A (Cal.) sues B (a German national admitted for permanent residency in the US and domiciled in Nevada) in Nevada state court under state law for +$75K

May the case be successfully removed by B?

Answer – YES

The bit about aliens admitted for permanent residency and domiciled in a state is only about knocking out cases from alienage jurisdiction in 1332(a)(2)

* Does not apply to removal under 1441

There’s a good policy argument that the in-state defendant rule in 1441 should include aliens admitted for permanent residency and domiciled in the forum state, but there is no good statutory argument

Avitts v. Amoco Production

* Avitts was suing multiple companies in texas state court due to property damage from oil companies on their real property
* Removed to federal court - the original claim vaguely mentioned federal law
	+ They stated that state and federal law were applicable
		- But they didn’t state how federal law was violated
* After removal, defendants asked for a more definite statement
	+ Denied, but
	+ Plaintiffs rewrote the complaint anyway, this time excluding language referencing federal cause of action
* Federal court issued preliminary injunction for the plaintiffs, requiring environmental study
	+ Preliminary injunction is initial command to defendant so that if the plaintiff is entitled to relief it will be possible to provide it
* Now the Ds ask for remand and the Ps challenge it
* District court denied remand
* Preliminary injunction goes to court of appeals which decides that there’s no SMJ and therefore the case has to be remanded back to state court.

Procedure for removal

* Defendant has 30 days from service (or otherwise being aware of complaint) to remove a case to federal court
* if a later served defendant wants to remove (within 30 days of receiving complaint), earlier served defendants can consent even though their own 30 days are up
* if a case’s removability is only ascertainable later, the defendant has 30 days from that point to remove
	+ you cannot remove a case under 1332 (diversity or alienage) after 1 year from filing however unless the reason that the case’s removability was not known by the defendant until then was due to the plaintiff’s bad faith
	+ not so for removal under 1331 – that can occur even after a year

Waiving Objections to non-removability

* after removal a plaintiff can waive certain objections to non-removability if he fails to mention them within 30 days of removal – eg that the defendant removed more than 30 days after receiving the complaint or that not all defendants consented to removal
	+ but waiver cannot apply to objections that the removed action lacks SMJ
* what about the in-state defendant rule? Is it procedural or is it jurisdictional?
* Procedural!

That brings up the question of when a federal court can bring up the defect in procedure 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
* Majority view seems to be can’t

**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