

Common Law Civil Procedure



Univ.- Prof. Dr. Walter Buchegger
walter.buchegger@jku.at

Chapter 3 Section 3

Personal Jurisdiction

I. Personal Jurisdiction

Personal Jurisdiction

- ▶ **the authority of the court to exercise the power to render a binding and enforceable judgment**
- ▶ **Plaintiff:** seeking judicial relief is held to constitute a submission to jurisdiction
- ▶ **Defendant:** court has power over the defendant residing within the state where the court is located (physical presence)
 - ▶ when do we hold personal jurisdiction as given if this is not the case or if the defendant is a corporation?

I. Personal Jurisdiction

- ▶ **State Court has Personal Jurisdiction over a corporation,** if the extent and continuity of business activities seem large enough to equate this activity to „presence“ of a physical person
- ▶ **State Court has Personal Jurisdiction over the nonresident**
 - ▶ upon the basis of long arm statutes or statutes that will allow attachment
 - ▶ if the statute meets constitutional requirements
 - ▶ if due process of law is granted

I. Personal Jurisdiction

► **Federal Courts: Rule 4(k)(1) FRCP (summons) regulating territorial limits of effective service**

- (1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:
 - (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;
 - (B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or
 - (C) when authorized by a federal statute.

I. Personal Jurisdiction

► **Federal Courts: Rule 4(k)(2) FRCP (summons) regulating territorial limits of effective service**

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

- (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and
- (B) exercising jurisdiction is consistent with the United States Constitution and laws.

I. Personal Jurisdiction

- ▶ **Examples for Federal Long Arm Statutes without geographic boundaries of Federal Personal Jurisdiction.**
15 U.S.C.A. §§ 4 and 78aa.
 - ▶ actions under the antitrust laws
 - ▶ actions under federal securities laws

Chapter 3 Section 3 Subsection a.

**Traditional Standards for
Personal Jurisdiction**

I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The traditional Theory of Territoriality

▶ Pennoyer v. Neff, 95 U.S. 714 (1877)

strict rule of physical presence of

- ▶ the defendant (even travelling through the state)
- ▶ or property of the defendant

I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The Theory of Territoriality

▶ **in personam Jurisdiction**

based on physical presence (even if temporary) in the state

▶ **in rem Jurisdiction**

concerning ownership or title to goods within the borders of the state regardless of the residence of the defendant

▶ **quasi in rem Jurisdiction**

upon preexisting claims to defendant's goods within the state;
personal jurisdiction of state covers personal liability of the defendant to the extent of the value of the goods within the state

I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The Theory of Territoriality

► **quasi in rem Jurisdiction**

the problem of the location of intangibles and contingent obligations

Controversial ruling of the U.S.S.C. in *Harris v. Balk*, 198 U.S. 215 (1904):
debt resides with the debtor:

A debt „clings to and accompanies [the debtor] wherever he goes“.

Thus the creditor's claim can be attached once his debtor happens to enter the state, where the plaintiff, who is seeking relief against the creditor resides.

I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The Theory of Territoriality

► **quasi in rem Jurisdiction**

the problem of the location of intangibles and contingent obligations

Controversial ruling of the U.S.S.C. in *Harris v. Balk*, 198 U.S. 215 (1904):
debt resides with the debtor:

if the debtor contests, that the claim attached is owed to the defendant
creditor, quasi in rem jurisdiction is not obtainable, but merely in personam
jurisdiction

I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The Theory of Territoriality

► quasi in rem Jurisdiction

U.S.S.C. in Harris v. Balk, 198 U.S. 215 (1904)

A creditor to B

State A

B debtor to A
and creditor to C

C debtor to B

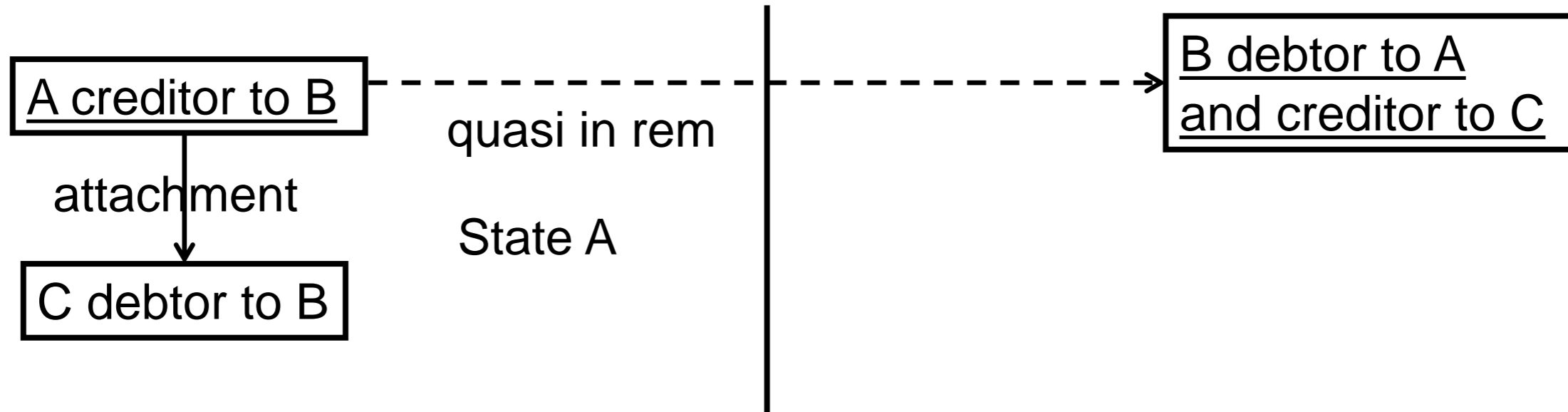
I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The Theory of Territoriality

