Lect 13

* PJ over a D in state court – 14th A
* What about PJ over a D in federal court?
  + The constitutional question is about the 5th Amendment  
    - contact between D and United States as a whole
    - P sues D, a citizen of New York, in federal court in Alaska concerning a brawl the two got into in New York. D is served in New York and has never been to Alaska.  
      As a constitutional matter, there is PJ.
  + Constitutional question of PJ generally arises as a problem only when a fed ct seeks to assert PJ over a foreigner abroad
  + BUT FRCP 4(k) makes it largely the case that a fed ct can assert PJ over a D only if a state ct could – will discuss in detail later
  + So constitutional inquiry under 14th A is relevant to fed ct too
* Pennoyer v. Neff read the international law on PJ into the due process clause of the 14th A
* But why is this a question of due process? Due process is a right of the D, whereas int’l law seems to be about the relationship between sovereigns
* right of defendant not to have life, liberty, or property taken by an entity that has no sovereign power over her, even if that entity is fair in other respects
* Anne Wallice wishes to sue Mariel Echemendia for $10,000 concerning a brawl the two got into in Virginia.  
  - She approaches Michael Green, who agrees, without Mariel’s consent, to act as the adjudicator.  
  - Green will conduct the trial exactly as a Virginia state court would.  
  - Mariel defaults and Green takes $10,000 of her property and gives it to Anne.
* This is a violation of due process, because MG has no adjudicative power over Mariel

OK – but what is the particular theory of PJ?

NOTE: this is the framework in place at the time of Pennoyer. This framework will be expanded (allowing state courts more PJ power) through Int’l Shoe. In addition, some of the Pennoyer framework is no longer constitutional. BUT there is (in Green’s opinion) some PJ power that state courts currently have that can be justified only through the Pennoyer framework, not through Int’l Shoe. So you need to know Pennoyer to know the current reading of the 14th Amendment on PJ.

Pennoyer regime is territorial – jealous sovereigns grapping what is in their borders at the initiation of the suit and not allowing other sovereigns to reach within their borders

* *in personam* – source of PJ is presence of D at initiation of suit (NOT at time of event being adjudicated)
* *in rem* – source of PJ is presence of property at initiation of suit  
  suit concerns ownership of property (e.g. quiet title action)  
  binding upon all possible claimants
* *quasi in rem*   
  two types:  
  1) source of PJ is D’s property in state at initiation of suit, but 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
  + Sometimes this one is called “in rem” instead

Examples of Pennoyer in action

* 1) Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred in Oregon while he was a resident of Oregon
* Service of the summons and complaint are delivered to Neff in hand in California
* Is there PJ?
* No – no person or property in Ore. at beginning of suit
* Fact that cause of action arose in Oregon does not matter
* 2) Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred in Oregon while he was a resident of Oregon
* There is in-hand service of the summons and complaint upon Neff while he is in Oregon on a brief business trip

OK – in personam

* Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred to Mitchell in California – Neff was never an Oregon resident
* There is in-hand service of the summons and complaint upon Neff while he is in Oregon on a brief business trip

OK – in personam

In Personam Jurisdiction

§ 78. Individual Voluntarily Within The State  
  
A state can exercise through its courts jurisdiction over an individual voluntarily within its territory whether he is permanently or only temporarily there.

This is true even for causes of action that have no connection with the forum state

* Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court in order to quiet Pennoyer’s title to the property in Oregon that each claims he owns.
* Service on Neff is in-hand in California

- OK? Yes – quasi in rem (of the second type)

§ 101. Jurisdiction Over Land  
  
A state can exercise through its courts jurisdiction over land situated within the territory of the state, although a person owning or claiming an interest in the land is not personally subject to the jurisdiction of the state.

Pennoyer, an Oregon resident, brings a suit to quiet title to Oregon property that he claims he owns. He brings an action in Oregon state court that he hopes will bind everyone in the world.

- OK - this is an in rem action

- Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court for breach of a contract Neff entered into to sell Pennoyer property in California   
- Pennoyer gave Neff the money but Neff has not given Pennoyer the property  
- Pennoyer asks for an injunction ordering Neff to transfer title to Pennoyer  
- Service is in hand on Neff in Oregon.

- this is an in personam action even though it is about property – the source of PJ is Neff’s presence in state  
- injunctions must be based on in personam PJ

Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court for breach of a contract Neff entered into to sell Pennoyer property in California   
- Pennoyer gave Neff the money but Neff has not given Pennoyer the property  
- Pennoyer the court to transfer title to Pennoyer  
- Service is in hand on Neff in Oregon.

* No PJ
* Only the court of the state where the property is located can change title
* All a state with in personam jurisdiction can do is enjoin a person to change title

Mitchell brings an action against Neff in Oregon state court concerning $253.14 in legal fees. Neff resides in California. The Oregon state court attaches property owned by Neff worth $300 at the beginning of the suit.

