CHAPTER 2

The Courts and Jurisdiction

CHAPTER OUTLINE

The Courts and Litigation
Federal Court System
State Court Systems
The Courts and the Internet
Jurisdiction
Venue
THE WEIGH TO GO CASE

Your law firm was recently retained by Weigh To Go, a corporation that operates a chain of retail stores featuring high-tech exercise equipment and low-calorie foods. The corporation was formed 10 years ago under the laws of the state of Texas and met with such success that it now has stores in Texas, Nevada, and Oregon. Its headquarters is in Oregon. Weigh To Go currently maintains a Web site advertising and selling its products online. Because Weigh To Go has substantial Internet sales from California residents, it plans to open stores in California. Weigh To Go just learned that a few months ago another company started a similar business. This company calls itself Go A Weigh and has one store in the state of California. Go A Weigh is incorporated under the laws of California. Go A Weigh also maintains a Web site on the Internet but does not allow online purchases. Your attorney tells you that the firm will be filing a lawsuit based on trade name infringement and asks you to research the following questions. Should the complaint be filed in federal or state court, or does it matter? If the complaint is to be filed in federal court, which district is the proper one? If the complaint is to be filed in state court, which state or states could hear the case?

OBJECTIVES

Chapter 1 introduced you to the general litigation process. Choosing the proper court in which to initiate a lawsuit is an important step in that process. After reading this chapter, you should be able to:

- describe the functions of the various courts in the civil litigation process.
- list and describe the functions of various federal courts.
- describe the various courts found in state court systems.
- define subject matter jurisdiction.
- list the types of cases that must be brought in federal court.
- distinguish exclusive jurisdiction from concurrent jurisdiction.
- determine if a court can obtain personal jurisdiction over a defendant.
- explain the relevance of long-arm statutes.
- contrast personal jurisdiction with in rem jurisdiction.
- identify how venue affects the location of the trial court.

THE COURTS AND LITIGATION

The attorneys in the Weigh To Go matter recognize that they must choose a proper court in which to file their lawsuit. Selecting a proper court first requires an understanding of the U.S. court systems. Different court systems exist for each of the states. A separate court system exists for the federal government. Within each system you also find many different courts. Although court systems differ from one another in many ways, they have some characteristics in common. All court systems have trial courts and courts of appeal.
or review. Many court systems have two levels of review courts: intermediate courts of appeals (in some jurisdictions called courts of appeal) and highest courts of appeal or courts of last resort (sometimes referred to as supreme courts). The function of all trial courts is similar, as are the functions of courts of appeals and courts of last resort. The separate court systems are shown in Exhibit 2–1.

### Trial Courts

The civil litigation process usually begins in a **trial court** where the parties to a lawsuit file their pleadings and present evidence to a judge or jury. Trial courts are also called **lower courts**. The primary function of a trial court in civil cases is to resolve disputes between parties by first determining the true facts and then applying appropriate legal principles. Consider the following: Raeburn sues Cassidy for injuries he received in an automobile accident, claiming Cassidy was at fault by failing to stop at a stop sign. Cassidy claims he owes Raeburn nothing because Raeburn ran the stop sign. In a jury trial, the jury determines the true facts (that is, who ran the stop sign). The jury then follows the judge’s instructions in applying the law. In a trial before a judge only, the judge makes the factual and legal determinations.

Once a factual dispute has been resolved, appropriate legal principles are applied to those facts—principles that for the most part have been established by the legislature and by higher courts. In the preceding factual situation, once a trial court judge or jury determines that Cassidy ran a stop sign, causing injuries to Raeburn, the legal principles of negligence are applied and the court could award Raeburn money damages. Because litigation usually begins in a trial court, this court is referred to as a court of original jurisdiction. **Jurisdiction** refers to the power or authority of a court to hear a particular case. A court of **original jurisdiction** is a court where the case begins and is tried.

### Courts of Appeals

**Courts of appeals** (or appellate courts) are primarily courts of review. These courts examine the trial court proceedings to guarantee that parties receive a fair trial. A case is not retried in an appellate court. The appellate courts review the trial court’s process by reviewing a written, verbatim transcript or record of the lower court proceedings. The parties file legal **briefs** and often present oral arguments analyzing their position.

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**trial court**
A court where the parties to a lawsuit file their pleadings and present evidence to a judge or jury.

**lower court**
Another term for a trial court.

**jurisdiction**
1. The geographical area within which a court (or a public official) has the right and power to operate.
2. The persons about whom and the subject matters about which a court has the right and power to make decisions that are legally binding.

**original jurisdiction**
The power of a court to take a case, try it, and decide it (as opposed to **appellate jurisdiction**, the power of a court to hear and decide an appeal).

**court of appeals**
A court that decides appeals from a trial court. In most states it is a middle-level court (similar to a U.S. Court of Appeals), but in some states it is the highest court.

**brief**
A written statement prepared by one side in a lawsuit to explain its case to the judge. It usually contains a fact summary, a law summary, and an argument about how the law applies to the facts. Most such “briefs” are not brief.
The appellate court’s role is to determine if any legal errors occurred in the trial court and, if so, whether the error resulted in an unfair trial. A legal error is an error in the way the law is interpreted or applied to a situation. Examples of legal errors include a judge’s misstating the law when instructing the jury or allowing attorneys to introduce evidence that is not relevant to the case or that has been improperly obtained. The appellate court is not allowed to substitute its judgment for that of the trial court on factual questions. If any reasonable basis for the factual findings exists, the appellate court is not authorized to reverse the decision simply because it does not believe the evidence. In the hypothetical case of Raeburn v. Cassidy, described earlier, suppose the evidence in the case consisted of the following: Raeburn, a 19-year-old college student, testified that Cassidy ran the stop sign. Cassidy, a police officer who was off duty at the time of the accident, testified that Raeburn ran the stop sign. There are no other witnesses. If the trial court found in favor of Raeburn, an appellate court could not reverse just because an off-duty policeman seems more credible to it than a 19-year-old college student. The trial court already resolved this factual question, and the appellate court is bound by it.

The appellate review is usually conducted by a three-judge panel. To prevail, parties must have a majority (two of the three) on their side. Because the authority of the courts of appeals is to review a trial court’s actions rather than to resolve factual disputes, courts of appeals are courts of appellate jurisdiction. They may also be referred to as higher courts. In exercising appellate jurisdiction, a reviewing court has the power to affirm the decision (uphold the lower court), reverse the decision (change the lower court’s decision), or reverse and remand the case (change the lower court’s decision and send it back to the trial court to be retried).

Courts of Last Resort

Many court systems have two levels of courts with appellate jurisdiction, intermediate courts of appeals and one court of last resort, often referred to as a supreme court. Like intermediate courts of appeals, courts of last resort are primarily courts of appellate jurisdiction. They review the proceedings at the trial level and at the intermediate appellate level. Unlike intermediate courts of appeals that must review cases in which the parties request a review, courts of last resort generally have discretionary right to review the cases. In other words, these courts hear only those appeals that they want to hear. See Exhibit 2–2 for a summary of the various court functions.