► quasi in rem Jurisdiction

U.S.S.C. in *Harris v. Balk*, 198 U.S. 215 (1904)



I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The Theory of Territoriality

► quasi in rem Jurisdiction

even broader application of the Harris v. Balk Rule in Seider v. Roth, 269 N.Y.S.2d 99, 216 N.E.2d 312 (1966)

car accident in Vermont; two New York residents were insured; defendant was Canadian

attachment of auto liability insurance policy of Canadian car owner, because insurance company was doing business in New York

I. Personal Jurisdiction

3a. Traditional Standards for Assertion

Sovereignty: The Theory of Territoriality

▶ **Consent**

explicit

implied, i.e. notions of waiver

Hess v. Pawlowski, 274 U.S. 352 (1927):

personal injury case: driving on the highway of a state

impliedly constitutes consent to state jurisdiction once
a long arm statute has been enacted

Chapter 3 Section 3 Subsection b.

**Modern Standards for
Personal Jurisdiction**

I. Personal Jurisdiction

3b. Modern Standards for Assertion

Minimum Contacts – in Personam Jurisdiction

- ▶ **International Shoe v. Washington, 326 U.S. 310 (1945), USSC**
two prerequisites for personal jurisdiction
 - ▶ „minimum contacts“ with the forum state
 - ▶ traditional notions of „fair play and substantial justice“ not to be offended, forum is a fair one to the defendant, gives her/him full opportunity to be heard (due service of process)
- ▶ a multitude of USSC rulings has followed, advanced and developed the minimum contacts rule set forth in International Shoe

I. Personal Jurisdiction

3b. Modern Standards for Assertion

Minimum Contacts – in Personam Jurisdiction

▶ Refinements to International Shoe: **McGee v. International Life Insurance Company, 355 U.S. 220 (1957)**

▶ **requirement of purposeful act and foreseeability**

Texas insurance company reinsuring the life of a California resident, denying to serve the contract upon death; company never held any place of business in California; beneficiary obtained judgment upon California statute, Texas refused to enforce

▶ **USSC: contract which has substantial connection with the state's courts, will suffice for minimum contacts**

I. Personal Jurisdiction

3b. Modern Standards for Assertion

Minimum Contacts – in Personam Jurisdiction

- ▶ Refinements to International Shoe: **Worldwide Volkswagen Corporation v. Woodson, 444 U.S. 286 (1980)**

a case that shows the tool of minimum contacts as a means to fight too broad application of state long arm statutes

- ▶ **USSC: foreseeability is no sufficient benchmark for personal jurisdiction but merely the defendant's conduct and connection to the forum state**

I. Personal Jurisdiction

3b. Modern Standards for Assertion

Minimum Contacts – in Rem and Quasi in Rem Jurisdiction

▶ **Shaffer v. Heitner, 433 U.S. 186 (1977), USSC**

application of the minimum contacts rule to in rem and quasi in rem jurisdiction as well

- ▶ presence of property in the forum state but unrelated to the case will not in itself suffice for personal jurisdiction

I. Personal Jurisdiction

3b. Modern Standards for Assertion

Minimum Contacts – conclusions

- ▶ the three forms of personal jurisdiction developed under the theory of territoriality are all subject to the minimum contacts rule
- ▶ in cases, where real estate is involved, state statutes asserting jurisdiction are foreseeable jurisdiction
- ▶ in cases, where movable goods are involved, the mere presence of the goods will not suffice for reasons of jurisdiction even under a state long arm statute, but the case has to meet the minimum contacts rule
- ▶ minimum contacts rule implies the rule of reasonable service of process – due process of law

Chapter 4

**Service of Process
and Jurisdiction**

I. Service of Process

Service of Process – the Means of Asserting Jurisdiction

- ▶ **three forms of service of process**
 - ▶ **actual service:** in hand delivery of complaint and summons
 - ▶ **substituted service:** different state provisions to notify the defendant of the action without actual service
in federal cases Rule 4(e)(2)(B) and 4(d) (waiver) apply
 - ▶ **constructive service:** by publication
(only if other means are failing)
- ▶ **federal service of process** is governed by Rule 4(d), 4(e) and 4(f).
Rule 4(f) covers the cases of service outside the U.S.

I. Service of Process

Waiving Service of Summons – Rule 4(d)

- ▶ plaintiff notifies defendant of the commencement of the civil action
- ▶ plaintiff requests defendant to waive service of summons
- ▶ notification has to contain all the information necessary for defendant according to Rule 4(d)
- ▶ copy of complaint, two copies of a waiver form (with prepaid means for returning it)
- ▶ **Rule 4(d)** is an effort to avoid unnecessary expenses in attempts to serve the summons

I. Service of Process

Service of Process – Rule 4(e)

Rule 4(e) *Serving an Individual Within a Judicial District of the United States*. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;
 - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

I. Service of Process

Impermissible Use of Service

- ▶ if service is used to entice defendant into the forum state and
- ▶ the court's personal jurisdiction is transient jurisdiction, resting on the service in the state

or

- ▶ default judgment attacked by defendant: attack of judgment as well as of jurisdiction on the ground that latter was obtained by fraud

case may be dismissed.