this is the big problem with Pennoyer:  
Neff, a domiciliary of California, enters Oregon, kills Mitchell’s family, and returns to California  
Neff owns no property in Oregon  
Mitchell sues Neff in Oregon state court for wrongful death  
PJ?

No – under the Pennoyer framework. The question is solely whether the defendant or his property is within the borders of Oregon at the beginning of the lawsuit. Neff has no property in Oregon and is currently in California.

But it seems morally justified for Oregon to assert adjudicative power over someone who did something in Oregon in the past. This will be allowed under International Shoe.

Even under the Pennoyer framework, however, states were sometimes able to get around this problem by resort to legal fictions.

In Hess v. Pawloski (U.S. 1927) the Supreme Court upheld a Massachusetts statute that stated that driving within Massachusetts amounted to the appointment of an official in Massachusetts as the driver’s agent for service of process, in the sense that service upon the agent in Massachusetts will be sufficient for service upon the driver within Massachusetts, thereby creating PJ.

The statute in effect created a continued presence within Massachusetts to allow for this state’s courts to get in personam jurisdiction over people from outside the state for acts committed within the state in the past

But there were constitutional limits on the ability to rely on these statutes. You don’t need to know the details, but the problem was the privileges and immunities clause. A state could prohibit someone from driving within its borders, because cars were considered dangerous instrumentalities. For that reason, it could condition driving in the state upon an appointment of an agent for service of process (in the narrow sense that would create personal jurisdiction). But he could not prohibit individuals from doing business within the state, or traveling through the state in other ways.

All you need to know is that these statutes couldn’t get completely around the problem of getting in personam jurisdiction over individuals for past act in the state.

Now corporations

The problem here is the corporations are not like human beings. Human beings have bodies that make it clear wherever they are at any moment.

How do you get in personam jurisdiction over a corporation?

the D Corp., incorporated in California, has an agent go to Oregon where he sells a product to P   
- the product harms P  
- P seeks to sue the D Corp. in California state court  
- is there PJ?

Yes – corporations were considered to be subject to in personam jurisdiction in their state of incorporation.

But what about other states?

the D Corp., incorporated in California, has an agent go to Oregon where he sells a product to P   
- the product harms P  
- P seeks to sue the D Corp. in **Oregon state court**  
- is there PJ?

* Under Pennoyer framework there was no source of personal jurisdiction as this case is described. This would be like an individual going into a state doing something and then going back to his home state. No personal jurisdiction, unless the individual had property within the state
* It would not work for the CEO or for any other employee of the corporation to be tagged (served) in the state.
* The corporation is not the same thing as that individual.

So there are two problems for corporations under the Pennoyer framework

* How do you get personal jurisdiction over them for past acts in the state (this is the same problem that occurred for individuals)
* How do you determine whether a corporation is present within a state other than its state of incorporation? (this was not a problem for individuals, because they have bodies)

Again, statutes creating legal fictions were often relied upon by states to solve these problems.

- the D Corp., incorporated in California, wishes to do business in Oregon  
- to do so, Oregon requires the D Corp. to appoint the Sect. of State of Oregon as its agent for service of process (in the narrow sense that service on the agent what create in personam jurisdiction on the corporation in the state)  
- the D Corp. does  
- P is harmed by a D Corp. product and sues the D Corp in Oregon state court, serving the Sect. of State of Oregon   
- is there PJ?

- the Supreme Court would often uphold such statutes

They would also often uphold them in the following circumstances

- the D Corp., incorporated in California, wishes to do business in Oregon  
- Oregon takes doing business in Oregon to constitute appointment of the Sect. of State of Oregon as its agent for service of process  
- P is harmed by a D Corp. product and sues the D Corp in Oregon state court, serving the Sect. of State of Oregon   
- is there PJ?

BUT here too there was a limit on the ability to rely upon such statutes. Once again, you do not need to know the details, but it had to do with the commerce clause. A state could forbid a corp from doing intrastate commerce and so could condition doing it on the appt of an agent in the state that would create PJ

But it could not forbid the corp from doing interstate commerce

The main point is that these statutes were not able to fully solve these problems with the Pennoyer framework. That made international shoe 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. 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 individuals to be haled before a ct for *past* acts

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

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 – the criterion of Substantial continuous activity will be rejected in favor of a different test
  + (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)
  + Case that was appealed to USSCt – TX state court refused to enforce judgment of CA court
    - 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