The purpose of this handout is to set the scene for our brief introduction to personal jurisdiction issues. Questions regarding the geographical location of litigation can be extremely important, and there are a lot of legal rules and traditions that bear on resolving disputes about litigation location. Civil Procedure II permits a fairly comprehensive examination of those issues, as well as subject matter jurisdiction, the *Erie* Doctrine, and a variety of choice-of-law questions.

Civil Procedure I is not a substitute for Civil Procedure II. But we are including a brief coverage of personal jurisdiction, subject matter jurisdiction, and the *Erie* case to introduce these issues. We hope that a little knowledge is not, in this instance, a dangerous thing. At least it will mean that you have some familiarity with the basic ideas. To get a working appreciation of them, you should take Civil Procedure II.

The classical "power" approach: The starting point for American personal jurisdiction rules is the famous case of Pennoyer v. Neff, 95 U.S. 714 (1877). Without working through the twists and turns of that case, it seems sufficient to recognize that it put in place a jurisdictional regime in which there were two basic forms of jurisdiction and lawyers would try various methods of using them.

1. **In personam jurisdiction**: Ordinarily, this form of jurisdiction depended on service of process (summons and complaint) on the defendant while the defendant was in the state in which the court sat. It usually did not matter why the defendant was in the state, and even a defendant travelling rapidly through the state could be served while there with binding effect (called "transient jurisdiction"). If the plaintiff lured the defendant into the state by trickery, a common law doctrine called "fraudulent inducement into the forum" provided a basis for refusing to enforce the process even though served within the state. And service of process was not essential if the defendant was a citizen of the state; the state was recognized as having authority to adjudicate claims against its citizens even though they were away at the time suit was filed and not personally served within the state.

2. **In rem jurisdiction**: The name of this sort of jurisdiction resulted from its focus on property (a res) located in the state. Assuming the state could seize the property, it could do so to provide security for any judgment plaintiff might obtain against defendant. But the dispute between plaintiff and defendant might have nothing
to do with the property. Compare a suit to compel transfer of real property that plaintiff claims defendant agreed to sell to plaintiff with a suit in which plaintiff claims defendant caused an auto crash that injured plaintiff, and plaintiff attaches defendant's real property in the state to support jurisdiction in the state. Even if this does not seem peculiar to you, you might find it odd that this sort of jurisdiction could raise subsidiary questions, such as "what is property?" and "where is it located?" One aggressive notion developed under these provisions was that the auto insurance coverage a driver has is property of that driver subject to seizure in any state in which the insurance company does business.

Over time, these jurisdictional ideas were absorbed into the due process clause; lack of jurisdiction was said to be a violation of due process. Sometimes cases involving jurisdiction also involved another due process consideration -- notice of the lawsuit. Particularly when in rem jurisdiction was invoked, it could happen that the method of attaching local property gave the defendant notice of the suit only poorly, or not at all. Although those concerns originally seemed linked to jurisdiction, they really were somewhat separate; nowadays we would say that one must satisfy due process requirements for giving notice and also satisfy due process requirements for exercise of jurisdiction.

These 19th century jurisdictional notions did not work well in a modern industrialized society. The introduction of the automobile meant that it would often happen that an out-of-state driver would injure a citizen of a state and leave the state before the injured resident could file suit and serve process. The limitations on the in personam arm therefore prevented jurisdiction in many situations in which it would seem fair to require the defendant to appear and defend in the jurisdiction where the injury was done. The in rem arm, meanwhile, could provide a basis for jurisdiction that would seem unfair. It could be that defendant's property would be found to be present in a distant state even though defendant had no way to foresee that would be held to be true. To take a recurrent example mentioned above, some states came to treat the insurance coverage an insurance company provides a driver as property of the driver that could be seized in any jurisdiction in which the insurance company was subject to service of process of attachment. That could mean a California driver who had never left the state of California could be sued in New York because she had insurance from State Farm, which did business in New York. That could even be true if the accident happened in San Francisco, and the plaintiff was from North Carolina, so long as New York permitted attachment of the insurance policy to establish jurisdiction in such situations.
States tried various methods to cope with these limitations on their jurisdiction, principally to enable their citizens to have access to a local court for adjudication of claims against outsiders. Under the Privileges and Immunities Clause of the Constitution, a state could not deny those same opportunities to citizens of other states, so the North Carolinian in the example just above could sue the San Franciscan in New York by "seizing" the auto insurance policy. Another way states expanded the jurisdiction of their courts was by requiring prospective defendants to consent to suit there. Many states, for example, required out-of-state corporations (not protected by the Privileges and Immunities Clause) to register before they did business in the state. As part of the registration, they would usually have to appoint a local agent for service of process. As a result, anyone who wanted to sue such a corporation in the state could satisfy the in personam jurisdictional requirements by serving the agent in the state.

