Lect 12

Puzzle

* When jurisdictional facts overlap with merits
* Eg fraudulent joinder, St. Paul Mercury standard
* Can’t get to the merits of the case to resolve jurisdiction, since you can get to the merits only if you have jurisdiction
* So a standard more generous to the plaintiff is used
  + For example, for fraudulent joinder, the question is not whether the plaintiff fails to state a claim against the diversity destroying defendant, but as the court puts it in Rose, that there is “no possibility that the plaintiff can establish a valid cause of action under state law against the non-diverse defendant.”
  + Sometimes a court concludes that a plaintiff fails to state a claim after difficult legal reasoning, where reasonable minds might differ. This would not be an appropriate case to conclude that there was fraudulent joinder.

St. Paul Mercury standard – if a plaintiff is invoking diversity jurisdiction in federal Court, the plaintiff has a burden of showing that the amount in controversy is met. But the standard is relatively easy for the plaintiff to satisfy:

- “It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.”

What about the amount in controversy when a defendant removes? What does the defendant have to show?

* P (NY) brings an action against D (NJ) in NY state court for loss of his hand in a car accident
* P asks for $70k
* May D remove?

This question has been answered by the Clarification Act of 2011

1446(c)(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that-  
(A) the notice of removal may assert the amount in controversy if the initial pleading seeks--   
(i) nonmonetary relief; or   
(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and   
(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

So D can remove if the practice in state court allows the plaintiff to get more than the amount requested, and D can show by a preponderance of the evidence that the amount in controversy is more than $75,000.

Green: the preponderance of the evidence standard is a bit odd, because often the amount in controversy is determined on the basis of the pleadings, without looking at any evidence

Green: it is also odd that it should be more difficult for a defendant to remove to Federal Court that it is for the plaintiff to sue in Federal Court originally ready

1) P (NY) brings $50,000 breach of contract claim together with an unrelated $50,000 battery claim against D (NJ). Diversity case?

- YES – can aggregate, even if actions are unrelated

2) P and D had an agreement for P to do work for D for $50,000. P does the work but D doesn't pay. In P's (NY) complaint against D (NJ), P asks for $50,000 under a theory of breach of contract. Alternatively - if it is found that there is no contract - he asks for $40,000 in quantuum meruit (the fair market value of the labor he performed).  Diversity case?

- NO aggregation possible, because it is not possible for the plaintiff to receive both forms of relief at the same time

3) P1 (NY) and P2 (NY) join to bring battery actions against D (NJ) concerning a brawl in which all three were involved. Each asks for $50,000 in damages. Diversity case?

- NO – coplaintiffs may not aggregate their actions against a defendant in order to get above the jurisdictional minimum

Same thing is true of a plaintiff against codefendants

Does this makes sense?

* imagine that out of state D is seeking to remove case
  + As far as the D is concerned, if there is state court prejudice against him, he will suffer to the tune of $100,000. So why shouldn’t he be able to remove?

NOTE: We will discuss later the following scenario, in which one co-P is above the jurisdictional minimum but another is not - eg

P1 (NY) and P2 (NY) join to bring battery actions against D (NJ) concerning a brawl in which all three were involved. P1 asks for $80,000 in damages and P2 for $50,000.

In this case there is supplemental jurisdiction for P2 under Allapattah

Ignore this for now

To repeat-

Aggregation is possible only concerning an individual plaintiff’s claims against the individual defendant

With the following exception...

Someone has died. The two children of the decedent (P1 and P2) are the distributees of his estate -- that is, they have a right to inherit. P1 and P2 bring an action against the executor of the estate (D), who, they allege, has absconded with $80,000. $40,000 of that should go to P1 and $40,000 to P2. Under an exception to the nonaggregation rule, announced in Shields v Thomas, 58 U.S. (17 How.) 3 (1855), P1 and P2 may aggregate their claims against D to meet the jurisdictional minimum.  What is unusual about their claims against D that would make aggregation possible here?

* they must get the relief together
* if one gets it the other does too
* compare P1 and P2 suing D for battery, P1 might get relief but not P2
* Aggregation is possible in such cases, under the theory that the plaintiffs are asserting a common and undivided right

P1 and P2 are suing D. (P1 and P2 each have property adjoining D's.) P1 and P2 ask the court to enjoin D from polluting their property by shutting down his rendering plant. Assume that the cost to D in lost revenue if he shuts down the plant is $70,000. The value of an injunction to each of the plaintiffs is $50,000. Is the amount in controversy satisfied for diversity?

Two questions: how do you determine the amount in controversy for injunctions? There is a disagreement among the federal circuits concerning this issue. One approach is to look to the cost to the defendant of abiding by the injunction, if the question is whether the defendant can remove the case to federal court, and to look to the value of the injunction to the plaintiff if the question is whether the plaintiff can sue originally in federal court. Another approach is to look only to the value to the plaintiff for both cases in which the plaintiff sues originally in federal court and the defendant removes. A third is to look to the value to the plaintiff or the cost to the defendant, whichever is greater, in both cases.

