

Jurisdiction

Definition:

Practical authority granted to a formally constituted legal body to deal with and make pronouncements on legal matters and, by implication, to administer justice within a defined area of responsibility.

international jurisdiction discussion - <http://en.wikipedia.org/wiki/Jurisdiction>

Types:

Personal jurisdiction is an authority over a person, regardless of his location
(or)

Territorial jurisdiction is an authority confined to a bounded space, including all those present therein, and events which occur there.
(plus)

Subject Matter jurisdiction is an authority over the subject of the legal questions involved in the case.

International Dimension:

International laws and treaties provide agreements which nations agree to be bound to.

At the discretion of each state whether to cooperate or participate

How to co-ordinate activities of international courts/organizations with those of national courts?

complementarity: typical, international court is subsidiary or complementary (few problems)

concurrent: politically difficult to resolve

universal jurisdiction: UN, International Court of Justice - resolve disputes between states and both parties agree to be bound

intergovernmental organizations:

example: World Trade Organization (WTO)
... power to enforce decisions is at the will of the states affected
... but WTO is permitted to allow retaliatory action by successful states against states in breach of international trade law

Resolving international and national/local laws

monism: international laws automatically incorporated by no further action of legislature (e.g. Netherlands)

dualism: local jurisdictions incorporate international law only when explicitly incorporated (e.g. most nations - in US, ratified treaties are binding on all state and local gov' ts)

Resolving disputes among individual litigants from different nations

... range of treaty and convention obligations

Example: Brussels Convention (EU Member states)

- reciprocal enforcement of foreign judgments
- jurisdiction over persons domiciled in the EU
- jurisdiction over persons NOT domiciled in the EU determined by national law

Similar reciprocal conventions with rest of world

Example: Uniform Foreign Judgments Monetary Act

Civil Dispute Resolution and Procedure

(Chapter 12, Law and the Information Superhighway - Perritt)

Does a court have power to decide?

Maine resident being sued in Nevada. (Selling time share condos in Utah, web server in Iowa.)

Traditional approach

- is there jurisdiction over the parties?
- is adequate notice provided?
- what is the appropriate choice of law?
- is the geographic venue appropriate?

Perritt - as commerce becomes international, lines between issues no longer so distinct

Jurisdiction by a Court

I. Over the Parties

II. Over the Subject Matter

I. Jurisdiction Over the Parties

A. Requirements

substantive due process - power to act either upon a given property or upon a given person
procedural due process - D must have adequate notice and opportunity to be heard

B. Three kinds of jurisdiction - traditional

1. In personum - over the D's person
2. In rem - over a thing
3. Quasi in rem - would have been over person but ...

C. Interests Analysis – TODAY!

Analysis of personal jurisdiction typically includes two prongs:

1. does state's long arm statute reach the defendant?
 - can generally reach D's who
 - a. transact business in the state
 - b. commit a tortious act within the state
 - c. commit a tortious act outside the state where harmful effects are felt within the state
plus some type of additional activity

additional activity might include, for example,

- regular solicitation of business in the state
- persistent contact with the state
- reasonable expectation that actions will result in an injury in the state
- deriving substantial revenue from interstate commerce

What web activity comes within the realm of “transacting business in the state” or “soliciting business” in the state?

Some case law criteria:

- “sliding scale”
 - mere information on web site or advertising nationally
 - exchange of information on web site
 - engage in business on web site
- “interactive” versus “passive” use of web pages
- “continuous and systematic contacts”
- “quality and quantity of contacts”

2. does the reach violate Constitutional **due process**?

non-resident D must have “minimum contacts” with the forum state such that the D would reasonably anticipate being subjected to the court there

- maintenance of suit in other forum *cannot offend traditional notions of fair play and substantial justice*
- there must be *some act by which the D purposely avails itself of the privilege of conducting activities within the forum state*, thus invoking the benefits and protections of its laws
- contacts must be *continuous and systematic* or arise out of such contacts

Applying the due process requirement in civil cases

(1) Zippo Approach - "sliding scale"

(Zippo Manufacturing vs. Zippo Dot Com Inc.)

- mere information on web site or advertising nationally [passive - no personal jurisdiction]
- exchange of information on web site [interactive - further analysis required. Non-internet contacts?]
- engage in business on web site [active - yes, personal jurisdiction assuming actual transactions]

Foreign Defendant - If foreign D does not have requisite minimum contacts with any one state, contacts with U.S. as a whole may be considered. (Federal Rule of Civil Procedure 4(k)(2))

(2) Alternative Approach - "effects test" (Calder v. Jones)

- used in fewer states

- requisite minimum contacts assessed against the "effects" the non-resident defendant's activities have on the forum state
- both Internet and other contacts considered

Bottom Line:

- business can be subject to personal jurisdiction based solely on your Internet contacts with a forum state
- as business expands, so does risk of out-of-state jurisdiction

How can I avoid being subjected to the jurisdiction of all 50 states and all nations across the globe where I sell goods or services online?

- forum selection clauses
- law selection clauses

Progression as technology has advanced of:

"shrink wrap" licenses – applied to digital physical media

"browse wrap" licenses – link to terms and conditions on every web page

"click wrap" licenses – agreement to terms on the part of the user through a volitional action
- not a silver bullet but ...

2011 Case: Anomaly or trend?

New York Long-Arm Reaches through Internet

New York state's highest court, the Court of Appeals, has rendered an interpretation of New York's long-arm statute that potentially makes copyright violators anywhere in the world subject to New York courts. This decision comes in response to a request from the U.S. Circuit Court of Appeals for the Second Circuit for an opinion on the scope of New York's long-arm statute in the context of a federal copyright infringement action in *Penguin Group (USA), Inc. v. American Buddha*.

Penguin sued American Buddha in federal court in New York City for copyright infringement, alleging that the defendant was copying literary works owned by Penguin and making them available for downloading on the Internet free of charge. American Buddha's principal place of business is in Arizona. It operates two websites that are hosted on servers in Arizona and Oregon. American Buddha's websites assure its patrons that its uploading of these works and the users' downloading of them do not constitute copyright infringement because of the fair use provisions of copyright law. American Buddha moved to dismiss the complaint on the grounds that the court lacked jurisdiction over it because it does no business in New York and has no ties to that state. The federal district court granted the defendant's motion and dismissed the suit. Penguin appealed to the Circuit Court, which then asked the state court to interpret state law for it because the federal district courts in New York have disagreed with each other in their

rulings on this question.

The Court of Appeals reasoned that the injury in this case was more difficult to identify and quantify than in most other kinds of business torts because the Internet is intangible and ubiquitous. Ordinarily, the physical location of the defendant or the situs of the plaintiff's lost business would determine whether a court has jurisdiction. The location of the infringement in online cases is of little import inasmuch as the primary aim of the infringer is to make the works available to anyone with a computer with access to the Internet – including computer users in New York. In addition, the injury to a New York copyright holder, while difficult to quantify, is not as remote as a purely indirect financial loss due to the broad spectrum of rights accorded to copyright owners. The court concluded that the function and nature of the Internet and the diverse ownership rights enjoyed by copyright holders situated in New York combine to give New York courts jurisdiction over the defendant in this case.

If other states were to follow this precedent, copyright infringement on the Internet could be policed from almost any state without regard to the location of the alleged infringers. The court did not address the question of whether a plaintiff with no other ties to New York could use that state's courts under a theory that infringing downloading could be occurring there.
