

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:

- I. 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

II. Jurisdiction Over the Subject Matter

Need to qualify for federal court

(see 28 USC sec 1330-1368)

- 1330. actions against foreign states
- 1331. federal question case
- 1332. diversity of citizenship > \$75,000
- 1333. admiralty & maritime (exclusive)
- 1334. bankruptcy (exclusive)
- 1335. commerce and antitrust > \$10,000
- 1336. patents, plant variety protection, copyright, trademark (exclusive)

All other subject matter in state courts

Assuming state court, how do we determine between Maine and Nevada?

First to sue?

Venue (sec. 12.8 Perritt)

Contemporaneous with deciding the issue of state court versus federal court, in what geographic location will case be heard?

Appropriate to hold where:

- a. any **defendant resides**
- b. substantial part of the **events** or omissions giving rise to the claim occurred
- c. substantial part of the **property** giving rise to the claim is situated
- d. in the jurisdiction where **personal service** may be had

Venue (con't)

“forum non-conveniens”

- doctrine that allows a case to be dismissed because it can be better held elsewhere
- not as likely in federal court since federal courts allow transfer

So Maine and Nevada appropriate and perhaps Utah but not Wyoming.

... continue the analysis

Courts like forum selection clauses in contracts!

Enforcement of Judgments (sec. 12.9)

- full faith and credit clause of U.S. Constitution
 - makes judgments enforceable in other states
 - recognition required unless D can show violations of procedural due process, lack of personal jurisdiction of claiming court, or violation of public policy
- same typically true with foreign nations
 - state statutory law (Uniform Foreign Judgements Monetary Act) or comity

Practical matter: more difficult to enforce in jurisdiction of another court

Choice of Law (sec. 12.11)

- primarily a factor of personal jurisdiction, venue and enforcement of judgements
- court looks at all of these

Federal Court

- which state has the most significant relationship with the transactions and the parties?
- most significant interest is *where the sting was felt*
 - results in bias towards where P resides & thus that law often controls

Geographic Scope of Injunctions

(sec 12.10)

Federal court

- clear that injunctions run nationwide

State courts

- Perrit argues it is notice that should count and not formalities of service
- thus injunctions by state courts also generally should apply nationwide

The law encourages use of contracts to agree on all jurisdictional issues up front

In commercial relationships, contracts addressing personal jurisdiction, enforcement & choice of law are common

Cooperation seen among states similarly developing in international context

What about criminal law jurisdiction?

Example:

- see Statement of Minnesota Attorney General on Internet Jurisdiction
<http://www.jmls.edu/cyber/docs/minn-ag.html>
- positions of various nations similar

Minnesota's general criminal jurisdiction statute:

A person may be convicted and sentenced under the law of this State if the person:

- (1) Commits an offense in whole or in part within this state; or
- (2) Being without the state, causes, aids or abets another to commit a crime within the state; or
- (3) Being without the state, intentionally causes a result within the state prohibited by the criminal laws of this state.

Example: Gambling

Services outside of Minnesota that offer those inside Minnesota the opportunity to place bets.

Attorney Generals Position:

- 1. Gambling organizations criminally liable - gambling service is illegal
- 2. Accomplices liable - Internet access providers and credit card companies that continue to provide services to gambling organizations after notice that activities are illegal, are subject to accomplice liability
- 3. Gamblers criminally liable - betting by Minnesota residents is illegal

Likelihood of numerous gambling companies around the world being sued in Minnesota?

Even if a judgment passed, state cannot take a measure that violates another state's sovereignty.

- U.S. - "full faith and credit" clause of constitution
- International level - illegal to send an agent in to another nation to arrest a person convicted of a crime. Must gain approval of the nation - multilateral or bilateral agreements may apply

More likely that Minnesota will take care of business at home

- crime to place a bet - confiscate computers and winnings, prosecute violators

- control ISPs and credit card companies doing business in the state - prosecute violators

Problem: moving target, priority?

Sites where you might find more articles on Personal Jurisdiction

- <http://www.perkinscoie.com/aba/usjuris.htm>
- <http://www.tkhr.com>
- Cyberlaw Encyclopedia
- <http://www.gahtan.com/techlaw/home.htm>
