Introduction to Personal Jurisdiction
Personal jurisdiction types and constitutional rules <u>before</u> *International Shoe*
Some rules survive after *International Shoe* but some do not
Civil Procedure—Gómez-Arostegui Fall 2026

I. The Basics of Personal Jurisdiction

A. In order to enter a binding judgment against a defendant, a federal court (and a state court) must have personal jurisdiction over that defendant. Stated another way, personal jurisdiction describes the authority of a court in a "forum state" (i.e., the state where the lawsuit is filed) to exercise power over a person, entity, or property and enter a lawful judgment against that person, entity, or property. This is a *geographical limitation* on where a lawsuit can be filed. You cannot just drag anyone or any company into court anywhere in the United States.

1. Partly based on fairness. Imagine having to defend yourself in a lawsuit that someone decides to file in Maine, even though the lawsuit has no connection to that state and you live in Oregon.

2. Partly based on federalism and state sovereignty. There is a notion that some states have stronger interests than others when it comes to hearing a lawsuit, usually because of things like where the injury occurred or where the defendants live.

B. Personal jurisdiction must be contrasted with subject-matter jurisdiction, a concept we will discuss in a few weeks. For now, and quickly, subject-matter jurisdiction limits the *type* of lawsuit a court can hear:

1. The default rule is that *state* courts can hear any type of claim, unless some statute, rule, or decision states otherwise. The prohibition/exclusion can come from state law or federal law.

2. The default rule is that *federal* courts cannot hear any claim, unless some statute or decision states otherwise. The allowance must come from federal law.

C. How does one determine whether there is personal jurisdiction?

1. It is a two-step test, regardless of whether you file in federal court or state court. Note that our focus in this course will be on lawsuits filed in federal court.

a. First, there is a statutory (a.k.a. rule) step.

i. If you file in state court, you start this statutory step by looking at the forum state's own laws of civil procedure. The Federal Rules of Civil Procedure (FRCP) do not apply in state courts.

ii. If you file in federal court, you start this statutory step by looking at FRCP 4(k)(1), which requires a plaintiff to serve a summons on the defendant, or the defendant waiving the need for service, plus:

+ a *state* statute, rule, or decision in the forum state that would give a state court personal jurisdiction, and thereby give a federal court personal jurisdiction too—4(k)(1)(A); or

+ a *federal* authorization called the 100-mile bulge rule—4(k)(1)(B); or

+ a *federal* statute that authorizes personal jurisdiction—4(k)(1)(C).

iii. The interesting twist here, as you saw from today's reading (pp 19–20), is that in most litigated cases in federal court the plaintiff and court will use FRCP 4(k)(1)(A) and borrow and apply the statutory step from state law.

+ So if someone files a lawsuit in federal court here in Oregon, the federal court will look at Oregon rules/statutes of civil procedure. And if the Oregon law indicates that its state courts have personal jurisdiction over the defendant, then the statutory step is met in federal court.

iv. These federal and state laws on personal jurisdiction are often called long-arm statutes because (1) they typically are statutes (as opposed to rules or decisions); and (2) they nearly always deal with defendants who are not residents of the state where the lawsuit was filed. Picture an Oregon court (federal or state) reaching its long arm outside of the state to summon defendants who live in Montana in order to hale them into the Oregon court.

b. Second, there is a constitutional step, which depends in our course entirely on the meaning of the U.S. Constitution. States have their own constitutions, which could come into play as well, but our focus in this course is on the U.S. Constitution.

i. The U.S. Constitution applies regardless of whether the case is filed in federal court or state court.

ii. The due process clause appears in two places—the Fifth and Fourteenth Amendments.

+ The Fifth Amendment constrains a court using federal power to reach out.

+ The Fourteenth Amendment constrains a court using state power to reach out.

iii. These due process clauses place *constitutional* limits on when a defendant, particularly an out-of-state defendant, can be haled into court. It certainly is possible for a statutory step to allow something that the due process clause does not allow. Often, in this situation, we will say that the "statute or rule in question is unconstitutional" as applied.

c. Why have a two-step test?

i. First, setting things up this way allows a federal or state system, in its rules or statutes, to say that it

wants to exercise less personal jurisdiction than what is constitutionally permissible. So a state can enumerate very specific scenarios. And if none are met then there is no personal jurisdiction, and we do not even need to bother with the constitutional question.

ii. More importantly, as I mentioned just a moment ago, it also prevents those federal or state systems from exceeding what is constitutionally allowed.

+ Take, for example, a hypothetical court rule here in Oregon that says that anyone can be sued in Oregon if either they, their parents, or their grandparents had ever lived in the state.