Second question: Assume the plaintiffs are suing originally in federal court. Can we aggregate the values of the injunction for each plaintiff to get above the jurisdictional minimum? Possibly, if the injunctive relief is understood as a common and undivided right, because the injunctive relief must be provided to both plaintiffs if it is provided to any one plaintiff.

NOTE: that is not always true of injunctive relief. Sometimes an injunction can be tailored to benefit only one plaintiff.

PERSONAL JURISD IN STATE COURT

D is brought beforestate Ct

- does that ct have power over the defendant?

* **mutual limitation of sovereignty by states creates restrictions on personal jurisdiction over defendants**

Distinguish PJ from choice of law

P and D are New Yorkers who get in a brawl in New York  
- D is in Oregon on business trip  
- P sues D in Oregon state court  
- D is served in Oregon with summons and complaint

* In this case the Oregon State court has personal jurisdiction over the defendant, but it would be impermissible for the court to apply Oregon law
* From PJ it does not follow that forum law can be used

distinguish PJ from SMJ

* SMJ is about whether an entire case can be entertained anywhere in the federal court system
* PJ is about whether a sovereign (for our current purposes a state sovereign) has power over an individual defendant

distinguish PJ from service/notice

P and D are New Yorkers who get in a brawl in New York  
- D is in Oregon on business trip  
- P sues D in Oregon state court  
- D is served in New York with summons and complaint

* Here service is adequate, in the sense that the Mullane standard is satisfied
* But the Oregon court has no personal jurisdiction over the defendant

- P and D are New Yorkers who get in a brawl in New York  
- P sues D in New York state court  
- P serves D by taking the summons and complaint and flushing it down the toilet

- here the New York State court has personal jurisdiction over the defendant (for a number of reasons, including the fact that the defendant is domiciled in New York)

- but service is inadequate, because the Mullane standard has not been satisfied

Pennoyer v Neff (US 1878)

We won’t read Pennoyer

* very complicated case, but I will briefly describe it
* first case:
* Mitchell v. Neff  
  - Mitchell sues Neff for unpaid legal services in Oregon state court  
  - Neff has moved to Cal.  
  - the alleged source of PJ over Neff is his Oregon property  
  - service was by a publication that had practically no circulation outside Oregon  
  - Neff defaults  
  - the Ore. State court attaches the land and sells it in payment of the debt to...Mitchell himself  
  - Mitchell sells it to Pennoyer

Next case:

Neff v. Pennoyer  
- Neff finds out, sues Pennoyer in ejectment in federal court in Ore.  
- diversity case  
- Pennoyer claims it is his, because it was Mitchell’s, who got it pursuant to the enforcement of a valid Ore. State ct judgment  
- so Neff is collateral attacking the validity of the judgment in Mitchell v. Neff  
- was there PJ?  
- federal trial court says no, Pennoyer appeals  
- US SCt affirms (for different reasons)

The most important part of the case is actually dicta

* Justice Field says that going forward, questions of personal jurisdiction in state court will be governed by the due process clause of the 14th A.  
  - but not in the present case, because the 14th A. had not been ratified when Mitchell v. Neff occurred  
  - the question must therefore be answered according to international law on the recognition of foreign judgments (as interpreted by federal courts)

Far less important is the particular reason why the Supreme Court concluded that there was no personal jurisdiction over Neff in the case of Mitchell v. Neff, despite the fact that Neff had property within the state of Oregon.  
- the problem, Field claimed, was that the property was not *attached* at the outset of the suit  
- the requirement has subsequently been abandoned, provided that the property is *identified* at the outset, e.g.:

- Mitchell sues Neff in state court in Oregon  
- the source of PJ is property Neff has in Oregon, identified at the initiation of the lawsuit  
- it does not look like Neff is at risk of selling is property to escape jurisdiction, so the court refrains from attaching the property

- in this case, there is personal jurisdiction on the basis of property in the Oregon State court

Thus we need to distinguish PJ from forms of preliminary relief

Preliminary relief is relief that the court provides to the plaintiff before having determined the merits of the case, in order to ensure that if the plaintiff succeeds relief will be available

* For example, if it looks as if the defendant will sell his property during the course of the lawsuit, the court might attach the property in order to prohibit the defendant from selling it. This ensures that, if the plaintiff’s law suit succeeds, he will be able to get relief.
* But because preliminary relief puts a burden on the defendant even though the plaintiff has not won his case, courts do not provide it lightly

Another form a preliminary relief is a preliminary injunction

- P sues the D Corp. to prohibit its merger with the X Corp.  
- If the merger continues during the litigation, it will be practically impossible for the D and X Corps to be pulled apart again  
- P therefore asks for a *preliminary injunction* against the merger during the litigation

- in determining whether a preliminary injunction is appropriate a court takes into account the plaintiff’s likelihood of success on the merits, the burden that the preliminary injunction will impose upon the defendant, and the extent to which the plaintiff will be unable to get final relief without the preliminary injunction in place

effect of limits on PJ being read into the 14th Amendment, which is the important conclusion in Pennoyer

- P sues D in Oregon state court.   
- D has no connection with Oregon, but Oregon law allows the assertion of PJ over D.   
- D defaults.   
- P then sues on the default judgment *in Oregon state court*.   
  
