**CivPro**

**Personal Jurisdiction** – Personal jurisdiction refers to the court’s ability to exercise power over a particular defendant. Traditionally, PJ is based upon where the party is domiciled, presence in the state when served, or consent. A corporation is domiciled where it is incorporated and where it has its principal place of business.

**Long arm statute** – If no traditional basis exists, the plaintiff must look to see if the state has a long arm statute that would allow PJ over the defendant. A long arm statute gives the court PJ over an out-of-state defendant.

**Constitutional limits on PJ** – Even if a state arguably grants the state court PJ over the defendant, such exercise must still be constitutional. To be constitutional there must be sufficient contacts with the forum state so as to not offend the traditional notions of fair play and substantial justice. The Supreme Court has listed a series of factors with which to assess the constitutionality of PJ. In general the factors fall under (1) contact, (2) relatedness, and (3) fairness.

**Minimum contacts** – Minimum contacts requires a showing of purposeful availment and foreseeability. The courts must find that the defendant purposefully availed herself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws. Additionally, the defendant must have foreseen that she would be haled into court in the forum state.

**Purposeful availment** – The courts must find that the defendant purposefully availed herself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws.

**Foreseeability** – The defendant also must know or reasonably anticipate that her activities in the forum render it foreseeable that it may be haled into court there.

**Relatedness of the claim to the contact** – The claim must arise from the defendant’s contacts with the forum. This requires a showing of either specific or general jurisdiction.

**General jurisdiction – systematic and continuous activity** – The court will look to see if the defendant had systematic and continuous activity in the forum state such that the defendant is essentially at home in the forum.

**Specific jurisdiction – claim related to defendant’s contacts** – The claim must be related to the defendant’s contacts with the forum.

**Fairness** – To determine whether exercising PJ over the defendant is fair, the court will look at the convenience to the defendant, the state’s interests, and other factors.

**Convenience** – A forum is constitutionally acceptable unless it is so gravely difficult and inconvenient that the defendant is put at a severe disadvantage.

**State’s interest** – The forum state may have a legitimate interest in providing redress for its citizens.

**Other factors** – Other factors include the plaintiff’s interest, the judicial system’s interest, and the shared interests of the states.

**Subject Matter Jurisdiction** – Subject matter jurisdiction refers to the court’s ability to hear a type of case. The lack of SMJ is not waived by failing to raise it at trial; it may be raised for the first time even on appeal. In federal court, there are two main bases for SMJ: federal question jurisdiction (FQ) and diversity jurisdiction (DJ). Each claim asserted in federal court must have an independent basis for federal SMJ, but if the claim does not satisfy the requirements for FQ or DJ, it might be possible to hear the claim in federal court under supplemental jurisdiction.

**Federal Question** – FQ requires that the plaintiff’s well-pleaded complaint sets forth a cause of action that arises under federal law. A case arises under federal law if the plaintiff alleges a right or interest that is substantially founded on federal law.

**Diversity jurisdiction** – DJ requires complete diversity when the suit is filed and an amount in controversy that exceeds $75,000 excluding interest.

**Complete diversity** – Complete diversity requires that every plaintiff be of diverse state citizenship from each defendant. The citizenship of an individual is determined by his domicile, i.e. his permanent home where he intends to return. A corporation is a citizen of every U.S. state or foreign country in which it was incorporated and the one U.S. state or foreign country in which it has its principal place of business, which is the place from which the corporation’s high level officers direct and control the corporation’s activities.

**Amount in controversy** – The AIC is determined by the plaintiff’s good faith claim stated in the complaint. A single plaintiff may aggregate all of his claims against a single defendant, and multiple plaintiffs may aggregate their claims against a single defendant only when they are seeking to enforce a common or undivided interest.

**Removal** – A case may be removed from state court to federal court if (1) all defendants join in the removal and (2) the federal court would have SMJ over the action. There will be no removal if any defendant is a citizen of the forum state (in-state defendant rule) and no removal more than one year after the case is filed. A plaintiff can never remove.

**Supplemental jurisdiction** – If a court does not have DJ or FQ over a claim, it may be able to hear the claim under its supplemental jurisdiction. In a DJ case, claims that do not meet the amount in controversy requirement may invoke supplemental jurisdiction if they arise from a common nucleus of operative fact, which is the same concept as transaction or occurrence. However, supplemental jurisdiction cannot be used to override the complete diversity requirement.

**Venue** – A civil action may be brought in a judicial district in which (1) any defendant resides, if all defendants reside in the same state, (2) a substantial part of the vents or omissions giving rise to the claim occurred or a substantial part of the property that is the subject of the action is situated, or (3) any defendant is subject to personal jurisdiction with respect to the action but only if there is no district that satisfies (1) or (2).

