Lect 14

* Pennoyer framework

Notice that PJ is unrelated to the cause of action

- if there is PJ it exists for any cause of action

- we will call this general jurisdiction

* Theory is one of jealous sovereigns – grabbing what is in their borders

But even before Int’l Shoe there was a move to a less territorial theory of PJ

**Domicile**

Neff is domiciled in Oregon, but is on an extended trip in California.

Mitchell sues Neff in Oregon state court.

He has Neff served in California.

Neff defaults.

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

What result?

There is a question about whether PJ is allowed under Oregon law – but there is no const’l problem

Domicile was recognized pre-Int’l Shoe as a const’l basis for PJ

* Here idea is closer to Int’l Shoe theory though
* Not that forum state can grab the D but that the D willing associated with the forum state, carrying with it a duty to appear before its courts

What about residence?

Neff is domiciled in California, but is spending the summer residing in Oregon.
- Mitchell sues Neff in Oregon state court for unpaid lawyers fees incurred in Alaska.
- He has Neff served in California, while he was there for a brief trip home.
- Neff defaults.
- Mitchell then brings a suit in California state court to execute the Oregon judgment.
- Neff collaterally attacks the judgment.
- What result?

* not much case law but some cts have held there is PJ

**PJ over Corporations under Pennoyer framework**

- The D Corp., incorporated in California, sells a product in Oregon, which harms P
- P seeks to sue the D Corp
- Is there PJ if the CEO was tagged in Oregon?

- OK for notice under Mullane

- BUT NO PJ

There is a general problem of in personam PJ over corps., which is that it is not clear what it means for a corp to be present within the forum state

- to some extent a legal fiction was used to solve this problem:

- the D Corp., incorporated in California, wishes to sell a product in Oregon
- to do so, Oregon requires the D Corp. to appoint the Sect. of State of Oregon as its agent for service of process
- the D Corp. does
- P is harmed by a D Corp. product and sues the D Corp in Oregon state court, serving the Sect. of State of Oregon
- is there PJ?

Cts held yes

Notice that there is a problem of notice under Mullane, but that’s different from PJ

- the D Corp., incorporated in California, wishes to sell a product in Oregon
- Oregon takes selling products in Oregon to constitute appointment of the Sect. of State of Oregon as its agent for service of process
- P is harmed by a D Corp. product and sues the D Corp in Oregon state court, serving the Sect. of State of Oregon
- is there PJ?

Here too PJ was found to exist

* the question was how far you could go with this legal fiction

* for individuals the problem was that under the Privileges and Immunities Clause of Art VI, Individuals have a right to travel and do business in other states
* Art IV § 2:

 The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

* Since state could not forbid them from doing those things, it could not condition their doing them on the appt. of an agent for service of process

There was also a problem of conditioning a corporation’s doing *interstate* (as opposed to intrastate) business in the state upon the appointment of an agent for service of process, because the state could not prohibit the corp from doing interstate business without violating the dormant commerce clause

Another theory of corporate in personam PJ arose pre-Int’l Shoe…

The Neff Corp. is incorporated and has its principal place of business in California. But it does substantial business in Oregon, selling close to 3 million pairs of shoes a year. It has not appointed an agent for service of process, nor does Oregon have a statute claiming that by doing business in the state an agent for service is impliedly appointed. Mitchell sues Neff for breach of contract (the shoes he bought in the state fell apart). Is there PJ under a Pennoyer theory?

yes *present* in state

same as above, except Mitchell’s cause of action concerns shoes he bought in Nevada, wore in Nevada and fell apart in Nevada.

yes present in state – there was general PJ

- But notice that never could simply tag *employee*, even CEO – needed contacts for the corporate presence (or the state statute creating an agent for service of process)

The greatest problem with the Pennoyer framework (both with respect to individuals and corps) is the need to get PJ over a D as a result of D’s *past* activities

The fiction of an agent for service of process could do that to some extent, but, as we have seen, it was limited in its scope

* watershed in Int’l Shoe

**Int’l Shoe**

PP

State of Wash. sues Int’l Shoe - order of assessment for unemployment compensation taxes

method of service?

- personally served upon salesman in Wash and notice mailed to St. Louis

- Int’l Shoe appeared before office of unemployment

 - moved to set aside order on ground that

 - service was improper

 - was not a Wash. corp. (so no PJ)

 - was not doing business in state (so no PJ)

 - had no agent for service in state upon which service could be made (so no PJ)

 - and was not employer owing taxes (failed to state a claim under state tax statute)

 - also argued that Wash. statute was

 - in violation of commerce clause

 - and due process clause (cannot be taxed because for present in state)

- denied, commission affirms, state cts affirm incl. state SCt

- SCt granted cert and affirms

1) Start with attacks on merits

 - not employer within meaning of statute? (SCt ignores this state law question)

 - violation of commerce clause? (rejected: federal statute allows states to collect such employment taxes)

 - violation of due process (SCt rejects without much argument)

what about service?