Pre-Pennoyer: D has no grounds for challenging the judgment that could be entertained by the US SCt.  
Post-Pennoyer: D can challenge the judgment as a violation of the Due Process Clause of the 14th Amendment and appeal to the US SCt.

- international law’s restrictions on personal jurisdiction is being read into the due process clause

why due process? – will discuss next time

The *Pennoyer* Framework

* Notice that this is not the only way that one can argue for personal jurisdiction now. State courts’ power to assert personal jurisdiction over defendants has been expanded by *International Shoe* (US 1945). In addition, some of the Pennoyer framework is no longer good law (we will discuss which parts later)
* Nevertheless, learning the Pennoyer framework is important, because even now it is probably the case that certain forms of personal jurisdiction can be justified only by the Pennoyer framework, not by International Shoe
* So understanding Pennoyer is important for understanding current personal jurisdiction law
* Pennoyer regime is territorial – jealous sovereigns
* In determining whether a state court has personal jurisdiction over a defendant under the Pennoyer framework, one looks to whether the defendant or his property is within the borders of the state ***at the initiation of the lawsuit***
* It does not matter whether the person or property of the defendant was within the borders of the state earlier
* Green goes to West Virginia, kills 10 people, and then returns to Virginia
* The families of the people he killed seek to sue him for wrongful death
* There is no personal jurisdiction over Green in West Virginia under the Pennoyer framework
* There is PJ only in Virginia, where he can be tagged

Three types of PJ under the Pennoyer framework

* The following is how these terms have been traditionally used, and how they are used in the Field book:
* *in personam* – PJ due to presence of D at initiation of suit (NOT at time of event being adjudicated)
* *in rem* – source of PJ is presence of D’s property at initiation of suit
  + suit concerns ownership of property (e.g. quiet title action)
  + binding upon all possible claimants
* *quasi in rem-* source of PJ is D’s property in state at initiation of suit and  
  two types:  
  1) suit does not concern ownership of property
  + although if P wins, D’s property may be used to execute judgment

2) suit concerns ownership of property (e.g. quiet title action), BUT binding only on certain named parties, not on whole world

NOTE: sometimes these days the second type of quasi in rem action will be called in rem instead

Challenging a court that lacks PJ over you

Can attack directly – that is, you go before the court itself that is wrongly asserting PG and

- motion to dismiss for lack of PJ  
 - or, if the court has already issued a judgment, you can go before it and make a motion to set aside judgment

BUT if you defaulted, you can also *collaterally attack* the judgment if its validity comes up in proceedings on a different court system

Assume a state court has personal jurisdiction over a defendant and issues a judgment

Why does a sister state court have a duty to respect the judgment?

Consider the matter in an international scenario

D, a US national residing in NY, is sued by P in an Iranian court concerning a brawl that D got into with P in NY. D is tagged while in Iran on a brief trip. D defaults and a monetary judgment is issued against D. P then sues upon the judgment in New York state court.

* Despite the fact that the Iranian Court had personal jurisdiction, the New York State court has no *constitutional* duty to respect the judgment. Whether it does so is a matter of comity and international relations

But things are different within the United States itself

D, a citizen and resident of NY, is sued by P, a citizen and resident of CA, **in California state court** concerning a brawl that D got into with P in NY. D is tagged while in CA on a brief trip. D defaults and a monetary judgment is issued against D. P then sues upon the judgment in **state court in NY**.

The New York State court has a constitutional obligation to respect the California State court judgment, under the full faith and credit clause of the Constitution

Art IV, § 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

D, a citizen and resident of NY, is sued by P, a citizen and resident of CA, in **California state court** concerning a brawl that D got into with P in NY. D is tagged while in CA on a brief trip. D defaults and a monetary judgment is issued against D. P then sues upon the judgment **in federal court in NY**.

As it turns out, federal courts have no constitutional obligation to respect state court judgments. The full faith and credit clause of the Constitution does not apply to federal courts. Nevertheless, Congress has enacted a statute (the full faith and credit statute) putting a full faith and credit obligation upon federal courts. Note however that this is a statutory obligation that can be rescinded by Congress. We will later discuss a case in which Congress did just that (the Schiavo case)

28 U.S.C. § 1738. - State and Territorial statutes and judicial proceedings; full faith and credit   
...   
The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

D, a citizen and resident of NY, is sued by P, a citizen and resident of CA, in **federal court in California** concerning a brawl that D got into with P in NY. D is tagged while in CA on a brief trip. D defaults and a monetary judgment is issued against D. P then sues upon the judgment in **state court in NY**.

Here neither the full faith and credit clause of the constitution nor the full faith and credit statute applies. Nevertheless, it is unquestioned that state courts have a constitutional obligation to respect valid federal judgments. There are various theories about why this is so. The most common theory is that it follows from the Supremacy Clause of the United States Constitution.

Art. VI  
  
This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.