

CHAPTER 3 The Jurisdictional Bases

Types of Jurisdiction

There are two basic types of jurisdiction—Jurisdiction over the Person or Res (thing) and Jurisdiction over the Subject Matter. However, there are other types of jurisdiction which, in a sense, are subsets of subject matter jurisdiction. This is because to have these other types of jurisdiction the court must have subject matter jurisdiction.

Before any discussion of either subject matter jurisdiction or personal jurisdiction may occur, we need to briefly discuss the basis of jurisdiction. We would not expect that a New York court could have jurisdiction over what occurs in Japan between and affecting only residents of that country. The first step in a claim is to determine if New York has the authority to assert jurisdiction over a particular claim. If the cause of action is triable in a New York court, that is sufficient to assert jurisdiction over the parties. If the defendant is domiciled in New York, then personal jurisdiction may be asserted no matter where that person is, using any of the authorized methods of gaining personal jurisdiction. If the defendant is not in New York and not a New York domiciliary that is another issue.

This issue will be discussed later under title “Long Arm Statute.”

Subject Matter Jurisdiction

Subject Matter Jurisdiction is the authority of a court to hear a particular type of case. This jurisdiction is bestowed on the particular court by the State's constitution or by statute. Subject Matter Jurisdiction may not be waived by the court, a party or anyone else. The only way subject matter jurisdiction may be changed is by a change in the enabling laws. In the event that a court renders a judgment and that court did not have subject matter jurisdiction, the judgement is void; it is as if the court had never heard the case. When a New York court would have subject matter jurisdiction, the rules as to service of process to gain personal jurisdiction will apply, as will be discussed in Chapter 10. [CPLR §3131]

Pages 24A and 24B are deleted.

Example: *(This is entirely fictional and is an exaggeration for this purpose only – it would never really happen.)*

A married couple have decided to divorce. Since they have already decided all of the issues, both decide that the divorce will be uncontested. Because of the time it takes, they seek out a Judge of the New York State Family Court to help them. Their reasoning is that it is a family matter, thus a Family Court judge should be able to help them. They find an attorney who, for the usual and customary fee, agrees to take the case. After much searching, the attorney finds a Clerk of Family Court in one of the counties who accepts the filing. The clerk finds a judge willing to review the submissions. The parties, their attorneys, the Clerk of the Court and the Judge have all agreed to help this couple find the relief they seek. The judge, after correctly finding that the plaintiff was entitled to the divorce, signs the judgment. The plaintiff's attorney enters the judgment and sees that a copy is served on the defendant's attorney. All are now happy.

Unfortunately, the couple are still married. This is because the Family Court lacks subject matter jurisdiction to hear the case. Divorces may only be granted by the New York State Supreme Court. Everyone involved has wasted their time, energy and money on a judgment that is void ab initio.

Questions of Subject Matter Jurisdiction are actually much more complex than the example given above. There have been cases where a matter has gone all the way to New York's highest court - The Court of Appeals - where a determination has been made that the trial court did not have the requisite subject matter jurisdiction to hear the case. Thus, the party's may have been required to start all over.

It should always be kept in mind that just because a court has subject matter jurisdiction does not mean it exercises that jurisdiction. Local practice and procedure must be consulted. As a matter of practice the N.Y.S. Supreme Court, outside of N.Y.C., only hears civil cases. Throughout the state the supreme court only hears civil matters which are over the jurisdictional amounts of lower courts in the county in which the action is being brought. For instance, a plaintiff might seek to bring a claim in the N.Y.S. Supreme Court which is actually less than \$25,000. The Supreme Court has the authority to transfer that claim to a lower court with subject matter jurisdiction over such a claim such as a county, town or village court or the N.Y.C. Civil Court, depending on the amount of the judgment being sought.

General Subject Matter Jurisdiction

General Jurisdiction means that a court has subject matter jurisdiction over a particular cause of action unless there is a law that says it does not. General Jurisdiction does NOT mean that the court with this type of subject matter jurisdiction can hear any type of case. For, if there is a valid law saying that it cannot hear a particular type of case, it cannot.

