**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