<table>
<thead>
<tr>
<th>Trial Court</th>
<th>Evidence presented, facts determined, and appropriate law applied</th>
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</thead>
<tbody>
<tr>
<td>Intermediate Court of Appeals</td>
<td>Trial court proceedings reviewed for legal errors that resulted in unfair trial; review is usually mandatory</td>
</tr>
<tr>
<td>Court of Last Resort (Supreme Court)</td>
<td>Discretionary review of trial court proceedings and appellate court decision</td>
</tr>
</tbody>
</table>

**EXHIBIT 2–2 Court Functions**
FEDERAL COURT SYSTEM

The federal court system was authorized by the U.S. Constitution, Article III, which created the Supreme Court and such inferior courts as Congress may establish. Today those inferior courts include trial courts and appellate courts. The trial courts are most commonly known as the U.S. district courts (or federal district courts), but also include various specialized courts such as the U.S. Claims Court and the U.S. Court of International Trade. The appellate courts are known as U.S. courts of appeals (or federal courts of appeals). See Exhibit 2–3.
U.S. District Courts
The United States and its territories are divided into 94 districts, each one having a federal district court. Some larger districts are further subdivided into divisions. Each state has at least one federal district court in its boundaries and, depending on population, a state may have more. The number of judges assigned to each district varies according to need. District courts are trial courts. Thus, in the Weigh To Go case mentioned in this chapter’s Commentary, if a lawsuit were pursued in the federal court system, it would be started in a district court. The complaint and answer would be filed in that court, and any trial would take place there.

Miscellaneous Federal Trial Courts
In addition to the U.S. district courts, the federal court system includes various specialized trial courts, including bankruptcy courts, the U.S. Court of International Trade, and the U.S. Claims Court. The bankruptcy courts are an “adjunct” to each district court. All bankruptcy proceedings originate there. The U.S. Court of International Trade deals with cases involving international trade and custom duties. The U.S. Claims Court handles suits against the federal government for money damages in numerous civil matters (except for tort claims, which must be brought in district court).

U.S. Courts of Appeals
The United States is divided into 12 geographic appellate circuits, or regions. These courts hear appeals from district courts within their boundaries. The U.S. courts of appeals are primarily courts of review, having appellate jurisdiction. These courts review the proceedings that took place in a district court. In addition to the courts of appeals for each of the 12 geographic appellate districts, a 13th federal court of appeals with national jurisdiction has been established. This court hears appeals in patent, copyright, and trademark cases from any district court and all appeals from the U.S. Claims Court and the U.S. Court of International Trade. Generally, when any of the courts of appeals reviews a lower court decision, that decision is reviewed by a three-judge panel, and the majority decision prevails. However, similar to the district courts, the total number of justices in each appellate court varies according to need. See Exhibit 2–4 for a map showing the federal circuits and districts.

U.S. Supreme Court
The U.S. court system has one Supreme Court, consisting of nine justices. The Court is located in Washington, D.C., and holds its sessions from October through June. Primarily, the Supreme Court exercises appellate jurisdiction. In most cases, the exercise of that appellate jurisdiction is discretionary. With limited exceptions, the Supreme Court is not required to hear cases in which a party requests review. In deciding whether to grant a hearing in a case, the Court considers the importance of the decision not only to the aggrieved parties but also to society as a whole. The Court also considers whether the courts of appeals have decided cases in contradictory ways. The Supreme Court often hears cases to resolve disagreements between various appellate courts.
To request a hearing in the Supreme Court, a party files with the Court a document called a petition for a writ of certiorari. In this petition the party explains why the Supreme Court should consider the case. The justices then consider each petition for writ of certiorari and vote on whether to grant it. For a petition to be granted, four of the nine justices must agree. If the petition for the writ of certiorari is not granted, then the decision of the court of appeals stands. If a petition for writ of certiorari is granted, however, it does not mean that the party has won the case. The party has only managed to get a full hearing (review) by the Supreme Court. After the petition has been granted and the writ has been issued, the case proceeds much like an appeal in the appellate courts. The justices consider the lower court transcripts. The attorneys submit legal briefs and are allowed to orally argue the case in front of the Court. To prevail before the Supreme Court, a party must have the vote of five out of the nine justices, or a simple majority. (In the event that fewer than nine justices are hearing the case, it takes a majority to win. Should there be a certiorari (Latin) “To make sure.” A request for certiorari (or “cert.” for short) is like an appeal, but one that the higher court is not required to take for decision. It is literally a writ from the higher court asking the lower court for the record of the case. (pronunciation: sir-sho-rare-ee)
Although the Supreme Court is part of the federal court system, it can and does review cases originally tried in state courts, as long as some federal or constitutional issue exists. Again, there is usually no right to have such cases heard by the Supreme Court. As with appeals from federal court, Supreme Court review of state cases is discretionary.

Although the Supreme Court is primarily a court of review, in certain cases it has original jurisdiction. Article III, Section 2 of the U.S. Constitution provides:

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned (Art. III, § 2.1) the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exception, and under such regulations as the Congress shall make.

### STATE COURT SYSTEMS

Each state has a court system established pursuant to the laws of the state. For the most part states pattern their court structures after the federal system. All states have trial courts and some sort of appellate, or review, courts. Most states also have a state supreme court or a court of last resort. The role of each of these courts is comparable to their equivalents in the federal system. The names, however, differ from state to state. For example, general trial courts in California are called superior courts. In New York, trial courts are called supreme courts. In other states, trial courts are known as circuit courts, city courts, county courts, surrogate courts, and courts of common pleas. Many states have additional specialty trial courts such as probate court, juvenile court, and family court. Some states have different levels of trial courts.

In addition, many state court systems have a small claims court (the people’s court). In these courts, parties who are suing for small amounts of money go through a simplified litigation process. Attorneys are usually not involved, and all pleadings are extremely simple. These courts are intended to afford speedy legal relief in small cases where normal litigation costs would preclude other actions.
THE COURTS AND THE INTERNET

Today’s courts, like most businesses, rely heavily on the Internet to function efficiently. A court’s Web site provides essential factual and legal information for attorneys as well as litigants. You will generally find the following information:

- the court’s physical address (or addresses), often with a link to an online map with directions
- the telephone numbers for the various departments within the court, often including telephone numbers for each judge’s staff
- court hours (essential information for anyone filing documents)
- court calendars
- selected documents and other information about pending and past cases
- local rules of court
- local forms for use in the court

In addition to providing information, the Internet has changed the way courts conduct business. Many courts allow documents to be electronically filed. Many judges post “tentative rulings” in law and motion matters prior to the time for the hearing on the matter. In some proceedings attorneys are allowed to appear by telephone, rather than personally. Litigation attorneys and paralegals must familiarize themselves with the various procedures and requirements connected with the court’s use of the Internet.

JURISDICTION

Recall the hypothetical case of Raeburn v. Cassidy described earlier in the chapter. Assume that the automobile accident happened in San Francisco, California. An Internet search for courts in San Francisco results in your finding several different courts located in the city, including the San Francisco County Superior Court, the California Court of Appeal for the 1st District, the California Supreme Court, the U.S. District Court for Northern California, and the U.S. Court of Appeals for the 9th Circuit. Before filing a lawsuit, the attorney for Raeburn must decide which of those many courts is the proper one for that lawsuit. This is a question of jurisdiction. Jurisdiction is the power or authority that a court has to hear a particular case.

