

## Personal Jurisdiction

### Is the D present in the territory of court (NSW)?

Individual: subject to jurisdiction of forum where

- It is present within its territory at the time of service of the OP (*Gosper*), even if that presence is fleeting or transient (*HRH Maharanee*)
  - o Contra: The purpose for which the D is inside the territorial borders is irrelevant to the question of forum UNLESS the P tricked, fraudulently enticed or physically coerced the D inside the borders of the forum territory in order to have the D served (*Laurie v Carroll; Perrett v Robinson*).
- If a person leaves the jurisdiction before being served, they will not be amenable to the jurisdiction (*Laurie v Carroll*). BUT if they knew that the process was issued and they left to evade service, they will be regarded as within the jurisdiction of the court (*Laurie v Carroll; Joye v Sheahan*).  
Jurisdiction will be completed through substituted service.

### Was service good?

Personal service (UCPR):

- r 10.20: OP in SC, IRC, District Court and DDT must be personally served.
- r 10.21(1): Effected by leaving a copy of document with person. If they don't accept it, put at feet and tell them nature of document. If threat of violence, leave document near as practicable to the other person (r 10.21(2)), that will constitute personal service (r 10.21(3))

Substituted service (UCPR):

- r 10.14(1)(a): court can order if cannot be practicably served
- r 10.13(3A)(a): applicant must give affidavit of the person's whereabouts.

Corporation: If company is registered in NSW then it is present in the jurisdiction, however writ still needs to be served in accordance with court procedures.

- UCPR r 10.22: served on principal officer of corporation (i) or serve in a manner prescribed by law (ii) (*Corporations Act* or *SEPA*)
  - o CA s 109X(1)(i) leaving at or posting to co's registered office, (ii) delivering document personally to director who resides in Aus, (iii) liquidator
- NB: If company is another State
  - o SEPA s 15(1): initiating process can be issued in a State and served in another, by leaving at or sending to co's registered office (s 9(1)) or delivering copy to director (s 9(2)). **If SEPA applies, s 109X and s 601CX does not apply (s 9(9))**
- NB: If foreign company incorporated overseas and registered in Aus.
  - o CA s 601CD: Foreign company must register in Aus to carry on business. Service on registered foreign companies (s 601CX)
    - s 601CX: leaving at or posting to registered office of body (1)(i), or leaving it at, or posting to local agent of foreign company (1)(ii), if two or more directors live in Aus, personally serve them (3).

NB: CL applies if foreign company is incorporated overseas and not registered in Australia. Need to prove presence or has submitted to jurisdiction.

- A corporation is present within the jurisdiction where it carries on business at some fixed and definite place in the forum, and has been for a sufficiently substantial period (*National Commercial Bank v Wimborne*)
  - o Agent must have authority of corp to make contracts with persons in NSW binding on the corporation.
  - o Not established by showing that foreign co has appointed a solicitor to commence or defend legal proceedings.
  - o Consider: (i) name of corporation is displayed, (ii) whether it owns or leases the premises, (iii) whether it employs staff or staff is allocated to agent and it pays wages

**If D not present, have they nonetheless submitted to the jurisdiction?**

Express agreement:

- Parties may agree in express terms that a court has jurisdiction in disputes via a jurisdiction clause (*Dunbee v Gilman*).
- UCPR r 10.6: Any document may be served by one party in accordance with any agreement by which the party is bound.
  - o However, if the parties agreed on a mode of service different from the rules, then you can use those (*Howard v National Bank of New Zealand*)

Submission by instructing lawyers:

- UCPR r 10.13: person located overseas can instruct lawyers in Aus to accept service

Submission by entering an appearance:

- UCPR r 6.9: D can appear by filing notice of appearance.
- Cf UCPR r 12.11: D can set aside OP and making of this application is not submission (4).

Inconsistent conduct:

- D can submit through words or conduct of such a nature that it is clearly inconsistent with a challenge to jurisdiction (*National Commercial Bank v Wimborne*)
  - o Dispute as to merits of case is waiver of challenge of jurisdiction (*Verytzas*)
  - o Failure to object to jurisdiction when the possibility of cross-claim arises for not constitute waiver (*National Commercial Bank*). However, if cross-claim arises out of same subject matter as originally submitted, D will have submitted to causes of action in that cross-claim (*Marlborough Harbour*)

**If court does not possess CL jurisdiction, is there otherwise a statutory basis?**

New Zealand – TTPA

- s 9(1): OP in civil proceedings issued by an Aus court may be served in NZ. No need leave
- s 10: After being served in NZ under TTPA, D in civil proceeding can apply to court to stay proceedings on the basis that NZ court is more appropriate forum court.

Within Australia – SEPA

- s 15(1): initiating process can be issued in a State and served in another; but service must be effected in same way as place of issue (s 15(2) e.g. UCPR r 10.20)
- No need for leave to serve (*McEntee v Connor*) and no need for connection between cause of action and forum (*McEntee*)

- s 12: Effect of service will have same effect as if it were served in the forum
- s 18(1): An appearance entered after service of OP must state an address within Australia as address for service; without which service will not be effective (s 18(2))

**Outside Australia – using the long-arm provisions of court rules (John Pfeiffer)**

- UCPR r 11.1: part applies to NSWSC
  - o Not applicable to District Court (*Flo Rida v Mothership*) or DDT (*Studorp v Robinson*)
- UCPR r 11.4: OP may be served outside Aus without leave if under Sch 6 grounds.
- UCPR r 11.5: power of court to grant application for leave when not in Sch 6
- UCPR r 11.6: power to set aside service when (i) service not authorised by rules, (ii) court is an inappropriate forum, (iii) claim has insufficient prospects of success to warrant outsider.
- UCPR r 11.7: notice requirement to D informing of court's jurisdiction and Sch 6 ground(s)
- UCPR r 11.8AA: leave required to proceed if no appearance by D.

Contract (Schedule 6 (b), (c), (n))

- Contract broadly construed including:
  - o Claims for money had and received, judgment debts, obligations to pay sums certain
- Contract made in Australia (b)(i)
  - o Law of forum determines where K is made. Therefore, the last act to create the binding obligation must be in Australia i.e. communication of acceptance
  - o If method of acceptance is instantaneous, then where acceptance is received by offeror (*Showtime Touring*)

Where acceptance is to be posted, the place of acceptance is where it is posted.