Lect 5

**Int’l Shoe**

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 continuous 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

What is most important in Int’l Shoe is the creation of a new theory of PJ

quid pro quo, not about being able to grab what is in forum state

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

Court also mentions *reasonableness* of PJ on the basis of inconvenience etc. We shall examine the role of this idea later – it does not consider how the D has reached out to the forum state, but only the extent to which it is burdensome on the D to go to the forum state, burdensome on the P to go to the D’s home, where the witnesses are etc.

To repeat:

*specific jurisdiction*
pj in state only for specific causes of action
the activities in state giving rise to pj include those giving rise to the cause of action

under Pennoyer framework at least in theory there was only *general* PJ:
pj in state for any cause of action, no matter where it arises

Green questions whether there might be something in between:

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

General in personam PJ over Corps

Perkins v. Benguet Consolidated Mining

- Perkins sued Phillipine corp in Oh for dividends claimed to be due to her as a shareholder of Benguet

- motion to quash service was granted and aff’d by state appellate courts

- attack on service? No – on PJ

 What were the activities supporting jurisd?

 - president maintained office, had 2 secretaries, bank accounts, director’s meetings, payroll

Why isn’t this a specific jurisd. case?

The activities giving rise to the cause of action (the failure to pay dividends) did not occur in Ohio

Why discussion of PJ being **required**?

 - even if PJ was permissible, the state court might at its discretion still dismiss, since this was an example of an out-of-state P suing and out-of-state D about something that occurred out of state

Perkins argued that the state court was required to take the case

- SCt concluded it was not required, although asserting PJ was permissible

Why permissible?

Court uses both the language of “continuous and systematic” and “substantial and continuous”

“The corporation has been carrying on in Ohio a continuous and systematic, but limited, part of its general business.”

“Thus he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company.”

“It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to permit Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio.”

Not a very hard case – the bulk of what little activities the corp engaged in were in Ohio

Helicopteros – not helpful because there was obviously no general PJ

* + Failed specific PJ case
	+ US Ps trying to get PJ over a Columbian corp in Texas state ct for wrongful death
	+ Helicopter accident in Peru
	+ A few things having to do with accident occurred in Texas
		- Training (but not action against trainer)
		- Helicopter bought there (but not accident against manufacturer or seller)
		- A bit of financial activities
	+ Really absurd that Columbian D could be sued on any cause of action in Texas on the basis of these activities

Goodyear Dunlap Tires (Just decided in June 2011) – Ginsburg’s opinion

Bus accident outside Paris

* Two NC boys killed
* Defective tires
* Sued parent – Goodyear USA (Ohio corp)
	+ It did not challenge PJ
* 3 subs
	+ Organized and operating in Turkey, France, Luxembourg
	+ For simplicity’s sake just speak of Turkey one
* Why not specific PJ?
	+ Bus accident in France
	+ Tires manufactured, bought and failed outside NC
	+ Why not enough that NCians harmed?
	+ Not something that the Turkish D did
* So need general PJ

Why not say general PJ over subs through general PJ over parent (Goodyear USA)?

* We will talk about this later in connection with Daimler

Setting aside parent, was there general PJ over Goodyear Turkey due to its activities directed toward NC?

Substantial and continuous under Int’l Shoe?

- not registered to do business in NC

* No employees bank accounts etc.
* No manufactering ads in NC
* Don’t they do business by selling products in NC?
* What are levels of tires making it in into NC through intermediaries?
* Tens of thousands of tires
* Out of tens of millions
* SCt - Not enough

test

“For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”

* not enough to be at home

BUT the court seems to consider only general PJ

What about category PJ

Ex Parte Newco Mfg, 481 So.2d 867 (Ala. 1985)

Ala P (but was Tenn at time of accident) brings wrongful death action against Newco (Mo D) manufacturer of thimble clamps for grist blast machine

Manufactured in MD

sold in MD

caused accident in Tenn

still Ala SCt held sale of other thimble clamps in Ala are enough for “general” PJ

We agree with Newco that, because the allegedly defective clamps were not sold in Alabama and because the decedent's fatal accident did not occur in Alabama, the instant lawsuit does not relate to or arise from Newco's contacts with Alabama; therefore, Newco is not subject to “specific” jurisdiction in Alabama. We must determine, then, whether sufficient contacts exist between Alabama and Newco so that due process is not offended in subjecting Newco to Alabama's “general” jurisdiction. In other words, the nature of the contacts between the forum state and the party over whom jurisdiction is sought must be examined to determine whether those contacts constitute continuous and systematic general business contacts which would support a reasonable exercise of jurisdiction by the forum state.

We find that Newco engages in that continuous and systematic course of conduct in Alabama, albeit through an independent manufacturer's representative or the telephone and mail services, that will support a reasonable exercise of jurisdiction by the courts of Alabama. Newco's annual sales in Alabama during the period of January 1979 to December 1984 ranged from $65,000 to $85,000, with a total of 2,000 transactions. Newco's contacts with Alabama are deliberate rather than fortuitous and, therefore, it was reasonably foreseeable that Newco, in purposefully doing business in Alabama, would at some point both need the protection and invoke the jurisdiction of the courts of Alabama. Newco avails itself of the privilege of making sales (and profits) in Alabama in a continuous and systematic course of merchandising. For the privilege of conducting such activities, Newco must bear the burden commensurate with the benefits received from its sales in Alabama.

NOTE: this was probably a case of category, not general, jurisdiction: Not likely that Ala SCt thought Newco could be submitted to PJ in Ala for any cause of action, only causes of action concerning thimble clamps

* Any distinction between Newco and Goodyear?
* greater volume of sales in forum state in Newco? Greater percentage of corp’s sales in forum state?
* Same type of item that caused the accident was sold in the forum state in Newco – not so in Goodyear?