- upholds basically under something like Mullane standard (Mullane was decided later)

We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's 'presence' there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonable assurance that the notice will be actual. Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit.

Real issue is PJ

What were Int’l Shoe’s activities in Washington?

 - 13 sales agents there

 - solicited orders, but transmitted them to to corp, which sealed deal

 - rented rooms for displays

 - no office

Would there be PJ over Int’l Shoe under a Pennoyer theory of corporate presence?

Arguably

But SCt recharacterizes the grounds for state court power in terms of minimum contacts and “fair play and substantial justice”

Historically, the jurisdiction of courts to render judgment *in personam* is grounded on their *de facto* power over the defendant's person. Hence, his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. *Pennoyer v. Neff,* [**95 U.S. 714**](http://www.law.cornell.edu/supct-cgi/get-us-cite/95/714), 733. But now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires only that, in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

To say that the corporation is so far "present" there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms "present" or "presence" are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. L. Hand, J., in *Hutchinson v. Chase & Gilbert,* 45 F.2d 139, 141. Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An "estimate of the inconveniences" which would result to the corporation from a trial away from its "home" or principal place of business is relevant in this connection. (p. 504)

* notice this consideration of “reasonableness”
including convenience, e.g. burden on D of going to forum state
* this is yet another element in the mix that we will discuss later – BUT even under Int’l Shoe, it is not enough to create power on its own – e.g.
* The D Corp. has its headquarters in Camden, New Jersey, a few miles from the state court in Pennsylvania.
It has no contacts with Pa. but it would be very convenient for the D Corp. to litigate there.
Is there PJ of the D Corp. in Pa. state court?
* NO

But in addition to reasonableness, there is a new theory of *power* in Int’l Shoe

But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue

we now have a conception of PJ tied to activities at time of cause of action that gives rise to reciprocal duties to answer for activities later even if no longer present

 - will subsequently be applied to individuals

Does this distinction (past v present) really matter for this case?

* No – Int’l Shoe is still present in Wash.

SCt recharacterizes past cases on PJ under Pennoyer on the basis of minimal contacts theory

**‘Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.**

**While it has been held in cases on which appellant relies that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. Finally, although the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit.** True, some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction. **(521-22)**

* Activities are continuous and systematic & give rise to liabilities sued upon
	+ Personal Jurisdiction
* Casual presence, single isolated activities & suit unconnected with activities in state
	+ No Personal Jurisdiction
* Substantial continuous activity & suit concerns activities entirely distinct from those in the state
	+ Personal Jurisdiction
* Single or occasional acts had nature and quality making corporation amenable to suit; suit is related to cause of action
	+ Personal Jurisdiction
	+ Here the SCt ignores traditional theory concerning appt of agent for service of process – it was such an appointment that allowed courts to find PJ under Pennoyer regime

1) continuous and systematic & giving rise to liabilities sued upon

 - example?

 - General Motors (which has constinuous and systematic activities in Michigan) sued in Michigan about pollution it created in Michigan

2) casual presence, single isolated activities - suit unconnected with activities in state

 - no PJ

 - example

 - General Motors sends a single truck to Missouri, where the driver is tagged and GM is sued in Missouri state court for pollution it created in Michigan

3) substantial continuous activity - suit concerning activities entirely distinct from those in the state

 PJ

Example? GM sends a single truck to Missouri, where the driver hurts someone. GM is sued in *Michigan* concerning the Missouri accident

This is general jurisdiction – can be sued in Michigan on any cause of action

4) single or occasional acts had nature and quality making corp amenable to suit

 GM sends a single truck to Missouri, where the driver hurts someone. GM is sued in *Missouri* concerning the Missouri accident

This is specific jurisdiction

PJ only for specific causes of action

Notice that in connection with specific jurisdiction the court has now allowed the defendant to be subject to PJ for acts that he engaged in in the forum state in the PAST

something in between specific and general…?

Green’s term: category jurisdiction:

PJ for a *category* *of* (not all) causes of action, even when nothing about the transaction giving rise to the cause of action occurred in the forum state

Keep open question of whether category jurisd. Is allowed

BLACK’S OPINION

1. Dislikes vague standard tied to natural justice being read into the due process clause

NOTE: General PJ over individuals is relatively easy even after Int’l Shoe

Present domicile (and probably residence) in forum state

Tagging in forum state

Property in forum state

First two create general in personam PJ