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LAW SUMMARIES

Civil Procedure

Richard L. Marcus & Thomas D. Rowe, Jr.

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Civil Procedure

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Seventeenth Edition

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Gilbert Exam Strategies

Examination questions on civil procedure can concern a wide range of issues. The issues that you are most likely to encounter are discussed below and can be analyzed in the following sequence. (Note that these issues are discussed in greater detail in the Key Exam Issues section at the beginning of each chapter.)

1. Jurisdiction

Does the court have *authority* to render judgment in the present action, consistent with constitutional requirements of due process?

- a. Does the court have jurisdiction *over the parties* (territorial jurisdiction of the state)?
- b. Does the court have jurisdiction *over the subject matter* (over the particular type of action)?
- c. Has *adequate notice* been given to all parties?

2. Venue

Assuming the court does have jurisdiction, is it the *proper place* for trial of the action under the rules governing venue?

- a. If the action was originally filed in a court having proper venue, are there grounds for *transfer* or change of venue to another court?

3. State and Federal Law

- a. If the action is in federal court, does it concern a state law matter (usually this means it is a diversity case)? If so, the court will generally follow *state substantive law* and *federal procedural law*.
- b. Is there an *Erie* problem—*i.e.*, is there a *true conflict* between federal and state rules of law? (Only if there is a true conflict do you need to consider which rule, state or federal, applies.)

4. Pleadings

- a. Does the complaint contain a *valid substantive legal claim*?
- b. Does the complaint state the elements of a *prima facie case*?
- c. Is the complaint *sufficiently specific* so as to give fair notice of the basis of the claim(s) made?

- d. Does the answer properly admit or deny the complaint's allegations? Does it properly raise any applicable defenses?
- e. Is there a ground for allowing an *amendment*?

5. Parties

- a. Are the named parties proper (*real party in interest* and *capacity to sue or be sued*)?
- b. Are the named parties *properly joined*?
- c. Are there *other parties* who should be joined under the necessary party rule or who may become parties by intervention or impleader?
- d. Can the parties assert *claims against each other* in addition to those in the complaint—*i.e.*, counterclaims or cross-claims? Can the parties *implead* other parties?
- e. Is a *class action* appropriate?
- f. May additional parties *intervene*?

6. Discovery

Is there a controversy as to either party's right to obtain pretrial discovery from the other party or from some third person? If so, consider:

- a. Have the parties satisfied the requirement of *disclosure*?
- b. Is the information sought within the *permissible scope* of discovery (*i.e.*, is it relevant to the claim or defense of a party)?
- c. Is the information protected by a *privilege* or as *work product*?
- d. Is the *proper mechanism* used (*e.g.*, deposition, interrogatory, etc.)?
- e. What limitations by *protective order* are needed to prevent abuse?
- f. If a discovery order was violated, or if a disclosure obligation was not met, is a *sanction* appropriate?

7. Trial

- a. Is there a *right to a jury trial*?
- b. Are the issues before the court within the *scope* of the pleadings or pretrial order, or properly in issue because evidence on them was received without valid objection?

- c. Who has the *burden of proof* as to a particular issue, and has the burden been met?
- d. Were *instructions* properly given to the jury, and were they substantially correct?
- e. Was there *improper conduct* by the judge, a counsel, party, witness, or juror?
- f. Did plaintiff put on sufficient evidence to survive a *motion for judgment as a matter of law*?

8. Post-Trial

- a. Is there relief that the *trial court* can give?
 - (1) Motion for a *new trial* (to overcome procedural error or if the verdict is against the weight of the evidence).
 - (2) *Renewed motion for judgment as a matter of law* (if the verdict is unsupported by sufficient evidence).
 - (3) *Extraordinary relief* (e.g., if newly discovered evidence, fraud).
- b. Can the *appellate court* provide relief?
 - (1) Is there a *final judgment* or other appealable order?
 - (2) Is *discretionary appeal* available?
 - (3) May review be obtained by *extraordinary writ*?
- c. Does *res judicata* (claim preclusion) or *direct or collateral estoppel* (issue preclusion) bar relitigation of this matter in later trials?

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Capsule Summary

I. PERSONAL JURISDICTION AND RELATED MATTERS

A. INTRODUCTION

1. **Types of Personal Jurisdiction** §2
 Personal jurisdiction is a state's power to hear a case and enforce its judgment.
 - a. **In personam jurisdiction** §3
 In personam jurisdiction permits a court to enter a judgment that is **personally binding** on defendant. Courts in other states must give **full faith and credit** to the judgment.
 - b. **In rem jurisdiction** §4
 In rem jurisdiction permits a court to adjudicate the rights of **all possible claimants in a specific piece of property**.
 - c. **Quasi in rem jurisdiction** §5
 There are two types of quasi in rem jurisdiction. The first type permits a court to determine rights of **particular parties** in property under its control. The second type permits a court having jurisdiction over defendant's property, but not over defendant personally, to use the property to satisfy plaintiff's personal claim against defendant. Use of this latter type as a basis for jurisdiction over nonresident defendants has been severely limited.
 2. **Pennoyer v. Neff and the Traditional Power Theory** §6
 Under *Pennoyer v. Neff*, a state's jurisdiction was generally limited to persons or property served with process or seized in the state.
 3. **Shift to Minimum Contacts** §22
 With *International Shoe*, the Court shifted from an emphasis on in-state service to a requirement of **minimum contacts** with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."
-

B. CONTEMPORARY CONSTITUTIONAL GROUNDS FOR STATE COURT JURISDICTION

1. **Contacts with Forum** §27
International Shoe generated a two-stage approach to jurisdiction problems, looking first to whether the defendant **purposely availed** himself of the privilege

of conducting activities in the forum and then at the **reasonableness** of permitting jurisdiction.