In many cases the question of jurisdiction is a relatively simple one to answer. For example, if both Raeburn and Cassidy reside in San Francisco, and the accident happened there, then the case is filed in a trial court in San Francisco. Because negligence actions are a matter of state law, the case is filed in the state trial court. If a lawsuit arises under a state law and all of the parties are residents of that state, then jurisdiction is in the state courts. If a lawsuit arises under a federal law and all parties are residents of the same state, then jurisdiction is usually in the federal court located in the state of residence of the parties. However, not all cases are as obvious as Raeburn v. Cassidy. Where parties are not residents of the same state or where one party, especially a business, has a presence in several states, determining proper jurisdiction is more involved. The use of the Internet by businesses raises several jurisdiction questions.
subject matter jurisdiction
The authority that a court has to hear a particular type of case.

personal jurisdiction
The power or authority of the court to make a ruling affecting the parties before the court.

in rem jurisdiction
The authority of a court to hear a case based on the fact that property, which is the subject of a lawsuit, is located within the state in which the court is situated.

quasi in rem jurisdiction
Authority of a court to hear a case based on the fact that the defendant owns property that is located within the state, even though that property is not the subject of the lawsuit.

diversity of citizenship
The situation that occurs when persons on one side of a case in federal court come from a different state than persons on the other side. Complete diversity (all of the plaintiffs are from a different state than all of the defendants) allows the court to accept and decide the case based on the court’s diversity jurisdiction, provided that certain other criteria are met. Diversity of citizenship also applies to suits between citizens and foreign nationals.

Two factors are analyzed to determine which court has jurisdiction to hear a case: (1) the type of case (the subject matter of the lawsuit) and (2) the residence of the defendant (or in some cases where the defendant has property). To have jurisdiction to hear a case, a court must have both subject matter jurisdiction, the authority to hear the type of case before the court, and personal jurisdiction, authority or power over the parties, especially the defendant. Sometimes the defendant’s property becomes a substitute for personal jurisdiction. This is referred to as in rem jurisdiction or quasi in rem jurisdiction (see Exhibit 2–6).

Subject Matter Jurisdiction
Subject matter jurisdiction determines whether a court has the power to hear a particular type of case. For example, consider the Weigh To Go case. The plaintiff must file this lawsuit in a trial court that has the power to hear a case based on trade name infringement. The first issue in any case is to determine whether a case belongs in federal court or in state court. Various laws dictate the kinds of cases that can be brought in federal courts and the kinds that can be brought in state courts.

Subject Matter Jurisdiction of the Federal Courts
The federal courts have limited subject matter jurisdiction. They hear cases only when the Constitution, treaties, or some federal law specifically confers jurisdiction on those courts. Generally, in criminal cases the federal courts have jurisdiction when the offense is a crime under federal law. In civil cases, the federal courts have subject matter jurisdiction in the following circumstances:

1. the case involves a constitutional issue
2. the case involves a treaty
3. the case involves a federal law, such as those that regulate bankruptcy, patent and copyright, discrimination, or maritime issues
4. the U.S. government is a plaintiff or defendant in the lawsuit
5. the plaintiff and defendant are not citizens of the same state (diversity of citizenship)

Diversity of Citizenship
Even though a particular type of case is usually in state court, such as automobile accidents, federal courts often have subject matter jurisdiction if...
diversity of citizenship exists (28 U.S.C. § 1332). Jurisdiction based on diversity of citizenship has two requirements:

1. the plaintiff and defendant are not residents of the same state, and
2. if the case is a claim for money damages, the damages claimed must exceed $75,000.

Most cases require complete diversity before the federal court can hear a case. This means that no plaintiff and no defendant can be citizens of the same state. Diversity also exists when a dispute is between citizens of a state and citizens or subjects of a foreign state. For examples of how diversity is determined, see Exhibit 2–7. Complete diversity is not required for certain class action lawsuits. In these cases, if the amount in controversy exceeds $5,000,000 the federal courts have jurisdiction if diversity exists between any plaintiff and any defendant. Several special rules apply and the U.S. Code should always be checked (28 U.S.C. § 1332).

When plaintiffs and defendants in a case are individuals, state citizenship is normally determined by the individuals’ primary residence. In contrast, corporate parties are considered citizens of both the state in which they are incorporated and the state in which they maintain their principal place of business. In a recent case, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010) the U.S. Supreme Court ruled that the principal place of business for a corporation is based on its “nerve center,” which the Court defined as “the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.” Corporations may thus be citizens of more than one state. For example, consider the hypothetical

Recall the case of *Raeburn v. Cassidy* described earlier in the chapter. Rather than both parties being residents of San Francisco, California, assume the following situations at the time of the accident. Also assume that in all cases the amount of damages exceeds $75,000:

1. Raeburn is a citizen of California and Cassidy is a citizen of Oregon, visiting a friend in California.
   
   **Complete Diversity Exists**
   
   *Raeburn* v. *Cassidy*
   
   (citizen of California) (citizen of Oregon)

2. Raeburn is a citizen of California and has a passenger, Reese, also a citizen of California.
   
   **Complete Diversity Exists**
   
   *Raeburn and Reese* v. *Cassidy*
   
   (both citizens of California) (citizen of Oregon)

3. Raeburn is a citizen of California and Cassidy is a citizen of Oregon driving a vehicle owned by his friend, Pearlman, a citizen of California.
   
   **Complete Diversity Does NOT Exist**
   
   *Raeburn* v. *Cassidy* and *Pearlman*
   
   (citizen of California) (citizen of Oregon) (citizen of California)
case of *Tech, Inc. v. Disk, Inc.* Assume that Tech, Inc. is a corporation that was incorporated in the state of Delaware but maintains its headquarters and principal business in Silicon Valley (California). Tech, Inc. would be considered a citizen of both Delaware and California. Assume that Disk, Inc. is incorporated in the state of Delaware, but maintains its headquarters and principal place of business in Texas. If Tech, Inc. were involved in a lawsuit against Disk, Inc., diversity of citizenship would not exist because both parties are considered residents of Delaware.

One question that sometimes arises in connection with the monetary limit required for diversity jurisdiction is whether several small claims can be aggregated to achieve the minimum requirement. Unfortunately, the answer to this question is not a simple one and depends on the nature of the claims to be aggregated. In general, however, claims cannot be added together to meet the $75,000 requirement if the claims are separate and distinct. For example, if several people are injured in an automobile accident and individually each claim is under $75,000, but added together they exceed that amount, the federal court would not have diversity jurisdiction. Each person has a separate and distinct claim, even though they are related, and even though they could join in the same lawsuit.

**Choice of Law** Again, consider the case of *Raeburn v. Cassidy.* Assume that Raeburn was a citizen of California and Cassidy was a citizen of Oregon, and further assume that the accident happened in California. Because the parties are citizens of different states, the federal court has jurisdiction based on diversity (as long as Raeburn's claim exceeds $75,000). When a federal court exercises jurisdiction based on diversity of citizenship, the substantive law controlling the dispute is not found in federal law. If it were, subject matter jurisdiction would be based on that federal law rather than on the diversity of citizenship. When hearing a diversity case, therefore, the federal court must apply some state law to the substantive issues in the case. Usually, but not always, the federal court applies the substantive law of the state in which the federal court is situated. For example, in *Raeburn v. Cassidy,* if the case was in a district court in California, California state substantive law applies to the case.