In 1945, the Supreme Court broke away from this approach for in personam jurisdiction in International Shoe Co. v. Washington, 326 U.S. 310 (1945), which substituted the following new standard:

[D]ue 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."

This minimum contacts approach is the one used today. As you can guess from the quotation above, it is far from self-executing.

Until 1945, states could experiment with new ways to justify jurisdiction only by fitting them within the in personam or in rem formulations. But with the new standard announced by the Court, they began adopting statutes authorizing the exercise of jurisdiction in circumstances they felt would fit into the minimum contacts analysis, such as claims arising from defendant's "doing business in the forum," or "operating a motor vehicle in the forum." These statutes came to be called long-arm statutes because they sought to extend the long arm of the state's jurisdiction to authorize the courts of the state to entertain cases allowed under the new due process framework. Some moved beyond any limitations in their long arm statutes. § 410.10 of the California Code of Civil Procedure, for example, says: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or the United States." This provision essentially means that the only impediment to exercise of personal jurisdiction by a California court is a constitutional limitation.
Federal courts would not necessarily be subject to the same jurisdictional limitations as state courts because they are all part of a single sovereign, the United States. Therefore, one could say that anyone served with process anywhere in the United States could be required to defend anywhere in the U.S., just as California can say that anyone served with process anywhere in the state must defend in any state court in the state. But Fed. R. Civ. P. 4(k)(1)(A) generally provides that a federal court can exercise jurisdiction only if a state court in that state would be authorized to exercise jurisdiction. That federal rule therefore makes state long-arm statutes applicable to federal court litigation, and the due process issues raised by federal court litigation are regarded as raising the same issues as those in state courts.

General jurisdiction and specific jurisdiction: Until fairly recently, in personam jurisdiction was thought of as being only one kind of thing. But the fact that a state could exercise jurisdiction over its citizens even if they were not served within the forum, and could insist that an out-of-state corporation appoint an agent for service of process within the state to qualify to do business suggests what has proven true -- there are really two sorts. One is called "general jurisdiction," meaning that this defendant can be sued in this state on any claim. That is usually the "home base" of the defendant. The other kind of jurisdiction is tied to the circumstances underlying this particular lawsuit; it is legitimate to require the defendant to defend this lawsuit here due to the links between the lawsuit and the forum, but that conclusion does not extend to other lawsuits. That is "specific jurisdiction."

Ingredients of due process analysis: The "minimum contacts" analysis was subdivided into two parts -- "purposeful availment" and "reasonableness." To justify jurisdiction, a plaintiff must satisfy both prongs of this analysis. The purposeful availment prong looks, generally, to a voluntary act by the defendant that established a connection to the forum state that would alert the defendant to the prospect of being sued there if something went wrong. The reasonableness inquiry looks to the interests of the plaintiff and the defendant affected by whether the suit could proceed in the forum, the state's interests in entertaining the case (to provide relief to its citizens or to apply its law with regard to activities or products in the state).

In sum, the modern due process specific jurisdiction inquiry looks to the following questions:

(1) Is the applicable long-arm statute satisfied?

(2) Is due process satisfied because (a) defendant engaged in activity that constitutes purposeful availment, and (b)
the exercise of jurisdiction is reasonable?

In conclusion, I emphasize that you are not expected to master these many ideas in Civil Procedure I. But at least they provide a context in which you can work with the minimum contacts issues in the case we will examine.