Personal Jurisdiction In State Court

- in personam – PJ over person

- in rem – PJ over property (suit concerns who owns property and is binding on everyone in the world)

- quasi in rem – PJ over property – two types

 - suit is unrelated to property

 - suit concerns who owns property and is binding on only named parties

When must presence of person or property in state occur?

- state court – commencement of the suit is sometimes at service

- federal court – commencement occurs at filing in federal court

- in personam jurisd is generally determined by presence of the defendant at time of service (including substituted service, like publication)

- (blog Q): would it be enough for the D to be present at the time of filing, even if he was not in the state at the time of service?

- no case examples – we do not know

Attachment –

- In *Pennoyer* SCt held that property must be attached at the beginning of the suit

- courts typically ignored this rule

- They thought it was enough that the property is identified at the beginning of the lawsuit

- identification of property at the beginning of the suit is pragmatically a good idea – it would be bad to begin a suit without knowing whether there is property to create PJ

- Green: but is it really a constitutional requirement to identify the property? Here too, we are not really sure what the SCt would say now

What is attachment?
- So Δ cannot sell the property – concern exists that the Δ might try and sell or move the property out of the state

 - Property attached so if Π does win they will be able to get relief

Attachment is a form of preliminary relief –provided to the P to make sure that if he wins he will be able to get the relief he requested

- Another form of preliminary relief is a preliminary injunction - eg to stop a merger

 - If P sues to stop the merger permanently, P will generally ask for a preliminary injunction to stop it temporarily

 - if the merger were allowed to continue during the litigation, the P could not really get his relief even if he won – the companies would be merged, and tearing them apart would be impossible

* It makes sense to not demand attachment for there to be quasi in rem, since attachment is a form of preliminary relief that is needed only if it looks like the D will sell or spirit away his assets during the litigation.

Domicile – not accepted as a source of in personam PJ under the common law

- but came to be accepted during the Pennoyer regime, even when D was temporarily out of the state

- theory standing behind it is more *Int. Shoe* than *Pennoyer*

- obligation to the sovereign requires a Δ to return to the state for litigation

Consent

- Δ can create PJ – can consent explicitly or by waiving PJ

- ex.’s - failing to mention at beginning of litigation; consenting at the

time of the litigation; or consent prior to litigation (contract, internet website) to choice of forum clause (also common for there to be a choice of law clause)

 - Sometimes consent to PJ provisions in contracts are not enforced

PJ over corporations

- First hypothetical – a corporation is not a physical body and so cannot be tagged the way a human being can

 - serving CEO in state is not enough to create in personam PJ over the corporation.

 - it is enough for notice to corp though – *Mullane*, rule 4(h), no problem w/service

What does it mean for the corporation to be present?

Problem: *Pennoyer* does not allow for states to reach out and drag people or corporations back. More of a problem as the country grew and people began to move more often.

Examples of how states tried overcome this problem within the Pennoyer framework

(1) states would rely upon legal fictions – they would pass statutes saying that the corporation, to do business in the state, must appoint a state official as an agent for service of process—an avatar of the corporation—so the corporation could be served in the state in a way that would create in personam PJ

-states required the corporation to establish an agent for service; sufficient for PJ.

 - would then satisfy *Mullane* by mailing notice to corp

(2) implied appointment – states sometimes would pass statutes saying that doing business was itself the implied appointment of an agent for service of process in the state

- individuals – *Hess* – by virtue of driving in Mass. we will consider that to be the appointment of an official in the state as the individual’s agent for service of process.

But there were limits to the use of this legal fiction:

- states cannot regulate/restrict *interstate* commerce and so it was though that they could not condition the corp’s engaging in interstate commerce in the state upon the appointment an agent for service of process

- furthermore individuals had a right under the privileges and immunities clause to freely travel and to business in a state – so state could not condition an individual’s traveling and doing business upon the appt. of an agent for service of process

- so how was the statute in Hess upheld?

- Reason: cars are inherently dangerous and therefore the state should be allowed to prohibit someone from driving

- since they could prohibit it, they could condition driving upon the appointment of an agent for service of process

Second hypo

Another method of getting in personam PJ over a corporation under the Pennoyer framework

- traditionally a corporation not present, except where it is incorporated.