**Residence (venue)** – For venue purposes, a corporation resides in any judicial district in which it is subject to PJ with respect to the civil action in question. In a state with more than one district, the corporation is deemed to reside in any district in that state within which the corporation’s contacts would be sufficient to subject it to PJ if that district were a state.

**Transfer of venue** – To have venue transferred, the defendant must show either that venue is improper in the plaintiff’s chosen venue or that venue should be transferred in the interests of justice for the convenience of the parties and witnesses. When venue is improper, transfer is to a proper venue that has subject matter jurisdiction and personal jurisdiction over the parties. When venue is proper, transfer may be made to another district in which the action might have been brought or to which all the parties have consented.

**Forum non conveniens** – Forum non conveniens gives the court discretion for the convenience of the parties and witnesses and in the interest of justice to transfer a civil action to any action to any other district where it might have been brought or to dismiss the action. The federal court will evaluate both public and private factors in making this decision. Important public factors are the availability of an alternative forum, the plaintiff’s choice of forum, and the forum state’s interest in providing a forum for its residents. Important private factors for the court to consider are the convenience of the parties and the witnesses, location of the evidence, and where the cause of action arose.

**Governing law** – Under the Erie doctrine, a federal court hearing a case under diversity jurisdiction will apply federal procedural law and the substantive law of the state in which it sits. Federal courts may apply some state procedural rules when those rules have no bearing on the mechanics of the federal court system.

**Amendments** – An amendment will relate back to the date of the first filing to avoid the statute of limitations if the new claim concerns the same conduct or transaction or occurrence. To join a new defendant, the amendment will relate back if (1) it concerns the same conduct or transaction or occurrence, (2) the new party knew of this case within 120 days of filing, and (3) the new party knew that but for mistake, they would have been named originally.

**Joinder of parties** – A new party must be joined when (1) complete relief cannot be accorded among the other parties to the lawsuit without the absentee or (2) the absentee has such an interest in the subject matter of the lawsuit that his absence will (a) impair or impede his ability to protect that interest or (b) leave the other parties at substantial risk of incurring multiple or inconsistent obligations. The court must also have PJ over the new defendant and adding the defendant may not destroy SMJ or venue. A court may join a new party when it involves the same transaction or occurrence and there is a common question of fact or law.

**Class action** – Joining parties to a class action involves two steps of certification. First, there must be (1) common questions of law or fact, (2) adequate and fair representation to protect the interest of the class, (3) the class is so numerous that joinder of all members would be impracticable, and (4) the claims of the representative parties are typical of the class. Second, the court must determine the appropriate type of class action, which is either based on (1) prejudice, (2) an injunction or declaratory judgment action, or (3) common question predominates and class action is the superior method. SMJ will be based on the representative’s domicile or the amount in controversy.

**Discovery (scope)** – A party may seek to obtain any nonprivileged matter that is relevant to any claim or defense, including any documentary evidence. The information sought must be reasonably calculated to lead to the discovery of admissible evidence on a claim or defense in the case; it is not required that the information itself be admissible at trial.

**Summary judgment** – Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The facts are viewed in light most favorable to the non-moving party.

**JMOL, RJMOL, new trial** – A judge may grant a motion for judgment as a matter of law when the evidence, viewed in the light most favorable to the party against whom the verdict would be directed (including all legitimate inferences in their favor and without considering the credibility of the witnesses), is such that a reasonable juror could come to only one conclusion. A motion for judgment as a matter of law is a prerequisite for a renewed motion for judgment as a matter of law.

**Res judicata (claim preclusion)** – Res judicata bars a litigant in a prior action from bringing the same cause of action again. For res judicate to apply, it must be shown that (1) the earlier judgment is a valid final judgment on the merits, (2) the cases are brought by the same claimant against the same defendant, (3) the same cause of action or claim is involved in the later lawsuit, and (4) the cause of action was actually litigated or could have been litigated in the prior action.

**Collateral estoppel (issue preclusion)** – Collateral estoppel estops a party in a prior case from re-litigating an issue that was resolved in that case. It requires that (1) the first case ended in a valid final judgment on the merits, (2) the issue was actually litigated and determined in the prior case, and (3) the issue was essential to the prior litigation. The issues must also be identical in each action.