+ Now imagine you've never set foot in Oregon, and you actually live in New York, but your grandparents lived in Oregon 60 years ago for 2 years. And now imagine that a New York resident decides to sue you in Oregon, based on a dispute arising entirely in New York. They sue in Oregon because they think the laws and procedures there will be more favorable to their case than the laws and procedures in New York. Under the Oregon statutory rule I have just described, they could hale you into court in Oregon.

+ This of course would be ridiculous, and that's where the U.S. Constitution steps in—the constitutional step. Basically, what happens here is that the court in Oregon would analyze both the text of the statutory rule and then all the cases on the boundaries of personal jurisdiction under the U.S. Constitution and would have to conclude that even though their own statutory rules allow them to hale you into their courts, those rules violate the due process clause of the Fourteenth Amendment. Therefore, there is no personal

jurisdiction over the defendant and the court will have to dismiss the case. The case will have to be refiled in a court that does have personal jurisdiction over you, the defendant. In this case that would certainly include New York, and perhaps some other places too.

II. The Traditional Bases of Personal Jurisdiction Before *International Shoe* (1945)

International Shoe is a very important 1945 decision that you will read after reading this handout. What I am laying out here are the basic principles that were in place before *International Shoe*.

A. The Supreme Court in *Pennoyer v. Neff* (1878), and a few other early cases, set out two principal bases for finding that the exercise of personal jurisdiction comported with constitutional due process:

1. If the defendant or property subject to the lawsuit was *present* in the forum state; or

2. The defendant *consented* (express or implied; voluntary or involuntary) to being sued in the forum state.

B. Keep in mind that these traditional personal-jurisdiction bases were in place when interstate transportation and communication were relatively minimal and most business and commerce was strictly local.

C. These traditional bases (presence and consent) came into play (and still do) in a variety of ways. The following describes the labels courts put on different types of lawsuits, which happened to be treated differently for a number of purposes:

1. *In rem* lawsuits: These are disputes about property located in the forum state where ownership is determined once and for all against all possible claimants. Think of an eminent domain action, or an action to condemn a piece of property. Often the plaintiff is the government (federal, state, or municipal) and they are not even suing a person. Technically speaking, the government might be suing the property. So the defendant is effectively (and sometimes literally) the piece of property. The judgment basically binds or is enforced on the property. *Presence:* property in the state.

a. Statutory step—some statute, rule, or decision must provide for *in rem* personal jurisdiction.

b. Constitutional step—the court can enter a binding judgment without running afoul of the due process clause. The owner of property in State X, and those purporting to own it, should reasonably expect that they might have to attend the federal or state courts of that state to defend their purported rights to that property.

2. *Quasi in rem* type #1 lawsuits: These are disputes about property located in the forum state where ownership will be determined solely between the parties named in the suit. Typically, a private party sues another private party to determine ownership between the two of them (and no one else) over the property in question. The plaintiff typically "attaches" the property at the outset of the suit, essentially seizing it until the rights can be adjudicated. The judgment basically binds or is enforced on the property. *QIR* #1 is not that far removed from *in rem*. *Presence:* property in the state.

a. Statutory step—some statute, rule, or decision must provide for *quasi in rem* #1 personal jurisdiction.

b. Constitutional step—the court can enter a binding judgment without running afoul of the due process clause. The purported owner of property in State X should reasonably expect that she might be called into the courts of that state to adjudicate her rights to that property.

3. *Quasi in rem* type #2 lawsuits: These are disputes not about property necessarily, but that relate to something else, like a breach of contract or personal-injury (i.e., tort) claim between two people. If the defendant owns property in the forum state, the plaintiff can "attach" that property at the outset of the lawsuit, following set procedures. That is the personal-jurisdiction hook, so to speak. After judgment in favor of the plaintiff's claim, the attached property is sold to help cover the amount owed in the judgment. Notably, the proceeds of the sale are the maximum the plaintiff can recover, even if it falls short of the total amount awarded in the judgment. So again, in a way, the judgment is

basically enforced on the property alone. *QIR* #2 seems more closely related to *in personam* (discussed below) than *in rem*. But it does still involve property. *Presence:* property in the state.

a. Statutory step—some statute, rule, or decision must provide for *quasi in rem* #2 personal jurisdiction.

b. Constitutional step—the court can enter a binding judgment against the person who owns the property without running afoul of the due process clause. This supposedly is fair because the maximum in liability that the person is exposed to is the value of the property that the person owns in the forum state.

