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

**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

P(NY) sues D(Germany) in federal court in NY under German law concerning a brawl they got into in Germany.
P asks for $80,000 in damages.
The source of PJ is $50,000 in a bank account D has in NYC.
Is there SMJ under 1332(a)?

Fed cts are conflicted (does not come up much anymore)

* Could say amt in controversy is not satisfied because the court has adjudicative power only up to $50,000
* On the other hand, perhaps limited appearances are not allowed in federal court…? If the D appears the whole amt can be litigated?
* (in fact federal courts look to state courts on the issue)

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.

* Asserting PJ 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

**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