**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*

The Pennoyer framework in action

- Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred in Oregon while he was a resident of Oregon  
- service of the summons and complaint are delivered to Neff in hand in California  
- PJ?

NO – not served in Oregon

- Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred in Oregon while he was a resident of Oregon  
- there is in-hand service of the summons and complaint upon Neff while he is in Oregon on a brief business trip  
- PJ? – YES

- Mitchell, an Oregon resident, sues Neff, a California resident, in Oregon state court for unpaid lawyer’s fees that Neff incurred to Mitchell in California – Neff was never an Oregon resident  
- there is in-hand service of the summons and complaint upon Neff while he is in Oregon on a brief business trip  
- PJ?

Yes – whether there is personal jurisdiction is independent of where are the cause of action arose

Because Neff was served in Oregon, there is personal jurisdiction in Oregon for any cause of action Mitchell might have against him.

- Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court in order to quiet title to property in Oregon that each claims he owns  
- service on Neff is in-hand in California  
- PJ?

Yes this is a quasi in rem action of the first time – the service is a relevant to whether there is personal jurisdiction

- Pennoyer, an Oregon resident, brings a suit to quiet title to Oregon property that he claims he owns  
- he brings an action in Oregon state court that he hopes will bind everyone in the world  
- service is by publication  
- it is determined that Pennoyer owns the property  
- is Neff, a Californian in California, who has a claim on the property bound by the judgment?

Yes, at least as far as personal jurisdiction is concerned. This is an in rem action

- Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court for breach of a contract Neff entered into to sell Pennoyer property in California   
- Pennoyer gave Neff the money but Neff has not given Pennoyer the property  
- Pennoyer asks for an injunction ordering Neff to transfer title to the Cal. property to Pennoyer  
- service is in hand on Neff in Oregon

This is a tough one. In fact there is personal jurisdiction, because what is being created is an obligation on Neff’s person to perform a particular act. The court is not purporting to change ownership of the California property. It is putting an obligation on Neff to transfer title. And it can do that because Neff was served within the borders of Oregon.

§ 94. Decree To Be Carried Out In Another State  
A state can exercise jurisdiction through its courts to make a decree directing a party subject to the jurisdiction of the court to do an act in another state, provided such act is not contrary to the law of the state in which it is to be performed.

- Pennoyer, an Oregon resident, sues Neff, a California resident, in Oregon state court for breach of a contract Neff entered into to sell Pennoyer property in California   
- Pennoyer gave Neff the money but Neff has not given Pennoyer the property  
- Pennoyer asks the court to *transfer title to Pennoyer*  
- service is in hand on Neff in Oregon

- this will not work. The court is purporting to act in rem, but the property is not in Oregon.

- Mitchell, an Oregon resident, brings an action against Neff in Oregon state court concerning $253.14 in legal fees that were incurred in Alaska  
- Neff resides in California  
- the Oregon state court attaches property in Oregon owned by Neff worth $300 at the beginning of the suit

There is personal jurisdiction–this is a quasi in rem case of the second type

- Mitchell, an Oregon resident, brings an action against Neff, a California resident, in Oregon state court concerning $253.14 in legal fees  
- the personal jurisdictional basis for the suit is $200 property in Oregon owned by Neff  
- Neff defaults  
- the property is sold and the money given to Mitchell  
- Mitchell then brings a suit *on the Oregon judgment* in California state court to recover the remaining $53.14  
- service on Neff is in-hand on California  
- what result?

Mitchell cannot sue on the Oregon judgment because it did not create a debt. It could only create a debt if there was in personam personal jurisdiction over Neff. But there wasn’t. There was only jurisdiction over neff’s property.

One way of thinking of it is that the quantum of personal jurisdictional power that the Oregon court has is limited by the property. It has only $200 worth of power. But Mitchell is free to sue on the remaining $53.14 in California or in any other state where Neff has property. But he has to bring a new lawsuit. You cannot sue on the Oregon judgment.

- Mitchell lures Neff to Oregon with a story that Neff has won a contest  
- while he is in Oregon, Neff is served for a suit brought by Mitchell in Oregon state court concerning unpaid lawyers fees  
- Neff chooses to default  
- under Oregon law, someone can be submitted to personal jurisdiction on the basis of tagging in the state even when the tagging is the result of fraudulent inducement  
- Mitchell then brings a suit in California state court to execute the Oregon judgment  
- under California law someone cannot be submitted to personal jurisdiction on the basis of tagging in the state when the tagging is the result of fraudulent inducement  
- Neff argues that the earlier Oregon judgment is void  
- what result?

The first question is whether Oregon’s approach is constitutional under the Pennoyer framework.

The answer is yes. The Pennoyer approach is really about power over persons and things with in the state’s borders. It is not a moral notion of justified authority.

The next question is whether the full faith and credit clause is satisfied by the California court using its views about personal jurisdiction or whether it has to use Oregon’s views. One might say that if the California court treats the Oregon judgment the same way it would treat a California judgment, Full faith and credit is satisfied. Since a Cal judgment of the same type would not be respected in California courts, and Oregon judgment of that type does not have to be either. But that isn’t so.

the recognizing jurisdiction must give the judgment the *same effect* it would have in the rendering jurisdiction’s courts  
e.g. a California court must give the Oregon judgment the same effect it would have in Oregon state court.

Since the Oregon judgment will be respected in Oregon, it must be respected in California too.

It is important to draw a distinction between what a state has the constitutional power to do as far as personal jurisdiction is concerned, and what it actually chooses to do. Here California is not choosing to exercise power that it has.

The sections from the first restatement of conflicts that I had you guys read spells out what states in general choose to do. It still gives you a good deal of information about limits on their power under the Pennoyer framework. But at times it may be more restrictive than the Pennoyer framework.

- Mitchell has Neff tagged in Ore. while he is there for a business trip  
- Mitchell’s suit is in Ore. state ct and concerns unpaid lawyer’s fees  
- Neff appears to litigate the merits  
- While Neff is there Pennoyer has him served in connection with another unrelated suit, brought in Ore. state ct, concerning a brawl in Cal.  
- PJ? Yes – although sometimes states choose not to assert personal jurisdiction in such cases.

- Mitchell sues Neff (a California resident) in Oregon state court concerning lawyer’s fees Mitchell performed for Neff in California

sary.