**2017-09-06 In Class Notes**

* Attempts to argue for federal question jurisdiction vs. failure to state a claim
	+ **Ex 1:**

P sues a municipality in federal court for damages under 42 U.S.C. § 1983 for violations of his civil rights (also joins state law battery action)

the US SCt has never decided whether a municipality can be sued under § 1983

the federal court concludes that municipalities cannot be sued under § 1983

how is the case dismissed: lack of SMJ or failure to state a claim?

* + - **Failure to state a claim**
		- **a case can arise under federal law for the purposes of 1331 even though the plaintiff doesn’t actually have a federal law to sue under**

**how far can a plaintiff take this?**

* + **Ex 2**:

P and D get into a fight

P wants to sue D in federal court

so P sues D in federal court for violating federal securities law by hitting him in the face (also joins a state law battery action)

failure to state a claim or lack of SMJ?

* + - **Lack of SMJ**
* In the second case the plaintiff does not merely not state a claim for federal law there’s no *colorable* claim under federal law – cannot reasonable say plaintiff states a claim under federal law
	+ ct also considers motive of plaintiff

a similar distinction occurs when attempting to defeat diversity

* **Joinder to defeat federal subject matter jurisdiction**

- P (NJ) wishes to sue the D Corp. for fraud

- D Corp. has is incorporated in NY with PPB in NY

- P does not want the action removed by the D Corp. to federal court

- so P joins X (NJ), an accountant who was in part responsible for the D Corp.’s misrepresentations, as a defendant

- the ability of the accountant to be liable under the relevant state law is uncertain (i.e. P may fail to state a claim against X)

- the D Corp. removes

- should the federal court remand the case

* + Even if P might fail to state a claim, case should be remanded
		- The court can’t make conclusion about whether P fails to state claim against X, has to have jurisdiction to be able to determine that

how far can a plaintiff take this…?

* + *Rose v. Giamatti,* 721 F. Supp. 906 (S. D. Oh. 1989)
		- Fraudulent joinder if there’s no factual basis upon which it can be claimed
		- The question is not whether or not it fails to state a claim
			* Question is if there is a *colorable* claim at all (rational)
			* Looks like P is just trying to join a diversity destroying party
	+ Distinction between jurisdictional inquiry and whether or not P states a claim or not

**Personal Jurisdiction in State Court**

***State Sovereignty***

* States w/ respect to one another, and w/ respect to other nations, are treated as sovereign nations
	+ Other sovereigns don’t have power within other sovereigns
	+ Mutual limitations as result of sovereignty

***Key Points Regarding Personal Jurisdiction***

* Distinguish personal jurisdiction (PJ) from choice of law (what kind of law a court will apply to a defendant)
* Distinguish PJ from subject matter jurisdiction (SMJ)
* Distinguish PJ from service/notice
	+ Two different considerations that may seem to be muddled in *Pennoyer v. Neff*
	+ ***Attachment***
		- Court in *Pennoyer* speaks about attachment as way court can get power over a defendant’s property
		- Or as a way to serve notice to a defendant

***Pennoyer v. Neff***(US 1878)

* Not legal history – still out there to some extent
	+ Some law still can only be validated by citing *Pennoyer v. Neff* that is not justified by *International Shoe v. Washington.*

**Pennoyer Theory**

* When determining whether there is PJ, one needs to determine whether court can exercise power over:
	+ Person, or;
	+ Property
* A court has PJ by virtue of people or property being within its borders **at the time of the lawsuit**
	+ The question is “was there personal jurisdiction in the earlier case of *Pennoyer* (*Mitchell v. Neff*)?”
		- US SCt affirms, its reason being – no attachment of the property at the initiation of the suit
* *Mitchell v. Neff* happened before 14th Amendment
	+ but in dicta the SCt asserts that going forward the requirements for PJ articulated by the court will be read into the 14th A Due Process Cluase and be binding on the states as a matter of federal constitutional law
* The requirement of attachment for *in rem/quasi* *in rem* was soon abandoned
	+ Provided that the property is *identified* at the outset
		- Subsequent cases make it clear that this standard is used
	+ This makes sense: why demand attachment? Why is it important to the court’s power?
		- The courts power derived by presence of the property itself, not whether or not it can interfere with the property