- a. **Purposeful availment—minimum contacts** **\$28**

Purposeful availment inquiry focuses solely on **activities of defendant**, looking for some voluntary action by defendant establishing a **beneficial relationship** with the forum state.

 - (1) **Foreseeability** **\$29**

Mere foreseeability of contact with the forum is important but insufficient; defendant's conduct with respect to the forum state must be such that he should reasonably **anticipate being haled into court there** (e.g., long-term relationship with forum or seeking to serve forum market).
 - (2) **Relationship between contacts with forum and claim asserted** **\$40**

The Court assumes "specific" jurisdiction is proper with regard to claims that are related to forum contacts that satisfy the purposeful availment requirement, but jurisdiction may also be proper where the claim arises from contacts that do not satisfy the purposeful availment requirement, but is of the same type as claims that do. This might be rationalized by focusing on foreseeability of facing claims of this type in this state.
 - (3) **Commercial vs. noncommercial** **\$41**

Purposeful availment is more easily found with regard to defendant's commercial activity.
 - (4) **Choice of law distinguished** **\$42**

The fact that a particular state's law may apply under choice-of-law "center of gravity" principles does not alone satisfy the purposeful availment requirement as to that state.
 - (5) **Reasonableness insufficient to satisfy purposeful availment requirement** **\$45**

Factors such as a lack of inconvenience to defendant cannot outweigh the requirement of purposeful availment.
- b. **Fair play and substantial justice—reasonableness** **\$46**

In the reasonableness inquiry, consideration of **plaintiff's interests** is proper.

 - (1) **Factors** **\$47**

Factors considered when determining the reasonableness of jurisdiction are: (i) defendant's burden in defending the suit in the forum, (ii) the forum state's interest in adjudication, (iii) plaintiff's interest in obtaining convenient and effective relief, (iv) the judicial system's interest in resolving the suit effectively, and (v) furtherance of fundamental substantive social policies.
- c. **Application to Internet activities** **\$53**

Although still an evolving area, the same minimum contacts analysis applies to Internet activities, but the **purposeful availment requirement**

is emphasized and *the reasonableness requirements are probably relaxed*.

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|---|-------------|
| 2. Presence of Defendant's Property in Forum | \$61 |
| Presence of defendant's property in the forum will often establish a constitutionally sufficient contact between defendant and the forum, ordinarily because it establishes relevant contact between defendant and forum. | |
| a. Location of property | \$62 |
| Tangible property is located in a state if it is physically present there. Intangible property may be considered located in a jurisdiction if some transaction related to the property occurred there, but if embodied in an instrument, it is usually said to be located where the instrument is. This is usually governed by <i>state law</i> . | |
| b. Presence of property supports jurisdiction | \$66 |
| The presence of property in a state may support jurisdiction by providing contacts among the forum, defendant, and litigation. | |
| (1) True in rem | \$67 |
| States continue to have power to exercise true in rem jurisdiction, as in condemnation proceedings. | |
| (2) Claim related to rights and duties arising from ownership | \$70 |
| Property provides sufficient contact if the claim is related to rights or duties related to the property (e.g., absentee owner might be sued for injuries sustained on property located in the forum). | |
| (3) Absence of another forum | \$74 |
| The Court has not ruled on the scope of jurisdiction by necessity, which may exist in cases where defendant's property is located in the forum and no other forum is available to plaintiff. | |
| c. Presence of unrelated property insufficient for jurisdiction | \$77 |
| When property is completely <i>unrelated</i> to plaintiff's cause of action, its presence alone will not support jurisdiction. | |
| 3. General Jurisdiction | \$80 |
| Some courts distinguish between <i>general jurisdiction</i> , which subjects defendant to suit on any claim in the forum, and <i>specific jurisdiction</i> , which confers jurisdiction only for claims related to defendant's contact with the forum. | |
| a. Natural persons | \$82 |
| General jurisdiction is available in the state of a natural person's <i>domicile</i> . | |
| b. Corporations | \$83 |
| A corporation is subject to general jurisdiction in (i) the <i>state of incorporation</i> , (ii) the state in which its <i>headquarters</i> are located if different from state of incorporation, and (iii) states in which it conducts " <i>substantial activity</i> ." | |
| 4. Consent | \$93 |
| Defendant may consent to jurisdiction in a forum. | |