**Exclusive versus Concurrent Jurisdiction** When the federal courts have subject matter jurisdiction, sometimes the state court also has jurisdiction. Subject matter jurisdiction of the federal courts can be either exclusive or concurrent. **Exclusive jurisdiction** means that the action must be brought in federal court. **Concurrent jurisdiction** means that it can be brought either in federal court or in state court. Under federal law, certain types of cases must be in federal court. Examples of federal court exclusive jurisdiction include maritime cases, patent cases, and bankruptcy cases. However, other types of cases, such as employment discrimination or civil rights violations, can be litigated in either federal or state court. When federal jurisdiction is based on diversity of citizenship, jurisdiction is almost always concurrent with a state. For example, consider the *Weigh To Go* case described in the Commentary to this chapter. The facts indicate that this is a case of concurrent jurisdiction. (See Exhibit 2–8.)

**Removal to Federal Court** In cases where concurrent jurisdiction exists, the plaintiff decides where to file the lawsuit. However, if the plaintiff chooses to file in a state court, the defendant usually has the right to have the case transferred or removed to the federal...
**CONCURRENT JURISDICTION**

**State Court Has Jurisdiction:**
1. California statutory and case law provides protection to a trade name. This gives California subject matter jurisdiction.
2. Defendant Go A Weigh is a citizen of California. This gives California state court personal jurisdiction.
3. Because both subject matter and personal jurisdiction exist, state court in California has jurisdiction to hear case.

**Federal Court Has Jurisdiction:**
1. Plaintiff Weigh To Go is a citizen of Texas (state of incorporation) and Oregon (principal place of business). Defendant is a citizen of California. Diversity of citizenship exists, giving the federal court subject matter jurisdiction (assuming that damage minimums are requested). (Even though plaintiff does some business in California, California is not the place of incorporation or the principal place of business. Thus, plaintiff is not a citizen of California and diversity exists.)
2. Because the defendant is a citizen of California, the federal court in California has personal jurisdiction.
3. Because both subject matter and personal jurisdiction exist, the federal court located in California has jurisdiction to hear the case.

**Conclusion**
1. This is a case of concurrent jurisdiction. The plaintiff initially chooses the court. If the plaintiff chooses to file in state court, the defendant can remove the case to federal court. If the plaintiff files in federal court, the case remains there.

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**EXHIBIT 2–8 Concurrent Jurisdiction for Weigh To Go v. Go A Weigh**

court. The defendant accomplishes this by following the requirements described in the U.S. Code (28 U.S.C. § 1446). After the plaintiff files a complaint in state court, removal occurs as follows:

1. Within 30 days of service or receipt of papers, the defendant files in federal court the following:
   a. a notice of removal (a document requesting that the case be transferred to the federal court) and
   b. copies of all process, pleadings, and orders that she has received.
2. The defendant files these documents in the federal district and division located in the state where the plaintiff originally filed the complaint.
3. The defendant gives written notice to all adverse parties and the clerk of state court that notice of removal has been filed.

See Exhibit 2–9 for an example of a notice of removal.

Removal

The transfer of a case from one court to another (most commonly, from a state to a federal court, often for civil rights reasons).

Concurrent jurisdiction can also exist between two or more states. That is, where a case belongs in a state court system, more than one state may have subject matter jurisdiction. This would be determined by the facts of the case and the appropriate state laws.
To the Honorable Judges of the United States District Court for the Northern District of California:

Defendants, Go A Weigh, a corporation, through its attorney, respectfully shows the court:

1. The above-entitled action was commenced in the Superior Court of the State of California, County of San Francisco, on January 10, _____, and is now pending in that court.
2. The above-mentioned action is a civil action for damages and injunctive relief based on alleged infringement of the trade name laws of the State of California.
3. All defendants that are required to join in this notice have joined.
4. The action is one of which the United States District Courts are given original jurisdiction under 28 U.S.C. § 1332 by reason of the diversity of citizenship of the parties.
5. The amount in controversy in the action, exclusive of interest and costs, exceeds $75,000.
6. A copy of the complaint was served on defendant at San Francisco, County of San Francisco, State of California, on January 3, _____.
7. Thirty days have not yet expired since the action thereby became removable to this court.
8. At the time of the commencement of this action, plaintiff was and now is a citizen of the State of Texas; at the time of the commencement of this action, defendants and each of them were and now are citizens and residents of the State of California.
9. Copies of all pleadings, process, and orders, served on petitioner in this action are attached and marked Exhibit A.
10. Defendants present and file with this notice a bond with a good and sufficient surety, as required by law, conditioned that defendants will pay all costs and disbursements incurred by reason of these removal proceedings, should it be determined that this action was not removable or was improperly removed.

Wherefore, defendants request that the above-entitled action be removed from the Superior Court of the State of California to the United States District Court for the Northern District of California.

Date: January 10, _____
Respectfully Submitted,
_____________________________
Roberta Rios,
Attorney for Defendant

EXHIBIT 2–9 Notice of Removal

Supplemental Jurisdiction   Consider the following situation: Wilson works for Chipp Inc. as an electrical engineer. In the course of his employment Wilson designs certain products, which are patented. Pursuant to a written agreement, the patent belongs to Chipp Inc. because it was developed as part of Wilson’s job. Wilson leaves Chipp Inc. and starts his own company, manufacturing products that he designed at Chipp and for which Chipp holds the patent. This action on Wilson’s part violates his written contract with Chipp as well as Chipp’s patents on the products. Chipp Inc. wishes to sue Wilson for breach of contract as well as patent infringement. A lawsuit for breach of an employment
contract would not normally be within federal court subject matter unless the case involved diversity of citizenship. However, even if a matter is not normally within the subject matter jurisdiction of the federal courts, it is often heard in federal court if it is in conjunction with a case that is within the subject matter jurisdiction of the court. This is known as **supplemental jurisdiction**. This is also known as pendable or ancillary jurisdiction. In the case of *Chipp v. Wilson*, because the federal court has jurisdiction over the patent case, it can also exercise jurisdiction over the related action based on breach of contract.

**Subject Matter Jurisdiction in the State Courts**

Except for cases that must be brought in federal court, each state has the right to determine the subject matter jurisdiction of the courts within that state. Subject matter jurisdiction of state courts is determined by the laws of the state. If a dispute arises under those laws, the state courts generally have subject matter jurisdiction. Some federal laws, such as civil rights laws, also allow a state court to hear disputes arising under the federal law. See Exhibit 2–10 for examples of types of cases within the subject matter jurisdiction of the federal and state courts.

State court systems often have more than one level of trial court. Subject matter jurisdiction requires that a case be filed in the correct court. States usually have at least one trial court that has **general jurisdiction** in civil cases; that is, the power to hear any kind of case except those that must be brought in federal court. However, unlike the federal system, where there is only one level of trial court, many states have created special trial courts that have limited subject matter jurisdiction. A court of **limited jurisdiction** has authority to hear only certain kinds of cases. For example, some courts have authority to hear limited types of cases, such as juvenile proceedings or family law matters; some courts

**supplemental jurisdiction**

A federal court’s right to decide a claim based on a nonfederal issue if this claim depends on the same set of facts as does a federal claim in the case before the court.

**general jurisdiction**

The power of a court to hear and decide any of a wide range of cases that arise within its geographic area.

**limited jurisdiction**

Authority to hear only certain kinds of cases.

