Lawsuits alleging violations of international human rights must satisfy the standard personal jurisdiction requirements for a federal civil lawsuit. Beyond this threshold issue, determining who can be sued triggers complicated liability issues, some of which are still hotly contested. The simplest human rights cases follow the *Filártiga* model: a lawsuit against the torturer, a former government official. But many cases involve one or more variations on this model: non-state perpetrators, who may or may not act in coordination with state actors; commanding officers, or civilian leaders charged with responsibility for abuses committed by their subordinates; or defendants sued because they assisted the direct perpetrator in some way—a corporation that funds security forces who torture civilians, for example, or a military officer who helps select which prisoners will be killed.

Some of these issues are clearly resolved by the language of one or more of the statutes authorizing human rights litigation. The Torture Victim Protection Act (TVPA), for instance, applies only to abuses committed under “color of law, of any foreign nation.” The “state sponsors of terrorism” exception to the Foreign Sovereign Immunities Act (FSIA) only applies to states or state employees acting within their employment. Issues particular to each of these statutory grounds for litigation are discussed in prior chapters.

The most difficult debates arise in cases filed under the Alien Tort Statute (ATS). Cases decided prior to the Supreme Court’s decision in *Sosa v. Alvarez-Machain* held private actors liable in appropriate circumstances, as well as commanding officers, conspirators, and those who aid and abet abuses. The key question today is whether anything in *Sosa* undermines these pre-*Sosa* precedents. The Supreme Court did not directly address any of these issues. However, many defendants have argued that both the Court’s cautious tone and

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1 *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).
its admonition to avoid extending the reach of the ATS require narrow interpretations of the liability doctrines. They also assert that liability cannot be based on any doctrine that is not itself widely accepted and clearly defined as a part of international law. Plaintiffs counter that the Court’s recognition of a federal common law cause of action in ATS cases instructs the lower courts to apply standard common law doctrines such as aiding and abetting and conspiracy liability. Moreover, plaintiffs assert that each of these doctrines is well grounded in both traditional and modern international law norms.\footnote{This debate parallels that surrounding many post-\textit{Sosa} issues; it may be helpful at this point to review Chapters 1-3.} As discussed in Section B of this chapter, the post-\textit{Sosa} circuit court decisions side with plaintiffs on these debates, but decisions from the district courts have been mixed.

After a brief discussion of personal jurisdiction in Section A, this chapter addresses three key liability issues. Section B.1 discusses the pre- and post-\textit{Sosa} case law governing when private actors can be held liable for human rights violations. Section B.2 analyzes the standards for holding higher officials liable for the violations committed by their subordinates.

The final section of the chapter, Section B.3, addresses various doctrines according to which defendants can be held liable for violations directly perpetrated by others, including conspiracy, aiding and abetting, and various common law tort theories. Although these doctrines are often referred to as imposing indirect or secondary liability, neither the cases nor the commentators are consistent in using these labels. Some commentators, for example, consider aiding and abetting a form of direct liability, because it imposes liability for the defendant’s own actions, facilitating human rights violations committed by others. We have used the term direct liability in the more traditional sense, however, to refer to claims that defendants or their employees (in the case of a corporation) have themselves committed the underlying acts constituting the human rights violation. Indirect liability refers to claims that the defendant is liable for human rights violations when the acts were committed by others, whether because of assistance offered to the direct perpetrator, conspiracy, or another connection to the underlying abuses. We distinguish each of these from vicarious liability, which holds a defendant liable for the actions of others based solely on their legal relationship (e.g., employer/employee or principal/agent).