The *only* New York court with general jurisdiction is the New York State Supreme Court [NY Constitution Art. VI §7]. Thus, if there is no law stating which court has subject matter jurisdiction or if there is no valid law stating that the N.Y. Supreme Court specifically does not have jurisdiction over a particular type of case, the Supreme Court would have jurisdiction. In most instances, it would require an amendment to the N.Y. Constitution to deny subject matter jurisdiction to the supreme court. The state's constitution does give the Court of Claims exclusive jurisdiction in certain matters as discussed below.

Example 1: There is no statute specifically giving authority to any court to grant a divorce. Thus, only a court with general jurisdiction would have subject matter jurisdiction. Divorces may be granted by the N.Y.S. Supreme Court since it is the only court of general jurisdiction.

Example 2: There are statutes granting authority to the N.Y.S. Family Court and also N.Y.S. Surrogate's Court, under certain circumstances, to hear adoption cases. Thus, a court with general jurisdiction could also hear such a case because the law does not say it cannot. Thus, the N.Y.S. Supreme Court may also hear adoption cases.

Example 3: However, the New York State Constitution grants exclusive jurisdiction to the N.Y.S. Court of Claims to hear cases where the State of New York is to be a defendant. Federal law grants exclusive jurisdiction to the U.S. Bankruptcy Courts to hear bankruptcy cases. In both or these cases the court of general jurisdiction (N.Y.S. Supreme Court) is precluded from hearing such cases.

Limited Subject Matter Jurisdiction

Limited Jurisdiction means that a court has subject matter jurisdiction over a particular cause of action ONLY if there is a law specifically granting subject matter jurisdiction. If there is no law granting such authority to a court, any judgment rendered by that court is void.

With the sole exception of the N.Y.S. Supreme Court, all courts in New York, including the federal courts located in New York, are courts of limited jurisdiction. Of course, limited jurisdiction in the federal courts is not as a result of New York law, but it is because of the subject matter

jurisdiction granted to the individual federal courts under the laws of the United States.

Example 1: A married person seeks to get a judgment of divorce from N.Y.S. Family Court since the putative plaintiff and the spouse are a family. The court refuses to accept the case because there is no statute stating which court has jurisdiction over divorce cases. Family court is a court of limited jurisdiction and cannot hear a matter unless there is a law granting jurisdiction.

Example 2: A citizen of New York wishes to bring an action for money damages against the State of New York. The New York Constitution [Art. VI §9] grants exclusive authority to the Court of Claims to hear this type of action. The Court of Claims is a court of limited jurisdiction, but since there is a law granting authority for it to hear this particular type of action, it may hear the case and render a valid judgment. Since that authority gave the Court of Claims EXCLUSIVE jurisdiction, no other court (including the N.Y.S. Supreme Court) may hear the claim.

Example 3: A mother wishes to establish the paternity of a child's father. The N.Y.S. Constitution gives the N.Y.S. Family Court jurisdiction to determine paternity. [Art. VI §13-b5] However, it does not take away the general jurisdiction authority of the N.Y.S. Supreme Court to have concurrent jurisdiction in such a case.

Exclusive Subject Matter Jurisdiction

Exclusive Jurisdiction means that there is only one court that may hear a particular cause of action. This type of jurisdiction may be conferred by law or it may be because there is no law granting jurisdiction.

Example: There is no statute specifically giving jurisdiction over divorces. Thus, only a court with general jurisdiction, the N.Y.S. Supreme Court, may grant judgements of divorce. Thus, N.Y.S. Supreme Court has exclusive jurisdiction in actions for divorce.

Example: The N.Y.S. Constitution grants the N.Y.S. Court of Claims exclusive jurisdiction to hear claims against the state or most of its agencies. Thus, no other court, including the N.Y.S. Supreme Court, can hear such a case.

Concurrent Subject Matter Jurisdiction

Concurrent Jurisdiction means that more than one court has subject matter jurisdiction.

Example: A person seeking to adopt has a choice of bringing the action in the N.Y.S. Supreme, Family or Surrogate's Courts for a particular adoption case. Thus, these three courts have concurrent jurisdiction in this adoption case.

Original Subject Matter Jurisdiction

Original Jurisdiction refers to a court in which a particular cause of action may be commenced.