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<th>STATE COURT</th>
<th>FEDERAL OR STATE COURT</th>
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<tr>
<td>Cases involving federal laws</td>
<td>Cases involving state constitutional or state law issues</td>
<td>State law disputes where diversity of citizenship exists</td>
</tr>
<tr>
<td>• civil rights</td>
<td>Most personal injury cases</td>
<td>Certain civil rights cases</td>
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<tr>
<td>• discrimination</td>
<td>• automobile accidents</td>
<td>Federal constitutional issues</td>
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<tr>
<td>• social security</td>
<td>• medical and other malpractice</td>
<td>Cases involving certain federal laws</td>
</tr>
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<td>• broadcasting</td>
<td>• product liability</td>
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<tr>
<td>Cases against the U.S. government</td>
<td>Real property disputes</td>
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<tr>
<td>Intellectual property cases such as patent and copyright disputes</td>
<td>Landlord/tenant disputes</td>
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<tr>
<td>Corporate securities cases</td>
<td>Contract disputes</td>
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<tr>
<td>Admiralty cases (cases arising on the high seas)</td>
<td>Business disputes</td>
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<td>Cases involving rights under treaties</td>
<td>Family law cases</td>
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<tr>
<td>Disputes between states</td>
<td>Probate matters</td>
<td></td>
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**EXHIBIT 2–10 Examples of Subject Matter Jurisdiction: Federal versus State**
with limited jurisdiction are only empowered to hear cases in which the amount of money in dispute is a limited amount. These courts are often known as municipal courts, district courts, or justice courts. See Exhibit 2–11 and Exhibit 2–12.

**Challenging Subject Matter Jurisdiction**  A court that lacks subject matter jurisdiction has no power to decide a case. If it attempts to do so, that judgment is void and can be challenged at any time. Subject matter jurisdiction can be challenged in different

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**EXHIBIT 2–11  Subject Matter Jurisdiction**

- **FEDERAL**
  - United States Constitution
  - Treaties
  - Federal Laws
  - Diversity of Citizenship
  - United States Government a Party

**STATE** (Most Other Cases)

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**EXHIBIT 2–12  Analyzing Subject Matter Jurisdiction**

1. Because federal courts have specific limited jurisdiction, analyze your case to see if it fits into any of the categories of federal court power:
   a. Is this a dispute that arises under the Constitution?
   b. Is this a dispute involving a treaty?
   c. Is this a dispute where a specific federal law confers jurisdiction on federal courts?
   d. Does diversity of citizenship exist between the parties?
      1) Is there complete diversity so that no plaintiff and no defendant are citizens of the same state?
      2) Does the amount of the dispute exceed $75,000?

2. If there is a basis for federal court jurisdiction, is that jurisdiction exclusive or concurrent?
   a. If federal court jurisdiction is concurrent with state court jurisdiction, do you want to file in federal court or state court?

3. If there is no basis for federal court jurisdiction, or if jurisdiction is concurrent, which state court has jurisdiction?
ways, depending on where the lawsuit is filed. One common way to attack subject matter jurisdiction is by filing a motion to dismiss the case.

Personal Jurisdiction

In addition to having jurisdiction over the subject matter of the case, a court must also have jurisdiction over the parties. This authority, known as *personal jurisdiction*, means that the court has the power to render a judgment that affects the rights of the parties before the court.

**Jurisdiction over Plaintiff**

Personal jurisdiction over the plaintiff seldom, if ever, presents any legal problems. The plaintiffs always file the lawsuit and select the trial court. Therefore, they cannot complain that the court has no power over them. Having asked the court to make a decision concerning their rights, plaintiffs have no basis to challenge the court’s right to do so.

**Jurisdiction over Defendant**

Review the Commentary at the beginning of the chapter. Weigh To Go, a citizen of both Texas and Oregon, wants to file a lawsuit against Go A Weigh, a California citizen. Should Weigh To Go be allowed to file the lawsuit in either Texas or Oregon? In other words, should Go A Weigh, a company that does no business in either Texas or Oregon, be required to appear in a Texas or Oregon court to defend itself? This is a question of personal jurisdiction.

Because the defendant does not normally choose to be sued in a particular court, jurisdiction over the person of the defendant must be determined by other factors. No court has unlimited rights to exercise personal jurisdiction. Such a result would be basically unfair. Federal courts generally have personal jurisdiction over defendants if the state courts in the state in which the federal court is located would have personal jurisdiction. In other words, if a state trial court in California has personal jurisdiction over a defendant, then the federal trial courts located in California also have personal jurisdiction.

All state courts have personal jurisdiction over those who reside within the state. Whether a court has jurisdiction over a nonresident defendant depends on two factors. First, the exercise of jurisdiction must be in accordance with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Second, the exercise of jurisdiction must be in accordance with state law.

**Constitutional Limitations**

The Fourteenth Amendment to the U.S. Constitution requires that “due process of law” must be followed in civil as well as criminal cases. In the leading case of *International Shoe Co. v. Washington*, the U.S. Supreme Court held that a state cannot exercise personal jurisdiction over a nonresident defendant unless that defendant has sufficient contacts with the state to satisfy “traditional notions of fair play and substantial justice.” Courts can usually exercise personal jurisdiction over a nonresident defendant if that person or entity is doing business within the state and therefore has the opportunity to avail itself of the state’s laws and state’s courts. The courts refer to this as “purposeful availment.” However, it is not necessary that a defendant is actually conducting an ongoing business within the state. Constitutional requirements are often satisfied with less. In the *International Shoe* case the Supreme Court found that the state of
SCENARIO

Your supervising attorney, whose office is located in Texas, is anxious to file suit against Go A Weigh and has already determined that because of personal jurisdiction requirements the action must be maintained in California. Your attorney is also fairly certain that this case could be brought in federal court, under federal trademark laws. However, the attorney thinks that the case could also be brought in the state court of California under the laws of that state. Although your attorney is generally familiar with practice in the federal court, she knows nothing about practice within the state of California. She would like to be able to compare the substantive law and the procedures of the two jurisdictions before making any final decisions. The attorney has a meeting with the client tomorrow morning and would like to discuss the options with the client.

Your attorney asks you to research the California substantive law regarding infringement of trade names, along with the rules of procedure for that state. She tells you that if the matter is filed in state court it would be in San Francisco. She asks you to try to find out about the local rules of court for that area. The attorney needs this information by tomorrow morning. It is now late in the afternoon.

PROBLEM

Your law office has numerous resource materials for practice in the federal courts and for practice in your state, but it has nothing for the substantive laws or rules of procedures for the courts of other states. Your local law library does have out-of-state materials, but is located several miles away, has very limited parking, and closes at 6 p.m. How can you research this case within your time frame?

SOLUTION

Most law firms maintain law libraries containing statutory and case materials from their own state. However, generally there is little need for out-of-state references. Today, through the Internet, lawyers and paralegals can access several databases containing extensive federal, state, and international legal resources. The most popular legal databases are Westlaw and LEXIS, which are fee-based. Attorneys must pay to use the services. These services can be accessed through the Internet at <http://www.westlaw.com> and <http://www.lexis.com>. These services provide access to state and federal case law, and statutory law, as well as many secondary sources. They also contain public records such as corporate and real estate filings.

Other databases are available for free on the Internet. For example, on the Internet you can find most U.S. Supreme Court cases, many federal appellate court cases, many state court cases, the U.S. Codes, and state codes. You can also find the local rules of court for a number of individual courts.

Two popular Internet sites for extensive legal materials are <http://www.findlaw.com> and <http://www.law.cornell.edu>. In addition, recently Google added legal opinions from many courts to its Scholar feature.

