiate the constitutionality of jurisdiction based only on the physical presence of a person when it got the chance to do so. That, of course, did not happen, and we still do not know whether physical presence continues to be a sufficient basis for personal jurisdiction or not. We do know that most of the time a person who is found and served with process while present in the state can constitutionally be subjected to jurisdiction there, but we are not sure about why that is so.

Other aspects of territorial jurisdiction, too, remain unclear. We cannot wait, however, until all becomes clear. That day may never come. And so, we offer this work as what we hope is the best and most thorough treatment of the law governing jurisdiction over persons and property that is possible at this time.

Again, I want to express my thanks to the administration of the University of Kansas School of Law and its Law Library for helping to make this edition possible. I also want to thank Ana Porras Khan,

Larayne Schultz and other members of the secretarial staff who contributed invaluable assistance in the preparation of the manuscript. Finally, I want to express my gratitude to the several research assistants who helped me: Judy Kaye Messer, Timothy Toth, Robert Wickham, David Cooper, and Benjamin Casad.

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Lawrence, Kansas

Acknowledgments

I want to recognize with gratitude the support and encouragement given to this project by the deans of the two law schools for which I worked during the time the study was conducted and the book written: Dean Michael J. Davis of the University of Kansas School of Law and Dean Bert S. Prunty of the University of California Hastings College of the Law. The University of Kansas granted me a sabbatical leave to work on the book, which made it possible for me to complete this extensive project in just two years.

I am deeply indebted to the University of Kansas Law Library and to the library of the University of California Hastings College of the Law for the use of their facilities and collections.

I am particularly grateful to Debra Arnett, who, as my research assistant for a year and a half, made a number of very important contributions to the organization and administration of the research plan, and who shared with me the task of finding, reading, and briefing the thousands of cases the study rests on. She also checked the accuracy of the citations in several chapters. I also received valuable assistance from James Wagstaffe, John Cowles, Elizabeth Hougland, Michael Jones, and Kent Frobish. The typing of the manuscript of the text and footnotes was, for the most part, done by Mary Williams and Janice Riley. I am very grateful to them for their careful and painstaking work.

Finally, I want to acknowledge the contribution of my wife Sally to the success of this project. It was a demanding exercise, and I am grateful for her patience and support during all those evenings and weekends when I was in the library instead of the living room. I dedicate the book to her.

ROBERT C. CASAD

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