Final issue concerning removal

Objections to defects in *procedure* for removal (not lack of SMJ) are waived after 30 days from filing of removal – the in-state defendant rule is procedural, not a matter of smj

That brings up the question of when a federal court can bring up the defect in proecure sua sponte (on its own motion) – Green looked into it

* Cannot after 30 days from filing
* There is some disagreement among federal courts about whether it can even before the 30 day period is up

**Personal Jurisdiction in State Court**

We are now going to discuss procedure in state court

* When a state court has power to adjudicate a party (especially a defendant) and issue a binding judgment on them
* States are understood has having retained most of their sovereignty despite having given over some power to the federal government
* Thus the adjudicative power of their courts is to a large extent the power that nations’ courts have
* The adjudicative power that nations’ courts have can put limits on the powers of other nations’ courts

***Key Points Regarding Personal Jurisdiction***

* Distinguish personal jurisdiction (PJ) from choice of law
  + To say a state court has personal jurisdiction does not mean that it will (or even can) apply its law to the facts
  + A court can have PJ but be unable to apply it law to the facts
  + A jurisdiction’s law may apply to the facts but its courts may not have PJ
* Distinguish PJ from subject matter jurisdiction (SMJ)

SMJ concerns whether the case is of the type that can be entertained by a court system

Just because state courts have general SMJ does not mean that they will have PJ over a defendant

* Distinguish PJ from service/notice
  + Two different considerations that may seem to be muddled in *Pennoyer v. Neff*
  + Service is a way of giving someone notice (though not the only way)
  + Service in the forum state (the state where the case is being litigated) is one way of getting PJ
  + They should not be confused
    - Service out of the forum state is fine as far as notice is concerned but not as far as PJ is concerned – there must be some other method of PJ

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

* Not legal history – still out there to some extent
  + Some forms of PJ not justified by *International Shoe v. Washington* can probable be justified only by *Pennoyer v. Neff*
* Mitchell sues Neff in state court in Oregon for unpaid lawyers fees
* Notice was through publication in a newspaper that had circulation only in OR
* Neff was living in CA at the time of the suit
* He defaults, property he has in OR is sold to satisfy the judgment – curiously is sold to Mitchell himself, who then sells it to Pennoyer
* - Neff then sues Pennoyer in ejectment in federal court in Ore.  
  - diversity case
* Why is the PJ over Pennoyer?
  + Lots of reasons – probably served in OR, also domiciled in OR

- Pennoyer claims it is his, because he bought it from Mitchell, who got it pursuant to the enforcement of a valid Ore. state ct judgment  
- so Neff is attacking the validity of the judgment in Mitchell v. Neff

* Federal trial court holds for Neff on grounds that notice was inadequate under OR law
* The USSCt upholds on different grounds – no PJ
* but don’t federal courts have a duty to give state court judgments full faith and credit?
* Yes but only if there is PJ for the judgment
* A bit more on FF&C
* State and federal courts have no constitutional or statutory obligation to give the judgments of foreign nations FF&C, even when those judgments have PJ, even though they often do so
* State courts have a constitutional obligation to give sister state judgments FF&C (if the judgments have PJ) under the Full Faith and Credit Clause
* Art IV, § 1.   
  **Full Faith and Credit** shall be given in each State to the public Acts, Records, and **judicial Proceedings** of **every other State**. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.
* Federal courts have a statutory obligation to give state judgments FF&C (if the judgments have PJ) under the Full Faith and Credit statute
* 28 U.S.C. § 1738. - State and Territorial statutes and judicial proceedings; full faith and credit ...   
  The records and **judicial proceedings of any court of any such State,** Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.   
  Such Acts, records and judicial proceedings or copies thereof, so authenticated, **shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.**
* Because it is an obligation create by a federal statute, Congress could get rid of it (and has occasionally for certain cases, e.g. the Schiavo case)
* State courts have a constitutional obligation to give federal judgments FF&C (provided they have PJ)
* Where does this obligation come from
* Different views but probably the supremacy clause
* Art. VI  
    
  This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

**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**
  + why was there no jurisdiction over Neff’s person?
  + Because he was not served in OR at the beginning of the lawsuit
* Why was there not PJ over Neff’s property?
* Because the OR property was not attached at beginning of the lawsuit
* *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 Clause 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
* 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*