Although the Internet contains a great deal of free legal information, most legal researchers find that using fee-based services is often easier and more efficient than the Internet, especially for difficult legal questions.

Whether one uses a fee-based service or the Internet, computerized research offers many advantages. The research can be done in the researcher’s office or from a home computer, and it can be done at any time.

Washington had personal jurisdiction over a business that hired shoe salesmen within the state and provided them with samples. Occasionally, the company rented rooms to display the shoes. The salesmen took orders that were transmitted to the company’s office out of state. Products were shipped from out of state to Washington addresses. The company had no offices in the state of Washington. Read the reasoning of the Court in the excerpt from the case on page 47.

On the other hand, personal jurisdiction has been found to be lacking when e defendants, an automobile wholesaler and a retailer, sold an automobile in New
Mr. Chief Justice STONE delivered the opinion of the court.

The question for decision [is] whether, within the limitations of the due process clause of the Fourteenth Amendment, appellant, a Delaware corporation, has by its activities in the State of Washington rendered itself amenable to proceedings in the courts of that state. . . .

The Supreme Court of Washington was of the opinion that the regular and systematic solicitation of orders in the state by appellant’s salesmen, resulting in a continuous flow of appellant’s product into the state, was sufficient to constitute doing business in the state so as to make appellant amenable to suit in its courts. . . .

Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.”

It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations. But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of these very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.

AFFIRMED.
PART I  INTRODUCTION TO CIVIL LITIGATION

State Long-Arm Statutes  Even though the exercise of jurisdiction may be constitutionally permissible, it must also be allowed by the laws of the state in question. State laws describing the circumstances under which the state may exercise jurisdiction over nonresident defendants are known as long-arm statutes. The following is an example of a long-arm statute:

[A]ny person . . . whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising out of or related to:

1. the transaction of any business within this state;
2. contracting to supply services or goods in this state;
3. the causing of any injury within this state whether tortious or by breach of warranty;
4. the ownership, use, or possession of any real estate situated in this state;
5. contracting to insure any person, property, or risk located within this state at the time of contracting. . . .

Utah Code Ann. § 78B-3-205

Waiver by Appearance  As mentioned, if a court lacks subject matter jurisdiction, any judgment rendered by the court is void. To an extent, the same is true of personal jurisdiction. However, although the parties to a lawsuit cannot waive, or give up, the requirement of subject matter jurisdiction, a defendant can waive, or give up, the requirement of personal jurisdiction. A waiver of personal jurisdiction means that an individual voluntarily allows a court to hear a case against her even though the court does not have the power to do so. Furthermore, in some courts, if the defendant makes a general appearance in court and does not properly object to personal jurisdiction, she automatically waives any defect in personal jurisdiction. A defendant makes a general appearance whenever she files a pleading or takes part in the proceedings by doing anything other than objecting to jurisdiction.

Notice  Fairness demands that before a court can decide the rights of a defendant in a lawsuit, the defendant should be given proper notice of the action. This is known as service of process. How service can be accomplished is a matter determined by the laws of the jurisdiction in which the lawsuit is pending. The different methods of service of process are described in Chapter 5. See Exhibit 2–13.

Challenging Personal Jurisdiction  A defendant must exercise care in challenging personal jurisdiction because doing so in an improper manner may inadvertently confer personal jurisdiction on the court. Although federal courts allow defendants to challenge

PERSONAL JURISDICTION CHECKLIST

✓ Is defendant a resident of the state, or does defendant have sufficient contacts with the state?

And

✓ Has proper notice been given to defendant?

EXHIBIT 2–13 Personal Jurisdiction Checklist
personal jurisdiction in the answer to the complaint, in some courts personal jurisdiction must be attacked by a **special appearance** (an appearance for the sole purpose of questioning the court’s jurisdiction). This can be done by filing a motion to quash service of summons. A motion is simply a request to the court for a written order. A **motion to quash service of summons** is a request that the court not allow the complaint to be served, thereby preventing the plaintiff from pursuing her lawsuit. In federal court, a motion to quash service of summons is an alternative way of challenging personal jurisdiction.

**In Rem Jurisdiction**

Sometimes, even though personal jurisdiction may be questionable or even nonexistent, the court can hear a case if it has jurisdiction over property that is the subject of a dispute. This is known as **in rem jurisdiction** and is a substitute in some cases for personal jurisdiction. See Exhibit 2–14. For example, Ryan Flynn, a resident of Pennsylvania, dies and leaves an estate consisting of real and personal property, all of which is located in Pennsylvania. He is survived by two sons, Martin, a Pennsylvania resident, and Michael, a resident of Georgia. In his will, Flynn leaves all of his property to Michael. Martin wishes to challenge this. Even though Michael may have no connection to the state of Pennsylvania, because the property that is the subject of this dispute is located in Pennsylvania, the courts in Pennsylvania have jurisdiction to hear the matter. They have the right to determine ownership of property located within the state boundaries. This is in rem jurisdiction.

In exercising in rem jurisdiction, a court is limited to rendering judgments that affect only the property. The court cannot render personal judgments against the defendant that do not concern that property. For example, in the preceding case, suppose that Martin Flynn claimed that he was disinherited because of slanderous remarks made to his father by his brother. In addition to challenging the will, he might also wish to sue his brother for slander in the same action. In order for a court to hear this action, the Pennsylvania court would need to have personal jurisdiction over Michael.

**Quasi in Rem Jurisdiction**

Another substitute for personal jurisdiction is quasi in rem jurisdiction. For quasi in rem jurisdiction to exist, various requirements must be met. First, a defendant must own some property within the state, although the property need not be the subject of the lawsuit. Second, any judgment is limited to the value of the property within the state. Third, that property is usually brought before the court at the beginning of the lawsuit through an attachment proceeding. In an **attachment** proceeding, the court usually orders that the property be seized and remain under the control of the court until the case is resolved.

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**IN REM JURISDICTION CHECKLIST**

- Does the lawsuit concern property located in the state?
- And
- Has proper notice of the lawsuit been given to the defendant?

**EXHIBIT 2–14 In Rem Jurisdiction Checklist**
If a court hears a case based on in rem or quasi in rem jurisdiction, due process still requires that the exercise of jurisdiction be fair and that the defendant be notified of the lawsuit. Notice is accomplished through service of process under the laws of the state in which the action is pending. See Exhibit 2–15.

VENUE

An analysis of subject matter jurisdiction tells a plaintiff whether to file an action in federal court or state court. An analysis of personal jurisdiction tells a plaintiff in which state or states to file. Personal jurisdiction is statewide. Choosing the court in the proper geographical area of the state is a question of venue.

Lawsuits should be filed and heard in a court that has proper venue. However, unlike jurisdiction, a court’s lack of proper venue does not render a judgment void. If a defendant does not object to improper venue, she waives the right to object to the judgment rendered by the court.

Federal Court Venue

Some states have only one federal district court. Larger states, however, have more than one district located within their boundaries. Although all of the districts within the state have personal jurisdiction in a particular case, venue may be limited. The general venue
The statute for federal courts is 28 U.S.C. § 1391, but several different statutes control specific situations. The general statute provides two locations for proper venue and further provides that these locations are proper for cases based on diversity of citizenship or for cases not based on diversity:

1. The judicial district where any defendant resides, as long as all of the defendants reside in the same state, or
2. The judicial district where the acts that form the basis of the lawsuit occurred.