Example: Concurrent jurisdiction exists in NYC Civil Court, N.Y.S. Supreme Court or Erie County Court for an action for an unpaid debt, in the amount of \$19,000. Each of these courts may be a court of original jurisdiction for this action.

Specific Court Subject Matter Jurisdiction

Generally

The basis of jurisdictions of the various New York courts may be found first in the New York State Constitution, Article VI—Judiciary. Refinements of subject matter jurisdiction may be found in various other statutes such as the Judiciary Law, New York City Civil Court Act, the Surrogates Court Procedures Act, *et al.* The appellate courts have appellate jurisdiction. But, remember, some courts act as both courts of original jurisdiction and appellate courts (*e.g.*, the county courts in the 3rd and 4th Departments). The appellate courts with jurisdiction in more than one county are, in the main, strictly appellate courts. What follows is a limited version of the subject matter jurisdiction of the various courts. The statutes should be consulted.

N.Y.S. Court of Appeals

The Court of Appeals has jurisdiction to hear all appeals, from anywhere within the state, including criminal and civil cases. It is limited to the review of questions of law, except where the penalty is death or when an appellate division, in special proceedings makes new findings of fact [N.Y.S. Constitutional Article VI §3a]. However, before an appeal reaches it, the case is filtered through one or more of the intermediate appellate courts. The court of appeals has no original jurisdiction.

Appeals reach the Court of Appeals through various means. Most must first go to one of the appellate divisions. The exception is that sentences of death may be appealed to the Court of Appeals directly from the court of original jurisdiction. Just because there is an appeal, regardless of the merits, the court does not necessarily have to hear the case. The means of having an appeal heard are set out in §3 of Article VI:

1. **As or right. These are the circumstances in which the court must hear the appeal.**
2. **Certain judgments, determinations and orders of the supreme court, appellate divisions.**
3. **Other cases where the court certifies that it will hear the appeal.**

This court also rules on certain questions of New York law certified to it from the U.S. Supreme Court, the U.S. Courts of Appeals or the court of last resort in another state. This means that the court tells the certifying court how the NY law is to be interpreted.

N.Y.S. Supreme Court, Appellate Division

As we have already seen, the counties of New York have been divided into four departments. Each department has an intermediate appellate court referred to as the N.Y.S. Supreme Court, Appellate Division. The appellate divisions have authority to hear appeals from any of the courts of original jurisdiction in any of the counties within its department. There are rare circumstances where they may hear appeals from other departments. In the 1st and 2nd departments the appellate divisions have authorized the creation of another intermediate appellate court to hear certain appeals before they go to the appellate divisions. These lower intermediate appellate courts are the Appellate Terms of the Supreme Court. The appellate divisions have some original jurisdiction (e.g., admission and supervision of attorneys, certain Article 78 proceedings).

N.Y.S. Supreme Court, Appellate Term

The N.Y.S. Supreme Court, Appellate Term only currently exists in the 1st and 2nd Department. They have authority to hear appeals from those courts within their department which are not state wide courts. They also may not hear appeals in felony cases.

N.Y.S. Supreme Court

The supreme court has general original jurisdiction in civil and criminal cases. This does not mean that other courts do not have some jurisdiction in these areas. There may be concurrent jurisdiction with one or more other courts. It also does not mean that they will hear any case brought to them—even if they have jurisdiction. The purpose of having other courts with jurisdiction is to

relieve the supreme court from a case overload. N.Y.S. Supreme Court is ONE court with statewide jurisdiction with a branch in each county. If any of its branches has subject matter jurisdiction, they all do. As noted earlier, it may transfer cases down to courts with jurisdiction, but the lower court cannot transfer up. The Supreme Court may also transfer cases back to itself from the inferior trial courts under certain circumstances.

N.Y.S. Court of Claims

The N.Y.S. Court of Claims is a court of state-wide exclusive jurisdiction mainly to hear claims against the state, a state agency or an employee of the state acting within that employee's official duties, in which damages are sought. It also may hear claims by the state against a defendant. [N.Y.S. Constitution Art. VI - §9 and the Court of Claims Act Art. 2 §9] In actions in which the state is a plaintiff, the state may have the matter heard in the Court of Claims or any court which would otherwise have jurisdiction over the subject matter. If there is a counterclaim for damages however, it will not be allowed and a new action for the subject matter of the counterclaim would have to be brought in the Court of Claims.