4. *In personam* lawsuits*:* These are disputes where one hopes to obtain a binding judgment against a person or entity for some personal liability. The vast majority of lawsuits in the past and today proceed *in personam* and have no *in rem* or *quasi in rem* component to them. The following scenarios were held to be permissible before *International Shoe* (1945):

a. Tag/Transient personal jurisdiction—this is a way of obtaining personal jurisdiction by serving "process" (i.e., a complaint and summons) on the defendant when the defendant is present in the forum state (even if only briefly). The defendant is typically just passing through the forum state (hence, "transient") and the plaintiff is "tagging" the defendant with service of process. *Presence:* defendant is in the state *when served.*

i. Statutory step—some statute, rule, or decision must provide for tag/transient personal jurisdiction.

ii. Constitutional step—the court can enter a binding judgment against the defendant without running afoul of the due process clause so long as the defendant is a natural person. This did not work with defendants who are entities, like corporations or partnerships.

b. Domicile—this is asserting personal jurisdiction over a defendant that is domiciled in the forum state. *Presence:* defendant is domiciled in the state.

    i. Statutory step—some statute, rule, or decision must provide for domicile-based personal jurisdiction.

    ii. Constitutional step—the court can enter a binding judgment against the defendant without running afoul of the due process clause. The need for constitutionally protecting a defendant is weakest in this scenario.

c. Defendant can "consent" to personal jurisdiction. The consent can be express or implied & voluntary or involuntary. *Consent.*

    i. During the lawsuit—defendants who voluntarily or unconditionally appeared in a lawsuit, i.e., without reserving the right to contest personal jurisdiction, waived or forfeited the objections they might have (even if valid) for lack of personal jurisdiction.

        + Statutory step—some statute, rule, or decision must provide that one can waive or forfeit a personal-jurisdiction objection by doing or failing to do certain things during the litigation. Over time, the rules on this have changed. We will study the relevant FRCP.

        + Constitutional step—the court can enter a binding judgment against a defendant that waives or forfeits their due process right because many constitutional protections (including due process) are waivable or forfeitable.

    ii. During the lawsuit—a non-resident *plaintiff* automatically "consents" to personal jurisdiction on *counterclaims* brought by the defendant against the plaintiff. As we will learn in greater detail later, a

"counterclaim" is a claim brought by a defendant against the plaintiff *in the same lawsuit*.

+ Statutory step—typically, statutes or rules do not specifically address personal jurisdiction in this situation. But it is something that is generally understood in a number of decisions as an authoritative principle nonetheless.

+ Constitutional step—the court can enter a binding judgment against the plaintiff on the defendant's counterclaim because the plaintiff, by bringing the lawsuit in the state, effectively waived or forfeited any objections she might have to personal jurisdiction on a counterclaim.

iii. In advance of the lawsuit—a defendant can consent to personal jurisdiction in a forum-selection clause that appears in an agreement between the parties that governs the dispute. The parties basically agree beforehand to litigate future disputes in one or more identified states. This is, again, essentially a waiver of any objection one might have to lack of personal jurisdiction in those states.

+ Statutory step—there typically aren't statutes or rules that specifically address personal jurisdiction in this situation, but this is essentially a principle of contract law. The court is simply enforcing an agreement between the parties to not object to personal jurisdiction in certain states.

+ Constitutional step—the court can enter a binding judgment against a defendant that waives their due process rights because most constitutional protections are waivable.

iv. In advance of the lawsuit—voluntarily appointing an agent to accept service of process in the forum state

for claims can act as consent. This typically applies to companies, but in some cases can apply to individual defendants.

+ Statutory step—some statute, rule, or decision must provide for exercising personal jurisdiction in this scenario.

+ Constitutional step—the court can enter a binding judgment against a defendant that waives their due process right because most constitutional protections are waivable.

v. In advance of the lawsuit—involuntary appointment of an agent to accept service of process in the forum state, or simply involuntarily agreeing to be amenable to suit in the forum state, usually by requiring a company to register in the forum state in order to conduct business there.

+ Statutory step—some statute, rule, or decision must provide for exercising personal jurisdiction in this scenario.

+ Constitutional step—The fiction of "consent" starts to break down here, as does the notion of "presence" through an agent. This discomfort led the Supreme Court to rule that, for companies at least, personal jurisdiction comported with due process if the defendant was "doing business" in the state—a more logical form of "presence" than the involuntarily appointed agent. But there was also an old decision from the Court that suggested that consent through mere registration comported with due process.

* When you read *International Shoe*, you will see that the parties spent a lot of time arguing over whether the defendant company was "doing

business" in the forum state of Washington.

III. How Much Remains After *International Shoe*. The remainder of the readings in the casebook begin with *International Shoe* (1945), a decision that changed personal-jurisdiction jurisprudence significantly. Many of the decisions (though not all) since 1945 have addressed whether some of the constitutional rules noted above survive or have essentially been overruled by *International Shoe*.