Where there are multiple defendants in a case, sometimes neither of these locations is possible.

If the action cannot be brought in any district meeting these criteria (i.e., if all defendants do not reside in the same state or if the lawsuit arose from acts that took place in a location that no longer has personal jurisdiction), an alternative venue is provided, depending on whether the action is based on diversity of citizenship or some other basis. If the action is based on diversity of citizenship, venue is proper in any judicial district having personal jurisdiction over any defendant. If the lawsuit is based on some basis other than diversity, venue is proper in any judicial district in which any defendant may be found. See Exhibit 2-16.

Corporations present special issues with venue. In determining the residence of a defendant, a corporation is considered to reside in any judicial district in which it is subject to personal jurisdiction at the time the lawsuit is filed. If a state has more than one judicial district, however, the code provides that a corporation “shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the

<table>
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<th>BASIS FOR JURISDICTION</th>
<th>VENUE</th>
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<tr>
<td>Diversity of Citizenship</td>
<td>(1) a judicial district where any defendant resides, if all defendants reside in the same state,</td>
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<td></td>
<td>(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or</td>
</tr>
<tr>
<td></td>
<td>(3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.</td>
</tr>
<tr>
<td>NOT Based on Diversity</td>
<td>(1) a judicial district where any defendant resides, if all defendants reside in the same state,</td>
</tr>
<tr>
<td></td>
<td>(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or</td>
</tr>
<tr>
<td></td>
<td>(3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.</td>
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corporation shall be deemed to reside in the district within which it has the most significant contacts."

In addition to the general venue statute, other sections of the code provide special venue rules. For example, lawsuits relating to copyrights or trademarks may be brought in the district in which the defendant or his agent resides or may be found, and patent infringement actions may be brought in the judicial district where the defendant resides or where the defendant has committed acts of infringement and has a regular and established place of business (28 U.S.C. § 1400). Any civil action by a stockholder on behalf of his corporation may be brought in any judicial district where the corporation might have sued the same defendants (28 U.S.C. § 1401). And generally, when the U.S. government is the defendant in a lawsuit, venue is proper in the judicial district where the plaintiff resides (28 U.S.C. § 1402). Special rules also apply to some complex litigation matters where similar cases have been brought in different courts. The code (28 U.S.C. § 1407) gives a special judicial panel on multidistrict litigation the power to make orders regarding venue for pretrial proceedings for the convenience of witnesses and interests of justice.

Sometimes, a statute that creates substantive rights also provides for venue. For example, the U.S. Code provides that employment discrimination lawsuits can be brought.

in any judicial district in the state in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. [42 U.S.C. § 2000e-5 (f) (3)]

Determining proper venue in federal cases can be a complicated process. Statutes must be carefully read and analyzed. See Exhibit 2-17.

State Court Venue

Venue in state court actions is, of course, determined by state law. As a general rule, however, actions usually can be maintained in the county in which the defendant resides or where the cause of action arises. In different types of cases, other counties might also have proper venue. For example, in contract cases, actions can often be heard in the county in which the contract was made, was to be performed, or was breached. In lawsuits affecting title to real estate, the action is normally heard wherever the real estate is located.

Changing Venue

Because venue does not relate to the court’s basic power to hear a case, under proper circumstances it can be changed. However, the place of trial can be changed only to another court that has jurisdiction. To change venue, a party makes a formal written request of the court where the lawsuit was filed. This is done by making a motion for change of venue. However, a court must have a good reason before it considers transferring the case to another location. Some of the more common reasons include the fact that in the original location the parties cannot get a fair trial, or the case was not filed in the proper court to begin with. A case might also be transferred for the convenience of the witnesses.
VENUE ANALYSIS

The large state of California has four court districts for federal trial courts:

- Northern District headquartered in San Francisco
- Central District headquartered in Los Angeles
- Southern District headquartered in San Diego
- Eastern District headquartered in Sacramento

Assume the following:

- P, a resident of Ohio, wants to sue D and E for injuries that P received in an auto accident that occurred in San Diego, California
- Both D and E are California residents, but D lives in San Francisco and E lives in Los Angeles

Jurisdiction exists in all four California districts because it involves California state law (negligence) and both defendants are residents of California.

Venue exists in:

1. Northern District of California because one defendant resides in this district and all defendants reside in the state of California
2. Central District of California because one defendant resides in this district and all defendants reside in the state of California
3. Southern District of California because the accident occurred here

Conclusion: Plaintiff could file the lawsuit in any of the three districts listed above; even though the Eastern District has jurisdiction, it does not have venue.

EXHIBIT 2–17 Venue Analysis

FINDING IT ON THE INTERNET

A paralegal working on the Weigh To Go case might be expected to locate addresses and other information concerning federal and state courts in different geographical regions. Information about federal courts can be found in the U.S. Federal Judiciary Web sites <http://www.uscourts.gov> and <http://www.fjc.gov/federal/courts.nsf>. Information about state courts can be accessed through the site for the National Center for State Courts at <http://www.ncsconline.org>.

a. Access the U.S. courts’ site at <http://www.uscourts.gov> and, using the link feature, find the address for the district court in your region. This Web site contains several articles about the court that can be located by clicking on “Educational Resources.” Find and summarize one article regarding the courts.


c. Access the site containing information about state courts. Identify and list Web sites of the home pages for the state courts in your geographical area.
The litigation process revolves around the courts. Because many different courts exist in the United States, plaintiffs must choose the proper court in which to pursue their case. In general, court systems are made up of trial courts, courts of appeals, and a court of last resort. In the litigation process, the function of trial courts is to determine the facts of the dispute and apply appropriate legal principles. The primary purpose of the courts of appeals is to review the proceedings in the trial court. A court of last resort, often called a supreme court, generally has discretionary right to review lower court proceedings.

The federal court system consists of three levels of courts, U.S. district courts, U.S. courts of appeals, and the U.S. Supreme Court. The U.S. district courts are primarily trial courts. This is where a case is originally heard. The U.S. courts of appeals and the U.S. Supreme Court are primarily courts of review. They examine the proceedings that occurred in the trial courts.

The structure of any state court system is determined by the laws of that state. Although some differences do exist from state to state, most state court systems are similar to the federal court system. All state court systems have some sort of trial courts and courts of appeals. Most states also have a state supreme court. The functions of the various state courts are similar to their counterparts in the federal court system.

Jurisdiction is the power or authority that a court has to hear a case. Proper jurisdiction requires that a court have the power to hear the kind of case before it (subject matter jurisdiction) and also power to make a decision binding the parties to the lawsuit (personal jurisdiction). The federal courts have subject matter jurisdiction in a case if the dispute arises under the Constitution, treaties, or federal laws. A federal court also has subject matter jurisdiction when there is diversity of citizenship and the amount in controversy exceeds $75,000. State law determines what kinds of cases can be brought in the state courts. If a court lacks subject matter jurisdiction, a judgment rendered is void. In addition to subject matter jurisdiction, a court must also have personal jurisdiction over the parties. A court (federal or state) has personal jurisdiction over those who voluntarily agree to submit to the court’s jurisdiction or over those who reside within the state where the court is located. If a defendant resides outside of the state, then a court has personal jurisdiction only if the defendant has some substantial contacts with the state and state law authorizes the exercise of that jurisdiction. State laws that deal with the exercise of personal jurisdiction over nonresident defendants are known as long-arm statutes. Personal jurisdiction also requires that the defendant receive proper notice of the lawsuit. In rem jurisdiction and quasi in rem jurisdiction can sometimes substitute for personal jurisdiction. In rem jurisdiction exists when the subject matter of the lawsuit involves property that is located in a state. Quasi in rem jurisdiction can exist when the defendant owns any property within the state, but the plaintiff must satisfy any judgment from that property. In rem and quasi in rem jurisdiction also require that the exercise of jurisdiction be basically fair and that the defendant receive proper notice of the lawsuit.
In choosing the proper court in which to initiate a lawsuit, an attorney must consider not only the question of jurisdiction but also the question of venue. Venue relates to selection of the court in the proper geographical area. In the federal courts, venue is usually proper where the cause of action arose or in the district in which the defendant resides. If the defendant is the U.S. government or if jurisdiction is based on diversity, it is also proper where the plaintiff resides. In the interest of justice, venue can be changed to another court of proper jurisdiction.