There is one Court of Claims, but it is divided into districts where the various judges and clerks have offices for administrative convenience. However, its official venue is the city of Albany.

Because of its exclusive jurisdiction and the doctrine of sovereign immunity, the procedure followed in the other state courts will not necessarily hold in this court. Some of this court's procedure is governed by the Court of Claims Act, although mostly it follows the CPLR. In this court there is no right to a jury trial; all cases are bench trials, usually heard by one judge. However, the assigned judge may determine that the matter should be heard by up to three judges, in which case two must agree on the judgment.

This court, although having its exclusive jurisdiction, is also a court of limited jurisdiction which could result in some anomalies. For instance, if there is a co-defendant who is not a state agency or employee of the state being sued in their official capacity, the case may have to be split

and the case against the co-defendant heard in another court. In addition, if the state is the plaintiff in other than the court of claims, a claimant with a counter claim against the state cannot bring the action in that court. This may result in opposite results.

There is one Court of Claims, but it is divided into districts where the various judges and clerks have offices for administrative convenience. However, its official venue is the city of Albany.

N.Y.S. Surrogate's Court

The N.Y.S. Surrogate's Court mainly exercises jurisdiction over all actions and proceedings relating to the affairs of persons who have died. It also has jurisdiction over adoptions. It is a court of statewide jurisdiction, with a court in each county.

N.Y.S. Family Court

N.Y.S. Family Court has jurisdiction over matters relating to the family, such as adoptions, family offenses, juvenile delinquency, support, paternity, etc. An important exception is that it has no jurisdiction to issue a judgment for separation, divorce or annulment. It is a court of statewide jurisdiction, with a court in each county.

New York City Civil and Criminal Courts

New York City Civil and Criminal Courts are unique to New York City. In this course, we would mainly be concerned with the civil court.

The N.Y.C. Civil Court may hear specific types of actions arising within New York City, including certain matters relating to real estate. Its jurisdictional amount for recovery of property and money is up to \$25,000 although its jurisdiction on a counterclaim for money only is unlimited. It also has jurisdiction over landlord-tenant matters. It also has a small claims part with jurisdiction up to \$5,000.

Criminal court is limited to non-felony crimes and the initial arraignments for all crimes for which an indictment has not yet issued.

County Courts

One in each county outside of New York City. In the 2nd Department, they are strictly trial courts. In the 3rd and 4th Departments, they serve as trial courts and intermediate appellate courts. They may have jurisdiction over crimes and specific types of actions involving realty in the county and certain civil matters up to \$25,000 where the parties meet residency requirements and other matters.

District Courts

Although any county outside of New York City may have a district court, only Nassau and Suffolk have them and it only covers a portion of Suffolk county. Its jurisdiction somewhat parallels the jurisdiction of the NYC Civil and Criminal courts. Their monetary jurisdictional maximum is \$15,000.

Town, Village and City Courts

The Town, Village and City courts are referred to as Justice Courts. The main enabling statute is the Uniform Justice Court Act. These courts exist in various localities throughout the state, except New York City. Their subject matter jurisdiction varies, depending on local law. However, their jurisdiction may not exceed that of the District Courts. Judges in the Town and Village Courts need not be attorneys, but are required to receive training to certify them to their positions as Judge.

A Note About Subject Matter Jurisdiction

Even though a court may have subject matter jurisdiction over a particular cause of action, that does not mean it will actually hear the case. Local practice determines where the case may actually be brought. Some examples:

Outside of New York City, the supreme court will only hear civil cases, leaving criminal matters to the county court for felonies and other criminal matters to the county, town or village courts, as appropriate.

In New York City, the supreme court handles both civil cases and felony criminal cases. Civil actions of \$25,000 or less will not be heard by the supreme court because the New York City Civil Court is available for such cases. Non-felony criminal cases, misdemeanors and violations, in New York City are usually heard in New York City Criminal Court.

