

Personal Jurisdiction

by Sophia



WHAT'S COVERED

In this lesson, you will learn how lawsuits are begun and how the court knows that it has both subject matter jurisdiction and personal jurisdiction over at least one of the named defendants. Specifically, this lesson will cover:

1. The Adversary System

The courts are not the only institutions that can resolve disputes. Later, we will discuss other dispute-resolution forums, such as arbitration and mediation. For now, let us consider how courts make decisions in civil disputes. Judicial decision-making in the context of litigation (civil lawsuits) is a distinctive form of dispute resolution.

First, to get the attention of a court, the plaintiff must make a claim based on existing laws. Second, courts do not reach out for cases. Cases are brought to them, usually when an attorney files a case with the right court in the right way, following the various laws that govern all civil procedures in a state or in the federal system. Most US states' procedural laws are similar to the federal procedural code.

Once at the court, the case will proceed through various motions (motions to dismiss for lack of jurisdiction, for example, or insufficient service of process), the proofs (submission of evidence), and the arguments (debate about the meaning of the evidence and the law) of contesting parties.

This is at the heart of the **adversary system**, in which those who oppose each other may attack the other's case through proofs and cross-examination. Every person in the United States who wishes to take a case to court is entitled to hire a lawyer. The lawyer works for his client, not the court, and serves him as an advocate, or supporter. The client's goal is to persuade the court of the accuracy and justness of his position.

The lawyer's duty is to shape the evidence and the argument - the line of reasoning about the evidence - to advance his client's cause and persuade the court of its rightness. The lawyer for the opposing party will be doing the same thing, of course, for her client. The judge (or, if one is sitting, the jury) must sort out the facts and reach a decision from this cross-fire of evidence and argument.



TERM TO KNOW

Adversary System

The legal system in use in the U.S. whereby courts hear evidence from parties in a case who advocate for themselves, while the judge acts as an independent arbiter of the facts and law.

2. Method of Adjudication

The method of adjudication - the act of making an order or judgment - has several important features. First, it focuses the conflicting issues. Other, secondary concerns are minimized or excluded altogether. Relevance is a key concept in any trial. The judge is required to decide the questions presented at the trial, not to talk about related matters.

Second, adjudication requires that the judge's decision be reasoned, and that is why judges write opinions explaining their decisions (an opinion may be omitted when the verdict comes from a jury).

Third, the judge's decision must not only be reasoned, but also be responsive to the case presented: The judge is not free to say that the case is unimportant and that she, therefore, will ignore it.

Unlike other branches of government that are free to ignore problems pressing upon them, judges must decide cases.

➔ **EXAMPLE** A legislature need not enact a law, no matter how many people petition it to do so.

Fourth, the court must respond in a certain way. The judge must pay attention to the parties' arguments and the decision must result from their proofs and arguments. Evidence that is not presented and legal arguments that are not made cannot be the basis for what the judge decides, although a judge may take what is called **judicial notice** of obvious facts or conditions. Also, judges are bound by standards of weighing evidence: The burden of proof in a civil case is generally a **preponderance of the evidence**.



TERMS TO KNOW

Judicial Notice

The custom allowing a judge to take notice of events that are commonly known, such as the weather or a well-known event, without having to take in evidence of same.

Preponderance of the Evidence

A standard of proof whereby a fact is proven in civil cases; such evidence is of greater weight or more convincing than the evidence offered in opposition to it. Distinguished from "beyond a reasonable doubt," the standard in criminal cases.

2a. Burden of Proof

In all cases, the plaintiff - the party making a claim and initiating the lawsuit (in a criminal case the plaintiff is the prosecution) - has the burden of proving the case. If the proof fails, the defendant - the party being sued or prosecuted - will win.

Criminal prosecutions carry the most rigorous burden of proof: The government must prove its case against the defendant **beyond a reasonable doubt**. That is, even if it seems very likely that the defendant committed the crime, as long as there remains some reasonable doubt - perhaps he was not clearly identified as the culprit; perhaps he has an alibi that could be legitimate - the jury must vote to acquit rather than convict.