**KEY TERMS**

- affirm
- appellate jurisdiction
- attachment
- brief
- certiorari
- concurrent jurisdiction
- court of appeals
- diversity of citizenship
- exclusive jurisdiction
- general appearance
- general jurisdiction
- higher court
- in rem jurisdiction
- jurisdiction
- legal error
- limited jurisdiction
- long-arm statutes
- lower court
- motion to quash service of summons
- original jurisdiction
- personal jurisdiction
- quasi in rem jurisdiction
- remand
- removal
- reverse
- special appearance
- subject matter jurisdiction
- supplemental jurisdiction
- supreme court
- trial court
- venue

**REVIEW QUESTIONS**

1. What are the functions of trial courts and courts of appeals in the litigation process?
2. How is the federal court system structured?
3. What are some of the different courts in state court systems?
4. What is subject matter jurisdiction?
5. What are three types of cases that can be brought in federal court?
6. What is the difference between exclusive jurisdiction and concurrent jurisdiction?
7. When does a court have personal jurisdiction over a party to a lawsuit?
8. Why do states have long-arm statutes?
9. What is the difference between personal jurisdiction and in rem jurisdiction?
10. What is venue?
Where necessary, check with your instructor prior to starting any of these exercises.

1. Find out about the court structure in your state. List the various courts and the functions of each. Check the Web site for your state’s courts.

2. Check the laws of your state to see if a long-arm statute exists. If it does, what does it provide?

3. Check the laws of your state to see how to do the following:
   a. Challenge subject matter jurisdiction.
   b. Challenge personal jurisdiction.
   c. Change venue from one court to another.
   Also check form books for your state to find proper forms to accomplish (a), (b), and (c).

4. Review the factual situation in the Commentary to this chapter. Assume that Go A Weigh is operating within your state instead of California. In which court or courts could an action by Weigh To Go against Go A Weigh be filed? Check the U.S. Codes and the laws of your state, and give some authority for your answer.

5. Analyze the following situations and determine whether the federal court has jurisdiction under diversity of citizenship.
   a. Brady and Jeffers, both citizens of North Dakota, wish to sue as a result of an automobile accident caused by the negligence of Crane, a citizen of Montana. The damages for each of them exceed $75,000.
   b. Same as in (a) except that Brady and Jeffers also want to name as a defendant, Dowd, the owner of the vehicle driven by Crane. Dowd is a citizen of North Dakota.
   c. Same as in (a) except that Brady is claiming damages of $50,000 and Jeffers is claiming damages of $40,000.
   d. Digicam, Inc., a manufacturer of digital cameras, is a corporation incorporated in the state of Delaware with its principal place of business in California. It distributes its product through several national retailers who do business in several states, including Washington State. Reider, a citizen of the state of Washington, buys a defective camera that “explodes” while Reider is holding it, injuring Reider. The retailer who sold Reider the camera has declared bankruptcy. Reider wishes to sue Digicam, Inc. for his injuries. Reider is claiming that his damages exceed $75,000.

6. Analyze the following situations and determine whether the forum state has personal jurisdiction.
   a. Review the Digicam, Inc. situation described in (d) of question 5. Based on the facts given, would the state of Washington have personal jurisdiction over Digicam?
   b. Go A Weigh, one of the corporations mentioned at the beginning of this chapter, maintains a Web site, <http://www.goaweigh.com>. The Web site contains a description and pictures of its equipment; a feature entitled “Frequently Asked Questions”; a list of names, addresses, and telephone numbers of vendors who sell the exercise equipment; and an e-mail address to contact the company for more
You cannot order any equipment through the Web site. Marley is a resident of the state of Maine. Marley sees its Web site and wants to order equipment. Unfortunately, Go A Weigh does not distribute exercise equipment through any vendors in Maine. However, Marley calls a vendor (listed on the Web site) in New York. The vendor agrees to ship Marley equipment. Marley is seriously injured using the equipment and claims his injury is a result of a defectively designed product. Can Marley sue Go A Weigh in Maine? Business records show that the equipment manufactured by Go A Weigh is occasionally sold to Maine residents but that its total revenue for the state of Maine is less than 1%.

7. Answer the following questions regarding the case of International Shoe Co. v. Washington found in this chapter.
   a. Describe the contacts that International Shoe had with the state of Washington.
   b. Did the Court feel that these contacts were sufficient to give Washington personal jurisdiction over International Shoe?
   c. What was the reason for the Court’s decision?

8. Recall the hypothetical case of Raeburn v. Cassidy described in the chapter. Assume that the case is tried in a state trial court. A jury returns a verdict in excess of a million dollars, even though Raeburn’s medical bills are less than $5,000. Is there a basis for the defendant requesting a review in the U.S. Supreme Court? Explain your answer. (See State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003).)

9. Review the Map in Exhibit 2–4. If a case was tried in Ohio in the U.S. District Court, in which circuit would an appeal be heard?

CHAPTER PROJECT

Review the case of Raeburn v. Cassidy presented earlier in this chapter. Assume that the facts described occurred in your city and that both Raeburn and Cassidy are residents of your state. Determine which court has original jurisdiction over the matter. Give the address of that court, as well as a reference to your state laws that determine jurisdiction and venue. If the case were to be appealed, which court in your state would hear the matter? Does this court have a Web site? If so, what is the Web address?

THE BENNETT CASE

Assignment 2: Determining Jurisdiction

You have been given additional facts regarding the Bennett case (from Chapter 1 Commentary and Appendix B). Bennett’s employer, Rikards-Hayley, an investment banking firm, is a corporation incorporated in Delaware with its principal place of business in San Francisco, California. It has offices in several states. Bennett is employed in the New York office, located in Manhattan. Your supervising attorney does not believe that this case will settle. It will probably go to trial. Preliminary research indicates that both state and federal
laws exist regarding employment discrimination based on sex. Your supervisor asked you to review the Bennett research file (see Appendix B) and to write a memo addressing the following questions:

1. If the action is based on New York state law, does the New York trial court have both subject and personal jurisdiction over the defendant?

2. If the action is filed in a New York state court, locate the address for the court or courts that would have venue.

3. If the action is based on federal law (Title VII—42 U.S.C. § 2000e), which courts would have subject matter jurisdiction, personal jurisdiction, and proper venue?

4. If the action is filed in federal court under 42 U.S.C. § 2000e, can the federal court also hear a claim for infliction of emotional distress (based entirely on state law) suffered by Bennett as a result of the discrimination?

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