

The Civil Lawsuit: In Personam Jurisdiction

A civil law suit is one in which the plaintiff sues the defendant for money. It is the opposite of a criminal action in which the state brings charges against the defendant, who may face jail time. This presentation will review one of the requirements of a civil lawsuit, In Personam Jurisdiction.

Civil vs. Criminal Law Suits

Civil

- Brought by **private plaintiff**
- Plaintiff sues for **money** because of an injury caused by the defendant
- The plaintiff must prove the case. Jury must be convinced by a preponderance of the evidence

Criminal

- Brought by the **state**
- The state seeks **punishment** because of an injury caused by the defendant
- The state must prove the case. Jury must be convinced beyond a reasonable doubt.

How does a Civil Law Suit Begin?

Before a Civil trial can begin you need to consider two things: 1. In Personam Jurisdiction and 2. Subject Matter Jurisdiction

In Personam Jurisdiction describes which state can hear the case. You must consider **Minimal Contacts** as well as **Service of Process**.

Subject Matter Jurisdiction describes which court in that state can hear the case. You must consider if state or federal courts can hear the case, as well as if there is **limited** or **general jurisdiction**.

How do you Obtain In Personam Jurisdiction?

To obtain In Personam Jurisdiction you must first have minimal contacts.

Minimal Contacts means that the state where you want to sue the defendant must have one of the following contacts with the defendant:

- The defendant is **physically present** in the state
- The defendant entered the state and committed a tort or entered into a contract (**The Long Arm Statute**)
- The defendant has a **home** in the state
- The defendant is a **corporation**

How do you Obtain In Personam Jurisdiction?

To obtain In Personam Jurisdiction you must also have service of process.

Service of Process means that you give the defendant notice of the lawsuit by actually serving the defendant with legal papers.

Service of Process

There are a number of ways to serve the defendant with legal papers. Here are four of the most common, beginning with personal delivery.

Personal delivery is the most common type of service. It involves delivering the summons and complaint directly to the defendant. In some states you can hire someone to serve process for a fee, in other states the sheriff delivers the papers.

The second method is known as substituted service of process.
This is sometimes also called leave and mail.

If the defendant cannot be located you can serve papers on a family member or business associate, such as the defendant's administrative assistant.

The third method is known as nail and mail.

If the defendant, family member, or associate cannot be located you can serve process by attaching the papers to the defendant's front door then mailing a copy to the defendant's home.

The fourth method is by registered agent.

This method is used if the defendant is a corporation. Corporations assign registered agents to receive service of process on behalf of the corporation.

Example of In Personam Jurisdiction

Imagine the defendant is a business from Ohio. This defendant went to New York and sold a vacuum cleaner to a student there.

The vacuum cleaner later exploded and caused serious injury to the student. At this point the defendant had returned to Ohio.

If the student wanted to sue the defendant for injuries sustained, **where could the lawsuit be heard?**

Example of In Personam Jurisdiction

- First, the student could sue the defendant where he/she is **physically present**, Ohio. ***Note** – In Personam Jurisdiction may not be obtained through fraud, or lying in order to get a defendant to physically enter a state with the intent of serving him/her with papers there.
- Second, the student could sue the defendant where he/she is a **domiciliary**, meaning he/she has a house in that state (not an apartment or rented room but a house.) In this case, also Ohio.
- Third, the student could sue the defendant where he/she committed a tort or entered into a contract. In this case, New York. **The Long Arm Statute** applies in this situation.

Minimal Contact when the Defendant is a Corporation

To understand the 4th type of Minimal Contact you must be familiar with the different types of corporations.

To start a corporation papers called the **Articles of Incorporation** must be filed. The state in which the papers are filed then grants the corporation a charter, making it an official corporate entity. All corporations are **Domesticated** in the state that grants the charter. Domesticated Corporations give permission to be sued in the state in which they incorporate.

A **foreign corporation** is a corporation domesticated in a state other than the one in which it is doing business.

Example of Minimal Contact when the Defendant is a Corporation

Suppose that you start a corporation in Virginia called Land's End. Because you filed Articles of Incorporation in Virginia and Virginia granted a charter, Land's End can be sued there.

Now imagine that Land's End wants sell it's product online to people in New York and Pennsylvania. Land's End would have to file papers in those state's too, as a foreign corporation. New York and Pennsylvania give Land's End permission to do business in their respective states and Land's End gives permission to be sued in those states.

Renegade Corporations & Alien Corporations

A renegade corporation is one that never files its papers in a state, this is an illegal corporation. An alien corporation is one that is incorporated in another country.

Suppose Land's End started doing business in Hawaii but never filed any paper there. It would be a **Renegade Corporation** in Hawaii.

Suppose a competitor to Land's End from Canada started doing business in Virginia, one of the states where Land's End operates. This Canadian corporation would be considered an **Alien Corporation** and must file papers in each U.S. state where it wants to do business.