By contrast, the burden of proof in ordinary civil cases - those dealing with contracts, personal injuries, and the like - is a preponderance of the evidence, which means that the plaintiff's evidence must outweigh whatever evidence the defendant can muster that casts doubts on the plaintiff's claim.

This is not merely a matter of counting the number of witnesses or of the length of time that the parties talk: The judge in a trial without a jury (a bench trial), or the jury where one is impaneled, must apply the preponderance of evidence test by determining which side has the greater weight of credible, relevant evidence.

Adjudication and the adversary system imply certain other characteristics of courts. Judges must be impartial; those with a personal interest in a matter must refuse to hear it. The ruling of a court, after all appeals are exhausted, is final.

This principle is known as *res judicata* (Latin for “the thing is decided”), and it means that the same parties may not take up the same dispute in another court at another time. Finally, a court must proceed according to a public set of formal procedural rules; a judge cannot make up the rules as he goes along.



TERMS TO KNOW

Beyond a Reasonable Doubt

The standard of proof by which a criminal defendant must be found guilty in order to be convicted of a crime or misdemeanor.

Res Judicata

A matter that has been adjudicated and finally decided; a rule that once a case is finally decided, it cannot be brought again.

3. Beginning a Lawsuit

Beginning a lawsuit is simple and is spelled out in the rules of procedure by which each court system operates.

3a. Complaint and Summons

In the federal system, the plaintiff begins a lawsuit by filing a **complaint** - a document clearly explaining the grounds for suit - with the clerk of the court.

The court’s agent (usually a sheriff, for state trial courts, or a U.S. deputy marshal, in federal district courts) will then serve the defendant with the complaint and a summons. The summons is a court document stating the name of the plaintiff and his attorney and directing the defendant to respond to the complaint within a fixed time period.

The timing of the filing can be important. Almost every possible legal complaint is governed by a federal or state statute of limitations, which requires a lawsuit to be filed within a certain period of time.

➞ **EXAMPLE** In many states, a lawsuit for injuries resulting from an automobile accident must be filed within two years of the accident or the plaintiff forfeits his right to proceed.

As noted earlier, making a correct initial filing in a court that has subject matter jurisdiction is critical to avoiding statute of limitations problems.



TERM TO KNOW

Complaint

The document filed to bring about a lawsuit.

3b. Jurisdiction and Venue

The place of filing is equally important, and there are two issues regarding location. The first is subject matter jurisdiction, as already noted.

➞ **EXAMPLE** A claim for breach of contract, in which the amount at stake is \$1 million, cannot be brought in a local county court with jurisdiction to hear cases involving sums of up to only \$1,000. Likewise, a claim for copyright violation cannot be brought in a state trial court, since federal courts have exclusive jurisdiction over copyright cases.

The second consideration is **venue**— the proper geographic location of the court.

➞ **EXAMPLE** Every county in a state might have a trial court, but the plaintiff is not free to pick just any county.

Again, a statute will spell out to which court the plaintiff must go (e.g., the county in which the plaintiff resides or the county in which the defendant resides or maintains an office).



TERM TO KNOW

Venue

A particular place, county, or geographical area where a court is located.

4. Service of Process and Personal Jurisdiction

The defendant must be served— that is, must receive notice that he has been sued. Service can be done by physically presenting the defendant with a copy of the summons and complaint. But sometimes the defendant is difficult to find (or deliberately avoids the marshal or other process server).

State procedural rules spell out a variety of ways by which individuals and corporations can be served. These include using U.S. Postal Service certified mail or serving someone already designated to receive **service of process**.

➞ **EXAMPLE** A corporation or partnership is often required by state law to designate a “registered agent” for purposes of getting public notices or receiving a summons and complaint.

One of the most troublesome problems is service on an out-of-state defendant. The **personal jurisdiction** of a state court over persons is clear for those defendants found within the state.

If the plaintiff claims that an out-of-state defendant injured him in some way, must the plaintiff go to the defendant’s home state to serve him? Unless the defendant had some **significant contact** with the plaintiff’s state, the plaintiff may indeed have to.

