

the Court had yet to consider due process requirements in the context of evolving business models, modern e-commerce in particular.<sup>909</sup>

***Actions In Rem: Proceeding Against Property.***—In an *in rem* action, which is an action brought directly against a property interest, a state can validly proceed to settle controversies with regard to rights or claims against tangible or intangible property within its borders, notwithstanding that jurisdiction over the defendant was never established.<sup>910</sup> Unlike jurisdiction *in personam*, a judgment entered by a court with *in rem* jurisdiction does not bind the defendant personally but determines the title to or status of the only property in question.<sup>911</sup> Proceedings brought to register title to land,<sup>912</sup> to condemn<sup>913</sup> or confiscate<sup>914</sup> real or personal property, or to administer a decedent's estate<sup>915</sup> are typical in rem actions. Due process is satisfied by seizure of the property (the “*res*”) and notice to all who have or may have interests therein.<sup>916</sup> Under prior case law, a court could acquire *in rem* jurisdiction over nonresidents by mere constructive service of process,<sup>917</sup> under the theory that property was always in possession of its owners and that seizure would afford them notice, because they would keep themselves apprized of the state of their property. It was held, however, that this fiction did not satisfy the requirements of due process, and, whatever the nature of the proceeding, that notice must be given in a manner

<sup>909</sup> 564 U.S. \_\_\_, No. 09–1343, slip op. (2011) (Breyer and Alito concurring).

<sup>910</sup> Accordingly, by reason of its inherent authority over titles to land within its territorial confines, a state court could proceed to judgment respecting the ownership of such property, even though it lacked a constitutional competence to reach claimants of title who resided beyond its borders. *Arndt v. Griggs*, 134 U.S. 316, 321 (1890); *Grannis v. Ordean*, 234 U.S. 385 (1914); *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269, 271 (1917).

<sup>911</sup> *Boswell's Lessee v. Otis*, 50 U.S. (9 How.) 336, 348 (1850).

<sup>912</sup> *American Land Co. v. Zeiss*, 219 U.S. 47 (1911); *Tyler v. Judges of the Court of Registration*, 175 Mass. 71, 76, 55 N.E. 812, 814 (Chief Justice Holmes), appeal dismissed, 179 U.S. 405 (1900).

<sup>913</sup> *Huling v. Kaw Valley Ry. & Improvement Co.*, 130 U.S. 559 (1889).

<sup>914</sup> *The Confiscation Cases*, 87 U.S. (20 Wall.) 92 (1874).

<sup>915</sup> *Clarke v. Clarke*, 178 U.S. 186 (1900); *Riley v. New York Trust Co.*, 315 U.S. 343 (1942).

<sup>916</sup> *Pennoyer v. Neff*, 95 U.S. 714 (1878). Predeprivation notice and hearing may be required if the property is not the sort that, given advance warning, could be removed to another jurisdiction, destroyed, or concealed. *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993) (notice to owner required before seizure of house by government).

<sup>917</sup> *Arndt v. Griggs*, 134 U.S. 316 (1890); *Ballard v. Hunter*, 204 U.S. 241 (1907); *Security Savings Bank v. California*, 263 U.S. 282 (1923).