The supreme court has the authority to transfer cases to other statewide or local courts. This is to promote the efficient use of the court system. If a case is commenced in the supreme court that should not have been commenced there, because there is another court with subject matter jurisdiction, the supreme court will transfer the case to such court. The transfer may also occur where the supreme court makes a determination that a case with a claim for a monetary limit within its jurisdiction is actually claiming more than the actual value of the case (and that value is within the jurisdiction of another court). Even if the lower court's judgment ends up being in an amount higher than that lower court's jurisdiction, the judgment is still valid. The only restriction is that the lower court may not award more than what was originally claimed.

The foregoing does not mean that the supreme court must relinquish a case brought to it that could be heard in another court (where concurrent jurisdiction exists). The case may be retained by the supreme court.

There are also processes whereby cases commenced in a lower court may be transferred up to the supreme court where the lower court lacked subject matter jurisdiction. These generally involve a motion made to the supreme court to have the case transferred from the lower court to itself.

Jurisdiction Over the Person or Res

Once a court has subject matter jurisdiction, it now needs personal jurisdiction. If the court does not have subject matter jurisdiction, any discussion of personal jurisdiction is moot. If there is a basis for jurisdiction, in most instances, the "long arm" jurisdiction that a statewide court may have can reach out beyond the geographical boundaries of the state to assert personal jurisdiction over a party. This long arm jurisdiction may also be exercised by the inferior trial courts to allow them, with varying limitations, to reach out beyond their local geographical and political boundaries.

Personal Jurisdiction

Personal Jurisdiction is the authority of the court to compel a party to comply with the court's mandate or determination. You may sometimes hear personal jurisdiction referred to as *in personam* jurisdiction. In order for a New York court to have personal jurisdiction over a party, there are specific requirements. The first is that the court have subject matter jurisdiction over the particular type of case which the party bringing the action wishes for the court to hear.

The federal constitution speaks of something called "Due Process." [U.S. Constitution Amendments V and XIV] The 5th Amendment states, in relevant part, "No person...shall be...deprived of life, liberty or property, without due process of law." The 14th Amendment, adopted after the Civil War, specifically extends this requirement to the states.

What is this thing called due process. The courts have interpreted it in any number of ways in a number of cases. However, simply put, it requires that government cannot use its authority to require that a person do or not do something unless NOTICE is provided that such an action is being contemplated. Then, government must afford that party with an OPPORTUNITY TO BE HEARD. Notice refers

to a process by which the party finds out that the government or someone using a governmental institution (here, we are referring to the courts) is seeking to require that something be done or not be done. Opportunity to be heard means that a neutral forum is provided where the parties can present their arguments and evidence and have that neutral person or body make a decision as to which of the parties prevail.

There are specific methods which must be used in order to acquire personal jurisdiction. In New York these methods are set out in the state's statutes. If personal jurisdiction is attempted by methods other than what a relevant statute allows, there is no notice and the attempt to gain personal jurisdiction is not valid. The ways in which personal jurisdiction is acquired will be discussed later in this text when we discuss service of process.

Personal jurisdiction belongs to the person. This means it is waivable. That is, a party can give up their right to be properly and legally notified about the action or give up their right to be heard, or both. When a person has a parking ticket attached to their car for illegal parking—that is notice. When the driver elects to just pay the fine, he is waiving the right to present a defense.

Example 1: The Plaintiff tells the defendant during a chance meeting about a suit P has brought against D [this is not lawful notice]. D tells the court that they do not care about the improper service and they want the case to proceed. The defendant has waived the right to proper notice.

Example 2: The Plaintiff has the defendant served with the papers used to commence an action. The defendant chooses not to appear. The defendant then may be subject to a default judgment, meaning the plaintiff may win without the court hearing the defendant's side of what happened. The

defendant had the *opportunity*, but chose to waive the right be heard.

Jurisdiction over the Res

In conjunction with, or sometimes instead of, Personal Jurisdiction is jurisdiction over the *res*, meaning "thing." This jurisdiction may be *In Rem* or *Quasi in Rem* jurisdiction.

In Rem jurisdiction is when the actual "thing" in dispute is within the jurisdiction of the court. The court may determine the rights of the party in regard to the *res*.

Example: A painting is found in an attic belonging to D. P sees the painting hanging on D's wall and claims that it belongs to her. The court may take control of the painting until it can determine to whom the painting rightfully belongs.