**Mutuality, offensive and defensive collateral estoppel** – Traditionally, a judgment could not be used against a nonparty, which meant that a nonparty could not take advantage of the judgment either by precluding a prior party from litigating an issue determined against the party. However, that traditional rule has been relaxed considerable. Nonmutual defensive collateral estoppel will be allowed if the party had a full and fair opportunity to litigate the issue in the first case. Nonmutual offensive collateral estoppel will be allowed only if it is fair, as determined by (1) full and fair opportunity to litigate the issue in the first case, (2) the defendant could foresee multiple suits, (3) the plaintiff could not have joined easily in the first case, and (4) there is no risk of inconsistent judgments on the record.

**Subject matter jurisdiction (CA)** – In California, the Superior Court has general SMJ and can hear any civil case. Cases are divided by limited civil cases and unlimited civil cases. Limited civil cases are those where the amount in controversy does not exceed $25k, and they have limited discovery, no equitable relief, and no recovery more than $25k. An unlimited case where the amount in controversy exceeds $25k. Equitable relief is available and any claimant can recover any amount. The plaintiff initially determines the classification. The case can be reclassified automatically by the court, or on motion by a party or the court. The court will not consider the merits of the case but can look beyond the pleadings to arbitration award and settlement conference statements.

**Venue (CA)** – In California, venue is based on county. There are special rules for different subject matter: (1) local actions exist in the county where the land is, (2) transitory actions exist in the county where *any* defendant resides when the case is filed. Contract cases are heard in the venue where the contract was entered or to be performed. Personal injury or wrongful death cases are in the venue where the injury occurred. If there is a corporation as a party, venue is where the principal place of business, where they entered the contract, or where the breach occurred. If all defendants are non-residents of CA, then venue in any county is proper. Venue can be transferred if the original venue was improper or if venue is proper but (1) there is reason to believe impartial trial cannot be had, (2) convenience of witnesses and ends of justice, or (3) no judge qualified to act.

**Pleadings (CA)** – California follows fact pleading which means the plaintiff must allege ultimate facts on each element of the cause of action. The plaintiff need not state the basis for subject matter jurisdiction. The plaintiff must state the amount of damages unless it is a personal injury or wrongful death suit. Defendant can request a statement of damages.

**General Demurrer (CA)** – Failure to state facts sufficient to constitute a cause of action. Remember, under fact pleading, plaintiff must allege ultimate facts on each element of the cause of action.

**Motion to Quash Service of Summons (CA)** – Special appearance based on lack of personal jurisdiction, improper process (bad documents), or improper service of process. Must be made BEFORE or WITH a demurrer, answer or motion to strike or else it is WAIVED.

**Motion to Strike (CA)** – Defendant may bring a motion to strike under Anti-SLAPP to prevent strategic lawsuits against public participation that would chill First Amendment rights. The burden is on the plaintiff to show probability of winning on the merits. Motion will not be granted if plaintiff is enforcing a truly private right. The defendant can also countersue for malicious prosecution under SLAPP-back if he wins.

**Fictitious Defendants (CA)** – Plaintiff can file a complaint with a fictitious “Doe” defendant if they are genuinely unaware of the true identify of a defendant, but they must state the cause of action (charging allegation). Moreover, plaintiff can substitute the true defendant in an amendment if (1) the original complaint was filed before the statute of limitations ran and contained charging allegations, (2) the plaintiff was genuinely ignorant of the defendant’s identity, and (3) the plaintiff pleaded that ignorance in the original complaint.

**Discovery (CA)** – In limited cases, there is no duty to supplement discovery as long as information was accurate and complete when given. In unlimited cases, there is a duty to supplement discovery. Additionally, the CA constitution recognizes a right of privacy which requires balancing the need for information sought during discovery against the need for privacy.

**Class actions (CA)** – To certify a class action in CA, the plaintiff must show (1) an ascertainable class and (2) a well-defined community of interest based on (a) common questions predominate, (b) the representative is adequate, and (c) class will result in substantial benefit to the parties and to the court. There are no separate types of class actions.

**Trial issues (CA)** – In CA, the court will try facts on equity causes of action before damages (equity first rule). There is no right to a jury trial if damages claim is merely incidental to an equity claim (equity cleanup doctrine). You need not move for a directed verdict at trial to later move for a JNOV. CA courts will allow for remittitur as well as additur.

**Res judicata (CA)** – California follows the primary rights doctrine. Under that doctrine, a cause of action is defined as an invasion of a single primary right. A cause of action may not be split into separate lawsuits if the cause of action arises from invasion of a single primary right. For example, a cause of action based on personal injuries may be separated and sued on separately from a cause of action based on property damage suffered in the same accident because the right to be free from personal injury is considered a different primary right than the right to be free from harm to property.