➞ **EXAMPLE** Suppose a traveler from Maine stopped at a roadside diner in Montana and ordered a slice of homemade pie that was tainted and caused him to be sick. The traveler may not simply return home and mail the diner a notice that he is suing it in a Maine court. But if out-of-state defendants have some contact with the plaintiff’s state of residence, there might be grounds to bring them within the jurisdiction of the plaintiff’s state courts.

Again, recall that even if a court has subject matter jurisdiction, it must also have personal jurisdiction over each defendant against whom an enforceable judgment can be made. Often this is not a problem; you might be suing a person who lives in your state or regularly does business in your state.

Or a nonresident may answer your complaint without objecting to the court's *in personam* (personal) jurisdiction. But many defendants who do not reside in the state where the lawsuit is filed would rather not be put to the inconvenience of contesting a lawsuit in a distant forum. Fairness - and the due process clause of the Fourteenth Amendment - dictates that nonresidents should not be required to defend lawsuits far from their home base, especially where there is little or no contact or connection between the nonresident and the state where a lawsuit is brought.

Every state in the United States has a statute regarding personal jurisdiction, instructing judges when it is permissible to assert personal jurisdiction over an out-of-state resident. These are called **long-arm statutes**. But no state can reach out beyond the limits of what is constitutionally permissible under the Fourteenth Amendment, which binds the states with its proviso to guarantee the due process rights of the citizens of every state in the union.



TERMS TO KNOW

Service of Process

The act of serving a defendant with legal process, dictated by the rules of procedure of a particular court.

Personal Jurisdiction

The authority a court has over a person being sued. The U.S. Constitution requires that in order for a court to have power over a person, that person must have minimum contacts with the forum (geographical area covered by the court). A court lacking personal jurisdiction over someone cannot issue a judgment against that person.

Significant Contact

The requirement for a court's personal jurisdiction over a defendant; such jurisdiction is not permitted where the defendant does not have at least minimum contact with the jurisdiction where the court is located.

In Personam

A Latin term used in law to refer to personal jurisdiction.

Long-Arm Statute

A state law that provides for personal jurisdiction over defendants in foreign states. For example, doing business in a state is one category states have determined allow them to use their "long arm" to require an out-of-state defendant to appear in their court. Therefore, a corporation like Sears, headquartered in one state, may be required to defend actions in other states where it does business.

5. General Rules of Personal Jurisdiction

When considering the basic rules of personal jurisdiction, refer to the following list:

1. Once a court determines that it has subject matter jurisdiction, it must find at least one defendant over which it is fair (i.e., in accord with due process) to exercise personal jurisdiction.
2. If a plaintiff sues five defendants and the court has personal jurisdiction over just one, the case can be heard, but the court cannot make a judgment against the other four.
 - a. But if the plaintiff loses against defendant 1, he can go elsewhere (to another state or states) and sue

defendants 2, 3, 4, or 5.

- b. The court's decision in the first lawsuit (against defendant 1) does not determine the liability of the nonparticipating defendants.
 - c. This involves the principle of *res judicata*, which means that you can't bring the same action against the same person (or entity) twice. It's like the civil side of double jeopardy. *Res* means "thing," and *judicata* means "adjudicated." Thus the "thing" has been "adjudicated" and should not be judged again. But for nonparticipating parties, it is not over. If you have a different case against the same defendant - one that arises out of a completely different situation - that case is not barred by *res judicata*.
3. Service of process is a necessary (but not sufficient) condition for getting personal jurisdiction over a particular defendant (see rule 4).
- a. In order to get a judgment in a civil action, the plaintiff must serve a copy of the complaint and a summons to the defendant.
 - b. There are many ways to do this, all set forth in the state's procedural rules.
 - a. The process server personally serves a complaint on the defendant.
 - b. The process server leaves a copy of the summons and complaint at the residence of the defendant, in the hands of a competent person.
 - c. The process server sends the summons and complaint by certified mail, return receipt requested.
 - d. The process server, if all other means are not possible, notifies the defendant by publication in a newspaper having a minimum number of readers (as may be specified by law).
4. In addition to successfully serving the defendant with process, a plaintiff must convince the court that exercising personal jurisdiction over the defendant is consistent with due process and any statutes in that state that prescribe the jurisdictional reach of that state (the so-called long-arm statutes). The Supreme Court has long recognized various bases for judging whether such process is fair.
- a. *Consent*: The defendant agrees to the court's jurisdiction by coming to court, answering the complaint, and having the matter litigated there. (Unlike subject matter jurisdiction, which cannot be waived, personal jurisdiction can be waived by an entity or person who may submit him or herself or itself to the court's personal jurisdiction.)
 - b. *Domicile*: The defendant is a permanent resident of that state.
 - c. *Event*: The defendant did something in that state, related to the lawsuit, that makes it fair for the state to say, "Come back and defend!"
 - d. Service of process within the state will effectively provide personal jurisdiction over the nonresident.