Quasi in Rem jurisdiction is when property owned by the defendant, who cannot be served, is within the state. That property may be seized (levied upon) and may then be used to satisfy a judgment up to the limit of the value of the property. There are some very strict constitutional constraints on using this type of power.

Example: D has lost a debt case to P and has a final \$100,000 judgment. D refuses to pay the debt. P may have D's bank account, which has a balance of \$150,000, levied upon before trial. The court may then authorize execution against the account in order to satisfy the judgment. Once the judgment has been satisfied, the remainder is available to D.

In either *in rem* or *quasi in rem* jurisdiction, only the property in question may be used to satisfy the judgment. That property or its value may be insufficient to make the plaintiff whole.

Because of the long arm jurisdiction of the various courts as discussed at the beginning of this chapter, using *in rem* jurisdiction is pretty much unnecessary and, thus, is seldom useful.

Access to Federal Court

Although this text is designed to focus on New York Civil Practice, when discussing subject matter jurisdiction some attention should be devoted to the subject matter jurisdiction of the Federal Courts.

Federal jurisdiction may be asserted in the following situations:

1. Matters arising under federal law: Where there are federal questions involving any type of federal law, including the U.S. Constitution, federal statutes, executive orders and rules and regulations of administrative agencies, the matter would be heard in the federal court of original jurisdiction. Some examples are matters involving civil rights, federal tax laws and rules of the Internal Revenue. Note that there are some matters arising under federal law where law grants subject matter jurisdiction to the state courts as well as the federal courts.
2. Diversity Jurisdiction: Diversity of citizenship exists where there is a lawsuit, arising under state law, between litigants who are from different states. In addition to diversity, there is a requirement regarding the jurisdictional amount. This is called

the amount in controversy and it must exceed \$75,000.

3. Supplemental jurisdiction: When litigants have both federal and state issues, the federal court may entertain both issues in the interest of efficiency especially if they stem for a common issue and are substantially related to each other.

Let's look at an example of cases involving diversity: Bunny lives in Richmond Virginia and is a resident there. Virginia is considered her domicile. This is her home, she works in Richmond, votes there and does all of her business there. She brings a lawsuit against Marion, who resides in New York. The lawsuit seeks \$100,000. Although a Virginia or a New York court might have jurisdiction, the plaintiff may bring the action in federal court. Or, if the plaintiff brings the action in a state court, the defendant has the right to remove the action to the appropriate federal district court.

The rule further requires complete diversity. Let us consider situations where there is more than one plaintiff or defendant. In this situation, all parties must reside in different states.

For example, Plaintiffs Joanne and Phillip reside in New York and Pennsylvania, respectively. They bring a lawsuit against Trina, Donald and Yolanda, who reside in New Jersey, Wyoming and Kansas. Here each party is domiciled in a different state. Hence we have complete diversity. Assuming they meet the jurisdictional amount, the lawsuit may be heard in a federal court.

However, using the example immediately above, if Donald lives in New York, the federal court would not have jurisdiction because of the lack of complete diversity between him and Joanne.

Did You Get It?

1. There is a law which grants jurisdiction to the N.Y.C. Civil Court to hear a certain cause of action with a monetary amount up to \$25,000. Does any other court have subject matter jurisdiction? Why?
2. In one of the counties, the Supreme Court, as a matter of local practice, does not hear matters with a value of less than \$25,000. Where might a plaintiff bring this action?
3. The plaintiff and the defendant had contracted to have any claim one might have against the other heard in the New York City Civil Court. Plaintiff is bringing an action against D for \$25,735 on the contract. May NYC Civil Court render a valid judgment in this case for the amount specified? Why?
4. Does N.Y.S. Supreme Court in New York County (1st Dept.) have subject matter jurisdiction over a cause of action which arose in Orleans County (4th Dept.) where both parties live in Orleans County and the Orleans County Supreme Court has jurisdiction? Why did you give that answer?
5. Does the Supreme Court, Appellate Division, 4th Department, have appellate jurisdiction over an appeal from the Bronx County Court (1st Department)? Why did you give that answer?
6. Does the Nassau County Court have appellate jurisdiction over a trial held in White Plains (Westchester County) City Court? Why? If you answered NO, to which court would the appeal be taken?