Lect 10

Two big problems with the Pennoyer framework:

1. Getting PJ over a defendant (whether an individual or a corp) for past acts in the forum state
2. determining whether a corporation is present within a state other than its state of incorporation to subject it to in personam PJ

statutes creating a fictive agent for service of process (such that service on the agent created PJ over the corp or individual) helped to some extent

but there were constitutional limits on their use (which you don’t need to know) that mader them unable to completely solve the problem

that made a new theory of PJ necessary – intl shoe

state of Wash sues Int’l Shoe in an administrative ct in Wash for unemployment taxes

the D challenges the statute applies to them and the constitutionality of the statute,

these can be set aside – (the challenges failed)

also challenged service

method of service?

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

This was also rejected (we will discuss due process and notice later)

Important challenge is pers jurisd

- denied, comm’n affirms, state cts aff’d, incl state SCt

- US SCt granted cert

Affirms

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

- 13 sales agents there

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

- rented rooms for displays

- no office

The court uses the fact that a corp’s presence in a state is reducible to its contacts to recharacterize PJ in terms of contacts

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)

But the SCt is introducing a new theory of contacts that will allow corps and inivdiuals to be haled before a ct for past acts

Political Theory of Pennoyer (jealous territorial sovereigns asserting their power over anything within their borders)

Political Theory of Int’l Shoe

- a moral theory about an exchange between D and forum state

- privilege of protection of state implies reciprocal duties to return

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

* + Black’s concurring opinion – worried that vague moral standards are being read into Due Process Clause (certain theory being read into clause; will vary and nothing can restrain Justices from concluding that states have violated due process aside from Justices’ moral views)
* Two categories of in personam jurisdiction under Int’l Shoe
  + (1) Substantial continuous activity in forum state leads to PJ for all causes of action, even those distinct from activities in forum state (general jurisdiction)
    - This will be limited in Daimler
  + (2) Single or occasional acts in forum state leads to PJ for causes of action arising out of or related to those activities (specific jurisdiction)
* *McGee v. International Life Insurance Co.* (US 1957) (p185)
  + How specific in personam jurisdiction works
  + Case that was appealed to USSCt – TX state court refused to enforce judgment of CA court (a default judgment against TX life insurance company)
    - Beneficiary’s TX cause of action – suing insurance company for debt created by the California judgment
      * Judgment creates a debt
        + AND collecting the debt requires new cause of action (debt collection action) brought where the judgment debtor has assets
    - Life insurance company argued there was no judgment debt because the CA judgment was void due to want of personal jurisdiction
  + Original CA case – plaintiff, a beneficiary of the life insurance policy of her son, sued for breach of contract because company would not pay on policy - life insurance company defaulted (did not show up); company had argued that death was not covered by policy because it was due to suicide
    - By defaulting on first judgment, cannot challenge liability on contract action collaterally if judgment is determined to be valid because there was PJ
    - Ins Co was taking a big chance
    - But there was a benefit too – by defaulting and waiting for the plaintiff to sue on the judgment in TX (where the D had assets), TX courts would be determining the PJ of the CA ct – this is a collateral attack
    - If they had challenged PJ before the CA state ct (that is, made a direct attack), the CA ct would be determining its own PJ
    - Unfortunately for the D, the USSCt took the case on appeal from the TX courts and held there was PJ
  + Only contact by Company in CA - mailed reinsurance certificate (contract) to CA
    - BUT despite small contact, the contract that P was suing on was that very document
    - Small contact but cause of action closely related to the contact
  + Court’s rationale was problematic though
  + The power theory in Intl Show was about what the ***D*** did to reach out to the forum state and create a reciprocal obligation to return
  + But McGee ciourt starts mentioning other considerations unrelated to what the D did
  + It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable. When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum - thus in effect making the company judgment proof. Often the crucial witnesses - as here on the company's defense of suicide - will be found in the insured's locality. Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing which amounts to a denial of due process.
    - * McGee factors don’t match International Shoe theory of power
    - They become an independent set of considerations besides Int’l Shoe power theory