CASE STUDY: *World-Wide Volkswagen Corp. v. Woodson*

Again, let's consider Mrs. Robinson and her children in the Audi accident. She could file a lawsuit in Arizona after she establishes residency there. But while the Arizona court would have subject matter jurisdiction over any products-liability claim (or any claim that was not required to be heard in a federal court), the Arizona court would face an issue of personal jurisdiction: Under the due process clause of the Fourteenth Amendment, each state must extend due process to citizens of all of the other states. Because fairness is essential to due process, the court must consider whether it is fair to require an out-of-state defendant to appear and defend against a lawsuit that could result in a judgment against that defendant.

6. Choice of Law and Choice of Forum Clauses

To simplify matters, many commercial contracts contain choice of law clauses. Courts honor these terms in a contract and will apply the law of the state chosen by the parties in their contract.

➞ **EXAMPLE** Suppose the parties to a contract wind up in court arguing over the application of the contract's terms. If the parties are from two different states, the judge may have difficulty determining which law to apply.

If the contract says that a particular state's law will be applied if there is a dispute, then ordinarily the judge will apply that state's law as a rule of decision in the case.

IN CONTEXT

Let's say that Kumar Patel (a Missouri resident) opens a brokerage account with Goldman, Sachs and Co., and the contractual agreement calls for "any disputes arising under this agreement" to be determined "according to the laws of the state of New York." When Kumar claims in a Missouri court that his broker is "churning" his account, and, on the other hand, Goldman, Sachs claims that Kumar has failed to meet his margin call and owes \$38,568.25 (plus interest and attorney's fees), the judge in Missouri will apply New York law based on the contract between Kumar and Goldman, Sachs.

Ordinarily, a choice of law clause will be accompanied by a choice of forum clause. In a choice of forum clause, the parties in the contract specify which court they will go to in the event of a dispute arising under the terms of contract.

IN CONTEXT

Let's say that Harold (a resident of Virginia) rents a car from Alamo at the Denver International Airport. He does not look at the fine print on the contract. He also waives all collision and other insurance that Alamo offers at the time of his rental. While driving back from Telluride Bluegrass Festival, he has an accident in Idaho Springs, Colorado. His rented Nissan Altima is badly damaged. On returning to Virginia, he would like to settle up with Alamo, but his insurance company and Alamo cannot come to terms. He realizes, however, that he has agreed to hear the dispute with Alamo in a specific court in San Antonio, Texas. In the absence of fraud or bad faith, any court in the United States is likely to uphold the choice of forum clause and require Harold (or his insurance company) to litigate in San Antonio, Texas.



SUMMARY

In this lesson, you learned that the courts function as part of an **adversary system** in which both sides of a dispute are able to present evidence before a judge. The **method of adjudication** will always mandate a reasoned decision by an impartial judge. Additionally, the plaintiff or prosecution must meet the **burden of proof**.

When **beginning a lawsuit**, the first step is the **complaint and summons** - which involves **service of**

process - followed by the determination of **jurisdiction and venue**. There are some **general rules for personal jurisdiction** that can help in determining which court has the power to hear a particular case. Many commercial contracts include **choice of law and choice of forum clauses** that can help simplify the determination of personal jurisdiction.

Best of luck in your learning!

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