- but a theory of corporate “presence” in the state was created

- certain level of activity to determine where a corporation is.

- theory of corporate presence-a sufficient level of contact-where a corporation had PJ under *Pennoyer*

 - not the same as citizenship for diversity, more expansive

 - problem was companies with ephemeral contact; corporation does not have sufficient current contacts

 - if the corporation did not have an implied agent they couldn’t be dragged back

 - because a Π couldn’t drag a corporation back, quasi in rem actions were more common.

- Third hypo – suit in OR for a COA in NV,

- Once you have the corporation present in the forum state you can sue them for any COA, no matter where it occurred.

- presence of corporations and people treated the same under *Pennoyer*

*International Shoe v. Washington*

- State of WA attempted to collect unemployment taxes not paid by International Shoe. Suit brought in Washington.

- Method of service – personal (salesman) and registered mail to HQ in Missouri.

- In hand service to CEO would not have satisfied PJ.

- Corporations are all about contacts – “fictional being”

- The SCt described the D as appearing “specially” – not what normally defines a special appearance – WA allowed International Shoe to argue both the merits + PJ

Objections/Defenses Raised by International Shoe other than the PJ defense

(1) Service

 - Δ argued service on salesman not proper & had no agent in the state

 - Court rejects - registered mail satisfied *Mullane*.

(2) Not an employer in the meaning of the WA statute that requires unemployment taxes

- Failure to state a claim defense

- Not addressed directly by the Court

(3) Due Process violation

- Δ argued that state was infringing upon the employees due process right to contract with corporation

- Rejected by the Court

(4) Interstate commerce

- Δ argued that WA statute was acting as a burden on interstate commerce

- Congress already decided these taxes were permissible

- Rejected by the Court.

PJ defense

International Shoe Contacts – would it have been sufficient under *Pennoyer*?

- Salesmen (eleven to thirteen within the state)

- Salesman would occasionally rent permanent sample rooms in business buildings or rooms in hotels for exhibiting samples

- Given that sales activities continued at the time of the lawsuit probably **would have been sufficient under *Pennoyer*.**

 **-** it also helped, although probably not necessary, that the COA concerned the corporation’s actions that were on going

- Current presence, in this case – no need to drag the corporate defendant back

- SC created a rule that was more important for cases in the future, than in the current case –

Key Phrases from *International Shoe*

- “fair play and substantial justice” takes into consideration past acts. SC wanted to re-characterize the law to be able to drag Δ back to the state for past actions.

- “estimate of the inconveniences” – is it burdensome for the corporation to go to the forum state?

- unclear just how important this factor is – can there be PJ over a corp in a state if it is convenient for the corp to go there even if the corp has never had contacts with the state?

Theory of obligation to forum state in Int’l Shoe

- Corp D reaches out to state getting protection of its laws

- creates reciprocal obligation to return for actions related to those activities in state

- Responding to a suit brought to enforce the activities can hardly be said to create an undue burden.

Four categories of PJ

- 3 categories same under *Pennoyer* (presence)

(1) Activities continuous and systematic activities + give rise to the COA = PJ OK

(2) Casual presence, isolated activity + activity unconnected with the COA = No PJ

(3) Substantial and continuous activity, activity unconnected with cause of action = PJ OK

1 category different and new

(4) Single or occasional acts, isolated activity + activity related to cause of action = PJ OK

- New concept of why State has power over a corporation: quid pro quo idea that the corporation is enjoying benefits of the State by conducting activities there and that privilege may give rise to obligations

- Different from *Pennoyer* – state can now drag Δ back for past acts in

the state

Two Themes:

(1) How far can you go under *International Shoe*?

- *International Shoe* both expanded and threatened PJ under *Pennoyer.*

- Degrees of relatedness: some of what Δ did in forum state relates to COA, some does not.

- COA does not relate to actions Δ committed in forum state, still might be related b/c type of product related in suit could be same product Δ ships to forum state.

(2) Are the old theories under *Pennoyer* still good?

- Tagging still okay

- Vast amount of cases are easy to determine PJ under Int’l Shoe: (1) individual goes to a state, does something wrong, and must return (2) corporation is so present it cannot deny PJ

- The cases we will study lie somewhere in the middle and are therefore more challenging