**Challenging Personal Jurisdiction**

* Direct
	+ Motion to dismiss for lack of PJ brought before the court that is wrongly asserting PJ
	+ Motion to set aside judgement brought before the court that wrongly asserted PJ
* Indirect
	+ Collateral attack
		- A challenge on the validity of the judgment of different proceeding on the ground that the court in the proceedings lacked PJ
* *Neff v. Pennoyer –* collateral attack occurred (indirect challenge) of judgment in Mitchell v Neff
	+ Was there PJ over Pennoyer in *Neff v. Pennoyer*? Yes, 4 reasons:
		- Pennoyer lived in Oregon
		- Pennoyer claimed ownership of property in Oregon
		- Probably served with process in Oregon
		- Consent creates PJ by willingly appearing before court
* Effects of limits on PJ being read into 14th Amendment
	+ Affects direct attacks **and** collateral attacks
	+ now the matter can be appealed to the USSCt because an issue of federal constitutional law is implicated
	+ 14th Amendment binding on states, 5th Amendment binding on federal government

***Types of Personal Jurisdiction***

* *In personam:* source of PJ is presence of defendant at initiation of the suit – NOT at the time of the event being adjudicated
	+ Simply by being within the borders of the state, one can be tagged
* *In rem:* source of PJ is presence of property at initiation of the suit
	+ The suit concerns ownership of property (e.g. quiet title action)
	+ Binding upon all possible claimants
		- The property gives the court power over the owner of such property
* *Quasi in rem*
	+ Two types
		- (1) the suit concerns the ownership of property (e.g. quiet title action), BUT it’s only binding on certain parties
		- (2) the source of PJ is defendant’s property in state at initiation of suit, but the suit does not concern the ownership of the property
	+ What kind of PJ was Mitchell trying for in Mitchell v. Neff?
		- 2nd type of *quasi in rem*
* - assume that a court that rendered a judgment had PJ
- why does another court system have to give it any respect?
* No Constitutional law that requires for a state court to recognize the judgement of a foreign nation, *even if* that foreign nation had personal jurisdiction
	+ However, Article IV, § 1 – Full Faith and Credit
		- Constitutional obligation to give effect to judgments of sister states
		- Only speaks of constitutional obligation between states, not between the states and federal government
	+ The only obligation federal courts have to recognize state judgments is a *statutory obligation:* 28 U.S.C. § 1738
	+ Debate over where in Constitution where federal judgments have power over states (states have to recognize federal judgments)
		- Article VI of Constitution (Supremacy Clause) is one theory
* Distinguish the question of what state courts *can do* to get personal jurisdiction (Constitutional permissibility), and what they have *chosen* to do

**The Pennoyer Framework in Action**

* Under *Pennoyer*, you only look at what is in the state at the beginning of the lawsuit, not *what gave rise* to the lawsuit
* Once you have *in personam jurisdiction,*
	+ The court has power it needs to issue an injunction
		- The court can create an obligation to do anything anywhere in the world
		- it can even create an obligation on the defendant to transfer title (ownership) to property that is locatred in another state
			* BUT it cannot actually change ownership of out-of-state property itself
	+ Can issue a judgment on the defendant of an infinite amount of money
* Under *Pennoyer,* even if you’re lured into a state, courts can still get personal jurisdiction over you as a Constitutional matter
	+ states do not commonly exercise this this power
* also can get in personam PJ over a defendant for a new lawsuit when he is appearing in connection with another lawsuit
	+ again, sometimes states no not take advantage of this power

in a quasi in rem action,

* the court has power only over the property that is the source of PJ
* it cannot create a valid judgment in excess of the poroperty’s value
* *Full Faith and Credit:*
	+ The recognizing jurisdiction must give the judgment the *same preclusive effect* it would have in the rendering jurisdiction’s courts
	+ e.g. a California court must give the Oregon judgment the same preclusive effect it would have in Oregon state court
* Early on in *Pennoyer* framework, courts decided that domicile creates in personam PJ