* PJ - quasi in rem (of the first type)

Mitchell brings an action against Neff in Oregon state court concerning $253.14 in legal fees.  
The personal jurisdictional basis for the suit is $200 property in Oregon owned by Neff.   
Neff defaults.   
The property is sold and the money given to Mitchell.   
Mitchell then brings a suit *on the Oregon judgment* in California state court to recover the remaining $53.14.   
Service on Neff is in-hand on California.   
What result?

There was only $200 of jurisdiction over Neff in Oregon. That is the limit of its adjudicative power. There is no valid judgment to sue upon in Cal.

Mitchell brings an action against Neff in Oregon state court concerning $253.14 in legal fees.  
The personal jurisdictional basis for the suit is $200 property in Oregon owned by Neff.   
Neff defaults.   
The property is sold and the money given to Mitchell.   
Mitchell then brings a suit in California state court to recover the remaining $53.14.  
The suit is not to enforce the Oregon judgment but is a new suit on the merits.  
Is Mitchell claim precluded?

* No – generally he can sue for the remaining amount because the judgment was limited to $200. The remaining $53 is unlitigated

Tagging

Mitchell lures Neff to Oregon with a story that Neff has won a contest.

While he is in Oregon, Neff is served for a suit brought by Mitchell in Oregon state court concerning unpaid lawyers fees. Neff chooses to default.

Under Oregon law, someone can be submitted to personal jurisdiction on the basis of tagging in the state even when the tagging is the result of fraudulent inducement.

Mitchell then brings a suit in California state court to execute the Oregon judgment.

Under California law someone cannot be submitted to personal jurisdiction on the basis of tagging in the state when the tagging is the result of fraudulent inducement.

Neff argues that the earlier Oregon judgment is void.

What result?

* First –Full Faith and Credit: The recognizing jurisdiction must give the judgment the *same preclusive effect* it would have in the rendering jurisdiction’s courts.  
  a California court must give the Oregon judgment the same preclusive effect it would have in Oregon state court.
* so because there was PJ under Oregon law the judgment is valid, unless Oregon law is unconstitutional

BUT under Pennoyer framework it is constitutional - In general it satisfies due process to serve a person in a state, through fraud

But states generally choose not to use their power to assert PJ

NOT what about someone dragged into state

* unclear whether there is power under Pennoyer framework, but Green thinks there probably is
* despite the fact that states don’t assert this power
* note about reading – I gave you the First Restatement to read – this suggests that there is no PJ over those forced to be in state

§ 78. Individual **Voluntarily** Within The State  
A state can exercise through its courts jurisdiction over an individual voluntarily within its territory whether he is permanently or only temporarily there.

* But the First Restatement articulates what at the time was the common law on PJ in the states – that is what the states generally did not
  + It isn’t an articulation of the constitutional restrictions

**Litigation Activities in the State**

Mitchell sues Neff in Oregon state court. Neff has no connection to the state but does not want to default.

He appears solely for the purpose of challenging personal jurisdiction. May the Oregon court nevertheless take Neff's presence (including through his lawyer) to be consent to in personam jurisdiction?

Yes –approved by SCt in York v Texas

BUT now states do not assert this power

Some allow special appearances

* in which a D may appear to argue lack of PJ without creating PJ in so arguing
* but special appearances require that D not bring up the merits

Mitchell sues Neff in Oregon state court.

Neff has no connection to the state but does not want to default.

He appears for the purpose of challenging personal jurisdiction but also adds the defense of failure to state a claim.

What result? Under special appearance approach, there is PJ, because D brought up the merits

In federal court and some state courts the approach is even more generous

* D can appear to bring up lack of PJ as a defense and can join it with defenses on the merits

Mitchell brings an action against Neff in Oregon state court concerning $253.14 in legal fees. The personal jurisdictional basis for the suit is $200 property in Oregon owned by Neff. The Oregon state court attaches the property at the beginning of the suit. Neff appears, but solely to litigate liability up to the value of the property attached. May the Oregon court nevertheless take Neff's presence (including through his lawyer) to be consent to in personam jurisdiction?

- Yes

- does this mean that Oregon does not allow special appearances – NO, could still allow a D to appear to claim the court has no PJ power, but here the court clearly does have some power

BUT – some states allow **limited** appearances

* You appear in a quasi in rem action but to litigate up to the value of the property

Mitchell has Neff tagged in Oregon while he is there for a business trip.

Mitchell’s suit is in Oregon state court and concerns unpaid lawyers fees.

Neff appears to litigate the merits.

While Neff is there Pennoyer has him served in connection with another unrelated suit, brought in Oregon state court, concerning a brawl in California.

Neff chooses to default. Under Oregon law, someone can be submitted to personal jurisdiction on the basis of tagging in the state even when in the state for litigation.

Pennoyer then brings a suit in California state court to execute the Oregon judgment.

Under California law someone is immune from service (in other words, cannot be submitted to personal jurisdiction) while in the state for litigation activities.

Neff argues that the earlier Oregon judgment is void.

What result?

* Under Full Faith and Credit, use Oregon law, unless unconstitutional
* But it is constitutional under Pennoyer framework
* Still some states allow immunity from PJ while a D is in the state to litigate
* Most common with respect to witnesses